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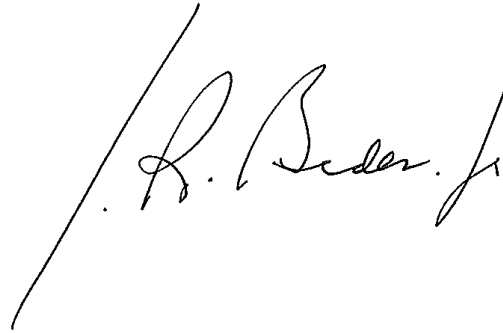
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Presidential Documents

Title 3—**Memorandum of June 27, 2023****The President****Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961****Memorandum for the Secretary of State**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to \$500 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to read "J. Biden", is written over a large, light-colored diagonal watermark that reads "Biden".

THE WHITE HOUSE,
Washington, June 27, 2023

Rules and Regulations

Federal Register

Vol. 88, No. 128

Thursday, July 6, 2023

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 217

Brunei Electronic System for Travel Authorization Validity Period

AGENCY: Office of Strategy, Policy, and Plan; DHS.

ACTION: Announcement of ESTA validity period.

SUMMARY: This notice announces that the U.S. Department of Homeland Security (DHS) is reducing Brunei Darussalam's Electronic System for Travel Authorization (ESTA) travel authorization validity period for travel by citizens or nationals of Brunei under the Visa Waiver Program (VWP) to the United States from two years from the date of issuance to one year for ESTA applications received after the date of publication of this notice. DHS is making this change based on the Government of Brunei's inability to satisfy multiple VWP requirements.

DATES: This announcement is effective on July 6, 2023.

FOR FURTHER INFORMATION CONTACT: Anjum Agarwala, Visa Waiver Program Office, Office of Strategy, Policy, and Plans, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Visa Waiver Program

Pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, the Secretary of Homeland Security (the Secretary),¹ in consultation with the Secretary of State, may designate certain countries for participation in the Visa Waiver

¹ The Secretary of Homeland Security has delegated this authority to the Under Secretary for Strategy, Policy, and Plans pursuant to DHS Delegation 23000, Delegation to the Under Secretary for Strategy, Policy, and Plans, Sec. IIL.4.

Program (VWP) if certain requirements are met. Those requirements include, among others:

(1) A rate of nonimmigrant visitor visa refusals for citizens or nationals of the country below the statutorily established threshold;

(2) certification by the government seeking designation for VWP participation that it issues machine-readable passports that comply with internationally accepted standards;

(3) a determination by the Secretary, in consultation with the Secretary of State, that the country's designation would not negatively affect U.S. law enforcement and security interests;

(4) an agreement to report, or make available through INTERPOL or other designated means authorized by the Secretary, information about the theft or loss of passports to the U.S. government within the designated timeframe;

(5) the country's government's acceptance for repatriation of any citizen, former citizen, or national not later than three weeks after the issuance of a final order of removal; and

(6) an agreement with the United States to share information regarding whether citizens and nationals of the country traveling to the United States represent a threat to the security or welfare of the United States or its citizens.

See INA section 217(c)(2)(A)–(F), 8 U.S.C. 1187(c)(2)(A)–(F).

The INA also sets forth requirements for countries' continued VWP eligibility and, where appropriate, probation, suspension, or termination of program countries. See INA section 217(c)–(f), 8 U.S.C. 1187(c)–(f).

Citizens and eligible nationals of VWP countries may apply for admission to the United States at U.S. ports of entry as nonimmigrant visitors for business or pleasure for a period of ninety days or less without first obtaining a nonimmigrant visa, provided they are otherwise eligible for admission under applicable statutory and regulatory requirements. To travel to the United States under the VWP, a noncitizen must, without limitation:

(1) be seeking entry as a visitor for business or pleasure for ninety days or less;

(2) be a citizen or national of a VWP country;

(3) present a valid unexpired electronic and machine-readable

passport that meets program requirements and is issued by a designated VWP participant country to the air or vessel carrier before departure;

(4) execute the required immigration forms;

(5) if arriving at a port of entry into the U.S. by air or sea, arrive on an authorized carrier;

(6) not represent a threat to the welfare, health, safety or security of the United States;

(7) not have failed to comply with the conditions of any previous admission as a nonimmigrant visitor;

(8) possess a round-trip transportation ticket;

(9) obtain an approved travel authorization via Electronic System for Travel Authorization (ESTA);

(10) waive the right to review or appeal a decision regarding admissibility at the port of entry or to contest, other than on the basis of an application for asylum, any action for removal; and

(11) meet other program requirements.

See INA section 217(a)–(b); 8 U.S.C. 1187(a)–(b). See also 8 CFR part 217.

Brunei was designated for participation in the VWP on July 29, 1993. See 58 FR 40581.

B. ESTA Validity Period

Typically, under DHS regulations, a travel authorization issued under ESTA is valid for a period of two years from the date of issuance. See 8 CFR 217.5(d)(1). However, the Secretary, in consultation with the Secretary of State, may decrease ESTA travel authorization validity period for a designated VWP country. See 8 CFR 217.5(d)(3).² DHS publishes notice of any changes to ESTA travel authorization validity periods in the **Federal Register**. 8 CFR 217.5(d)(3).

II. Reduction of Brunei's ESTA Validity Period

DHS conducts the statutorily required review of each participating VWP country at least once every two years to evaluate the effects that continuing the country's designation in the program will have on U.S. national security, law enforcement, and immigration enforcement interests. See INA section 217(c)(5)(A), 8 U.S.C. 1187(c)(5)(A).

In May 2018, DHS conducted an in-country statutorily required periodic

² As noted above, this authority is delegated to the Under Secretary for Strategy, Policy, and Plans.

review of Brunei's continued designation as a participating country in the VWP. The comprehensive review assessed Brunei's counterterrorism, law enforcement, immigration, border control, and document security capabilities and practices. DHS identified a number of areas of non-compliance with VWP requirements. DHS formally communicated its concerns to senior Government of Brunei officials and provided a list of action items with associated timelines for completion which, if timely completed, would address DHS's concerns, and maintain Brunei's standing as a participating country in the VWP.

DHS and the U.S. Department of State engaged regularly with Bruneian officials at both the technical and political levels over the following years to provide technical assistance and encourage progress. However, Brunei failed to meet the deadlines outlined in its VWP workplan. A July 2022 DHS in-country periodic review showed that Brunei still had made insufficient progress on the workplan. This non-compliance compromises the integrity of the VWP as a security partnership.

DHS is publishing this notice announcing that effective July 6, 2023, DHS is decreasing Brunei's ESTA validity period for travel to the United States from two years to one year for applications received after the effective date of this notice. Should Brunei's non-compliance with VWP requirements continue, DHS, in consultation with State, may make further adjustments to Brunei's VWP designation at any time, including suspension or termination from the program.

Robert Silvers,

Under Secretary, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security.

[FR Doc. 2023-13441 Filed 7-5-23; 4:15 pm]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-1401; Project Identifier MCAI-2023-00760-T; Amendment 39-22492; AD 2023-13-07]

RIN 2120-AA64

Airworthiness Directives; Saab AB, Support and Services (Formerly Known as Saab AB, Saab Aeronautics) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Saab AB, Support and Services Model SAAB 340B airplanes. This AD was prompted by a determination that the affected airplanes must not be operated at a maximum take-off weight (MTOW) above 29,000 pounds. This AD requires amending the applicable airplane flight manual (AFM) by incorporating a temporary revision (TR) to reduce the MTOW, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 21, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 21, 2023.

The FAA must receive comments on this AD by August 21, 2023.

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

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

- *Fax:* 202-493-2251.

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

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

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-1401; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory

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

Material Incorporated by Reference:

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

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-1401.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206-231-3220; email shahram.daneshmandi@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2023-1401; Project Identifier MCAI-2023-00760-T" at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

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

that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206-231-3220; email shahram.daneshmandi@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023-0121, dated June 13, 2023 (EASA AD 2023-0121) (also referred to as the MCAI), to correct an unsafe condition for certain Saab AB, Support and Services Model SAAB 340B airplanes. The MCAI states that the affected airplanes must not be operated at a MTOW above 29,000 pounds. This condition, if not corrected, could allow flight in an uncertified envelope, and therefore could lead to a potential unsafe condition.

The FAA is issuing this AD to address the possibility of flight in an uncertified envelope, which could result in reduced structural capability and reduced controllability of the airplane.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-1401.

Related Service Information Under 1 CFR Part 51

EASA AD 2023-0121 specifies procedures for amending the applicable AFM by incorporating the specified AFM TR to reduce the MTOW. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA's Determination

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

on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2023-0121 described previously, except for any differences identified as exceptions in the regulatory text of this AD.

Compliance With AFM Revisions

EASA AD 2023-0121 requires operators to "inform all flight crews" of revisions to the AFM, and thereafter to "operate the aeroplane accordingly." However, this AD would not specifically require those actions as those actions are already required by FAA regulations. FAA regulations require operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Therefore, including a requirement in this AD to operate the airplane according to the revised AFM would be redundant and unnecessary.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2023-0121 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2023-0121 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023-0121 does not mean that operators need comply only with that section. For example, where the AD requirement refers to "all required actions and compliance times," compliance with this AD requirement is not limited to the section titled "Required Action(s) and Compliance Time(s)" in EASA AD 2023-0121.

Service information required by EASA AD 2023-0121 for compliance will be available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-1401 after this AD is published.

FAA's Justification and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for "good cause," finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because the MTOW for the airplane was increased from 29,000 to 30,000 pounds without determining if the propeller MTOW could be increased to 30,000 pounds. Therefore, the airplanes must not be operated at a MTOW above 29,000 pounds.

This condition, if not corrected, could result in the possibility of flight in an uncertified envelope, which could result in reduced structural capability and reduced controllability of the airplane. In addition, the required AFM amendment must be done within a compliance time of 7 days in order to address the unsafe condition. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 64 airplanes of U.S. registry. The

FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × \$85 per hour = \$85	\$0	\$85	\$5,440

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866, and
- (2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:
Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

2023–13–07 Saab AB, Support and Services (Formerly Known as Saab AB, Saab Aeronautics): Amendment 39–22492; Docket No. FAA–2023–1401; Project Identifier MCAI–2023–00760–T.

(a) Effective Date

This airworthiness directive (AD) is effective July 21, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Saab AB, Support and Services (formerly known as Saab AB, Saab Aeronautics) Model SAAB 340B airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0121, dated June 13, 2023 (EASA AD 2023–0121).

(d) Subject

Air Transport Association (ATA) of America Code 51, Standard practices/structures.

(e) Unsafe Condition

This AD was prompted by a determination that the affected airplanes must not be operated at a maximum take-off weight (MTOW) above 29,000 pounds. The FAA is issuing this AD to address the possibility of flight in an uncertified envelope, which could result in reduced structural capability and reduced controllability of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0121.

(h) Exceptions to EASA AD 2023–0121

(1) Where EASA AD 2023–0121 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2023–0121 specifies to “inform all flight crews and, thereafter, operate the aeroplane accordingly,” this AD does not require those actions as those actions are already required by existing FAA operating regulations (see 14 CFR 91.9, 14 CFR 91.505, and 14 CFR 121.137).

(3) This AD does not adopt the “Remarks” section of EASA AD 2023–0121.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

(j) Additional Information

For more information about this AD, contact Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206-231-3220; email shahram.daneshmandi@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023-0121, dated June 13, 2023.

(ii) [Reserved]

(3) For EASA AD 2023-0121, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

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

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

Issued on June 27, 2023.

Michael Linegang,

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

[FR Doc. 2023-14227 Filed 7-3-23; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. FAA-2023-1395; Project Identifier MCAI-2023-00720-R; Amendment 39-22485; AD 2023-12-26]

RIN 2120-AA64

Airworthiness Directives; Bell Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021-24-04, which applied to certain Bell Helicopter Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited)

Model 505 helicopters. AD 2021-24-04 required revising the existing Rotorcraft Flight Manual (RFM) for your helicopter. Since the FAA issued AD 2021-24-04, Bell Textron Canada Limited revised the RFM to incorporate more restrictive operating limitations. This AD is prompted by the determination that the existing altitude limitations were not valid for certain fuel types and that revising the existing RFM for your helicopter to align with the limitations of the Safran Helicopter Engines, S.A. Model ARRIUS 2R engine is necessary. This AD requires revising the existing RFM for your helicopter, as specified in a Transport Canada AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 21, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 21, 2023.

The FAA must receive any comments on this AD by August 21, 2023.

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

- *Federal eRulemaking Portal:* Go to regulations.gov. Follow the instructions for submitting comments.

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

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

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

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2023-1395; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Transport Canada material that is incorporated by reference in this final rule, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario, K1A 0N5, CANADA; phone 888-663-3639; email TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca; internet tc.canada.ca/en/aviation. You may find the Transport Canada material on the Transport Canada website at tc.canada.ca/en/aviation.

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at regulations.gov under Docket No. FAA-2023-1395.

Other Related Service Information: For Bell service information identified in this final rule, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; phone 1-450-437-2862 or 1-800-363-8023; fax 1-450-433-0272; email productsupport@bellflight.com; or at bellflight.com/support/contact-support. You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT:

Michael Hughlett, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone (817) 222-5889; email Michael.Hughlett@faa.gov.

SUPPLEMENTARY INFORMATION:**Comments Invited**

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2023-1395; Project Identifier MCAI-2023-00720-R" at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

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

that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Michael Hughlett, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone (817) 222-5889; email Michael.Hughlett@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021-24-04, Amendment 39-21825 (86 FR 69998, December 9, 2021) (AD 2021-24-04), for Bell Helicopter Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited) Model 505 helicopters having serial number 65011 and subsequent. AD 2021-24-04 was prompted by Transport Canada AD CF-2019-08, dated March 5, 2019 (Transport Canada AD CF-2019-08), issued by Transport Canada, which is the aviation authority for Canada. Transport Canada advised of the need to reduce the pressure altitude limitations for Jet B and JP-4 wide-cut fuels following unsatisfactory performance of the engine at the original higher altitude limitations with those wide-cut fuels. AD 2021-24-04 required revising the Limitations Section of the existing RFM for your helicopter. The FAA issued AD 2021-24-04 to prevent low fuel pressure, engine flame-out, or engine power interruption (a change in any engine performance parameter—including, but not limited to, gas generator speed, power turbine speed, main gas temperature, or output torque—outside its normal limits for the prevailing operating conditions).

Actions Since AD 2021-24-04 Was Issued

Since the FAA issued AD 2021-24-04, Transport Canada has issued Transport Canada AD CF-2023-16, dated March 6, 2023 (Transport Canada AD CF-2023-16), to supersede Transport Canada AD CF-2019-08.

Transport Canada AD CF-2023-16 states that Bell Textron Canada Limited determined that the altitude limitations in the existing RFM, as they pertain to certain fuel types, were not valid. Accordingly, Transport Canada AD CF-2023-16 requires updating the RFM to align with the limitations of the ARRIUS

2R engine, which include more stringent fuel operating envelope limitations for starting at certain altitudes, ambient temperatures, and fuel specifications. Transport Canada AD CF-2023-16 states that failure to comply with the correct operating limitations could result in low fuel pressure, engine flame-out, or engine power interruption. You may examine Transport Canada AD CF-2023-16 in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-1395.

The FAA is issuing this AD to require limitations that align with the ARRIUS 2R engine. This unsafe condition, if not addressed, could result in low fuel pressure, engine flame-out, or engine power interruption.

This AD also corrects the Applicability paragraph to identify the current type certificate holder as "Bell Textron Canada Limited" instead of "Bell Helicopter Textron Canada Limited" and removes the type certificate previously held by information.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Transport Canada AD CF-2023-16, which specifies to update the RFM BHT-505-FM-1 to Revision 5, or to later revisions, as approved by Transport Canada.

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

Other Related Service Information

The FAA also reviewed Figure 1-6. Fuel Operating Envelope (Sheet 1 of 1) of Bell 505 Rotorcraft Flight Manual BHT-505-FM-1, Revision 5, dated October 30, 2019, which specifies corrected fuel operating envelope limitations for various fuels.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in Transport Canada AD CF-2023-16 described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of these same type design.

AD Requirements

This AD requires accomplishing the actions specified in Transport Canada

AD CF-2023-16, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

The owner/operator (pilot) holding at least a private pilot certificate may revise the existing RFM for your helicopter and must enter compliance with this AD into the aircraft records in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439. This is an exception to the FAA's standard maintenance regulations.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for "good cause," finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because this model helicopter cannot safely fly at altitudes currently authorized by the existing RFM for your helicopter. The unsafe condition may result in low fuel pressure, engine flame-out, or engine power interruption; and this model helicopter does not have an auxiliary power unit onboard making it difficult to restart during flight. Additionally, these are high usage helicopters, which increases the likelihood of occurrence of exceeding the corrected operating limitations. In light of this, revising the existing RFM for your helicopter must be accomplished within 30 days after the effective date of this AD. Therefore, the compliance time for this required action is shorter than the time necessary for the public to comment and for publication of the final rule.

Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this

amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, Transport Canada AD CF-2023-16 is incorporated by reference in this FAA final rule. This AD, therefore, requires compliance with Transport Canada AD CF-2023-16 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in the Transport Canada AD does not mean that operators need to comply only with that section. For example, where the AD requirement refers to "Compliance," compliance with this AD requirement is not limited to the section titled "Corrective Actions" in Transport Canada AD CF-2023-16. Service information referenced in Transport Canada AD CF-2023-16 for compliance will be available at *regulations.gov* under Docket No. FAA-2023-1395 after this final rule is published.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 141 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Revising the existing RFM for your helicopter takes about 0.5 work-hour for an estimated cost of \$43 per helicopter and \$6,063 for the U.S. fleet.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866, and
- (2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
 - a. Removing Airworthiness Directive 2021-24-04, Amendment 39-21825 (86 FR 69998, December 9, 2021); and
 - b. Adding the following new airworthiness directive:

2023-12-26 Bell Textron Canada Limited:
Amendment 39-22485; Docket No. FAA-2023-1395; Project Identifier MCAI-2023-00720-R.

(a) Effective Date

This airworthiness directive (AD) is effective July 21, 2023.

(b) Affected ADs

This AD replaces AD 2021-24-04, Amendment 39-21825 (86 FR 69998, December 9, 2021).

(c) Applicability

This AD applies to Bell Textron Canada Limited Model 505 helicopters having a serial number 65011 and subsequent, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code: 7300, Engine fuel and control.

(e) Unsafe Condition

This AD was prompted by the determination that the altitude limitations for certain fuel types were not valid. The FAA is issuing this AD to require limitations that align with the Safran Helicopter Engines, S.A. Model ARRIUS 2R engine, which include more stringent fuel operating envelope limitations for starting at certain altitudes, ambient temperatures, and fuel specifications. The unsafe condition, if not addressed, could result in low fuel pressure, engine flame-out, or engine power interruption.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada AD CF-2023-16, dated March 6, 2023 (Transport Canada AD CF-2023-16). The owner/operator (pilot) holding at least a private pilot certificate may revise the existing Rotorcraft Flight Manual for your helicopter and must enter compliance with this AD into the aircraft records in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) Exceptions to Transport Canada AD CF-2023-16

Where Transport Canada AD CF-2023-16 refers to its effective date, this AD requires using the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Michael Hughlett, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone (817) 222-5889; email Michael.Hughlett@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) Transport Canada AD CF-2023-16, dated March 6, 2023.

(ii) [Reserved]

(3) For Transport Canada AD CF-2023-16, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario, K1A 0N5, CANADA; phone 888-663-3639; email TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca; internet tc.canada.ca/en/aviation. You may find the Transport Canada material on the Transport Canada website at tc.canada.ca/en/aviation.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110.

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

Issued on June 20, 2023.

Michael Linegang,

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

[FR Doc. 2023-14321 Filed 7-3-23; 11:15 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31494; Amdt. No. 4067]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 6, 2023. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 6, 2023.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590-0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fr.inspection@nara.gov or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing

Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone (405) 954-1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms 8260-3, 8260-4, 8260-5, 8260-15A, 8260-15B, when required by an entry on 8260-15A, and 8260-15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on June 23, 2023.

Thomas J. Nichols,

Manager, Aviation Safety, Flight Standards Service, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 10 August 2023

Adak Island, AK, PADK, Takeoff Minimums and Obstacle DP, Amdt 2A
 Ontario, CA, KONT, ILS OR LOC RWY 26L, ILS RWY 26L (CAT II), ILS RWY 26L (CAT III), Amdt 9
 Ontario, CA, KONT, ILS OR LOC RWY 26R, ILS RWY 26R (CAT II), ILS RWY 26R (CAT III), Amdt 6
 Ontario, CA, KONT, RNAV (GPS) Y RWY 26L, Amdt 3
 Ontario, CA, KONT, RNAV (GPS) Y RWY 26R, Amdt 3
 Atlanta, GA, KCVC, NDB RWY 28, Amdt 3C, CANCELED
 Marion, IA, C17, RNAV (GPS) RWY 17, Orig
 Marion, IA, C17, RNAV (GPS) RWY 35, Orig
 Marion, IA, C17, Takeoff Minimums and Obstacle DP, Orig
 Gooding, ID, KGNG, RNAV (GPS) RWY 7, Amdt 1B
 Gooding, ID, KGNG, RNAV (GPS) RWY 25, Amdt 1A
 Twin Falls, ID, KTWF, ILS OR LOC RWY 26, Amdt 10B
 Twin Falls, ID, KTWF, RNAV (GPS) RWY 8, Amdt 2
 Indianapolis, IN, KUMP, NDB RWY 15, Amdt 2C, CANCELED
 Manhattan, KS, KMHK, Takeoff Minimums and Obstacle DP, Amdt 8
 Ulysses, KS, KULS, NDB RWY 12, Amdt 5, CANCELED
 Mount Pleasant, MI, KMOP, VOR RWY 27, Amdt 2, CANCELED
 Batesville, MS, KPMU, LOC RWY 19, Amdt 1A, CANCELED
 Crystal Springs, MS, M11, RNAV (GPS) RWY 36, Orig-A
 Rolla, ND, 06D, RNAV (GPS) RWY 32, Amdt 1
 Burwell, NE, KBUB, RNAV (GPS) RWY 15, Orig-B
 Manville, NJ, 47N, RNAV (GPS) RWY 25, Amdt 2A
 Saratoga Springs, NY, 5B2, VOR/DME-A, Amdt 1C, CANCELED
 Seminole, OK, KSRE, NDB RWY 16, Amdt 4B, CANCELED
 Bend, OR, KBDN, BEND TWO, Graphic DP
 Bend, OR, KBDN, Takeoff Minimums and Obstacle DP, Amdt 5
 Pittsburgh, PA, KPIT, RNAV (GPS) Y RWY 28C, Amdt 5
 Pittsburgh, PA, KPIT, RNAV (GPS) Y RWY 28R, Amdt 6
 Pittsburgh, PA, KPIT, RNAV (RNP) Z RWY 28C, Amdt 1
 Pittsburgh, PA, KPIT, RNAV (RNP) Z RWY 28R, Amdt 2
 Reading, PA, KRDG, RNAV (GPS) RWY 31, Orig
 Wellsboro, PA, N38, VOR-A, Amdt 6A, CANCELED

York, PA, KTHV, RNAV (GPS) RWY 17, Amdt 3
 York, PA, KTHV, RNAV (GPS) RWY 35, Amdt 2
 Amarillo, TX, KAMA, LDA RWY 22, Amdt 1D
 Huntsville, TX, KUTS, NDB RWY 18, Amdt 1A, CANCELED
 Wichita Falls, TX, KCWC, NDB RWY 35, Amdt 4B, CANCELED
Rescinded: On June 21, 2023 (88 FR 40081), the FAA published an Amendment in Docket No. 31490, Amdt No. 4063, to Part 97 of the Federal Aviation Regulations under section 97.29, 97.33, and 97.37 The following entries for, Perry, IA, Kansas City, MO, Wilkes-Barre/Scranton, PA, and Huntington, WV, effective August 10, 2023, are hereby rescinded in their entirety:
 Perry, IA, KPRO, RNAV (GPS) RWY 14, Orig
 Perry, IA, KPRO, RNAV (GPS) RWY 14, Orig-B, CANCELED
 Perry, IA, KPRO, RNAV (GPS) RWY 32, Orig
 Perry, IA, KPRO, RNAV (GPS) RWY 32, Amdt 1B, CANCELED
 Perry, IA, KPRO, Takeoff Minimums and Obstacle DP, Amdt 1
 Kansas City, MO, KMKC, ILS OR LOC RWY 4, Amdt 6
 Kansas City, MO, KMKC, ILS OR LOC RWY 19, Amdt 24A
 Kansas City, MO, KMKC, RNAV (GPS) RWY 4, Amdt 3B
 Kansas City, MO, KMKC, RNAV (GPS) RWY 22, Amdt 2A
 Kansas City, MO, KMKC, RNAV (GPS) Y RWY 19, Orig
 Kansas City, MO, KMKC, RNAV (GPS) Z RWY 19, Amdt 2
 Wilkes-Barre/Scranton, PA, KAVP, ILS OR LOC RWY 22, Amdt 11
 Huntington, WV, KHTS, RNAV (GPS) RWY 12, Amdt 4

[FR Doc. 2023–14195 Filed 7–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31495; Amdt. No. 4068]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the

commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 6, 2023. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 6, 2023.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email fr.inspection@nara.gov or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone: (405) 954–1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form

8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for Part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments

require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on June 23, 2023.

Thomas J. Nichols,

Manager, Aviation Safety, Flight Standards Service, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV;

§ 97.31 RADAR SIAPs; § 97.33 RNAV

SIAPs; and § 97.35 COPTER SIAPs,
Identified as follows:

* * * Effective Upon Publication

AIRAC date	State	City	Airport name	FDC No.	FDC date	Procedure name
10-Aug-23 ...	MS	Columbia	Columbia/Marion County	3/0259	3/21/23	RNAV (GPS) RWY 23, Amdt 2.
10-Aug-23 ...	WI	Oconto	Oconto/J Douglas Bake Muni	3/0375	5/23/23	RNAV (GPS) RWY 11, Orig-B.
10-Aug-23 ...	WI	Oconto	Oconto/J Douglas Bake Muni	3/0376	5/23/23	RNAV (GPS) RWY 29, Orig-B.
10-Aug-23 ...	OR	Christmas Valley	Christmas Valley	3/0496	6/15/23	RNAV (GPS) -A, Orig.
10-Aug-23 ...	GA	Columbus	Columbus	3/1798	5/10/23	RNAV (GPS) RWY 13, Amdt 1.
10-Aug-23 ...	NC	Mount Olive	Mount Olive Muni	3/1841	4/14/23	RNAV (GPS) RWY 5, Orig-D.
10-Aug-23 ...	NC	Mount Olive	Mount Olive Muni	3/1842	4/14/23	RNAV (GPS) RWY 23, Orig-C.
10-Aug-23 ...	NM	Farmington	Four Corners Rgnl	3/2235	3/22/23	RNAV (GPS) RWY 23, Amdt 2.
10-Aug-23 ...	AL	Reform	North Pickens	3/2371	5/31/23	RNAV (GPS) RWY 1, Orig-C.
10-Aug-23 ...	IA	Emmetsburg	Emmetsburg Muni	3/2631	5/12/23	RNAV (GPS) RWY 31, Orig-B.
10-Aug-23 ...	GA	Louisville	Louisville Muni	3/2655	5/10/23	RNAV (GPS) RWY 13, Orig-A.
10-Aug-23 ...	VA	Farmville	Farmville Rgnl	3/3296	5/12/23	RNAV (GPS) RWY 21, Orig-B.
10-Aug-23 ...	VA	Farmville	Farmville Rgnl	3/3299	5/12/23	RNAV (GPS) RWY 3, Orig-A.
10-Aug-23 ...	AR	Texarkana	Texarkana Rgnl-Webb Fld	3/4078	5/8/23	RNAV (GPS) RWY 31, Orig-C.
10-Aug-23 ...	AK	Anvik	Anvik	3/4176	6/1/23	RNAV (GPS) RWY 17, Orig-A.
10-Aug-23 ...	AK	Anvik	Anvik	3/4186	6/1/23	RNAV (GPS) RWY 35, Orig-A.
10-Aug-23 ...	TN	Knoxville	Mc Ghee Tyson	3/4228	6/1/23	ILS OR LOC RWY 23L, Orig.
10-Aug-23 ...	TN	Knoxville	Mc Ghee Tyson	3/4229	6/1/23	RNAV (GPS) RWY 5R, Amdt 2A.
10-Aug-23 ...	TN	Knoxville	Mc Ghee Tyson	3/4231	6/1/23	RNAV (GPS) RWY 23L, Amdt 2.
10-Aug-23 ...	TN	Knoxville	Mc Ghee Tyson	3/4232	6/1/23	VOR RWY 23L, Amdt 5A.
10-Aug-23 ...	IA	Muscatine	Muscatine Muni	3/4362	6/1/23	RNAV (GPS) RWY 24, Orig-A.
10-Aug-23 ...	NY	Olean	Cattaraugus County-Olean	3/4369	6/1/23	RNAV (GPS) RWY 22, Amdt 2A.
10-Aug-23 ...	NY	Olean	Cattaraugus County-Olean	3/4370	6/1/23	LOC RWY 22, Amdt 7A.
10-Aug-23 ...	NY	Olean	Cattaraugus County-Olean	3/4371	6/1/23	RNAV (GPS) RWY 4, Amdt 2A.
10-Aug-23 ...	IL	Peoria	General Downing—Peoria Intl	3/4842	6/5/23	RNAV (GPS) RWY 13, Amdt 1C.
10-Aug-23 ...	IL	Peoria	General Downing—Peoria Intl	3/4843	6/5/23	RNAV (GPS) RWY 31, Amdt 1D.
10-Aug-23 ...	WV	Clarksburg	North Central West Virginia	3/4846	6/5/23	ILS OR LOC RWY 21, Amdt 4A.
10-Aug-23 ...	TX	Rocksprings	Edwards County	3/5208	5/12/23	VOR RWY 14, Amdt 5C.
10-Aug-23 ...	OH	Springfield	Springfield/Beckley Muni	3/5516	6/8/23	RNAV (GPS) RWY 24, Orig-A.
10-Aug-23 ...	MN	Sauk Centre	Sauk Centre Muni	3/5523	6/8/23	RNAV (GPS) RWY 32, Amdt 1B.
10-Aug-23 ...	MN	Sauk Centre	Sauk Centre Muni	3/5525	6/8/23	RNAV (GPS) RWY 14, Orig-A.
10-Aug-23 ...	SD	Eagle Butte	Cheyenne Eagle Butte	3/5526	6/8/23	RNAV (GPS) RWY 31, Orig-A.
10-Aug-23 ...	CA	Santa Monica	Santa Monica Muni	3/5530	5/30/23	VOR -A, Amdt 11A.
10-Aug-23 ...	MO	Mountain View	Mountain View	3/5788	5/15/23	RNAV (GPS) RWY 10, Orig-C.
10-Aug-23 ...	NY	New York	Long Island Mac Arthur	3/6091	6/6/23	ILS OR LOC RWY 24, Amdt 4D.
10-Aug-23 ...	NY	New York	Laguardia	3/6370	6/5/23	ILS OR LOC RWY 13, Amdt 2B.
10-Aug-23 ...	NY	New York	Laguardia	3/6371	6/5/23	LOC RWY 31, Amdt 3E.
10-Aug-23 ...	NY	New York	Laguardia	3/6372	6/5/23	RNAV (GPS) RWY 13, Amdt 1B.
10-Aug-23 ...	NY	New York	Laguardia	3/6373	6/5/23	RNAV (GPS) X RWY 22, Orig.
10-Aug-23 ...	NY	New York	Laguardia	3/6374	6/5/23	RNAV (GPS) Y RWY 22, Amdt 2F.
10-Aug-23 ...	NY	New York	Laguardia	3/6375	6/5/23	ILS OR LOC RWY 22, ILS RWY 22 (SA CAT I AND II), Amdt 21C.
10-Aug-23 ...	NY	New York	Laguardia	3/6376	6/5/23	RNAV (GPS) Y RWY 31, Orig-B.
10-Aug-23 ...	NY	New York	Laguardia	3/6377	6/5/23	RNAV (GPS) Z RWY 31, Amdt 1G.
10-Aug-23 ...	AL	Mobile	Mobile Intl	3/6442	5/16/23	ILS OR LOC RWY 32, Amdt 4.
10-Aug-23 ...	AL	Mobile	Mobile Intl	3/6443	5/16/23	RNAV (GPS) RWY 14, Amdt 3.
10-Aug-23 ...	AL	Mobile	Mobile Intl	3/6444	5/16/23	RNAV (GPS) RWY 18, Amdt 3.
10-Aug-23 ...	AL	Mobile	Mobile Intl	3/6445	5/16/23	RNAV (GPS) RWY 32, Amdt 3.
10-Aug-23 ...	AL	Mobile	Mobile Intl	3/6446	5/16/23	RNAV (GPS) RWY 36, Amdt 3.
10-Aug-23 ...	AL	Mobile	Mobile Intl	3/6447	5/16/23	VOR RWY 14, Amdt 9.
10-Aug-23 ...	AL	Mobile	Mobile Intl	3/6448	5/16/23	VOR RWY 32, Amdt 11C.
10-Aug-23 ...	VA	Hot Springs	Ingalls Fld	3/6647	4/5/23	ILS OR LOC RWY 25, Amdt 5.
10-Aug-23 ...	MI	West Branch	West Branch Community	3/7051	5/18/23	RNAV (GPS) RWY 9, Orig-B.
10-Aug-23 ...	VA	Orange	Orange County	3/7100	4/27/23	RNAV (GPS) RWY 8, Orig-A.
10-Aug-23 ...	VA	Orange	Orange County	3/7101	4/27/23	RNAV (GPS) RWY 26, Orig-A.
10-Aug-23 ...	PA	Pittsburgh	Pittsburgh Intl	3/7226	6/8/23	RNAV (RNP) Z RWY 28L, Amdt 1.
10-Aug-23 ...	PA	Pittsburgh	Pittsburgh Intl	3/7227	6/8/23	RNAV (GPS) Y RWY 28L, Amdt 5.
10-Aug-23 ...	MI	West Branch	West Branch Community	3/7653	5/18/23	RNAV (GPS) RWY 27, Amdt 1.
10-Aug-23 ...	MN	Rush City	Rush City Rgnl	3/7684	6/8/23	RNAV (GPS) RWY 34, Amdt 1.
10-Aug-23 ...	MN	South St Paul	South St Paul Muni/Richard E Fleming Fld.	3/7686	6/8/23	RNAV (GPS) RWY 34, Amdt 2.
10-Aug-23 ...	TX	Waco	Waco Rgnl	3/8186	6/12/23	RNAV (GPS) RWY 19, Amdt 1.
10-Aug-23 ...	MN	St Cloud	St Cloud Rgnl	3/8293	5/1/23	ILS OR LOC RWY 31, Amdt 3C.
10-Aug-23 ...	MN	St Cloud	St Cloud Rgnl	3/8295	5/1/23	RNAV (GPS) RWY 13, Amdt 1A.
10-Aug-23 ...	MN	St Cloud	St Cloud Rgnl	3/8299	5/1/23	ILS OR LOC/DME RWY 13, Amdt 1A.

AIRAC date	State	City	Airport name	FDC No.	FDC date	Procedure name
10-Aug-23 ...	MN	St Cloud	St Cloud Rgnl	3/8301	5/1/23	RNAV (GPS) RWY 31, Amdt 1B.
10-Aug-23 ...	MN	St Cloud	St Cloud Rgnl	3/8303	5/1/23	VOR RWY 31, Orig-C.
10-Aug-23 ...	WA	Bremerton	Bremerton Ntl	3/8658	3/22/23	ILS OR LOC RWY 20, Amdt 17A.
10-Aug-23 ...	NM	Moriarty	Moriarty Muni	3/8896	4/10/23	RNAV (GPS) RWY 26, Orig-B.
10-Aug-23 ...	OH	Dayton	James M Cox Dayton Intl	3/9103	5/1/23	RNAV (GPS) RWY 6R, Amdt 1B.
10-Aug-23 ...	PA	Pittsburgh	Pittsburgh Intl	3/9538	6/13/23	RNAV (RNP) Z RWY 10R, Orig-E.
10-Aug-23 ...	WA	Bremerton	Bremerton Ntl	3/9551	3/22/23	RNAV (GPS) RWY 2, Amdt 2B.
10-Aug-23 ...	AK	Buckland	Buckland	3/9573	6/15/23	Takeoff Minimums and Obstacle DP, Amdt 2.
10-Aug-23 ...	NY	Shirley	Brookhaven	3/9672	5/2/23	RNAV (GPS)-A, Orig.
10-Aug-23 ...	KS	Colby	Shalz Fld	3/9766	3/21/23	NDB RWY 17, Amdt 2.
10-Aug-23 ...	KS	Colby	Shalz Fld	3/9767	3/21/23	RNAV (GPS) RWY 17, Amdt 2.
10-Aug-23 ...	OH	Woodsfield	Monroe County	3/9791	3/20/23	VOR/DME RWY 25, Amdt 7A.

[FR Doc. 2023-14196 Filed 7-5-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

31 CFR Part 601

Distinctive Paper and Distinctive Counterfeit Deterrents for United States Federal Reserve Notes

AGENCY: Bureau of Engraving and Printing, Treasury.

ACTION: Final regulations.

SUMMARY: This final rule updates the description of the distinctive paper and distinctive counterfeit deterrents used to guard against counterfeit and fraudulently altered United States (U.S.) Federal Reserve notes. This final rule adopts a January 18, 2023, proposed rule without change.

DATES: Effective August 7, 2023.

FOR FURTHER INFORMATION CONTACT:

Leslie J. Rivera Pagán, Attorney-Advisor, Office of Chief Counsel, U.S. Department of the Treasury, Bureau of Engraving and Printing, Room 419A, 14th & C Streets SW, Washington, DC 20028, phone at (202) 874-2500 or fax (202) 874-2951.

SUPPLEMENTARY INFORMATION:

Background and Proposed Rule

The Department of the Treasury, Bureau of Engraving and Printing's (BEP) mission is to develop and manufacture U.S. Federal Reserve notes that are trusted worldwide. Accordingly, the Secretary of the Treasury has delegated specific authority and responsibilities related to producing U.S. Federal Reserve notes to the Director of BEP only. (Treasury Order 101-07, Delegation to the Director, Bureau of Engraving and Printing, for the Production of Currency

Notes to Meet the Demands of the Federal Reserve Banks, January 4, 2021.)

On January 18, 2023, BEP published a notice of proposed rulemaking (REG-00854-23) in the **Federal Register** (88 FR 2871). The BEP is adopting as final that proposed rule, which clarifies the description of the distinctive paper and distinctive counterfeit deterrents separately for U.S. Federal Reserve notes, removes obsolete language, aligns the regulation to the current state-of-art and emerging technologies generated as a result of BEP's research and development initiatives, clarifies the agency's authority for adopting distinctive paper and distinctive counterfeits deterrents, and announces the adoption of new distinctive paper and counterfeit deterrents by the Secretary of the Treasury.

This Final Rule

The public comment period on the proposed rule closed on March 20, 2023. No comments were received from the public in response to the notice of proposed rulemaking. Accordingly, BEP adopts the proposed regulation as the final regulation without modification for the reasons discussed in the proposed rule and this preamble.

Procedural Analyses

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires agencies to prepare an initial regulatory flexibility analysis (IRFA) to determine the economic impact of the rule on small entities. A small entity is defined as a small business, organization, or governmental jurisdiction; an individual is not a small entity. Section 605(b) of the RFA allows an agency to prepare a certification instead of an IRFA if the rule does not have a significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), it is hereby certified that

this regulation will not have a significant economic impact on a substantial number of small entities. The rule is limited to updating the description of the distinctive paper and distinctive counterfeit deterrents used to guard against counterfeit and fraudulently altered U.S. Federal Reserve notes and other obligations and securities in accordance with the U.S. Code. Accordingly, the rule will have no direct impact on small entities.

B. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. BEP has determined that this rule relates to the agency organization and management; therefore, Executive Orders 13563 and 12866 do not apply to this rule. This rule is not a "significant regulatory action" under Executive Order 12866.

C. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a rule that includes any federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This regulation does not include any federal mandate that may result in expenditures by state,

local, or tribal governments or the private sector exceeding that threshold.

D. Federalism

Executive Order 13132 (titled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments and is not required by statute or preempts state law unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications nor impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

E. Paperwork Reduction Act (PRA) Notices

The Paperwork Reduction Act does not apply because this rule did not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

F. Severability

BEP has considered how this regulation should be construed if any provision were held to be invalid or unenforceable. The distinctive paper and each of the distinctive counterfeit deterrents contribute independently to the security of U.S. Federal Reserve notes. Accordingly, were protection for any of these items stayed or invalidated by a reviewing court, prohibition of the unauthorized possession or control of the remaining items would continue to serve the intended purpose of guarding against counterfeit and fraudulently altered U.S. Federal Reserve notes.

List of Subjects in 31 CFR Part 601

Currency, Securities, Printing.

For the reasons stated in the preamble, BEP revises 31 CFR part 601 to read as follows:

PART 601—DISTINCTIVE PAPER AND DISTINCTIVE COUNTERFEIT DETERRENDS FOR UNITED STATES FEDERAL RESERVE NOTES

Sec.

- 601.1 Notice and scope.
- 601.2 Distinctiveness requirement.
- 601.3 Distinctive paper.
- 601.4 Distinctive counterfeit deterrents.
- 601.5 Penalty for unauthorized control or possession.

Authority: 5 U.S.C. 301; 12 U.S.C. 418, 421; 18 U.S.C. 474A; 31 U.S.C. 321.

§ 601.1 Notice and scope.

The regulation in this part governs the distinctive paper and distinctive counterfeit deterrents adopted by the Secretary of the Treasury for United States Federal Reserve notes, which are subject to 18 U.S.C. 474A. The Director of Bureau of Engraving and Printing, by delegated authority, hereby gives notice of the distinctive paper and distinctive counterfeit deterrents adopted by the Secretary of the Treasury.

§ 601.2 Distinctiveness requirement.

(a) The Secretary of the Treasury has adopted distinctive paper and distinctive counterfeit deterrents:

- (1) In which the United States has an exclusive property interest; or
- (2) That are not otherwise in commercial use or the public domain and are necessary for preventing the counterfeiting of United States Federal Reserve notes.

(b) The distinctive paper and counterfeit deterrents are used in United States Federal Reserve notes.

§ 601.3 Distinctive paper.

The distinctive paper is a cream-white currency note paper with fibers, colored red and blue, evenly distributed throughout the currency note paper. The distinctive paper shall contain distinctive counterfeit deterrents in the currency note paper denominations prescribed by the Secretary of the Treasury.

§ 601.4 Distinctive counterfeit deterrents.

The distinctive counterfeit deterrents that may be used in the denominations of United States Federal Reserve notes as prescribed by the Secretary of the Treasury are:

- (a) Security threads containing graphics consisting of the designation “USA” and the denomination of the currency note, expressed in alphabetic or numeric characters.
- (b) Optically variable inks with material characteristics.
- (c) Non-visual characteristic inks with material characteristics.
- (d) Optically variable thread (three-dimensional (3-D) security ribbon and micro-optic stripe) visible in front or back of the currency note.
- (e) Non-visual characteristic features with material characteristics.

§ 601.5 Penalty for Unauthorized Control or Possession.

(a) Control or possession of distinctive paper and/or distinctive counterfeit deterrents adopted in §§ 601.3 and 601.4 require authorization by the Secretary of the Treasury.

(b) The penalty for unauthorized control and/or possession of distinctive paper and/or distinctive counterfeit deterrents adopted in §§ 601.3 and 601.4 is found at 18 U.S.C. 474A.

Leonard R. Olijar,

Director.

[FR Doc. 2023-14204 Filed 7-5-23; 8:45 am]

BILLING CODE 4840-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2023-0350]

Special Local Regulations; Beaufort Water Festival and Air Show, Beaufort, SC

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations at various locations in Captain of the Port Charleston from July 14, 2023, to July 22, 2023. Our regulation for marine events within the Captain of the Port (COTP) Charleston identifies the regulated areas for these annual events in South Carolina. This action is necessary to provide for the safety of life on these navigable waters during marine events. During the enforcement periods, if you are the operator of a vessel in the regulated area you must comply with directions from the COTP Charleston or designated representative.

DATES: The regulations in 33 CFR 100.704, will be enforced for the special local regulations identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST1 Thomas J. Welker, Sector Charleston, Waterways Management Division, U.S. Coast Guard; telephone (843) 740-3184, email CharlestonWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the following special local regulations in 33 CFR 100.704, Table 1 to § 100.704, during the hours specified on the dates listed in the following Table:

DATES AND TIMES OF ENFORCEMENT OF 33 CFR 100.704 SPECIAL LOCAL REGULATIONS AT VARIOUS LOCATIONS IN THE CAPTAIN OF THE PORT CHARLESTON IN JULY 2023

No.	Date/time	Event/sponsor	Location	Regulated area
1	July 14, 2023 through July 23, 2023: 8 a.m. to 5 p.m. each day.	Beaufort Water Festival Sponsor: Beaufort Water Festival.	Beaufort, SC ...	Location: All waters 200 yards from seawall at Waterfront Park extending from Lady's Island Bridge to Spanish Point in Beaufort, SC.
2	July 22, 2023: noon to 5 p.m. ...	Beaufort Water Festival Air Show Sponsor: Beaufort Water Festival.	Beaufort, SC ...	Location: The following is a safety zone: A portion Beaufort River near Riverfront Park in Beaufort, SC. The zone is 700 feet wide by 2600 feet in length on waters of the Beaufort River encompassed within the following points: (1) 32°25'47" N/080°40'44" W, (2) 32°25'41" N/080°40'14" W, (3) 32°25'35" N/080°40'16" W, (4) 32°25'40" N/080°40'46" W.

This action is necessary to provide for the safety of life on these navigable waters during marine events. During the enforcement periods, as reflected in § 100.704(c), if you are the operator of a vessel in the regulated area you must comply with directions from the COTP Charleston or designated representative.

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

Dated: June 30, 2023.

C.F. Heard IV,

Commander, U.S. Coast Guard, Acting, Captain of the Port Sector Charleston.

[FR Doc. 2023-14276 Filed 7-5-23; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 668, 674, 682, and 685

[Docket ID: ED-2021-OPE-0077]

RIN 1840-AD53, 1840-AD59, 1840-AD70, 1840-AD71

Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; Federal Perkins Loan Program; Federal Family Education Loan Program; and William D. Ford Federal Direct Loan Program; Corrections

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations; technical corrections and correcting amendments.

SUMMARY: On November 1, 2022, the Department of Education (Department) published in the **Federal Register** final regulations relating to loans under the Federal Perkins Loan (Perkins) Program, the Federal Family Education Loan (FFEL) Program and the William D. Ford Federal Direct Loan (Direct Loan) Program. This document corrects technical errors in the regulations and

preamble. This document does not contain any substantive changes to the regulations.

DATES: These corrections are effective July 6, 2023.

FOR FURTHER INFORMATION CONTACT: For further information, contact Rene Tiongquico at (202) 453-7513 or by email at *Rene.Tiongquico@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: On November 1, 2022, the Department published in the **Federal Register** final regulations relating to loans under the Perkins Loan Program, the FFEL Program, and the Direct Loan Program (87 FR 65904), effective July 1, 2023. Those final regulations contain technical errors.

Waiver of Proposed Rulemaking, Negotiated Rulemaking, and Delayed Effective Date

In accordance with the Administrative Procedure Act (APA), 5 U.S.C. 553, the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(3)(B)). There is good cause to waive rulemaking here as unnecessary.

Rulemaking is “unnecessary” in those situations in which “the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.” *Utility Solid Waste Activities Group v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001), quoting U.S. Department of Justice, *Attorney General’s Manual on the Administrative Procedure Act* 31 (1947) and *South Carolina v. Block*, 558 F. Supp. 1004, 1016 (D.S.C. 1983). The regulatory changes in this document are necessary

to correct technical errors and do not establish any new substantive rules and do not make substantive changes to this regulation. Therefore, the Department has determined that publication of a proposed rule is unnecessary under 5 U.S.C. 553(b)(3)(B).

In addition, under section 492 of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1098a), all regulations proposed by the Department for programs authorized under title IV of the HEA are subject to negotiated rulemaking requirements. Section 492(b)(2) of the HEA provides that negotiated rulemaking may be waived for good cause when doing so would be “impracticable, unnecessary, or contrary to the public interest.” There is likewise good cause to waive the negotiated rulemaking requirement in this case, since, as explained above, notice and comment rulemaking is unnecessary.

The APA generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). As previously stated, because the final regulations correct errors, there is good cause to waive the delayed effective date in the APA and make the final regulations effective July 6, 2023.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or 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.

Technical Corrections

In FR Doc. 2022–23447, published in the **Federal Register** on November 1, 2022 (87 FR 65904), we make the following technical corrections:

1. On page 65912, in the first column, in the last line of footnote 25, remove “§ 206(c)(1)” and add, in its place, “§ 685.206(c)(1)”.

2. On page 65922, in the third column, revise footnote 60 to read as follows: “34 CFR 685.222(f)(3).”

3. On page 65928, in the first column, in the 14th line from the top of the first full paragraph, after “determines”, remove “and” and add, in its place, “an”.

4. On page 65942, in the third column, in footnote 102, remove “222(e)(1)(ii)” and add, in its place, “685.222(e)(1)(ii)”.

5. On page 65952, in the first column, revise footnote 122 to read as follows: “See, e.g., 34 CFR 685.222(e)(7)(iii)(B)–(C).”

6. On page 66004, in the first column, in footnote 179, in the sixth line, remove “Printing” and add, in its place, “Publishing”.

7. On page 66006, in the first column, revise footnote 183 to read as follows: “Oreopoulos, Philip and Uros Petronijevic (2013). “Making College Worth It: A Review of the Returns to Higher Education,” *The Future of Children*, Vol. 23, No. 1, pp. 41–65.”

8. On page 66008:

a. In the second column, revise the text of the sentence before the citation to footnote 192 to read as follows: “A more detailed version of the loan volumes will be available on the Department’s Federal Student Aid Data Center website.”

b. Revise footnote 192 to read as follows: “<https://studentaid.gov/data-center>.”

9. On page 66009, in the first column, revise footnote 193 to read as follows: “The table above is a summary. The complete table is available at www.regulations.gov using the Docket ID ED–2021–OPE–0077.”

10. On page 66019, in the first column, in the fourth line, remove

“bureau” and add, in its place, “Bureau”.

List of Subjects

34 CFR Part 674

Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

For the reasons set out in the preamble, the Department of Education corrects parts 674 and 685 of title 34 of the Code of Federal Regulations by making the following correcting amendments:

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087aa–1087hh; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

§ 674.33 [Amended]

■ 2. In § 674.33, amend paragraph (g)(1)(ii)(A) by adding the word “date” before the second instance of the word “determined”.

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 3. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087a, *et seq.*, unless otherwise noted.

§ 685.213 [Amended]

■ 4. In § 685.213, amend paragraph (b)(6) heading by adding “on” after “certification,”.

§ 685.214 [Amended]

■ 5. In § 685.214:

■ a. Amend paragraph (d)(1)(i)(B) by removing “paragraph (i)” and adding, in its place, “paragraph (h)”.

■ b. Amend paragraph (d)(1)(iii)(B) by removing “paragraph (d)” and “paragraph (e)” and adding, in their places, “paragraph (e)” and “paragraph (f)”, respectively.

■ c. Amend paragraph (g)(7) by removing “that borrower” and adding, in its place, “the borrower”.

§ 685.219 [Amended]

■ 6. In § 685.219:

■ a. Amend paragraph (b) by:

■ i. In the definition of *Non-governmental public service*, removing “personnel military” and adding, in its place, “personnel, military”.

■ ii. In the definition of *Public interest law*, removing “is” and adding, in its place, “means”.

■ b. Amend paragraph (g)(1) by removing “[EFFECTIVE DATE OF FINAL RULE]” and adding, in its place, “[July 1, 2023]”.

§ 685.406 [Amended]

■ 7. In § 685.406, amend paragraph (g)(4) introductory text by removing the phrase “the dates in paragraph (g)(1) of this section” and adding, in its place, “receipt of a materially complete application”.

Miguel A. Cardona,

Secretary of Education.

[FR Doc. 2023–14289 Filed 7–5–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket No. FMCSA–2013–0147]

Qualification of Drivers: Skill Performance Evaluation Program; Virginia Department of Motor Vehicles Application for Exemption Renewal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notification of provisional renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to provisionally renew an exemption for truck and bus drivers who are licensed in the Commonwealth of Virginia and need a Skill Performance Evaluation (SPE) Certificate to operate commercial motor vehicles (CMV) in interstate commerce. The exemption enables interstate CMV drivers who are licensed in Virginia and are subject to the Federal SPE certificate requirements to continue to fulfill the Federal requirements with a State-issued SPE certificate that qualifies such drivers to operate CMVs in interstate commerce. The exemption renewal is for a period of 2 years.

DATES: This renewed exemption is effective from July 8, 2023, through July 7, 2025. Comments must be received on or before August 7, 2023.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–

2013–0147 using any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. See the Public Participation and Request for Comments section below for further information.

- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* West Building, Ground Floor, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2013–0147) for this notification. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time. 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 West Building, 1200 New Jersey Avenue SE, Washington, DC, 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.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption 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 <https://www.transportation.gov/privacy>, the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–4001, FMCSAMedical@dot.gov. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this notification (FMCSA–2013–0147), indicate the specific page and section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to www.regulations.gov, insert the docket number “FMCSA–2013–0147” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notification listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b)(2) and 49 CFR 381.300(b) to renew an exemption for a class of persons from the Federal Motor Carrier Safety Regulations for up to 5 years 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” (49 U.S.C. 31315(b)(1)). The Virginia Department of Motor Vehicles (VA DMV) has requested on behalf of Virginia-licensed drivers who require a Federal SPE certificate renewal of the current exemption. A copy of the request is available in Docket No. FMCSA–2013–0147.

III. Background

Current Regulatory Requirements

CMV drivers who are otherwise qualified to drive a CMV but are not physically qualified to drive under 49 CFR 391.49(b)(1) or (2) because of a loss or impairment of limbs, may drive a

CMV if FMCSA has granted an SPE certificate to that person under 49 CFR 391.49.

Initial Decision Granting Exemption

In 2014, FMCSA initially granted the VA DMV’s request for exemption to enable Virginia-licensed drivers subject to the Federal SPE certificate requirements under 49 CFR 391.49 to fulfill the Federal requirements with a State-issued SPE certificate (79 FR 38659, July 8, 2014). The exemption required the State-issued SPE certificate to be based on standards, processes, and procedures comparable to those used by FMCSA, and the State was required to maintain copies of all evaluation forms and certificates issued to allow FMCSA to conduct periodic reviews of the State’s program. Virginia-licensed drivers who receive the State-issued SPE certificate are allowed to operate CMVs in interstate commerce. The exemption contained specific terms and conditions to ensure that the VA DMV maintained an equivalent level of safety to the Federal SPE process.

2016 and 2018 Renewals

FMCSA renewed the exemption on the same terms and conditions for a 2-year period from July 9, 2016, to July 9, 2018 (81 FR 44674, July 8, 2016).¹ FMCSA renewed the exemption again for a 5-year period, from July 8, 2018, to July 8, 2023 (84 FR 3532, Feb. 12, 2019).

Renewal Request

In its pending renewal request on behalf of the exempted drivers, the VA DMV noted that the current exemption allows trained staff from the Commonwealth of Virginia to review applications and conduct SPEs for Virginia commercial driver’s license (CDL) holders and the Virginia DMV Commissioner to approve SPE certificates. It notes that the application package mirrors the package otherwise required by FMCSA for SPE applications. The VA DMV will use an identical process and identical standards to process SPE applications. It further noted that, “Virginia DMV staff assigned to review SPE application packages are medical professionals (licensed practical nurses and

¹ At the time the first exemption was granted, the term of temporary exemptions was limited by statute to a maximum of 2 years. However, on December 4, 2015, Congress enacted the Fixing America’s Surface Transportation (FAST) Act, which allows an exemption to be granted for a period of 5 years (49 U.S.C. 31315(b)(2)) if FMCSA 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” (49 U.S.C. 31315(b)(1)).

Registered Nurses).” In addition, it stated that the Medical Review staff receive FMCSA training on how to conduct a thorough review of the SPE application information and that new staff are required to go through an extensive orientation. It noted that the nurse evaluators and the overseeing Healthcare Compliance Officer (Registered Nurse) have all participated in training conducted by FMCSA or will have recently attended the training provided by FMCSA on May 22–24, 2023.

Additionally, Medical Review staff forward those drivers who have met the Federal criteria for an SPE certificate to the Driver Licensing Quality Assurance (DLQA) staff to conduct the SPEs. The DLQA examiners hold Class A CDLs and have completed the FMCSA training required to conduct evaluations. Virginia states that since completing their training SPE examiners have coordinated with local FMCSA representatives to ensure retention of knowledge. The May 22–24, 2023, training will provide training to additional DLQA staff who have never had the class to allow Virginia to have a complement of examiners to accommodate any retirements in the future.

The VA DMV noted that DLQA examiners are positioned across VA DMV’s eight districts and each district has a CDL test site that can be used for the non-driving and off-highway portion of the SPE, and each district has a planned test route for the on-highway portion of the SPE. It states this minimizes the wait times for SPE applicants.

Finally, the VA DMV notes that it has participated in audit reviews, record reviews, and submits regular reports to FMCSA as part of ongoing quality assurance process. Since the most recent July 2018 renewal, the VA DMV notes that 37 Virginia drivers have applied for and obtained SPE certificates under the exemption and that an additional 40 to 50 drivers renew their certificates each year.

The VA DMV notes that its program has contributed to Virginia’s commitment to being the most military and veteran-friendly state in the nation through the Troops to Trucks Program (www.dmvnow.com/troopstotrucks). And it states that expediting the SPE process assists wounded veterans and military personnel with transition to civilian employment and reduces the time between discharge and employment for many wounded veterans “while addressing the trucking industry’s shortage of qualified licensed commercial truck drivers.”

IV. Equivalent Level of Safety

Virginia’s SPE program is essentially identical to the current FMCSA SPE program and is subject to oversight by FMCSA to ensure that VA’s processes are equivalent to FMCSA’s SPE processes. Virginia continues to adhere to the application process modeled on the FMCSA process. State personnel who conduct the SPE complete the same training as FMCSA personnel conducting SPEs and follow the same procedures and testing criteria used by FMCSA. FMCSA has conducted ongoing monitoring and SPE program reviews and Virginia continues to maintain records of applications, testing, and certificates issued for periodic review by FMCSA. Based on FMCSA’s analyses of the applications and the program, FMCSA has determined that continuing the exemption for the class of exempted drivers and continuing to allow the VA DMV to issue SPE certificates for Virginia residents will provide an equivalent level of safety as provided by FMCSA issuing the SPE certificates.

FMCSA is unaware of any evidence of a degradation of safety attributable to the current exemption. There is no indication of an adverse impact on safety under the terms and conditions specified in the initial exemption or exemption renewals. FMCSA concludes that provisionally extending the exemption for a period of 2 years, under the terms and conditions listed below, will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

V. Exemption Decision

A. Granting of Exemption

FMCSA provisionally renews the exemption for interstate Virginia-licensed drivers to be relieved of the requirement for an SPE certificate issued by FMCSA under 49 CFR 391.49 for a period of 2 years subject to the terms and conditions of this decision and the absence of public comments that would cause the Agency to terminate the exemption under Sec. VII below. The exemption renewal is otherwise effective July 8, 2023, through July 7, 2025, 11:59 p.m. local time, unless renewed or rescinded.

B. Terms and Conditions

The exemption to allow the VA DMV to issue an SPE certificate for interstate drivers who have experienced an impairment or loss of a limb and are licensed in the Commonwealth of Virginia is subject to the following terms and conditions:

1. VA DMV’s SPE program must be substantially similar to the current requirements in 49 CFR 391.49.

2. VA DMV must maintain an application process modeled on the FMCSA process and submit information concerning the application process to FMCSA’s Medical Programs Division for review, as requested.

3. State personnel who conduct SPEs must complete SPE training identical to that of FMCSA personnel currently administering the Federal SPE program.

4. The SPE and scoring for the SPE must be done using the same procedures and testing criteria used by FMCSA.

5. VA DMV must maintain records of applications, testing, and certificates issued for periodic review by FMCSA.

6. VA DMV must submit a monthly report to FMCSA listing the names and license number of each driver tested by the State and the result of the SPE (pass or fail).

7. As requested, the VA DMV must provide records required to be retained under this exemption and provide any other information necessary for FMCSA to evaluate the VA DMV’s compliance with the terms and conditions of this exemption.

8. Each driver who receives a State-issued SPE certificate must carry a copy of the certificate when driving for presentation to authorized Federal, State, or local law enforcement officials.

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. An exemption granted under the authority of 49 U.S.C. 31315(b) preempts State laws and regulations that conflict with or are inconsistent with the exemption. The decision to grant the exemption amounts to automatic Federal ratification of the State-issued SPE Certificate and therefore prohibits other jurisdictions from requiring a separate FMCSA-issued SPE. The State-issued certificate must be treated as if it had been issued by FMCSA. Virginia-licensed drivers who receive the State-issued SPE certificate are allowed to operate CMVs in interstate commerce.

VII. Termination

If the Agency determines that safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption. The exemption will also be revoked if the exemption has resulted in a lower level of safety than was

maintained before it was granted; or 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 Federal Motor Carrier Safety Regulations.

VIII. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on the application for an exemption. All

comments received before the close of business on the comment closing date indicated at the beginning of this notification will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notification. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late

comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Robin Hutcheson,

Administrator.

[FR Doc. 2023-13731 Filed 7-5-23; 8:45 am]

BILLING CODE 4910-EX-P

Proposed Rules

Federal Register

Vol. 88, No. 128

Thursday, July 6, 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 EDUCATION

34 CFR Chapter VI

[Docket ID ED–2023–OPE–0123]

Negotiated Rulemaking Committee; Public Hearing

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Intent to establish a negotiated rulemaking committee.

SUMMARY: We announce our intention to establish a negotiated rulemaking committee to prepare proposed regulations for the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). The committee will include representatives of organizations or groups with interests that are significantly affected by the subject matter of the proposed regulations. We also announce one public hearing at which interested parties may comment on the topic suggested by the Department and may suggest additional topics that we should consider for action by the negotiating committee. In addition, we announce that the Department will accept written comments on the topics suggested by the Department and suggestions for additional topics that we should consider for action by the negotiating committee.

DATES: The date, time, and location of the public hearing are listed under the **SUPPLEMENTARY INFORMATION** section of this document. We must receive written comments on the topics suggested by the Department and additional topics that you believe we should consider for action by the negotiating committee(s) on or before July 20, 2023.

ADDRESSES: Comments must be submitted through the Federal eRulemaking Portal at *regulations.gov*. Information on using *Regulations.gov*, including instructions for submitting comments, is available on the site under “FAQ.” If you require an accommodation or cannot otherwise

submit your comments via *regulations.gov*, please contact the person 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 we do not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

Privacy Note: The Department’s policy is to generally make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available. Commenters should not include in their comments any information that identifies other individuals or that permits readers to identify other individuals. The Department reserves the right to redact at any time any information in comments that identifies other individuals, includes information that would allow readers to identify other individuals, or includes threats of harm to another person.

FOR FURTHER INFORMATION CONTACT: For information about negotiated rulemaking, see *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at: www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html. For information about the public hearing, or for additional information about negotiated rulemaking, *contact:* Vanessa Gomez, U.S. Department of Education, 400 Maryland Ave. SW, Room 2C179, Washington, DC 20202. *Telephone:* (202) 987–0750. *Email:* vanessa.gomez@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: Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs authorized under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, the

Secretary conducts negotiated rulemaking to develop the proposed regulations. We announce our intent to develop proposed title IV regulations by following the negotiated rulemaking procedures in section 492 of the HEA.

We intend to select negotiators from nominees of the organizations and groups that represent the interests significantly affected by the proposed regulations. To the extent possible, we will select individual negotiators from the nominees who reflect the diversity among program participants, in accordance with section 492(b)(1) of the HEA.

Regulatory Issue

We intend to convene a committee to develop proposed regulations pertaining to topics in the title IV, HEA programs. Those topics are the authorities granted to the Secretary in HEA Section 432(a), which relate to the modification, waiver, or compromise of Federal student loans.

After reviewing the public comments presented at the public hearing and in the written submissions, we will publish a document (or documents) in the **Federal Register** announcing the specific topics for which we intend to establish a negotiated rulemaking committee and a request for nominations for individual negotiators for the committee who represent the communities of interest that would be significantly affected by the proposed regulations. This document will also be posted on the Department’s website at: <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html>.

Public Hearing

We will hold a virtual public hearing for interested parties to discuss the rulemaking agenda from 10 a.m. to noon and 1 p.m. to 4 p.m., Eastern time, on July 18, 2023. Further information on the public hearing is available at: <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html>.

Individuals who would like to present comments at the public hearing must register by sending an email message to negreghearing@ed.gov no later than noon, Eastern time, on the business day prior to the public hearing. The message should include the name of the presenter, the general topic(s) the individual would like to address, and one or more dates and times during which the individual would be available

to speak. We will attempt to accommodate each speaker's preference, but, if we are unable to do so, we will select speakers on a first-come, first-served basis, based on the date and time we received the message. We will limit each participant to four minutes.

The Department will notify speakers of the time slot reserved for them and provide information on how to log in to the hearing as a speaker. An individual may make only one presentation at the public hearing. If we receive more registrations than we can accommodate, we reserve the right to reject or cancel the registration of an entity or individual affiliated with an entity or individual that is already scheduled to present comments to ensure that a broad range of entities and individuals are able to present. Registration is required to view the virtual public hearing. We will post links for attendees who wish to observe on our website at <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html>. The Department will also post transcripts of the hearing on that site.

The Department will accept written comments via the Federal eRulemaking portal through July 20, 2023. See the **ADDRESSES** section of this document for submission information.

Schedule for Negotiations

We will announce dates for negotiations of any committee established after the public hearing through a notice published in the **Federal Register**. We anticipate holding three sessions of no less than 2 days each at roughly 4-week intervals. The dates and locations of these virtual meetings will be published in a subsequent *Federal Register* document and posted online at: <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html>.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or 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 for free on 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.

Program Authority: 20 U.S.C. 1098a.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2023-14329 Filed 7-5-23; 8:45 am]

BILLING CODE 4000-01-P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 803

[Docket No.: NTSB-2023-0006]

RIN 3147-AA27

Official Seal Description

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The National Transportation Safety Board (NTSB) is amending its regulatory description of the agency's seal. Since the seal's inception, the agency has utilized various versions of the seal. For consistency, the agency proposes updating the regulation and codifying current agency practice. This proposed change will provide a revised graphical representation of the seal. Additionally, the NTSB is including non-substantive technical amendments throughout part 803 due to recent internal organizational changes and a typographical error reflected in the agency's mailing address.

DATES: Send comments on or before September 5, 2023.

ADDRESSES: You may send comments, identified by Docket Number (No.) NTSB-2023-0006, by any of the following methods:

- *Federal e-Rulemaking Portal:* <https://www.regulations.gov>.
- *Email:* rulemaking@ntsb.gov.
- *Fax:* 202-314-6090.
- *Mail/Hand Delivery/Courier:* NTSB, Office of General Counsel, 490 L'Enfant Plaza East SW, Washington, DC 20594.

Instructions: All submissions in response to this NPRM must include Docket No. NTSB-2023-0006. All comments received will be posted

without change, including any personal information provided to <https://www.regulations.gov>.

Docket: For access to the docket, go to <https://www.regulations.gov> and search Docket No. NTSB-2023-0006.

You may send comments, identified by Docket No. NTSB-2023-0006, by any of the following methods:

- *Federal e-Rulemaking Portal:* <https://www.regulations.gov>.
- *Email:* rulemaking@ntsb.gov.
- *Fax:* 202-314-6090.
- *Mail/Hand Delivery/Courier:* NTSB, Office of General Counsel, 490 L'Enfant Plaza East SW, Washington, DC 20594.

Instructions: All submissions in response to this NPRM must include Docket No. NTSB-2023-0006. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket, go to <https://www.regulations.gov> and search Docket No. NTSB-2023-0006.

FOR FURTHER INFORMATION CONTACT: Casey Blaine, Deputy General Counsel, (202) 314-6080, rulemaking@ntsb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 1975, the NTSB adopted an official seal as authorized by the Independent Safety Board Act of 1974 (Act), and codified the seal in part 803 of its regulations entitled "Official Seal." 40 FR 30232 (July 17, 1975). The adoption at that time marked the NTSB's status as an independent Federal agency. 43 FR 36454 (Aug. 17, 1978). The original seal design was that of a triskelion, which was later replaced by the American bald eagle as set forth in the NTSB's final rule. 43 FR 36454. The NTSB explained that the eagle was "adopted in the interest of ready recognition of the Board's status as an independent agency of the Federal Government charged with the investigation of transportation accidents." *Id.* The agency continued, "it is imperative that Board officials be readily recognized as agents of the U.S. Government" *Id.*

Over thirty years later, the NTSB published its Plan for Retrospective Analysis of Existing Rules per two Executive orders that altogether advised agencies to conduct such an analysis. 77 FR 37865, 37866 (June 25, 2012). After reviewing public comments, the NTSB subsequently announced its plan to update the agency's regulations, which included part 803. 78 FR 1193 (Jan. 8, 2013). However, in the final rule, the NTSB ultimately amended certain sections of part 803, but did not revise the description of the seal found in

§ 803.1. See 81 FR 75729 (Nov. 1, 2016). Thus, the NTSB's current seal has been in effect for more than 40 years.

II. Changes to § 803.1

Since the last revision of § 803.1 in August 1978, the NTSB has utilized various versions of the seal within the agency. For consistency, the NTSB proposes codifying what has evolved as standard agency practice. This proposed change to update § 803.1 will focus on additional options for background colors and will provide a revised graphical representation of the seal.

While respecting the current NTSB seal, the agency is slightly modifying the design to make the seal digitally applicable. For example, the digital

version of the current seal alters in appearance when applied to the NTSB uniform; specifically, the current font changes when the seal is affixed to clothing. Thus, the proposed update to the design optimizes the seal, making it compatible with digital platforms.

Over the years, various versions of the seal have been recognized within the agency, but have never been codified; that recognition is now reflected in this proposed rulemaking. The agency clarifies that when the full color seal is used in print or digital media, the seal must be in a white circle. When the full color seal is embroidered on the official NTSB uniform, the seal's background color must be that of the material of the uniform.

Also, the proposed rule updates the regulatory description to reflect modern times. The NTSB will now use gender-neutral language to refer to the eagle. Further, the agency will replace the Latin terms “dexter” and “sinister” with “right” and “left”, respectively.

Additionally, the minor alteration of the NTSB's eagle will be more consistent with the Federal Government's official American eagle. The inscriptions encircling the NTSB's eagle—“E Pluribus Unum” and “National Transportation Safety Board”—will be updated from Serif font to Sans Serif font.

A side-by-side comparison of the NTSB's current and proposed versions of the seals appears below, respectively:



III. Technical Amendments

In 2022, the NTSB made organizational changes to its Office of the Administration, which the agency renamed as the Office of Human Capital Management and Training (HCT). The head of HCT is the Chief Human Capital Officer, who now has custody and control of the seal. Accordingly, due to this reorganization, the NTSB is including non-substantive technical amendments throughout part 803 to reflect the change in the agency's office designation. Thus, the agency is revising all references to the “Director, Office of Administration” with “Chief Human Capital Officer” in §§ 803.3 and 803.5.

Additionally, the agency is correcting a typographical error reflected in the zip code of the NTSB's mailing address.

IV. Regulatory Analysis

Because the NTSB is an independent agency, this proposed rule does not require an assessment of its potential costs and benefits under section 6(a)(3) of Executive Order (E.O.) 12866, Regulatory Planning and Review, 58 FR 51735 (Sept. 30, 1993). In addition, the NTSB has considered whether this

proposed rule would have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act (5 U.S.C. 601–612). The NTSB 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.

The NTSB does not anticipate this proposed rule will have a substantial, direct effect on state or local governments or will preempt state law; as such, this proposed rule does not have implications for federalism under E.O. 13132, Federalism, 64 FR 43255 (Aug. 4, 1999).

This proposed rule complies with all applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, 61 FR 4729 (Feb. 5, 1996), to minimize litigation, eliminate ambiguity, and reduce burden. The NTSB has evaluated this proposed rule under: E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629 (Feb. 16, 1994); E.O. 13045, Protection of Children from Environmental Health Risks and Safety

Risks, 62 FR 19885 (Apr. 21, 1997); E.O. 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249 (Nov. 6, 2000); E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355 (May 18, 2001); and the National Environmental Policy Act, 42 U.S.C. 4321–47. Pursuant to the Paperwork Reduction Act, the NTSB has determined that there is no new requirement for information collection associated with this proposed rule. The NTSB has concluded that this proposed rule neither violates nor requires further consideration under those orders, statutes, E.O.s, and acts.

List of Subjects in 49 CFR Part 803

Seals and insignia.

Accordingly, for the reasons stated in the preamble, the NTSB proposes to amend 49 CFR part 803 as follows:

PART 803—OFFICIAL SEAL

■ 1. The authority citation for part 803 continues to read as follows:

Authority: 49 U.S.C. 1111(j), 1113(f).

- 2. Revise § 803.1 to read as follows:

§ 803.1 Description.

The official seal of the National Transportation Safety Board (NTSB) is described as follows: An American bald eagle with wings displayed, holding an olive branch in its right talon and a bundle of 13 arrows in its left talon. Above the eagle's head is a white scroll inscribed "E Pluribus Unum" in black. The eagle bears a shield that resembles the United States flag with vertical

stripes of alternating white and red and a blue top; all are within an encircling inscription, "National Transportation Safety Board". The eagle's wings, body, and upper portion of the legs are shades of brown. The head, neck, and tail are white. The beak, lower portion of the legs, feet, arrows, olive branch, and encircling inscription are gold. When the full color seal is illustrated on print or digital media, the background of the seal must be white. When the full color

seal is embroidered on official NTSB uniform items, the seal's background must be the color of the material. When the monochrome seal is used on print or digital media, the seal can be displayed in black, blue, or in white on contrasting background. When used on official NTSB uniform items, the monochrome seal can be illustrated in yellow-gold on navy blue material. The monochrome version of the NTSB's official seal appears below.



§ 803.3 [Amended]

- 3. Amend § 803.3 by:
- a. In paragraph (a), removing "Director, Office of Administration" and adding in its place "Chief Human Capital Officer"; and
- b. In paragraph (b), removing "Director, Office of Administration" and adding in its place "Chief Human Capital Officer".

§ 803.5 [Amended]

- 4. Amend § 803.5, in paragraph (c), by removing "Director, Office of Administration" and "20594-003" and adding in their place "Chief Human Capital Officer" and "20594", respectively.

Jennifer Homendy,
Chair.

[FR Doc. 2023-14209 Filed 7-5-23; 8:45 am]

BILLING CODE 7533-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230628-0158]

RIN 0648-BL69

Monitoring Requirements for Pot Catcher/Processors Participating in Bering Sea/Aleutian Islands Groundfish Fisheries

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulatory changes to revise the monitoring requirements for pot gear catcher/processors (CPs) participating in Bering Sea/Aleutian Islands (BSAI) groundfish fisheries. This action is needed to address management challenges created by observer data collection errors that have impacted catch estimates. This action would improve observer data collection by requiring participants to carry a Level 2 observer and comply with pre-cruise meeting notifications, and by requiring certification and

testing standards for participants choosing any of the following voluntary monitoring options: providing observer sampling stations, installing motion-compensated platform and flow scales, and carrying additional observers on the vessel. Additionally, this action would change the location of existing monitoring regulations for longline CPs and halibut deck sorting by moving them under a single, new subpart within the regulations. This action promotes the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plan (FMP) for Groundfish of the BSAI Management Area, and other applicable laws.

DATES: Submit comments on or before August 7, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2022-0085, 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-2022-0085 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to the Assistant Regional Administrator,

Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

• Fax: 907-586-7465; Attn: Assistant Regional Administrator, Sustainable Fisheries Division.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All 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).

Electronic copies of the Regulatory Impact Review (RIR; referred to as the Analysis) prepared for this action are available from www.regulations.gov or from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address or to www.reginfo.gov/public/do/PRAMain. Find the particular information collections by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Mason Smith, 907-586-7228, mason.smith@noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI under the FMP for Groundfish of the BSAI Management Area. The North Pacific Fishery Management Council (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 FMPs appear at 50 CFR parts 600 and 679.

Background

NMFS proposes to improve data collection by observers deployed by the North Pacific Observer Program for management of the BSAI pot CP sector by revising the existing monitoring requirements for the BSAI pot CP sector. At its February 2023 meeting, the Council took final action to recommend

additional monitoring requirements for the BSAI pot CP sector. The following sections of this preamble describe: (1) the North Pacific Observer Program, (2) the BSAI pot CP sector, (3) the need for this action, (4) the elements of this proposed rule, and (5) the regulatory changes made by this proposed rule.

North Pacific Observer Program (Observer Program)

The Observer Program is an integral component in the management of North Pacific fisheries. The Observer Program was created with the implementation of the Magnuson-Stevens Act in the mid-1970s and has evolved from primarily observing foreign fleets to observing domestic fleets, including the BSAI pot CP sector. Regulations at subpart E of 50 CFR part 679 implement the Observer Program and prescribe how NMFS-certified observers will be deployed on board vessels and in processing plants to obtain information necessary for the conservation and management of the groundfish and halibut fisheries off Alaska. The information collected by observers contributes to the best available scientific information used to manage the fisheries under the Magnuson-Stevens Act.

Observers collect biological samples and gather information on total catch, including bycatch and interactions with protected species. Fishery managers use data collected by observers to manage groundfish catch and bycatch limits established in regulation and to inform the development of management measures that minimize bycatch and reduce fishery interactions with protected resources. Scientists use observer-collected data for stock assessments and marine ecosystem research.

Bering Sea/Aleutian Islands Pot CP Sector

The BSAI pot CP sector is managed in part under the License Limitation Program (LLP), which requires an LLP license endorsed for the directed fishing of groundfish in the BSAI. The LLP was recommended by the Council and approved and implemented by NMFS to address concerns of excess fishing capacity, and it limits the number, size, and specific operation of vessels deployed in the groundfish fisheries in the EEZ off Alaska (63 FR 52642, October 1, 1998; 50 CFR 679.4(k)(4)). The pot CP sector targets primarily Pacific cod using pot gear with single lines. Each vessel is currently required to deploy a certified observer to monitor their fishing activity. The BSAI pot CP sector is relatively small, with eight LLP licenses holding endorsements to fish

for Pacific cod with pot gear in the Bering Sea (BS) or Aleutian Islands (AI), and only six of which were active in 2022. Pacific cod seasons in the BSAI are often short, lasting approximately 1 to 2 weeks during the A season (beginning January 1) and the B season (beginning September 1) in recent years. The fast pace of fishing with single pot gear, high sampling workload, and the need for close communication between the captain and observer make the BSAI pot CP sector one of the most difficult fisheries for the Observer Program to sample. This sector is separate from CPs using pot gear for the groundfish Community Development Quota (CDQ) Program (63 FR 30381, June 4, 1998), and this action would not change any aspects of the groundfish CDQ regulations (50 CFR 679.32). The CDQ Program allocates a percentage of BSAI quotas for groundfish, prohibited species, halibut, and crab to eligible communities. The CDQ program, which was established to provide eligible western Alaska villages with the opportunity to participate and invest in BSAI fisheries and to support the economic development of local economies in western Alaska, already requires the same or stricter provisions as those proposed for the non-CDQ pot CP sector in this action.

Need for This Action

Observer data is NMFS' preferred source of information for estimating catch and discards in the BSAI pot CP fishery. Observer data is used by NMFS for inseason management in near real time, making it imperative that this data is as complete and accurate as possible. Currently, NMFS' management of the BSAI pot CP fishery is difficult due to a high rate of observer data loss, either by deletion by the Observer Program due to flawed data collection, or by observers failing to collect data in the first place.

Observer data collection in the BSAI pot CP fishery is based on a random sampling design of units (e.g., pots) of fishing effort. The sampling frame, which is the list of units from which the random selections will be sampled, for pot vessels can be difficult to define if pots are pulled out of order or in a varied way, which can be a frequent occurrence under rough seas. Additionally, the fast pace of pot CP fishing creates a high sampling workload for the observer and increases the need for close communication between that observer and the vessel captain and crew to ensure that the correct pots are sampled, which can be challenging for first or second-time observers.

Across all sectors, data deletions (*i.e.*, unusable data) are strongly correlated with inexperienced observers, with the majority of deletions occurring from trips on an observer's first or second contract (see Section 2.1 of the Analysis). Although pot CPs are one of the more challenging deployments for observers, the BSAI pot CP fishery is one of the only CP sectors in the full coverage (100 percent of trips observed) category that does not require a Lead Level 2 (LL2) deployment endorsement. LL2 deployment endorsements can only be obtained by an observer after they complete 2 cruises (contracts) of at least 10 days each, sample 30 sets of nontrawl gear, and successfully complete LL2 training or briefings. Because a LL2 observer deployment is not currently required in the BSAI pot CP fishery, there is a high rate of first-time observers being assigned to BSAI pot CP vessels. This has compounded the issues with data deletions in the fishery by creating a revolving scenario of new observers being assigned to these vessels each year. This action, which would require BSAI pot CP participants to carry at least one Level 2 observer at all times, is needed to ensure the deployment of experienced observers on BSAI pot CP vessels. Doing so would reduce the likelihood of data collection errors or deletion and total loss of data. A Level 2 endorsement is one step below a LL2 endorsement and can be obtained by an observer after they complete the initial observer certification, sample 60 data collection days, and successfully meet expectations on their most recent cruise (50 CFR 679.53(a)(5)(iv) and (v)).

Observer sampling on a pot CP vessel requires close communication between the observer and vessel captain. Because observers use a sampling design based on units of fishing effort, creating the sampling frame needed for random samples on pot vessels can be difficult to define if pots are pulled out of order or in a varied way. A pre-cruise meeting would provide an opportunity for Alaska Fisheries Science Center Fisheries Monitoring and Analysis Division staff to participate in a conversation between the vessel crew and a newly assigned observer prior to embarking on a trip. This would allow Alaska Fisheries Science Center Fisheries Monitoring and Analysis Division staff to clarify expectations and provide knowledgeable advice about anticipated sampling scenarios that an observer may encounter at sea and to better prepare the observer and the crew to work collaboratively and develop clear communication strategies. This

action is necessary to ensure proper sampling design, which in turn will reduce data deletions attributable to sampling design defects.

Accurate observer haul estimates are important to the BSAI pot CP sector, as well as to NMFS. Participants in the BSAI pot CP fishery have expressed concern with observer haul estimates compared to vessel production weights. Precise haul estimates are important to the sector for catch accounting during their short seasons, which are typically only a few weeks long. To obtain total haul weight estimates, observers measure the weights of fish from a set of randomly sampled pots within a haul, which are later extrapolated to the total numbers of fish tallied for that haul. NMFS has received feedback and inquiries from several active vessels about adding observer coverage, workstations, and scales to address concerns about extrapolated estimates. Due to the fast pace of fishing and high workload, observers must carefully plan to ensure they adequately sample each randomly selected pot. This action would authorize vessels to voluntarily provide a second observer to allow more pots to be sampled, resulting in potentially greater precision for total haul estimates. This action would additionally authorize vessels to voluntarily provide observer workstations with a motion-compensated platform (MCP) scale, as well as a NMFS-approved flow scale to measure the total haul weight of Pacific cod. Observer workstations may increase precision by providing an improved workspace for storing fish in an observer's sample and providing dedicated space to collect data, and the motion-compensated scales may provide more rapid and accurate weigh information. A NMFS-approved scale to measure the total haul weight of Pacific cod may reduce errors by eliminating the need to extrapolate the total numerical estimate of Pacific cod catches from the weighed samples. The BSAI pot CP fishery is currently not required to provide an observer workstation or measure total haul weights of Pacific cod on a NMFS-approved scale. Some vessels already have this equipment installed due to their participation in other fisheries requiring such equipment. However, regulations are needed to ensure proper testing and maintenance of the equipment for its use in this BSAI pot CP fishery.

The problems with data deletion in the BSAI pot CP fishery are compounded by the fishery's small number of participants and its short seasons. Since at least 2014, whenever

deletion of observer data has occurred in the fishery due to data collection errors, it has resulted in substantial changes to the estimates of catch and bycatch. Due to the short (1 to 2 week) BSAI Pacific cod seasons, each vessel may have only one individual observer who stays onboard for the entire season. In these cases, if data collected by the observer is deleted or changed during the post-season debriefing process, it can result in the loss of data for an entire vessel during that season. Since 2011, there have been 12 instances in which nearly all deployment data collected on board a pot CP vessel was deleted; 10 of those instances involved an observer on their first or second contract. With only six active vessels during this time period, any deletion of or change in data from a vessel had a disproportionately large effect on catch estimates compared to the effect of data loss or change in data in fisheries with larger fleets. In some cases in the BSAI pot CP fisheries, data changes after the season closure led to a near doubling of harvest estimates. Since 2011, the sector's utilization of total allowable catch (TAC) has ranged from 80–119 percent, and imprecise catch estimates could result in a TAC overage or TAC remaining that could otherwise have been harvested.

The regulatory changes to monitoring requirements proposed in this action are intended to reduce the likelihood of data loss on BSAI pot CP vessels by ensuring only experienced observers are deployed on BSAI pot CP vessels and ensuring effective collaboration between the observer and the captain and crew. This action additionally provides three voluntary monitoring options for pot CP vessels to install equipment or implement operational requirements that may further improve the precision of observer data. In February 2023, the Council took final action to recommend the suite of measures in this action. In the description below, the regulatory changes in this action are organized into two required elements (elements 1 and 2) and an optional element (element 3).

This Proposed Rule

This action would require participants to carry at least one Level 2 observer deployed at all times, require participants to comply with pre-cruise meeting notifications, and require certification and testing standards for participants choosing any of the following voluntary monitoring options: providing observer sampling stations, installing motion-compensated platform and flow scales, and carrying additional observers on board vessel.

This proposed rule, if adopted, would restructure subpart I and subpart K of 50 CFR part 679 to combine three sets of regulations under a single subpart, as follows: (1) existing regulations for longline CPs; (2) this action's proposed regulations for pot CPs; and (3) those CPs and motherships participating in the halibut deck sorting program. This restructuring would make no substantive changes to the regulatory requirements for longline CPs or the halibut deck sorting program, but is necessary to streamline similar monitoring regulations for CPs and motherships to provide the public easier access to the regulations. This proposed rule, if adopted, would revise subpart I, which currently applies only to equipment and operational requirements for the longline catcher/processor subsector, so that subpart I will also apply to the equipment and operational requirements for pot CPs and for CPs and motherships participating in the halibut deck sorting program. This proposed rule, if adopted, would change the title of § 679.100 (from the current title, "Applicability") to "Longline Catcher/Processor Subsector," would change the title of subpart I (from the current title of "Equipment and Operational Requirements for the Longline Catcher/Processor Subsector") to "Additional Equipment and Operational Requirements for Motherships and Catcher/Processors," and would change all references to existing subpart I to new § 679.100. The regulations for the halibut deck sorting program, which are currently found at § 679.120 (entitled "Halibut deck sorting") in subpart K (similarly entitled "Halibut Deck Sorting"), would be moved to subpart I and redesignated as § 679.102, with no other changes. As described further below, revised subpart I would also include new § 679.101, which would contain the new proposed pot CP monitoring requirements and which would be entitled, "Catcher/processors using pot gear for groundfish fishing." In conclusion, these changes are intended to streamline and provide the public easier access to the regulations by placing similar monitoring regulations for CPs and motherships together.

This proposed rule includes three new regulatory elements for the pot CP sector. The first element would add paragraph (G) in § 679.51(a)(2)(vi) to require a minimum of one Level 2 observer on board a CP vessel using pot gear subject to § 679.101(a) at all times. These changes are intended to reduce the likelihood of fisheries data loss by

ensuring experienced observers are deployed on board pot CP vessels. In addition, paragraph § 679.53(a)(5)(iv) (which states when a Level 2 endorsement is required) would be revised to add a reference to the new § 679.51(a)(2)(vi)(G) requirement.

The second element of this proposed rule, if adopted, would add subsection (a) in new § 679.101 to define the applicability of the proposed regulations to the owner and operator of a vessel named on an LLP license with a Pacific cod CP pot gear endorsement in the Bering Sea, Aleutian Islands, or both. In addition, this proposed rule would add paragraph (b) in new § 679.101 to require that vessels provide pre-cruise notification at least 24 hours prior to departure when the vessel will be carrying an observer who has not been deployed on that vessel within the last 12 months. In addition, when a pre-cruise meeting is requested by NMFS, the meeting must include the vessel operator or manager and the observers assigned to that vessel. The proposed changes are intended to reduce the likelihood of data loss by ensuring effective communication and collaboration between the observer(s) and the captain and crew.

The third element of this proposed rule, if adopted, would add paragraph (c) in new § 679.101 applicable to three additional voluntary monitoring options for pot CPs. The owner or operator of a vessel subject to this new section may choose any, all, or none of three voluntary monitoring options: (1) providing a certified observer sampling station with a NMFS-approved MCP scale for observer use; (2) installing a motion-compensated, NMFS-approved scale to measure the total catch of Pacific cod, in conjunction with an MCP scale for testing, electronic logbook, and video monitoring; and (3) carrying additional on-board observers. Each of these options are explained in further detail in the following sections.

Observer Sampling Station Option

The vessel operators would have the option to choose to install an observer sampling station in accordance with the specifications and requirements in § 679.28(d), including a working area of 4.5 square meters, a work table, and a MCP scale, all in proximity to where the observer can see gear retrieved and obtain fish samples (see Section 2.2.3.1 of the Analysis). An observer sampling station provides an organized work space and higher precision equipment for observer use that would improve observer data collection; however, installation of an observer sampling station can be costly. Section

679.101(c)(1) of this proposed rule would apply if a vessel operator chooses to install an observer sampling station.

Observer sampling stations provide observers with a low traffic area, in close proximity to the catch, where there is adequate space and the equipment needed to most effectively sample. An MCP scale compares the weight of fish to a reference weight at least 60 times per second, allowing the scale to compensate for the motion of the vessel, which can otherwise cause an inaccurate weight reading (see Section 2.2.3.1 of the Analysis). An MCP scale can be read to the hundredth of a kilogram, providing higher precision than the tenth of a kilogram reading obtained by the NMFS-issued brass scales or hanging Salter scale (see Section 2.2.3.1 of Analysis). Like all scales used by observers, an MCP scale must be selected from the list of approved scales published by NMFS Alaska Region (<https://www.fisheries.noaa.gov/alaska/resources-fishing/scales-approved-use-sea>). This option could be selected by obtaining an Observer Sampling Station Inspection Report as detailed in § 679.28(d)(10)(iii), and the MCP scale would remain in place for the 12-month duration approved in the Observer Sampling Station Inspection Report.

At-Sea Catch Weighing Option

This proposed rule includes proposed regulations at § 679.101 to authorize use of a motion-compensated, NMFS-approved total weight scale, such as a flow or hopper scale, to measure total catch of Pacific cod, in conjunction with an MCP scale for testing, electronic logbook, and video monitoring. This would authorize the use of a motion-compensated, NMFS-approved scale to measure total catch of Pacific cod weight, which may include flow scales or hopper scales certified on a case-by-case basis (see Section 2.2.3.2 of Analysis). Use of a NMFS-approved scale to measure total catch of Pacific cod would simplify observer data collection of Pacific cod total haul weights on pot CP vessels and improve precision of catch estimates. Installation of a NMFS-approved scale can be costly, and therefore this proposed rule includes regulations that would apply if a vessel chooses to install this NMFS-approved MCP scale. With proper maintenance and testing, these types of haul-level measurements eliminate the uncertainty involved in estimating total catch using a randomized sample approach. If vessel operators choose to acquire such scales, they would be required to be maintained in accordance with the scale requirements at

§ 679.28(b) to ensure data quality. These requirements include an initial inspection, followed by annual re-inspections by a NMFS-staff scale inspector. Additionally, daily testing by the vessel operator in the presence of an observer would be required for each calendar day the scale is used at sea. In this testing, scales must perform within 3 percent of test weights using a NMFS-approved and certified MCP scale. (Also see additional description of this testing under the discussion of option 1 of element 3 in the Analysis.) Finally, vessels choosing this option would be required to record test results through an electronic logbook, and use video to monitor the flow of catch and ensure no scale tampering has occurred; these recording and monitoring requirements would be similar to the requirements of the BSAI Pacific cod hook-and-line fishery (79 FR 68610, November 18, 2014). This option could be selected by obtaining a Scale Inspection Report as detailed in § 679.28(b)(2)(vii) and if selected, the option would remain in place for the 12-month duration approved in the Scale Inspection Report.

Additional Observer Option

This proposed rule, if adopted, would add language in subsection (c) of new § 679.101 and in § 679.51(a)(2)(vi) to authorize a vessel to choose to carry additional onboard observers. Carrying an additional observer could reduce the likelihood of data loss. The addition of observers may reduce observer workload and could allow observers to support and advise each other about their collection duties, and, therefore, potentially could lead to fewer data collection errors and to an increase the amount of samples conducted. This option is already allowed under existing monitoring provisions (§ 679.51) that allow a vessel to choose to contract with an observer provider to carry more than one observer. This proposed rule, if adopted, would add provisions that expressly authorize and apply to the practice of voluntarily adding observers. If a vessel chooses this option, one observer would be required to meet the Level 2 endorsement requirement in this proposed rule.

Classification

NMFS is issuing this proposed rule pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act. This proposed action is necessary for implementation of the BSAI FMP because the monitoring requirements in this action are expected to improve the quality of the data that is needed to administer the fishery management

programs implemented under this FMP. The NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration of comments received during the public comment period.

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

A Regulatory Impact Review (RIR or Analysis) was prepared to assess the costs and benefits of available regulatory alternatives. A copy of this Analysis is available from NMFS (see **ADDRESSES**). NMFS is recommending this proposed rule based on those measures that maximize net benefits to the Nation.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The factual basis for this determination is described as follows. This proposed rule, if adopted, would directly regulate the owners and operators of CPs participating in BSAI groundfish fisheries using pot gear. This action would require participants to carry at least one Level 2 observer deployed at all times, and would require participants to comply with pre-cruise meeting notifications. This action also would require certification and testing standards for participants choosing any of the following additional, voluntary monitoring options: providing observer sampling stations, installing motion-compensated platform and flow scales, and carrying additional observers on vessel. For Regulatory Flexibility Act (RFA) purposes only, the National Marine Fisheries Service (NMFS) established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates) and has combined annual receipts less than \$11 million for all its affiliated operations worldwide. The RFA also requires consideration of affiliations between entities for the purpose of assessing whether an entity is classified as small. If business entities are affiliated, then the threshold for identifying small entities is applied to the group of affiliated entities rather than on an individual entity basis. NMFS has

determined that vessels that are members of a fishing cooperative are affiliated when classifying them for purposes of the RFA.

Of the six active vessels that held LLP licenses endorsed for Pacific cod CP pot landings in 2021, five vessels were affiliated with either a Bering Sea Crab Rationalization Program Cooperative or the Freezer Longline Conservation Cooperative. All of those cooperatives have 5-year (2017–2021) average gross annual revenues greater than \$11 million, and would therefore not be considered small entities for RFA purposes. The remaining vessel that was not affiliated with a fishing cooperative was affiliated with additional vessels, and the combined annual receipts of all of the affiliated vessels (using an average aggregated over the 5-year period of 2017–2021) exceeded the \$11 million threshold and therefore is not considered a small entity under the RFA.

Based on this analysis, NMFS has determined there are no small entities affected by this proposed rule. Therefore, this action would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This proposed rule, if adopted, would revise existing collection-of-information requirements for OMB Control Number 0648–0318 (North Pacific Observer Program), and revise and extend for 3 years existing collection-of-information requirements for OMB Control Numbers 0648–0330 (NMFS Alaska Region Scale and Catch Weighing Requirements) and 0648–0515 (Alaska Interagency Electronic Reporting System). However, because the collection of information authorized by 0648–0318 is concurrently being revised by a separate action, the revision to that collection of information for this proposed rule will be assigned a temporary control number that will later be merged into 0648–0318. The public reporting burden estimates for the collection-of-information requirements provided below include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*OMB Control Number 0648—
TEMPORARY*

This proposed rule, if adopted, would revise the collection of information under OMB Control Number 0648–0318, associated with the North Pacific Observer Program. Due to a concurrent action for this collection, the collection-of-information requirements will be assigned a temporary control number that will later be merged into this control number. This proposed rule, if adopted, would require that the North Pacific Observer Program be notified by phone at least 24 hours prior to departure when a vessel will carry an observer who has not deployed on that vessel in the past 12 months. The public reporting burden per notification to the North Pacific Observer Program by phone is estimated to be 5 minutes.

OMB Control Number 0648–0330

NMFS proposes to revise and extend by 3 years the existing requirements for OMB Control Number 0648–0330. This collection contains catch weighing and monitoring requirements for catch share programs in the BSAI and Gulf of Alaska. This collection would be revised to include two of the voluntary monitoring options for BSAI pot CPs: the option to provide a certified observer sampling station with a NMFS-approved MCP scale for observer use; and the option to install a motion-compensated, NMFS-approved scale to measure the total catch of Pacific cod, in conjunction with an MCP scale for testing and video monitoring. This proposed rule would require testing and inspections of the observer sampling station and NMFS-approved scales. This proposed rule would not change the public reporting burdens for the collection-of-information requirements under this control number. The public reporting burden per individual response is estimated to average 10 minutes for the inspection request form for observer sampling stations, at-sea scales, and video monitoring systems; 1 minute for maintenance of observer sampling stations; 1 minute each for maintenance for hopper and flow scales; 2 minutes for observer notification of daily scale tests; 10 minutes each for the recording of daily flow scale tests and recording of daily hopper scale tests; 1 minute each for printed reports of catch and cumulative weight, the audit trail, the calibration log, and the fault log; 12 hours for installation of the video monitoring system; 1 minute for maintenance of the video monitoring system; 2 hours to submit the video monitoring data; 10 minutes for notification of the Pacific cod

monitoring option; 40 hours for the catch monitoring and control plan; and 16 hours for the crab monitoring plan.

OMB Control Number 0648–0515

NMFS proposes to revise and extend by 3 years the existing requirements for OMB Control Number 0648–0515. This collection contains the landing reports, production reports, and logbooks submitted through the Alaska Interagency Electronic Reporting System, which provides the Alaska fishing industry with a consolidated, electronic means of reporting commercial fish and shellfish information to multiple management agencies through a single reporting system. This collection would be revised because one of the voluntary monitoring options would require use of an electronic logbook. This proposed rule, if adopted, would not change the public reporting burdens for the collection-of-information requirements under this control number. The public reporting burden per individual response is estimated to average 15 minutes for the electronic logbooks, 15 minutes to register for eLandings, 10 minutes for the shoreside processor production report, 20 minutes for the at-sea production report, 10 minutes for the mothership landing report, 20 minutes for the out-of-state landing report, 30 minutes each for the shoreside processors landing report and the catcher/processor landing report, 35 minutes for the tender landing report, and 1 hour each for the registered buyer landing report for individual fishing quota (IFQ)/community development quota (CDQ) and the registered crab receiver landing report for IFQ/CDQ.

Public Comment on Collection-of-Information Requirements

NMFS seeks public comment regarding the following: (1) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the burden estimate; (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, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collections of information to NMFS Alaska Region (see **ADDRESSES**), or at www.reginfo.gov/public/do/PRAMain.

Notwithstanding any other provision of law, no person is required to respond to, and no person shall be subject to

penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 29, 2023.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 2. Amend § 679.51, by adding paragraph (a)(2)(vi)(G) to read as follows:

§ 679.51 Observer and Electronic Monitoring System requirements for vessels and plants.

- (a) * * *
- (2) * * *
- (vi) * * *

(G) *Catcher/processors using pot gear for groundfish fishing.* A catcher/processor subject to § 679.101(a) must comply with the following observer coverage requirements:

(1) *Observer coverage.* A catcher/processor must have aboard at least one Level 2 observer, as defined in § 679.53(a)(5)(iv).

(2) *Increased observer coverage option.* A catcher/processor may carry more than one observer. A vessel choosing this option must have aboard at least one Level 2 observer as described in paragraph (a)(2)(vi)(G)(1) of this section.

* * * * *

§ 679.53 [Amended]

■ 3. Amend § 679.53, by removing in paragraph (a)(5)(iv) introductory text the phrase “§ 679.51(a)(2)(vi)(A) through (E)” and adding, in its place the phrase, “§ 679.51(a)(2)(vi)(A) through (G).”

■ 4. In part 679, revise the heading of subpart I to read as follows:

Subpart I—Additional Equipment and Operational Requirements for Motherships and Catcher/Processors

■ 5. Amend § 679.100 by revising the section heading, the introductory paragraph, paragraph (a), and the introductory text of paragraph (b) to read as follows:

§ 679.100 Longline Catcher/Processor Subsector.

The owner and operator of a vessel named on an LLP license with a Pacific cod catcher/processor hook-and-line endorsement for the Bering Sea, Aleutian Islands or both the Bering Sea and Aleutian Islands subareas (BSAI) must comply with the requirements of this section.

(a) *Opt out selection.* Each year, the owner of a vessel subject to this section who does not intend to directed fish for Pacific cod in the BSAI or conduct groundfish CDQ fishing at any time during a year may, by November 1 of the year prior to fishing, submit to NMFS a completed notification form to opt out of directed fishing for Pacific cod in the BSAI and groundfish CDQ fishing in the upcoming year. The notification form is available on the NMFS Alaska Region website (<https://alaskafisheries.noaa.gov/>). Once the vessel owner has selected to opt out, the owner must ensure that the vessel is not used as a catcher/processor to conduct directed fishing for Pacific cod with hook-and-line gear in the BSAI or to conduct groundfish CDQ fishing during the specified year.

(b) *Monitoring option selection.* The owner of a vessel subject to this section that does not opt out under paragraph (a) of this section must submit a completed notification form for one of two monitoring options to NMFS. The notification form is available on the NMFS Alaska Region website (<https://alaskafisheries.noaa.gov/>). The vessel owner must comply with the selected monitoring option at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing. If NMFS does not receive a notification to opt out or a notification for one of the two monitoring options, NMFS will assign that vessel to the

increased observer coverage option under paragraph (b)(1) of this section until the notification form has been received by NMFS.

* * * * *

■ 6. In subpart I, add § 679.101 to read as follows:

§ 679.101 Catcher/processors using pot gear for groundfish fishing.

(a) *Applicability.* The owner and operator of a vessel named on an LLP license with a Pacific cod catcher/processor pot gear endorsement for the Bering Sea, Aleutian Islands or both the Bering Sea and Aleutian Islands subareas (BSAI) must comply with the requirements of this section when using pot gear for groundfish fishing as a catcher/processor in the Bering Sea or Aleutian Islands.

(b) *Pre-cruise meeting.* The Observer Program must be notified by phone at 1 (907) 581–2060 (Dutch Harbor, AK) or 1 (907) 481–1770 (Kodiak, AK) at least 24 hours prior to departure when the vessel will be carrying an observer who has not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. If requested by NMFS, the pre-cruise meeting must minimally include the vessel operator or manager and any observers assigned to the vessel.

(c) *Additional monitoring options.* The owner or operator of a vessel subject to this section may choose any, all, or none of the following monitoring options described in paragraphs (c)(1) through (3) of this section. Should an owner or operator choose any of these monitoring options, the owner and operator must comply with the applicable requirements described in paragraphs (c)(1) through (3) of this section.

(1) *Observer sampling station option.* Under this option, an observer sampling station meeting the requirements at § 679.28(d), unless otherwise approved by NMFS, must be provided for observer use. This option is selected by obtaining an Observer Sampling Station Inspection Report as detailed in § 679.28(d)(10)(iii) and will remain in place for the 12-month duration

approved in the Observer Sampling Station Inspection Report.

(2) *Increased observer coverage option.* Under this option, if two observers are aboard the vessel meeting the requirements at § 679.51(a)(2)(vi)(G)(2), at least one of the observers must be endorsed as a Level 2 observer in accordance with § 679.53(a)(5)(iv).

(3) *NMFS-approved total catch weighing scales option.* Under this option, a vessel owner and operator may install a NMFS-approved scale for weighing total catch of Pacific cod. This option is selected by obtaining a Scale Inspection Report as detailed in § 679.28(b)(2)(vii) and will remain in place for the 12-month duration approved in the Scale Inspection Report. Under this option—

(i) A vessel owner and operator with an approved Scale Inspection Report must ensure that—

(A) All Pacific cod brought on board the vessel is weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b), and that each set is weighed and recorded separately.

(B) The vessel is in compliance with the video monitoring requirements described at § 679.28(k).

(C) The vessel is in compliance with the requirements for electronic logbooks at § 679.5(f) at all times during that year.

(ii) [Reserved]

§ 679.120 [Redesignated as § 679.102 and Amended]

■ 7. Redesignate § 679.120 of Subpart K to § 679.102 of Subpart I, and remove all references to “§ 679.120” and adding, in their place, “§ 679.102” in the following places:

- a. § 679.2;
- b. § 679.7(e)(1), (2), (3), and (10);
- c. § 679.28(d)(9), (d)(10)(iii)(A), and (l);
- d. § 679.32(c)(3)(i)(C)(4);
- e. § 679.51(a)(2)(vi)(F);
- f. § 679.63(a)(1);
- g. § 679.84(c)(1); and
- h. § 679.93(c)(1).

Subpart K [Reserved]

■ 8. Reserve subpart K.

[FR Doc. 2023–14174 Filed 7–5–23; 8:45 am]

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Notices

Federal Register

Vol. 88, No. 128

Thursday, July 6, 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 COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD109]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Falls Bridge Replacement Project in Blue Hill, Maine

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

ACTION: Notice; issuance of renewal incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a renewal incidental harassment authorization (IHA) to Maine Department of Transportation (MEDOT) to incidentally harass marine mammals incidental to Falls Bridge Replacement Project in Blue Hill, Maine.

DATES: This renewal IHA is valid from July 1, 2023 through June 30, 2024.

ADDRESSES: Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the *Detailed Description of Specified Activity* section of the initial

IHA issuance notice is planned or (2) the activities as described in the *Description of the Specified Activity* and *Anticipated Impacts* section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.

History of Request

On December 8, 2021, NMFS issued an IHA to MEDOT to take marine

mammals incidental to the Falls Bridge Replacement Project in Blue Hill, Maine (86 FR 71034, December 14, 2021), effective from July 1, 2022 through June 30, 2023. On March 3, 2023, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-maine-department-transportation-falls-bridge-project-blue-hill>) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. The notice of the proposed renewal incidental harassment authorization was published on June 9, 2023 (88 FR 37864).

Description of the Specified Activities and Anticipated Impacts

The MEDOT construction project consists of creating a temporary bridge for vehicle traffic during work on the Falls Bridge, which was expected to require the installation (and then removal when the project is complete) of 15 24-inch steel pipe piles. Work on the main bridge deck was not expected to incidentally harass marine mammals, however in order to facilitate that work, MEDOT planned to place one or two large trestles (up to 100 foot by 125 foot (30.5 by 38 meters) long) in the water next to the bridge. These trestles were expected to require the installation of up to 60 24-inch diameter steel pipe piles. In addition to the temporary work trestles and temporary bridge, MEDOT anticipated the need for four temporary support towers during the demolition and removal of the existing bridge superstructure. The temporary support towers were to be placed at the corners of the tied arch, approximately 20 feet (6.1 meters) in from the existing bridge abutments. The temporary support towers were expected to require up to 5 24-inch steel pipe piles to support each of the towers, for a total of 20 24-inch steel pipe piles.

In total the initial project plans included the installation and removal of 95 24-inch diameter steel pipe piles. It was expected that all 95 piles would be installed in rock sockets (holes) in the bedrock created by down-the-hole (DTH) equipment. Impact pile driving would be used to seat the piles and potentially drive them through softer

substrates. For piles driven in the center of the channel under the bridge (mostly for the trestles), additional lateral stability may require the use of rebar tension anchors drilled deeper into the substrate in the center of the piles and connected to the piles once installed. This would be accomplished by using an 8-inch diameter DTH bit. It was expected that no more than 65 of the 95 piles would require these tension anchors. Once the work on the bridge was complete, all 95 piles would be removed using a vibratory hammer. The DTH and impact hammer installation and vibratory extraction of the piles was expected to take up to 80 days of in-water work.

MEDOT subsequently updated its construction plans by reducing the number of driven piles from the previously estimated 95 piles down to a total of 12 piles. Pile size was also reduced from 24-inch steel pipe piles to 14-inch steel pipe piles. MEDOT completed all pile driving with the use of an impact hammer, and the DTH method was not used by MEDOT. All project related pile installation activities conducted under the initial IHA, which were limited to installation of 12 14-inch steel piles, were completed over a 2-day period in October and November 2022.

This renewal request is to cover the subset of the activities covered in the initial IHA that will not be completed during the effective IHA period. MEDOT plans to remove all 12 14-inch steel pipe piles through vibratory means between October and December of 2023. MEDOT estimates it will take 30 minutes to remove a single pile, with up to six piles removed per day.

The likely or possible impacts of MEDOT's planned activity on marine mammals could involve both non-acoustic and acoustic stressors and are unchanged from the impacts described in the initial IHA. Potential non-acoustic stressors could result from the physical presence of the equipment, vessels, and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal. The effects of underwater and in-air noise and visual disturbance from the MEDOT's planned activities have the potential to result in Level B harassment of marine mammals in the action area.

Detailed Description of the Activity

A detailed description of the construction activities for which take is authorized here may be found in the notices of the proposed and final IHAs

for the initial authorization (86 FR 61164, November 5, 2021; 86 FR 71034, December 14, 2021). As previously mentioned, this request is for a subset of the activities authorized in the initial IHA that would not be completed prior to its expiration. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notice for the initial IHA. Changes to the initial scope include the reduction of pile size and number of piles required. The initial scope planned for the installation and removal of 95 24-inch steel pipe piles. In total, 12 14-inch piles were installed. MEDOT is requesting a renewal IHA for vibratory removal of 12 14-inch steel pipe piles. The renewal IHA would be effective from July 1, 2023 through June 30, 2024.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which take is authorized here, including information on abundance, status, distribution, and hearing, may be found in the notice of the proposed IHA for the initial authorization (86 FR 61164, November 5, 2021). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA (86 FR 61164, November 5, 2021).

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here may be found in the notice of the proposed IHA for the initial authorization (86 FR 61164, November 5, 2021). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the

specified activity are found in the notices of the proposed and final IHAs for the initial authorization (86 FR 61164, November 5, 2021; 86 FR 71034, December 14, 2021). Specifically, days of operation, area or space within which harassment is likely to occur, and

marine mammal occurrence data applicable to this authorization remain unchanged from the initial IHA. Similarly, the stocks taken, methods of take, daily take estimates and types of take remain unchanged from the initial IHA. The number of takes authorized in

this renewal are a subset of the initial authorized takes that better represent the amount of activity left to complete. These takes, which reflect the lower number of remaining days of work, are indicated below in Table 1.

TABLE 1—AMOUNT OF TAKING, BY LEVEL B HARASSMENT, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Species	Stock	Take	Percent of stock
Harbor porpoise	Gulf Maine/Bay of Fundy	20	<0.1
Atlantic white-sided dolphin	Western North Atlantic	20	<0.1
Common dolphin	Western North Atlantic	80	0.1
Harbor seal	Western North Atlantic	198	0.3
Gray seal	Western North Atlantic	8	<0.1
Harp seal	Western North Atlantic	1	<0.1
Hooded seal	Western North Atlantic	1	UNK

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are almost identical to those included in the **Federal Register** (FR) notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in that document remains accurate (86 FR 71034, December 14, 2021). In the renewal IHA, the pile size and the amount of piles removed per day has been updated to reflect what occurred under the initial IHA. MEDOT’s original shutdown zones were based on removal of three 24-inch steel piles per day. However, due to the reduced pile size used in the initial IHA, MEDOT plans to remove six 14-in steel piles per day, resulting in larger estimated Level A harassment isopleths. The estimated Level A harassment isopleth for high frequency cetaceans increases from 25 meters to 62 meters. However, the shutdown zone for phocids remains the same. As a result, MEDOT proposed to increase the shutdown zone for cetaceans from 50 meters to 100 meters. This update is reflected in Table 2 below and in the IHA renewal.

The following mitigation, monitoring, and reporting measures are planned for this renewal:

- The MEDOT must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 meters of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.
- Conduct training between construction supervisors and crews and

the marine mammal monitoring team and relevant MEDOT staff prior to the start of all pile driving activity and when new personnel join the work, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood.

- Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone.
- MEDOT will establish and implement the shutdown zones. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones typically vary based on the activity type and marine mammal hearing group. To simplify implementation of shutdown zones, MEDOT has planned to implement shutdown zones for two groups of marine mammals, cetaceans and pinnipeds, with the shutdown zone in each group being the largest of the shutdown zones for any of the hearing groups contained within that group. MEDOT has also voluntarily proposed to increase shutdown sizes above those we would typically require in order to be precautionary and protective to marine mammals. Due to the modification of pile size and duration as discussed above, the updated shutdown zones for the IHA renewal are in Table 2.

TABLE 2—MINIMUM REQUIRED SHUTDOWN ZONES

Activity	Shutdown distance (m)	
	Cetaceans	Pinnipeds
Vibratory Removal	100	50

- Monitoring must take place from 30 minutes prior to initiation of construction activity (*i.e.*, pre-start clearance monitoring) through 30 minutes post-completion of construction activity.
- Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead Protected Species Observer (PSO) to determine the shutdown zones clear of marine mammals. Construction may commence when the determination is made.
- If construction is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.
- MEDOT must use soft start techniques. Soft start requires contractors and equipment to slowly approach the work site creating a visual disturbance allowing animals in close proximity to construction activities a chance to leave the area prior to stone resetting or new stone placement. Contractors shall avoid walking or driving equipment through the seal haulout. A soft start must be implemented at the start of each day’s construction activity and at any time following cessation of activity for a period of 30 minutes or longer.

- The MEDOT must employ at least one PSO to monitor the shutdown and Level B harassment zones.

- Monitoring will be conducted 30 minutes before, during, and 30 minutes after construction activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from construction activity.

- The MEDOT must submit a draft report detailing all monitoring within 90 calendar days of the completion of marine mammal monitoring or 60 days prior to the issuance of any subsequent IHA for this project, whichever comes first.

- The MEDOT must prepare and submit final report within 30 days following resolution of comments on the draft report from NMFS.

- The MEDOT must submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above).

- The MEDOT must report injured or dead marine mammals.

Comments and Responses

A notice of NMFS' proposal to issue a renewal IHA to MEDOT was published in the **Federal Register** June 9, 2023 (88 FR 37864). That notice either described, or referenced descriptions of, the MEDOT's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and mitigation, monitoring and reporting measures. NMFS received no public comments.

Determinations

The renewal request consists of a subset of activities analyzed through the initial authorization described above. In analyzing the effects of the activities for the initial IHA, NMFS determined that the MEDOT's activities would have a negligible impact on the affected species or stocks and that authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.*, less than one-third the abundance of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation

measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) MEDOT's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

Endangered Species Act

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Renewal

NMFS has issued a renewal IHA to MEDOT for the take of marine mammals incidental to conducting Falls Bridge Replacement Project in Blue Hill, Maine, from July 1, 2023 through June 30, 2024.

Dated: June 29, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 2023-14237 Filed 7-5-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD090]

Endangered Species; File No. 27490

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the University of Massachusetts Dartmouth School for Marine Science and Technology has applied in due form for a permit pursuant to the Endangered Species Act of 1973, as amended (ESA). The permit application is for the incidental take of ESA-listed sturgeon and sea turtles associated with the otherwise lawful fisheries survey activities within and adjacent to the Massachusetts/Rhode Island Wind Energy Area. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on the application materials. All comments received will become part of the public record and will be available for review.

DATES: Written comments must be received at the appropriate address (see **ADDRESSES**) on or before August 7, 2023.

ADDRESSES: The application is available for download and review at <https://www.fisheries.noaa.gov/national/endangered-species-conservation/incidental-take-permits> and at <https://www.regulations.gov>. The application is also available upon request (see **FOR FURTHER INFORMATION CONTACT**).

You may submit comments, identified by NOAA-NMFS-2023-0090, by Electronic Submission: Submit all electronic public comments via the Federal eRulemaking Portal <https://www.regulations.gov> and enter [NOAA-NMFS-2023-0090] in the Search box. Click on the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All Personal Identifying Information (*e.g.*, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or

protected information. We will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT:
Alison Verkade, (301) 427-8074,
alison.verkade@noaa.gov.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the “taking” of a species listed as endangered or threatened. The ESA defines “take” to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following species are included in the conservation plan and permit application: loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), and Kemp’s ridley (*Lepidochelys kempii*) sea turtles, and Atlantic sturgeon (*Acipenser oxyrinchus*).

Background

NMFS received a draft permit application from University of Massachusetts Dartmouth School for Marine Science and Technology (SMAST) on September 29, 2022. Based on our review of the draft application, we requested further information and clarification. On November 29, 2022, SMAST submitted a revised application. Based on review of the application, NMFS and SMAST held further discussions regarding what needed to be incorporated in the application and Habitat Conservation Plan. On June 13, 2023, SMAST submitted a revised and complete application for the take of ESA-listed sturgeon and sea turtles during the operation of fisheries survey operations in and around the Massachusetts/Rhode Island Wind Energy Area (WEA). The proposed fisheries survey is intended to sample non-ESA listed wild fish populations to provide baseline fisheries data prior to the construction of five offshore wind farms within the WEA in order to better understand the effects on wild fish populations from offshore wind development. SMAST is requesting a 2-year rolling take interval (*i.e.*, take that occurs over any 2 consecutive years) for

sturgeon and sea turtles. The total 2-year rolling incidental take of Atlantic sturgeon (*Acipenser oxyrinchus*) requested is 10, based on an estimated 5 takes per year. The total 2-year rolling incidental take of ESA-listed sea turtles requested is 8, based on an estimated 1 take per year of each of the following species: loggerhead (*Caretta caretta*), Kemp’s ridley (*Lepidochelys kempii*), green (*Chelonia mydas*), and leatherback (*Dermochelys coriacea*).

Conservation Plan

Section 10 of the ESA specifies that no permit may be issued unless an applicant submits an adequate conservation plan. The conservation plan prepared by SMAST describes measures designed to minimize and mitigate the impacts of any incidental take of ESA-listed sturgeon and sea turtles. To avoid and minimize take of sturgeon, SMAST will only operate the trawl survey with at least one survey staff onboard trained within the last 5 years in accordance with the Northeast Fisheries Observer Program in protected species identification and safe handling (inclusive of taking genetic samples from Atlantic sturgeon). Additionally, reference materials for identification, disentanglement, safe handling, and genetic sampling procedures will be available on board each survey vessel. To avoid and minimize take of sea turtles, between June 1 and November 30, SMAST will have a trained lookout posted on all vessel transits during all phases of the project to observe for protected species and communicate with the captain to take avoidance measures as soon as possible if one is sighted. Further, SMAST will implement the following avoidance measures between June 1 and November 30: (1) The trained lookout will monitor <https://seaturtlesightings.org> prior to each trip and report any observations of sea turtles in the vicinity of the planned transit to all vessel operators/captains and lookouts on duty that day; (2) If a sea turtle is sighted within 100 m of the operating vessel’s forward path, the vessel operator must slow down to 4 knots (unless unsafe to do so) and may resume normal vessel operations once the vessel has passed the sea turtle. If a sea turtle is sighted within 50 m of the forward path of the operating vessel, the vessel operator must shift to neutral when safe to do so and then proceed away from the turtle at a speed of 4 knots or less until there is a separation distance of at least 100 m at which time normal vessel operations may be resumed; (3) The vessel will spend 15 minutes prior to each tow at the sampling station looking out for sea

turtles. If a sea turtle is sighted during transit to a sampling station, during scouting, or while the gear is being prepared and deployed, the vessel will immediately proceed to an alternative tow station away from where the animal was observed; (4) Between June 1 and November 30, vessels will avoid transiting through areas of visible jellyfish aggregations or floating sargassum lines or mats. In the event that operational safety prevents avoidance of such areas, vessels will slow to 4 knots while transiting through such areas; and (5) All vessel crew members will be briefed in the identification of sea turtles and in regulations and best practices for avoiding vessel collisions. Reference materials will be available aboard all project vessels for identification of sea turtles. The expectation and process for reporting of sea turtles (including live, entangled, and dead individuals) will be clearly communicated and posted in highly visible locations aboard all project vessels, so that there is an expectation for reporting to the designated vessel contact (such as the lookout or the vessel captain), as well as a communication channel and process for crew members to do so.

These measures will avoid and minimize the incidental take of sturgeon and sea turtles due to incidental capture or vessel interactions. The alternatives considered were determined by SMAST to either: (1) substantially reduce the ability of the survey to detect changes; (2) result in significant impact delays to the initiation of the surveys, thus jeopardizing the ability to collect pre-construction baseline data that is necessary to understand the response of wild fish populations to offshore wind development; or (3) rely upon unproven methods. Funding for the proposed conservation measures will be provided by the five offshore wind developers directly to SMAST.

National Environmental Policy Act

Issuing an ESA section 10(a)(1)(B) permit constitutes a Federal action requiring NMFS to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500–1508 and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Policy Act (1999). NMFS intends to prepare an Environmental Assessment to consider a range of reasonable alternatives and fully evaluate the direct, indirect, and cumulative impacts likely to result from issuing a permit.

Next Steps

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments received during the comment period to determine whether the application meets the requirements of section 10(a) of the ESA. If NMFS determines that the requirements are met, a permit will be issued for incidental takes of ESA-listed sturgeon. The final NEPA and permit determinations will not be made until after the end of the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: June 29, 2023.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023-14236 Filed 7-5-23; 8:45 am]

BILLING CODE 3510-22-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before August 7, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at <https://www.reginfo.gov/public/do/PRAMain>. Please find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the website's search function. Comments can be entered electronically by clicking on the "comment" button next to the information collection on the "OIRA Information Collections Under Review" page, or the "View ICR—Agency Submission" page. A copy of the supporting statement for the collection of information discussed herein may be

obtained by visiting <https://www.reginfo.gov/public/do/PRAMain>.

In addition to the submission of comments to <https://Reginfo.gov> as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the "Commission" or "CFTC") by clicking on the "Submit Comment" box next to the descriptive entry for OMB Control Number 3038-0072, at <https://comments.cftc.gov/FederalRegister/PublicInfo.aspx>.

Or by either of the following methods:

- **Mail:** Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- **Hand Delivery/Courier:** Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include 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://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

Christopher W. Cummings, Market Participants Division, Commodity Futures Trading Commission, (202) 418-5445 or ccummings@cftc.gov, and refer to OMB Control No. 3038-0072.

SUPPLEMENTARY INFORMATION:

Title: Registration under the Commodity Exchange Act (OMB Control No. 3038-0072). This is a request for an extension of a currently approved information collection.

Abstract: The information collected under OMB Control No. 3038-0072 is

¹ 17 CFR 145.9.

gathered through the use of forms for registration of swap dealers and major swap participants. Swap dealers and major swap participants are required by section 4s(a) of the Commodity Exchange Act ("CEA") (7 U.S.C. 6s(a)) to register with the Commission. The CFTC uses various forms for registration (and withdrawal therefrom) (the "Registration Forms"). OMB Control No. 3038-0072 applies to the Registration Forms for registration of swap dealers and major swap participants,² to the alternative method provided under Commission regulations to submission of a fingerprint card for foreign natural persons; and to the process for requesting cross-border comparability determinations for substituted compliance with requirements otherwise applicable to swap dealers and major swap participants.

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.³ On April 28, 2023, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 88 FR 26279 ("60-Day Notice"). The Commission did not receive any comments on the 60-Day Notice.

Burden Statement: The Commission continues to estimate the burden for this collection as described below.

Respondents/Affected Entities: Users of Commission registration forms that are swap dealers and major swap participants.

Estimated number of respondents: 779.

Estimated average burden hours per respondent: 1.14 hours.

Estimated total annual burden on respondents: 888 hours.

Frequency of responses: Periodically.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: June 30, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023-14251 Filed 7-5-23; 8:45 am]

BILLING CODE 6351-01-P

² Forms for registration of futures commission merchants, commodity pool operators, commodity trading advisors, retail foreign exchange dealers, introducing brokers, associated persons, floor traders, and floor brokers are the subject of a separate information collection (OMB Control Number 3038-0023).

³ 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8(b)(3)(vi).

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038–0079: Swap Dealer and Major Swap Participant Conflicts of Interest and Business Conduct Standards With Counterparties

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including a proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the information collections included in certain Commission’s regulations, requiring swap dealers (“SDs”) and major swap participants (“MSPs”) to follow specified procedures and provide specified disclosures in their dealings with counterparties, to adopt and implement conflicts of interest procedures and disclosures, and to maintain specified records related to those requirements.

DATES: Comments must be submitted on or before September 5, 2023.

ADDRESSES: You may submit comments, identified by “OMB Control No. 3038–0079,” by any of the following methods:

- **Online:** The CFTC Comments Portal, on the agency’s website, is available at <https://comments.cftc.gov>. Select the “Submit Comments” link for this rulemaking and follow the instructions on the Public Comment Form.

- **Mail:** 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. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT: Dina Moussa, Special Counsel, 202–418–

5696, dmoussa@cftc.gov, Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: Under the PRA,¹ Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 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 PRA² requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. 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.³

Title: Swap Dealer and Major Swap Participant Conflicts of Interest and Business Conduct Standards with Counterparties (OMB Control No. 3038–0079). This is a request for an extension of a currently approved information collection.

Abstract: Section 731 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act⁴ amended the Commodity Exchange Act (“CEA”) to add sections 4s(h) and 4s(j)(5)⁵, which provide the Commission with both mandatory and discretionary rulemaking authority to impose business conduct requirements on SDs and MSPs in their dealings with counterparties, including “Special Entities,”⁶ and require that each SD and MSP implement conflicts of interest systems and procedures. Congress granted the Commission broad discretionary authority to promulgate business conduct requirements, as

¹ 44 U.S.C. 3501 *et seq.*

² 44 U.S.C. 3506(c)(2)(A).

³ 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8(b)(3)(vi).

⁴ Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010).

⁵ 7 U.S.C. 6s(h) and (j)(5).

⁶ Such entities are generally defined to include Federal agencies, States and political subdivisions, employee benefit plans as defined under the Employee Retirement Income Security Act of 1974 (“ERISA”), governmental plans as defined under ERISA, and endowments.

appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the CEA.⁷

Accordingly, the Commission has adopted subpart H of part 23 of its regulations (“EBCS Rules”)⁸ and § 23.605,⁹ requiring SDs and MSPs to follow specified procedures and provide specified disclosures in their dealings with counterparties, to adopt and implement conflicts of interest procedures and disclosures, and to maintain specified records related to those requirements.

The recordkeeping and third-party disclosure obligations imposed by the regulations are essential to ensuring that SDs and MSPs develop and maintain procedures and disclosures required by the CEA and Commission regulations.¹⁰

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who

⁷ See section 4s(h)(3)(D) of the CEA, 7 U.S.C. 6s(h)(3)(D) (Business conduct requirements adopted by the Commission shall establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the CEA); see also sections 4s(h)(1)(D), 4s(h)(5)(B) and 4s(h)(6) of the CEA; 7 U.S.C. 6s(h)(1)(D), 6s(h)(5)(B) and 6s(h)(6).

⁸ 17 CFR part 23, subpart H. Subpart H of part 23 (titled Business Conduct Standards for Swap Dealers and Major Swap Participants Dealing with Counterparties, Including Special Entities) includes the following provisions: § 23.400 (Scope); § 23.401 (Definitions); § 23.402 (General Provisions); § 23.410 (Prohibition on fraud, manipulation and other abusive practices); § 23.430 (Verification of counterparty eligibility); § 23.431 (Disclosures of material information); § 23.432 (Clearing disclosures); § 23.433 (Communications—fair dealing); § 23.434 (Recommendations to counterparties—institutional suitability); § 23.440 (Requirements for swap dealers acting as advisors to Special Entities); § 23.450 (Requirements for swap dealers and major swap participants acting counterparties to Special Entities); and § 23.451 (Political contributions by certain swap dealers).

⁹ 17 CFR 23.605. Section 23.605 is titled Conflicts of interest policies and procedures.

¹⁰ Reporting under § 23.451 (Political contributions by certain swap dealers) is optional and it is unknown how many registrants, if any, will engage in such reporting and how much burden, if any, will be incurred. Nevertheless, the Commission is providing an estimate of the regulation’s burden for purposes of the PRA below.

are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

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 (“FOIA”), 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.¹¹

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://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

Burden Statement: The Commission is revising its estimate of the burden for this collection based on a decrease in the current number of Commission-registered SDs.¹² The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 106.

Estimated Average Burden Hours per Respondent: 2,352.9 hours.

Estimated Total Annual Burden Hours: 249,412 hours.

Frequency of Collection: Ongoing.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: June 30, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–14248 Filed 7–5–23; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Revise Collection 3038–0096, Swap Data Recordkeeping and Reporting Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) is announcing an opportunity for public comment on the proposed revision of an information collection by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the information collections pertaining to the Commission’s swap data recordkeeping and reporting requirements. These rules impose recordkeeping and reporting requirements on the following entities: Swap Dealers (“SDs”), Major Swap Participants (“MSPs”), Swap Execution Facilities (“SEFs”), designated contract markets (“DCMs”), swap data repositories (“SDRs”), derivatives clearing organizations (“DCOs”), and swap counterparties that are neither swap dealers nor major swap participants (“non-SD/MSP counterparties”).

DATES: Comments must be submitted on or before September 5, 2023.

ADDRESSES: You may submit comments, identified by “Revision of Information Collection Pertaining to Swap Data Recordkeeping and Reporting Requirements, OMB Control No. 3038–0096,” by any of the following methods:

- The Agency’s website, at <https://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.
- **Mail:** Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- **Hand Delivery/Courier:** Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT:

Chase Lindsey, Assistant Chief Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 (202) 740–4833; email: clindsey@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.*, Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed information collection including each proposed extension of an existing information collection, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of a proposed revision of the currently approved information collection listed below. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

Title: Swap Data Recordkeeping and Reporting Requirements (OMB Control No. 3038–0096). This is a request for revision of a currently approved information collection.

Abstract: The collection of information is needed to ensure that the CFTC and other regulators have access to swap data as required by the Commodity Exchange Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). The Dodd-Frank Act directed the CFTC to adopt rules providing for the reporting of data relating to swaps. In 2012, the CFTC adopted Regulation 45, which imposes recordkeeping and reporting requirements relating to swaps. The Commission is revising its burden hours and hourly labor cost estimates following the Commission’s designation of a Unique Product Identifier (“UPI”) and product classification system for certain swap asset classes. The Commission is revising its burden estimates associated with the reporting obligations under part 45 of the Commission rules to account for new burden associated with the requirements of part 45.7.

¹¹ 17 CFR 145.9.

¹² Specifically, the change for the renewal is based solely on the decreased number of entities provisionally-registered with the Commission as SDs (109 at the last renewal in 2020 and 106, currently, as of June 7, 2023), as the annual total burden hours has remained the same—at 2,352.9 hours per respondent. And just as before, there are no entities currently registered as MSPs.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the CFTC, including whether the information will have a practical use;
- The accuracy of the CFTC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that you believe is exempt from disclosure under the Freedom of Information Act ("FOIA"), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the CFTC's regulations.¹

The CFTC 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://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

Burden Statement: CFTC Regulation 45.7 results in information collection requirements within the meaning of the PRA. With respect to the ongoing reporting and recordkeeping burdens associated with swaps, the CFTC believes that SDs, MSPs, SEFs, DCMs, DCOs, SDRs, and non-SD/MSP counterparties incur an annual time-burden of 1,093 hours. This time-burden represents a proportion of the burden respondents incur to operate and maintain their swap data recordkeeping and reporting systems.

In addition, the Commission estimates that regulation 45.7 will create costs for entities required to retrieve and transmit UPIs to update their systems to retrieve

and transmit UPIs. The Commission estimates that SDRs, SEFs, DCMs, and reporting counterparties required to retrieve and transmit UPIs will incur a one-time initial burden of one hour per entity to modify their systems to adopt the required changes, for a total estimated hours burden of 1,732 hours. The associated labor cost per entity is estimated to be \$93.31 for a total cost across entities of \$161,620.

Respondents/Affected Entities: Swap Dealers, Major Swap Participants, SEFs, DCMs, DCOs, and other counterparties to a swap transaction (*i.e.*, end-user, non-SD/non-MSP counterparties).

Estimated number of respondents: 1,732.

Estimated average burden hours per respondent: 1.6 hours.

Estimated total annual burden hours on respondents: 2,825 hours.

Frequency of collection: Ongoing.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: June 30, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023-14250 Filed 7-5-23; 8:45 am]

BILLING CODE 6351-01-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Fair Lending Report of the Consumer Financial Protection Bureau, June 2023

AGENCY: Consumer Financial Protection Bureau.

ACTION: Fair Lending Report of the Consumer Financial Protection Bureau.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is issuing its eleventh Fair Lending Report of the Consumer Financial Protection Bureau (Fair Lending Report) to Congress. The CFPB is committed to ensuring fair, equitable, and nondiscriminatory access to credit for both individuals and communities. This report describes our fair lending activities in supervision and enforcement; guidance and rulemaking; interagency coordination; and outreach and education for calendar year 2022.

DATES: The CFPB released the 2022 Fair Lending Report on its website on June 28, 2023.

FOR FURTHER INFORMATION CONTACT:

Bobby Conner, Senior Policy Counsel, Fair Lending, at 1-855-411-2372. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

1. Fair Lending Enforcement and Supervision

1.1. Risk-Based Prioritization

Because Congress charged the CFPB with the responsibility of overseeing many lenders and products, the CFPB has long used a risk-based approach to prioritizing supervisory examinations and enforcement activity. This approach helps ensure that the CFPB focuses on areas that present substantial risk of credit discrimination for consumers and small businesses.¹

As part of the prioritization process, the CFPB identifies emerging developments and trends by monitoring key consumer financial markets. If this field and market intelligence identifies fair lending risks in a particular market, that information is used to determine the type and extent of assets applied to address those risks.

The prioritization process incorporates a number of additional factors, including tips and leads from industry whistleblowers, advocacy groups, and government agencies; supervisory and enforcement history; consumer complaints; and results from analysis of Home Mortgage Disclosure Act (HMDA) and other data.

As a result of its annual risk-based prioritization process, in 2022 the CFPB focused much of its fair lending supervision efforts on mortgage origination and pricing, small business lending (including agricultural lending), policies and procedures regarding geographic and other exclusions in underwriting, and on the use of automated systems and models, sometimes marketed as artificial intelligence and machine learning models.

As in previous years, the CFPB's 2022 mortgage origination work continued to focus on redlining (intentional discrimination against applicants and prospective applicants living or seeking credit in minority neighborhoods, including by discouragement); assessing potential discrimination in underwriting and pricing processes; assessing whether lenders are illegally steering applicants on a prohibited basis; and HMDA data integrity and validation reviews (both as standalone exams and in preparation for subsequent Equal Credit Opportunity Act (ECOA) exams).

¹ For additional information regarding the CFPB's risk-based approach in prioritizing supervisory examinations, see section 2.2.3, Risk-Based Approach to Examinations, *Supervisory Highlights Summer 2013*, available at https://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf.

¹ 17 CFR 145.9.

The CFPB's small business lending work assessed whether there were disparities in application, underwriting, and pricing processes, and whether there were weaknesses in fair lending-related compliance management systems.

Across multiple markets, the CFPB assessed whether lenders complied with the adverse action notice requirements of ECOA and Regulation B and evaluated whether lenders maintain policies and procedures that exclude property on the basis of geography in underwriting decisions and to ensure those policies and procedures do not unlawfully exclude certain types of income.

The CFPB continued to expand its evaluation of automated systems and models, sometimes marketed as artificial intelligence and machine learning models, as used by institutions, including in evaluating applicants for credit.

1.2. Fair Lending Enforcement

Congress authorized the CFPB to bring actions to enforce the requirements of eighteen enumerated statutes, including ECOA, HMDA, and the Consumer Financial Protection Act of 2010 (CFPA), which prohibits unfair, deceptive, and abusive acts or practices (UDAAPs). The CFPB engages in research, conducts investigations, files administrative complaints, holds hearings, and adjudicates claims through the CFPB's administrative enforcement process. The CFPB also uses its independent litigation authority to file cases in Federal court alleging violations of fair lending laws under the CFPB's jurisdiction. Like other Federal regulators, the CFPB is required to refer matters to the Department of Justice (DOJ) when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.²

1.2.1. Public Enforcement Actions

In 2022, the CFPB announced one fair lending-related enforcement action, Trident Mortgage Company, LP (Trident).³ On July 27, 2022, the CFPB, together with the DOJ, filed a complaint and proposed consent order in the United States District Court for the Eastern District of Pennsylvania to resolve the agencies' allegations against

Trident. The court entered the order on September 14, 2022. Trident is incorporated in Delaware and had locations in Delaware, New Jersey, and Pennsylvania at the time of the alleged conduct. Before the complaint was filed, Trident ceased originating mortgages. The States of Delaware, New Jersey, and Pennsylvania entered into concurrent agreements with Trident. The CFPB and DOJ's joint complaint alleged that Trident engaged in unlawful discrimination on the basis of race, color, and national origin against applicants and prospective applicants, including by redlining majority-minority neighborhoods in the Philadelphia-Camden-Wilmington Metropolitan Statistical Area (Philadelphia MSA) and engaged in acts and practices directed at prospective applicants that would discourage prospective applicants from applying for credit in violation of ECOA, Regulation B, and the CFPA. DOJ also alleged that Trident's conduct violated the Fair Housing Act (FHA). As part of remediation, the order requires Trident to invest \$18.4 million in a loan subsidy program under which Trident will contract with a lender to increase the credit extended in majority-minority neighborhoods in the Philadelphia MSA and make loans under the loan subsidy fund. That lender must also maintain at least four licensed branch locations in majority-minority neighborhoods in the Philadelphia MSA. Trident must also fund targeted advertising to generate applications for credit from qualified consumers in majority-minority neighborhoods in the Philadelphia MSA and take other remedial steps to serve the credit needs of majority-minority neighborhoods in the Philadelphia MSA. Trident must also pay a civil money penalty of \$4 million. This settlement is the first Federal government resolution involving illegal lending discrimination by a nonbank mortgage lender.

1.2.2. ECOA Referrals to Department of Justice

The CFPB must refer to DOJ a matter when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.⁴ The CFPB may refer other potential ECOA violations to DOJ as well.⁵ In 2022, the CFPB referred five matters to DOJ about discrimination pursuant to section 706(g) of ECOA. The referrals included four matters involving discrimination on the basis of race and national origin in mortgage lending

(redlining) and one matter involving discrimination in underwriting mortgage loans on the basis of receipt of public assistance income.

1.2.3. Implementing Enforcement Orders

When an enforcement action is resolved through a public enforcement order, the CFPB (together with other government entities, when relevant) takes steps to ensure that the respondent or defendant complies with the requirements of the order. Depending on the specific requirements of individual public enforcement orders, the CFPB may take steps to ensure that borrowers who are eligible for compensation receive remuneration and that the defendant has complied with the injunctive provisions of the order, including implementing a comprehensive fair lending compliance management system.

1.2.4. Pending Fair Lending Enforcement Investigations

In 2022, the CFPB had a number of ongoing and newly opened fair lending investigations of institutions. The CFPB investigated or is actively investigating potential discrimination in several markets, including student lending, payday lending, credit cards, small business lending, and mortgage lending, including the unlawful practices of redlining and discriminatory targeting, as well as discrimination in home valuation and mortgage pricing exceptions. In 2022, the CFPB also investigated issues with HMDA reporting. The CFPB is looking into potential discriminatory conduct, including under ECOA and the statutory prohibition on unfair acts or practices targeted at vulnerable populations and leading to bias in automated systems and models.

1.3. Fair Lending Supervision

The CFPB's Supervision program assesses compliance with Federal consumer financial protection laws and regulations at banks and nonbanks over which the CFPB has supervisory authority. As a result of the CFPB's efforts to fulfill its fair lending mission during 2022, the CFPB initiated 32 fair lending examinations or targeted reviews, which represents a 146 percent increase in fair lending examinations/targeted reviews since 2020.

For supervisory communications issued by Supervision during 2022, the most frequently identified issues related to the CFPB's review of mortgage origination underwriting policies and guidelines, particularly those that

² See 15 U.S.C. 1691e(g).

³ Consumer Fin. Prot. Bureau, *CFPB, DOJ Order Trident Mortgage Company to Pay More Than \$22 Million for Deliberate Discrimination Against Minority Families* (July 27, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-doj-order-trident-mortgage-company-to-pay-more-than-22-million-for-deliberate-discrimination-against-minority-families/>.

⁴ 15 U.S.C. 1691e(g).

⁵ *Id.*

exclude lending for properties in certain locations or geographies.

In 2022, the CFPB issued several fair lending-related Matters Requiring Attention and entered Memoranda of Understanding directing entities to take corrective actions that the CFPB will monitor through follow-up supervisory actions. Examiners encouraged lenders to enhance oversight and identification of fair lending risk and to implement policies, procedures, and controls designed to effectively manage HMDA activities, including regarding integrity of data collection. The CFPB also directed mortgage lenders to correct violations relating to redlining, including by providing consumer remediation designed to spur lending in the redlined areas.

During 2022, informed by the Director's priority to address risks of consumer harm from advanced and emerging technologies in consumer finance, the CFPB focused additional resources on advanced data science and analytics during exam events to identify fair lending risks and violations in models.

1.4. Annual Performance Plan Metrics

Consistent with a recommendation from the Government Accountability Office (GAO)⁶ the CFPB re-introduced several measures and performance goals specific to its fair lending supervision and enforcement, specifically the number of fair lending supervision events opened during the fiscal year and the percentage of all fair lending enforcement cases concluded by the CFPB that were successfully resolved through litigation, a settlement, issuance of a default judgment, or other means. The CFPB will again report progress for all supervisory and enforcement events relating to fair lending laws within the CFPB's jurisdiction in subsequent years in the CFPB's Annual Performance Plan.

2. Rulemaking and Guidance

2.1. Rulemaking

During 2022, the CFPB continued to make progress on the small business lending data collection rulemaking required by Congress under section 1071 of the Dodd-Frank Act and participated in an interagency rulemaking to implement quality control standards for automated valuation models (AVMs). Under HMDA (Regulation C), the CFPB also issued a final rule amending the official commentary regarding the asset-size

exemption threshold and a technical amendment regarding the coverage threshold for closed-end mortgage loans.

The CFPB publishes an agenda of its planned rulemaking activity biannually, which is available at: <https://www.consumerfinance.gov/rules-policy/regulatory-agenda>.

2.1.1. Small Business Lending Data Collection Rulemaking

In the Dodd-Frank Act, Congress directed the CFPB to adopt regulations governing the collection of small business lending data. Section 1071 amended ECOA to require financial institutions to compile, maintain, and submit to the CFPB certain data on applications for credit for women-owned, minority-owned, and small businesses.

Congress enacted section 1071 for the purpose of facilitating enforcement of fair lending laws and enabling communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses.

The CFPB previously issued a proposed rule amending Regulation B to implement changes to ECOA made by section 1071.⁷ The comment period for this proposed rule closed on January 6, 2022. Consistent with section 1071, the CFPB proposed to require covered financial institutions to collect and to report to the CFPB data on applications for credit for small businesses, including those that are owned by women or minorities. The proposal also addressed the CFPB's approach to privacy interests and the publication of small business lending data, shielding certain demographic data from underwriters and other persons, recordkeeping requirements, enforcement provisions, and the proposed rule's effective and compliance dates.⁸

More information is available at: <https://www.consumerfinance.gov/1071-rule/>, a page compiling key materials related to the CFPB's small business lending rulemaking.

2.1.2. Automated Valuation Models Rulemaking

The CFPB determined that the AVM rulemaking should follow the process set forth in the Small Business

Regulatory Enforcement Fairness Act of 1996 (SBREFA) to obtain input from small business that are likely to be impacted by the proposed regulation. In 2021, the CFPB began the SBREFA process to consult with representatives of small entities likely to be affected directly by the proposed AVM rulemaking. On February 23, 2022, the CFPB published the *Outline of Proposals and Alternatives Under Consideration for the Small Business Advisory Review Panel for Automated Valuation Model Rulemaking*.⁹ To address potential fair lending risk in models, the proposal noted that the CFPB would consider proposing a requirement that covered institutions establish policies, practices, procedures, and control systems to ensure that their AVMs comply with applicable nondiscrimination laws.

The CFPB is participating in this interagency rulemaking with the Federal Reserve Board (FRB), Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and Federal Housing Finance Agency (FHFA) (collectively, the Agencies) to develop regulations to implement the amendments made by the Dodd-Frank Act to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) concerning AVMs. The FIRREA amendments require implementing regulations for quality control standards for AVMs. These standards are designed to ensure a high level of confidence in the estimates produced by the valuation models, protect against the manipulation of data, seek to avoid conflicts of interest, require random sample testing and reviews, and account for any other such factor that the Agencies determine to be appropriate. The Agencies have continued to work to develop a proposed rule to implement the Dodd-Frank Act's AVM amendments to FIRREA.¹⁰

2.1.3. HMDA (Regulation C) Adjustment to Asset-Size Exemption Threshold

On December 27, 2022, the CFPB issued a final rule amending the official

⁹ CFPB, Small Business Advisory Review Panel for Automated Valuation Model (AVM) Rulemaking: Outline of Proposals and Alternatives under Consideration (Feb. 23, 2022), https://files.consumerfinance.gov/f/documents/_avm_outline-proposals_2022-02.pdf.

¹⁰ Additional activity has occurred since the close of this reporting period. On June 1, 2023, the Agencies released a proposed AVM rule. See <https://www.consumerfinance.gov/about-us/newsroom/agencies-request-comment-on-quality-control-standards-for-automated-valuation-models-proposed-rule/>.

⁶ Govt. Accountability Office, *CFPB Needs to Assess the Impact of Recent Changes to Its Fair Lending Activities* (May 2021), <https://www.gao.gov/assets/gao-21-393.pdf>.

⁷ The proposal was published in the **Federal Register** on October 8, 2021. See 86 FR 56356.

⁸ Additional activity has occurred since the close of this reporting period. On March 30, 2023, the CFPB released its final rule implementing section 1071. See <https://www.consumerfinance.gov/rules-policy/final-rules/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b/>.

commentary that interprets the requirements of Regulation C to reflect the asset-size exemption threshold for banks, savings associations, and credit unions based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers.¹¹

2.1.4. HMDA (Regulation C); Judicial Vacatur of Coverage Threshold for Closed-End Mortgage Loans

On December 21, 2022, the CFPB issued a technical amendment to Regulation C to reflect the closed-end mortgage loan reporting threshold of 25 mortgage loans.¹²

In April 2020, the CFPB issued a final rule (2020 HMDA Final Rule) to amend Regulation C that increased the closed-end mortgage loan reporting threshold from 25 loans to 100 loans. On September 23, 2022, the United States District Court for the District of Columbia vacated the 2020 HMDA Final Rule as to the increased loan volume reporting threshold for closed-end mortgage loans. As a result of the September 23, 2022, court order, the threshold for reporting data about closed-end mortgage loans is the 25-loan threshold established by the 2015 HMDA Rule. This technical amendment updates the Code of Federal Regulations to reflect the effective closed-end loan reporting threshold. For more information regarding this and other litigation matters, please see section 4 of this report.

2.2. Guidance

The CFPB issues guidance to its various stakeholders in many forms, including *Consumer Financial Protection Circulars (Circulars)*, advisory opinions, interpretive rules, statements, bulletins, publications such as *Supervisory Highlights*, and other resources to aid in compliance.

2.2.1. Consumer Financial Protection Circular 2022–03: Adverse Action Notification Requirements in Connection With Credit Decisions Based on Complex Algorithms

On May 26, 2022, the CFPB released a *Circular* to remind the public, including those responsible for enforcing Federal consumer financial

protection law, of creditors' adverse action notice requirements under ECOA.¹³ The *Circular* affirmed that Federal anti-discrimination law requires companies to explain to applicants the specific reasons for denying an application for credit or taking other adverse actions, even if the creditor is relying on credit models using complex algorithms. The *Circular* makes clear that Federal consumer financial protection laws, including adverse action requirements, should be enforced regardless of the technology used by creditors, and that creditors cannot justify noncompliance with ECOA based on the mere fact that the technology they use to evaluate credit applications is too complicated, too opaque in its decision-making, or too new.

2.2.2. Advisory Opinion Regarding ECOA and Regulation B and Revocations or Unfavorable Changes to the Terms of Existing Credit Arrangements

On May 9, 2022, the CFPB issued an advisory opinion affirming that ECOA bars lenders from discriminating against applicants after they have received a loan, not just during the application process.¹⁴ The advisory opinion and accompanying analysis clarify that ECOA protects borrowers from discrimination in all aspects of a credit transaction. The advisory opinion is consistent with a legal brief filed in 2021 by the CFPB, the Federal Trade Commission (FTC), the FRB, and DOJ.¹⁵ Among other things, the advisory opinion affirms that ECOA and Regulation B protect applicants who have received credit and are existing account holders, not just those in the process of applying for credit. In addition, the advisory opinion explains that creditors must provide adverse action notices to applicants against whom they take adverse action, and that certain adverse actions—such as revoking existing credit or changing the

terms of an existing credit arrangement—are only actions that can be taken against applicants who have already received credit.

2.2.3. Interpretive Rule on the Limited Applicability of CFPB's "Time or Space" Exception With Respect to Digital Marketing Providers

On August 10, 2022, the CFPB issued an interpretive rule clarifying when digital marketing providers for financial firms must comply with Federal consumer financial protection law.¹⁶ Section 1002 of the CFPB defines the term "service provider" and sets forth two exceptions to that definition. Under one of those exceptions, a person is not a service provider solely by virtue of such person offering or providing to a covered person time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media. As explained in the interpretive rule, digital marketers that are involved in the identification or selection of prospective customers or the selection or placement of content to affect consumer behavior do not fall under this narrow exception and thus are typically service providers for purposes of the law. Digital marketers acting as service providers can be held liable by the CFPB or other law enforcers for committing unfair, deceptive, or abusive acts or practices as well as other consumer financial protection violations. The interpretive rule explains that digital marketers provide material services to financial firms and that the CFPB, along with other consumer protection enforcers, can sue digital marketers to stop violations of consumer financial protection law.

2.2.4. Supervisory Highlights

The CFPB's *Supervisory Highlights* reports provide guidance and general information about the CFPB's supervisory activities at banks and nonbanks without identifying specific entities. These reports communicate the CFPB's key examination findings and operational changes to the CFPB's supervision program. *Supervisory Highlights* is also a convenient and easily accessible resource for information on the CFPB's recent guidance documents. In 2022, the CFPB

¹¹ CFPB, *Home Mortgage Disclosure (Regulation C) Adjustment to Asset-Size Exemption Threshold* (Dec. 27, 2022), https://files.consumerfinance.gov/f/documents/cfpb_hmda_annual-adjustments_2022-12.pdf.

¹² CFPB, *Home Mortgage Disclosure (Regulation C); Judicial Vacatur of Coverage Threshold for Closed-End Mortgage Loans* (Dec. 9, 2022), https://files.consumerfinance.gov/f/documents/cfpb_judicial-vacatur_technical-amendment_2022-12.pdf.

¹³ CFPB, *Consumer Financial Protection Circular 2022–03, Adverse action notification requirements in connection with credit decisions based on complex algorithms* (May 26, 2022), <https://www.consumerfinance.gov/compliance/circulars/circular-2022-03-adverse-action-notification-requirements-in-connection-with-credit-decisions-based-on-complex-algorithms/>.

¹⁴ CFPB, *Equal Credit Opportunity (Regulation B); Revocations or Unfavorable Changes to the Terms of Existing Credit Arrangements* (May 5, 2022), https://files.consumerfinance.gov/f/documents/cfpb_revoking-terms-of-existing-credit-arrangement_advisory-opinion_2022-05.pdf.

¹⁵ *Fralish v. Bank of America, N.A.*, Brief amicus curiae of Consumer Fin. Prot. Bureau, Dept. of Justice, Bd. Of Governors of the Fed. Reserve System, and Fed. Trad Comm'n (Dec. 16, 2021), https://files.consumerfinance.gov/f/documents/cfpb_fralish-v-bank-of-america_amicus-brief_2021-12.pdf.

¹⁶ CFPB, *Interpretive rule on the Limited Applicability of Consumer Financial Protection Act's "Time or Space" Exception with Respect to Digital Marketing Providers* (Aug. 10, 2022), https://files.consumerfinance.gov/f/documents/cfpb_time-or-space_interpretive-rule_signed_2022-08.pdf.

published three issues of *Supervisory Highlights*.¹⁷

On May 2, 2022, the CFPB released the 26th edition of *Supervisory Highlights*.¹⁸ The findings included in this report cover examinations completed between July 2021 and December 2021 in the areas of auto servicing, consumer reporting, credit card account management, debt collection, deposits, mortgage origination, prepaid accounts, remittances, and student loan servicing.¹⁹ This report also discussed the publication of the CFPB's updated exam manual for evaluating UDAAPs, explaining that the updates cover discriminatory practices that may also be "unfair" under the CFPB.

A special edition of *Supervisory Highlights, Issue 27, Student Loan Servicing Special Edition, Fall 2022*, was released on September 29, 2022.²⁰ This report focused on specific supervisory findings unique to the student loan market.

The CFPB released the 28th edition of *Supervisory Highlights* on November 16, 2022, covering examinations completed between January 2021 and June 2021.²¹ This report included the fair lending enforcement matter, *Trident*, which the CFPB's supervisory activities supported. For more information on the *Trident* matter, please see section 1.2.1 above.

All issues of *Supervisory Highlights* are available at: <https://www.consumerfinance.gov/compliance/supervisory-highlights/>.

2.2.5. HMDA Guidance and Resources

Given the importance of accurately reported HMDA data to the CFPB's fair lending mission, the CFPB maintains a comprehensive suite of resources on its public website to help filers fulfill their reporting requirements under HMDA and Regulation C and to allow others to evaluate and study mortgage lending. These resources include: an Executive Summary of HMDA rule changes;²²

¹⁷ Issue 26, Spring 2022; Issue 27, *Supervisory Highlights Student Loan Servicing Special Edition*, Fall 2022; Issue 28, Fall 2022.

¹⁸ CFPB, *Issue 26, Spring 2022* (May 2, 2022), https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf.

¹⁹ *Id.*

²⁰ CFPB, *Issue 27, Student Loan Servicing Special Edition, Fall 2022* (Sept. 29, 2022), https://files.consumerfinance.gov/f/documents/cfpb_student-loan-servicing-supervisory-highlights-special-edition_report_2022-09.pdf.

²¹ Consumer Fin. Prot. Bureau, *Issue 28, Fall 2022* (Nov. 16, 2022), https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-28_2022-11.pdf.

²² CFPB, *Executive Summary of the 2020 Home Mortgage Disclosure Act (Regulation C) Final Rule* (Apr. 16, 2020), https://files.consumerfinance.gov/f/documents/cfpb_rule-executive-summary_hmda-2020.pdf.

Small Entity Compliance Guide;²³ Key Dates Timeline;²⁴ Institutional and Transactional Coverage Charts;²⁵ Reportable HMDA Data Chart;²⁶ sample data collection form;²⁷ FAQs,²⁸ a new Beginners Guide to Accessing and Using HMDA Data,²⁹ and downloadable webinars,³⁰ which provide an overview of the HMDA rule. In 2022, the CFPB published a summary of the 2021 data on mortgage lending.³¹ The CFPB also provides on its website an interactive version of Regulation C that is easier to access and navigate than the printed version of Regulation C.³²

Together with the Federal Financial Institutions Examination Council (FFIEC),³³ the CFPB also routinely updates its HMDA resources throughout the year to ensure HMDA reporters have the most up-to-date information. For example, in September 2022, the CFPB

²³ CFPB, *Home Mortgage Disclosure (Regulation C) Small Entity Compliance Guide* (Feb. 2023), https://files.consumerfinance.gov/f/documents/cfpb_hmda_small-entity-compliance-guide_2023-02.pdf.

²⁴ CFPB, *HMDA Rule Key Dates Timeline, January 1, 2020 to December 31, 2022*, https://files.consumerfinance.gov/f/documents/cfpb_hmda-key-dates-timeline-2020-2022.pdf.

²⁵ CFPB, *HMDA Institutional Coverage Chart*, https://files.consumerfinance.gov/f/documents/cfpb_hmda-institutional-coverage_2023.pdf; Consumer Fin. Prot. Bureau, *HMDA Transactional Coverage Chart*, https://files.consumerfinance.gov/f/documents/cfpb_hmda-transactional-coverage_2023.pdf.

²⁶ CFPB, *Reportable HMDA Data: A Regulatory and Reporting Overview Reference Chart for HMDA Data Collected in 2023*, https://files.consumerfinance.gov/f/documents/cfpb_reportable-hmda-data_regulatory-and-reporting-overview-reference-chart_2023-02.pdf.

²⁷ CFPB, *Sample Data Collection Form*, https://files.consumerfinance.gov/f/documents/201708_cfpb_hmda-sample-data-collection-form.pdf.

²⁸ CFPB, *Home Mortgage Disclosure Act FAQs*, <https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/home-mortgage-disclosure-act-faqs/>.

²⁹ CFPB, *A Beginner's Guide to Accessing and Using Home Mortgage Disclosure Act Data* (June 13, 2022), https://files.consumerfinance.gov/f/documents/cfpb_beginners-guide-accessing-using-hmda-data_guide_2022-06.pdf.

³⁰ CFPB, *HMDA Webinars*, <https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/webinars/>.

³¹ CFPB, *Summary of 2021 Data on Mortgage Lending* (June 16, 2022), <https://www.consumerfinance.gov/data-research/hmda/summary-of-2021-data-on-mortgage-lending/>.

³² See *Interactive Bureau Regulations, Regulation C*, <https://www.consumerfinance.gov/rules-policy/regulations/1003/>.

³³ Collectively, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the CFPB comprise the Federal Financial Institutions Examination Council (FFIEC). The State Liaison Committee was added to FFIEC in 2006 as a voting member. Federal Fin. Instit. Examination Council, <http://www.ffiec.gov> (last visited May 15, 2023).

released the 2023 Filing Instructions Guide³⁴ and the 2023 Supplemental Guide for Quarterly Filers.³⁵ Together with the FFIEC, in February 2022, the CFPB also published the 2022 edition of the HMDA Getting it Right Guide.³⁶ The CFPB also works with the FFIEC to publish data submission resources for HMDA filers and vendors on its Resources for HMDA Filers website, <https://ffiec.cfpb.gov>.

In addition, HMDA reporters can ask questions about HMDA and Regulation C, including how to submit HMDA data, by emailing the CFPB's HMDA Help at HMDAHelp@cfpb.gov. The CFPB also offers financial institutions, service providers, and others informal staff guidance on specific questions about the statutes and rules the CFPB implements, including ECOA and Regulation B and HMDA and Regulation C, through its Regulation Inquiries platform at www.reginquiries.consumerfinance.gov.

3. Stakeholder Engagement

The CFPB engages with external stakeholders, including consumer advocates, civil rights organizations, industry, academia, and other government agencies. This engagement comes in varied forms, including broadcasting the CFPB's work and policy priorities through CFPB channels like blogs, press releases, or speeches; and reaching out directly to advocates and consumers through website updates and social media. The CFPB also regularly issues reports analyzing data and market conditions. To further an all-of-government approach to fair lending enforcement, the CFPB also participates in interagency groups. All of these engagements are critical to informing the CFPB's work and broadcasting the CFPB's priorities and recent work to its stakeholders.

3.1. Promoting and Broadcasting the Fair Lending and Access to Credit Mission

3.1.1. CFPB Blog Posts, Press Releases, and Other Communications

The CFPB regularly uses blog posts, statements, press releases, guides, brochures, social media, and other tools to timely and effectively communicate

³⁴ CFPB, *Filing instructions guide for HMDA data collected in 2023* (Sept. 2, 2022), <https://s3.amazonaws.com/cfpb-hmda-public/prod/help/2023-hmda-fig.pdf>.

³⁵ CFPB, *Supplemental Guide for Quarterly Filers for 2023* (Sept. 2, 2022), <https://s3.amazonaws.com/cfpb-hmda-public/prod/help/supplemental-guide-for-quarterly-filers-for-2023.pdf>.

³⁶ Federal Fin. Instit. Examination Council, *A Guide to HMDA Reporting, Getting it Right!* (Feb. 28, 2022), <https://www.ffiec.gov/hmda/pdf/2022Guide.pdf>.

with stakeholders. These tools are targeted to individuals, advocates, civil rights organizations, government agencies, tribal entities, small business owners, financial institutions, and other stakeholders to promote and broadcast news and information about emerging fair lending issues, areas of concern, CFPB initiatives, and more.

In 2022, the CFPB published 12 blog posts related to fair lending topics including: examination findings that some financial companies are unlawfully considering religion when making decisions on financial products;³⁷ a joint letter sent to The Appraisal Foundation regarding appraisal discrimination;³⁸ a new initiative to focus on financial issues facing rural communities;³⁹ announcing efforts to further crack down on discrimination in the financial sector;⁴⁰ announcing the publication of the 2021 Fair Lending Annual Report to Congress;⁴¹ providing Spanish-speaking customers with Spanish-language disclosures;⁴² announcing the publication of the *Beginner's Guide to Accessing and Using Home Mortgage Disclosure Act Data*;⁴³ identifying and addressing the financial needs of immigrants;⁴⁴ the *Interagency Statement on Special Purpose Credit Programs Under ECOA and Regulation*

³⁷ Lorelei Salas, *It's illegal to penalize borrowers for being religious* (Jan. 14, 2022), <https://www.consumerfinance.gov/about-us/blog/its-illegal-penalize-borrowers-being-religious/>.

³⁸ Patrice Alexander Ficklin, *Appraisal discrimination is illegal under federal law* (Feb. 4, 2022), <https://www.consumerfinance.gov/about-us/blog/appraisal-discrimination-illegal-under-federal-law/>.

³⁹ Shawn Sebastian, *New effort focused on financial issues facing rural communities* (Mar. 10, 2022), <https://www.consumerfinance.gov/about-us/blog/new-effort-focused-on-financial-issues-facing-rural-communities/>.

⁴⁰ Eric Halperin, Lorelei Salas, *Cracking down on discrimination in the financial sector* (Mar. 16, 2022), <https://www.consumerfinance.gov/about-us/blog/cracking-down-on-discrimination-in-the-financial-sector/>.

⁴¹ Rohit Chopra, *The CFPB's 2021 Fair Lending Annual Report to Congress* (May 6, 2022), <https://www.consumerfinance.gov/about-us/blog/the-cfpbs-2021-fair-lending-annual-report-to-congress/>.

⁴² CFPB, *Support Spanish-speaking customers with Spanish-language disclosures* (May 11, 2022), <https://www.consumerfinance.gov/about-us/blog/support-spanish-speaking-customers-with-spanish-language-disclosures/>.

⁴³ Hallie Ryan, *CFPB publishes Beginner's Guide to Accessing and Using Home Mortgage Disclosure Act Data* (June 13, 2022), <https://www.consumerfinance.gov/about-us/blog/cfpb-publishes-beginners-guide-to-accessing-and-using-home-mortgage-disclosure-act-data/>.

⁴⁴ Sonia Lin, *Identifying and addressing the financial needs of immigrants* (June 27, 2022), <https://www.consumerfinance.gov/about-us/blog/identifying-and-addressing-the-financial-needs-of-immigrants/>.

B;⁴⁵ challenging inaccurate appraisals through the reconsideration of value process;⁴⁶ research about higher interest rates leading to higher debt burdens for mortgage borrowers;⁴⁷ and changes relating to HMDA's closed-end loan reporting threshold.⁴⁸

In 2022, the CFPB also issued 16 press releases related to fair lending and access to credit issues, including the announcement of: the publication of the CFPB's *Justice-Involved Individuals and the Consumer Financial Marketplace Report*;⁴⁹ the publication of the SBREFA outline for the AVM rulemaking;⁵⁰ the updated UDAAP exam guidance;⁵¹ Director Chopra's statement on the Interagency Task Force on Property Appraisal and Valuation Equity (PAVE) taskforce's report;⁵² the availability of 2021 HMDA data;⁵³ a report on financial challenges facing rural communities;⁵⁴ the issuance of an

⁴⁵ Tim Lambert, *Using special purpose credit programs to serve unmet credit needs* (July 19, 2022), <https://www.consumerfinance.gov/about-us/blog/using-special-purpose-credit-programs-to-serve-unmet-credit-needs/>.

⁴⁶ Patrice Alexander Ficklin, Makalia Griffith, and Tim Lambert, *Mortgage Borrowers Can Challenge Inaccurate Appraisals Through the Reconsideration of Value Process* (Oct. 6, 2022), <https://www.consumerfinance.gov/about-us/blog/mortgage-borrowers-can-challenge-inaccurate-appraisals-through-the-reconsideration-of-value-process/>.

⁴⁷ Feng Liu, *Office of Research blog: Higher interest rates leading to higher debt burdens for mortgage borrowers* (Nov. 30, 2022), <https://www.consumerfinance.gov/about-us/blog/higher-interest-rates-leading-to-higher-debt-burdens-for-mortgage-borrowers/>.

⁴⁸ Woody Anglade, Patrice Alexander Ficklin, and Timothy Lambert, *Changes to HMDA's closed-end loan reporting threshold* (Dec. 6, 2022), <https://www.consumerfinance.gov/about-us/blog/changes-to-hmda-closed-end-loan-reporting-threshold/>.

⁴⁹ CFPB, *CFPB Report Shows Criminal Justice Financial Ecosystem Exploits Families at Every Stage* (Jan. 31, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-shows-criminal-justice-financial-ecosystem-exploits-families-at-every-stage/>.

⁵⁰ CFPB, *Consumer Financial Protection Bureau Outlines Options To Prevent Algorithmic Bias In Home Valuations* (Feb. 23, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-outlines-options-to-prevent-algorithmic-bias-in-home-valuations/>.

⁵¹ CFPB, *CFPB Targets Unfair Discrimination in Consumer Finance* (Mar. 16, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-targets-unfair-discrimination-in-consumer-finance/>.

⁵² CFPB, *CFPB Director Chopra Statement on Appraisal Task Force Report* (Mar. 23, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-director-chopra-statement-on-appraisal-task-force-report/>.

⁵³ CFPB, *2021 HMDA Data on Mortgage Lending Now Available* (Mar. 24, 2022), <https://www.consumerfinance.gov/about-us/newsroom/2021-hmda-data-on-mortgage-lending-now-available/>.

⁵⁴ CFPB, *CFPB Releases Report on Financial Challenges Facing Rural Communities* (Apr. 19, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-report-on-financial-challenges-facing-rural-communities/>.

advisory opinion on the coverage of fair lending laws;⁵⁵ the publication of a report on mortgage servicing metrics;⁵⁶ the issuance of a CFPB Circular related to adverse action notice requirements under ECOA;⁵⁷ the availability of the 2021 HMDA data;⁵⁸ the *Trident* enforcement action;⁵⁹ issuance of an interpretive rule laying out when digital marketing providers for financial firms must comply with Federal consumer financial protection law;⁶⁰ a report detailing family finances and debt in rural Appalachia;⁶¹ the CFPB's Annual Report of Mortgage Market Activity;⁶² the CFPB's effort to spur opportunities for homeowners in the mortgage market;⁶³ and publication of data from the National Survey of Mortgage Originations.⁶⁴

⁵⁵ CFPB, *CFPB Issues Advisory Opinion on Coverage of Fair Lending Laws* (May 9, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-advisory-opinion-on-coverage-of-fair-lending-laws/>.

⁵⁶ CFPB, *CFPB Releases Report on Mortgage Servicing Metrics* (May 16, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-report-on-mortgage-servicing-metrics/>.

⁵⁷ CFPB, *CFPB Acts to Protect the Public from Black-Box Credit Models Using Complex Algorithms* (May 26, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-acts-to-protect-the-public-from-black-box-credit-models-using-complex-algorithms/>.

⁵⁸ CFPB, *FFIEC Announces Availability of 2021 Data on Mortgage Lending* (June 16, 2022), <https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-of-2021-data-on-mortgage-lending/>.

⁵⁹ CFPB, *CFPB, DOJ Order Trident Mortgage Company to Pay More Than \$22 Million for Deliberate Discrimination Against Minority Families* (July 27, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-doj-order-trident-mortgage-company-to-pay-more-than-22-million-for-deliberate-discrimination-against-minority-families/>.

⁶⁰ CFPB, *CFPB Warns that Digital Marketing Providers Must Comply with Federal Consumer Finance Protections* (Aug. 10, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-warns-that-digital-marketing-providers-must-comply-with-federal-consumer-finance-protections/>.

⁶¹ CFPB, *CFPB Report Details Family Finances and Debt in Rural Appalachia* (Sept. 1, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-details-family-finances-and-debt-in-rural-appalachia/>.

⁶² CFPB, *CFPB Annual Report of 2021 Mortgage Market Activity Reveals an End to the Refinancing Boom and an Increase in Home Purchase Loans* (Sept. 19, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-annual-report-2021-mortgage-market-activity-end-to-refinancing-boom/>.

⁶³ CFPB, *CFPB Launches Effort to Spur New Opportunities for Homeowners in the Mortgage Market* (Sept. 22, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-launches-effort-to-spur-new-opportunities-for-homeowners-in-the-mortgage-market/>.

⁶⁴ CFPB, *CFPB and FHFA Publish Updated Data from the National Survey of Mortgage Originations for Public Use* (Dec. 13, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-fhfa-publication-of-loan-level-data-for-public-use-collected-through-the-nsmo/>.

3.1.2. CFPB Engagements With Stakeholders

The CFPB often engages directly with stakeholders to inform the CFPB's policy decisions and message the CFPB's priorities and recent work. In 2022, CFPB staff participated in 124 stakeholder engagements related to fair lending and access to credit issues. Through speeches, presentations, podcasts, roundtables, webinars, and other smaller discussions on fair lending topics, the CFPB strives to keep abreast of economic and market realities that impact the lives of individuals, small businesses, and communities the CFPB is charged with protecting.

Throughout 2022, numerous other engagements centered around traditional and digital redlining, to include appraisal bias issues; algorithmic bias issues; special purpose credit programs; the rulemaking governing small business lending data collection and reporting under section 1071 of the Dodd-Frank Act; HMDA; agricultural and rural lending; student lending; and credit reporting.

3.2. Seeking Information: Request for Information

On September 27, 2022, the CFPB issued a Request for Information (RFI) seeking insights on ways to improve mortgage refinances for homeowners who would benefit from refinancing, including Black and Hispanic borrowers. When interest rates decline, many borrowers benefit from the lower rates by refinancing their loans. Mortgage refinancing can be harder to access for borrowers with smaller loan balances. Black and Hispanic borrowers, who on average have smaller loans, have not participated in recent refinance booms at the same rate as white borrowers. The RFI sought innovative and timely ideas to address persistent market failures and to help borrowers access beneficial refinancing along with short- and long-term loss mitigation assistance. The comment period for this RFI closed on November 28, 2022.

3.3. Data and Reports

3.3.1. Justice Involved Individuals and the Consumer Financial Marketplace

On January 31, 2022, the CFPB released a report reviewing the financial issues facing people and families who come in contact with the criminal justice system.⁶⁵ The report describes an ecosystem rife with burdensome fees, lack of choice, and barriers to credit

⁶⁵ CFPB, *Justice Involved Individuals and the Consumer Financial Marketplace* (Jan. 31, 2022), https://files.consumerfinance.gov/f/documents/cfpb_jic_report_2022-01.pdf.

access, where families are increasingly being forced to shoulder the costs. It walks through the financial challenges families encounter at every stage of the criminal justice process, and the ways in which providers—often for-profit private companies—are leveraging a lack of consumer choice and the companies' market dominance to impose hefty fees at families' expense. The report also describes the barriers people face when reentering society from the criminal justice system, including some barriers to obtaining consumer and small business credit that may raise fair lending concerns. The burdens of the criminal justice system—and its financial impacts—fall most heavily on people of color, women, and people with lower incomes of all races and ethnicities. Surveys have repeatedly found women, and specifically Black women, disproportionately shoulder the costs of staying in touch with loved ones in prison and paying court-related debt for family members, sometimes spending up to a third of their income on such costs and even forgoing basic necessities for themselves.

3.3.2. Medical Debt Burden in the United States

Medical debt is the most common collection tradeline reported on consumer credit records. Unfortunately, as a result of inequities in wealth, occupation, income, insurance coverage, and access to care, people of color are more likely to have medical debt in collections. People also report being contacted by debt collectors about medical debt more than any other type of debt. While medical debt has long played an outsized role on credit reports, concerns about medical debt collections and reporting are particularly elevated due to the COVID-19 pandemic. Many people have incurred pandemic-related medical debt. Black, Hispanic, and Native American communities have experienced higher rates of COVID-19 infection, in part because Black, Hispanic, and Native American people are more likely to be essential workers. Frontline workers may be particularly likely to have pandemic-related medical debt since they have more exposure to the virus but are less likely to have health insurance than the general population.

On March 1, 2022, the CFPB released a report summarizing key areas of concern in medical debt collections and reporting.⁶⁶ One such key finding was

⁶⁶ CFPB, *Medical Debt Burden in the United States* (Mar. 1, 2022), https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf.

that medical debt affects households unevenly, as past-due medical debt is more prevalent among Black and Hispanic individuals than white and Asian individuals. Medical debt can have a compounding impact in reducing future access to credit, housing, and employment for populations who already face financial exclusion, including communities of color, low-income individuals, and uninsured or underinsured individuals.

3.3.3. Special Issue Brief: New Data on the Characteristics of Mortgage Borrowers During the COVID-19 Pandemic

On March 23, 2022, the CFPB released a report regarding the mortgage characteristics and demographics of borrowers who remained in COVID-19-related forbearance in January 2022.⁶⁷ Utilizing data from the National Mortgage Database, this report followed up on a previous report in May of 2021 that analyzed the characteristics of mortgage borrowers during the COVID-19 pandemic based on the account status of borrowers reported through March 2021. The 2022 report found that borrowers had a forbearance rate of 1.3 percent, compared to 4.7 percent in the March 2021 sample used in the previous May 2021 report. Although the overall forbearance rate decreased, the 2022 report also found, among other findings, that Black and Hispanic borrowers remained significantly more likely to be in forbearance compared to white borrowers. Specifically, Black and Hispanic borrowers were 2.8 times and 1.6 times more likely to end up in forbearance, respectively, than white borrowers.

3.3.4. Availability of 2021 HMDA Data

The HMDA data are the most comprehensive publicly available information on mortgage market activity. The data are used by consumer groups, regulators, industry, and others to assess potential fair lending risks and for other purposes.

On March 24, 2022, the CFPB announced the availability of the 2021 HMDA modified loan application register data on the FFIEC's HMDA Platform for approximately 4,300 HMDA filers.⁶⁸ These published data

[gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf).

⁶⁷ CFPB, *New Data on the Characteristics of Mortgage Borrowers During the COVID-19 Pandemic* (Mar. 23, 2022), https://files.consumerfinance.gov/f/documents/cfpb_characteristics-of-mortgage-borrowers-during-covid-19-pandemic_report_2022-03.pdf.

⁶⁸ CFPB, *2021 HMDA Data on Mortgage Lending Now Available* (Mar. 24, 2022), https://files.consumerfinance.gov/f/documents/cfpb_2021-hmda-data-on-mortgage-lending-now-available_report_2022-03.pdf.

contain loan-level information filed by financial institutions, modified to protect privacy.

On June 16, 2022, the FFIEC announced the availability of additional data on 2021 mortgage lending transactions at 4,338 financial institutions reported under HMDA.⁶⁹ These data include a total of 48 data points providing information about the applicants, the property securing the loan or proposed to secure the loan in the case of non-originated applications, the transaction, and identifiers.

3.3.5. Data Spotlight: Challenges in Rural Banking Access

As part of the CFPB's renewed focus on the specific challenges of rural consumers and small businesses, on April 19, 2022, the CFPB released a report highlighting the consumer finance challenges faced by rural communities.⁷⁰ This report is a starting point for a CFPB initiative that will include devoted engagement with rural communities across the country, research into challenges faced by rural communities, and actions to protect rural consumers and small businesses from predatory bad actors and repeat offenders in consumer and small business financial markets.

3.3.6. Mortgage Servicing COVID-19 Pandemic Response Metrics: New Observations From Data Reported by Servicers for May-December 2021

On May 16, 2022, the CFPB published a report providing observations of data obtained from 16 large mortgage servicers to identify areas of risk in the servicers' COVID-19 pandemic responses.⁷¹ This report followed a previous 2021 response metrics report, and addresses similar topics including call center data, COVID-19 hardship forbearance exits, delinquency, and borrower profiles for the period May through December 2021. As described in the report, some borrowers were impacted more than others. While the data on language preference was

limited, among the servicers who provided language preference data, the percentage of borrowers in delinquency and who had a non-English language preference increased during the reviewed period. Conversely, the percentage of borrowers in delinquency and who identified English as their preferred language decreased.

3.3.7. Consumer Finances in Rural Appalachia

On September 1, 2022, the CFPB issued a report detailing consumer finances and debt in rural Appalachia.⁷² The report found that inhabitants of Appalachia face higher debt burdens and worse credit conditions compared to people in most other parts of rural America. In particular, medical debt collections are a much more prevalent issue among inhabitants of rural Appalachia, and consumers with medical debt collections often experience difficulties in making ends meet on other financial obligations.

3.3.8. Data Point: 2021 Mortgage Market Activity and Trends

On September 19, 2022, the CFPB released its annual report on residential mortgage lending activity and trends for 2021.⁷³ The report shows a shift from refinance loans in 2020 to home purchase loans in 2021, with a greater share of home purchase loans going to Asian, Black, and Hispanic white borrowers relative to the share of home purchase loans for non-Hispanic white borrowers. The top 25 closed-end lenders by loan volume held nearly half of the market share of residential mortgage lending—a trend that has risen each year since 2018. Other key findings of the report include that an increase in mortgage originations was driven by home purchase loans as refinance loans fell; the number of mortgage lending institutions reporting HMDA data dropped in 2021; and that Asian, Black, and Hispanic white borrowers' home purchase loan shares increased from 2020 to 2021. The report also found that Black and Hispanic white borrowers, overall, continued to qualify for lower median loan amounts, had lower median credit scores, and had higher denial rates compared to non-Hispanic white and Asian borrowers.

Additionally, Black and Hispanic white borrowers paid higher median interest rates and higher total loan costs overall.

3.3.9. Updated Data From National Survey of Mortgage Originations

On December 13, 2022, the CFPB and the FHFA published updated loan-level data for public use collected through the National Survey of Mortgage Originations. The data provide insights into borrowers' experiences obtaining residential mortgages.⁷⁴

3.1. Interagency Engagement

Seeking to address current and emerging fair lending risks, the CFPB regularly coordinates with other Federal, State, tribal, county, municipal, and international government entities, policymakers, and the organizations that represent them. Through numerous interagency organizations and taskforces, the CFPB coordinated its 2022 fair lending regulatory, supervisory, and enforcement activities to promote consistent, efficient, and effective enforcement of Federal fair lending laws.

The CFPB, along with the Department of Housing and Urban Development (HUD), FTC, FDIC, FRB, NCUA, OCC, DOJ, and FHFA, constitute the Interagency Task Force on Fair Lending. This Task Force meets regularly to discuss fair lending enforcement efforts, share current methods of conducting supervisory and enforcement fair lending activities, and coordinate fair lending policies. In 2022, the FDIC was the Chair of this Task Force.⁷⁵

On February 22, 2022, the CFPB, along with HUD, FRB, DOJ, OCC, FDIC, NCUA, and FHFA, released an *Interagency Statement on Special Purpose Credit Programs Under ECOA and Regulation B*. The statement encourages lenders to explore opportunities available to them to increase credit access through special purpose credit programs to better serve historically disadvantaged individuals and communities.⁷⁶

⁷⁴ CFPB, *CFPB and FHFA Publish Updated Data from the National Survey of Mortgage Originations for Public Use* (Dec. 13, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-fhfa-publication-of-loan-level-data-for-public-use-collected-through-the-nsmo/>.

⁷⁵ Additional activity has occurred since the close of this reporting period. In 2023, the NCUA became the Chair of the Interagency Taskforce on Fair Lending.

⁷⁶ Bd. of Governors of the Fed. Reserve Sys., Fed. Deposit Ins. Corp., Nat'l Credit Union Admin., Office of the Comptroller of the Currency, Consumer Fin. Prot. Bureau, the Dep't of Hous. and Urban Dev., the Dep't of Justice, and the Fed. Hous. Fin. Agency, *Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B* (Feb. 22, 2022),

www.consumerfinance.gov/about-us/newsroom/2021-hmda-data-on-mortgage-lending-now-available/.

⁶⁹ CFPB, *FFIEC Announces Availability of 2021 Data on Mortgage Lending* (June 16, 2022), <https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-of-2021-data-on-mortgage-lending/>.

⁷⁰ CFPB, *Data Spotlight: Challenges in Rural Banking Access* (Apr. 19, 2022), https://files.consumerfinance.gov/f/documents/cfpb_data_spotlight_challenges-in-rural-banking_2022-04.pdf.

⁷¹ CFPB, *Mortgage Servicing COVID-19 Pandemic Response Metrics: New Observations from Data Reported by Sixteen Servicers for May-December 2021* (May 16, 2022), https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-covid-19-pandemic-response-metrics_report_2022-05.pdf.

⁷² Matthew Liu, Cooper Luce, Michael Orevba, Shawn Sebastian, and Cortnie Shupe, *Consumer Finances in Rural Appalachia* (Sept. 1, 2022), https://files.consumerfinance.gov/f/documents/cfpb_consumer-finances-in-rural-appalachia_report_2022-09.pdf.

⁷³ CFPB, *Data Point: 2021 Mortgage Market Activity and Trends* (Sept. 19, 2022), https://files.consumerfinance.gov/f/documents/cfpb_data-point-mortgage-market-activity-trends_report_2022-09.pdf.

Through the FFIEC, the CFPB has robust engagements with other partner agencies that focus on fair lending issues. For example, throughout the reporting period, the CFPB has chaired the HMDA/Community Reinvestment Act (CRA) Data Collection Subcommittee, a subcommittee of the FFIEC Task Force on Consumer Compliance. This subcommittee oversees FFIEC projects and programs involving HMDA data collection and dissemination, the preparation of the annual FFIEC budget for processing services, and the development and implementation of other related HMDA processing projects as directed by this Task Force.

The CFPB also participates in the Interagency Working Group on Fair Lending Enforcement, a standing working group of Federal agencies—with the DOJ, HUD, and FTC—that meets regularly to discuss issues relating to fair lending enforcement. The agencies use these meetings to also discuss fair lending developments and trends, methodologies for evaluating fair lending risks and violations, and coordination of fair lending enforcement efforts.

The CFPB, the other FFIEC Federal agencies, HUD, and FHFA are the FFIEC's Appraisal Subcommittee (ASC) member agencies. The ASC's functions include providing Federal oversight of State appraiser and appraisal management company regulatory programs, and a monitoring framework for The Appraisal Foundation.⁷⁷ The ASC has taken steps to promote fairness and equity in valuations, including by being a member of the PAVE Task Force.

The CFPB engaged with other agencies on issues of bias in home appraisals through the PAVE Task Force. The PAVE Task Force is chaired by HUD Secretary Marcia Fudge and Assistant to the President for Domestic Policy and Director of the Domestic Policy Council, Ambassador Susan Rice.⁷⁸ This Task Force also includes cabinet-level leaders from executive departments and additional members

from independent agencies, including the CFPB. On March 23, 2022, the PAVE Task Force issued a report, *Action Plan to Advance Property Appraisal and Valuation Equity: Closing the Racial Wealth Gap by Addressing Misvaluations for Families and Communities of Color*.⁷⁹ The report outlines the historical role of racism in the valuation of property, examines the various forms of bias that can appear in residential property valuation practices, and describes how government and industry stakeholders will advance equity through concrete actions and recommendations. Aside from its involvement in PAVE, the CFPB is also actively working with its interagency partners on issues of bias in home appraisals.

In February 2022, senior staff from the CFPB, along with HUD, FRB, DOJ, OCC, FDIC, NCUA, and FHFA submitted a letter to the Appraisal Standards Board regarding proposed changes to the 2023 Edition of the Uniform Standards of Professional Appraisal Practice.⁸⁰

As required by section 1022 of the Dodd-Frank Act, the CFPB also consults with other agencies as part of its rulemaking process. For example, in 2022, while developing its small business lending data collection final rule, the CFPB consulted or offered to consult with the FRB, FDIC, NCUA, OCC, HUD, DOJ, FTC, the Department of Agriculture, the Department of the Treasury, the Economic Development Administration, the Farm Credit Administration (FCA), the Financial Crimes Enforcement Network, and the Small Business Administration (SBA) including, among other things, on consistency with any prudential, market, or systemic objectives administered by such agencies.

In addition to the established interagency organizations, CFPB personnel meet regularly with agency personnel, including with DOJ, HUD, FTC, FHFA, State Attorneys General, and the prudential regulators to coordinate and discuss the CFPB's fair lending work.

4. Amicus Program and Other Litigation

The CFPB files *amicus*, or “friend-of-the-court,” briefs in significant court cases concerning Federal consumer financial protection laws, including cases involving ECOA. These briefs provide courts with the CFPB's views and help ensure that consumer financial protection statutes are correctly and consistently interpreted. In 2022, no fair lending-related *amicus* briefs were filed. Information regarding the CFPB's *amicus* program, including a description of the *amicus* briefs it has filed, is available on the CFPB's website.⁸¹

In September of 2022, the CFPB was sued in the U.S. District Court for the Eastern District of Texas by the U.S. Chamber of Commerce, *et al.*, challenging the CFPB's update to the UDAAP section of its examination manual relating to the CFPB's prohibition on unfair practices. Litigation is currently ongoing.

In August 2020, the CFPB was sued in the U.S. District Court for the District of Columbia by the National Community Reinvestment Coalition, *et al.*, over the CFPB's final rule amending Regulation C to raise the loan-volume coverage thresholds for financial institutions reporting data under the 2020 HMDA Final Rule. On September 23, 2022, the District Court vacated the 2020 HMDA Final Rule's closed-end loan reporting threshold but upheld the rule's open-end reporting threshold. The decision means that the threshold for reporting data on closed-end mortgage loans is 25 loans in each of the two preceding calendar years, which is the threshold established by the 2015 HMDA Final Rule, rather than the 100-loan threshold set by the 2020 HMDA Final Rule.

In 2019, the CFPB was sued in the U.S. District Court for the Northern District of California by the California Reinvestment Coalition, *et al.*, regarding the CFPB's obligation to issue rules implementing section 1071. In February 2020, the court approved a stipulated settlement agreement. Among other things, the settlement agreement also provides a process for setting appropriate deadlines for the issuance of a proposed and final rule implementing section 1071. Following the timely issuance of a notice of proposed rulemaking, the comment period for the rulemaking closed on January 6, 2022.⁸² For a more

⁸¹ See generally, <https://www.consumerfinance.gov/policy-compliance/amicus/>.

⁸² Additional activity has occurred since the close of this reporting period. On March 30, 2023, the CFPB released its final rule implementing section 1071. See <https://www.consumerfinance.gov/rules->

https://files.consumerfinance.gov/f/documents/cfpb_spcp_interagency-statement_2022-02.pdf.

⁷⁷ During the reporting period, the CFPB Deputy Director Zixta Martinez served as Vice Chairperson of the ASC beginning on April 1, 2022, and Regional Director John Schroeder served as Vice Chairperson of the ASC through February 16, 2022.

⁷⁸ Since the close of this reporting period, Ambassador Susan Rice left her position as Assistant to the President for Domestic Policy and Director of the Domestic Policy Council. It was announced on May 5, 2023, that Neera Tanden would replace Ambassador Rice as Assistant to the President for Domestic Policy and Director of the Domestic Policy Council. Ms. Tanden now also serves as co-chair of the PAVE Task Force.

⁷⁹ Interagency Task Force on Property Appraisal and Valuation Equity (PAVE), *Action Plan to Advance Property Appraisal and Valuation Equity* (Mar. 2022), <https://pave.hud.gov/actionplan>.

⁸⁰ Patrice Alexander Ficklin, Consumer Fin. Prot. Bureau; Amy Frisk, Dep't of Hous. and Urban Dev.; Arthur Lindo, Bd. of Governors of the Fed. Reserve Sys.; Sameena Shina Majeed, Dep't of Justice; Donna Murphy, Office of the Comptroller of the Currency; Mark Pearce, Fed. Deposit Ins. Corp.; Timothy Segerson, Nat'l Credit Union Admin.; James Wylie, Fed. Hous. Fin. Agency, *Letter to Michelle Czekalski Bradley* (Feb. 4, 2022), https://files.consumerfinance.gov/f/documents/cfpb_appraisal-discrimination_federal-interagency_comment_letter_2022-02.pdf.

comprehensive update on 1071 activity, see section 2.1.1 of this report.

5. Interagency Reporting on ECOA and HMDA

The CFPB is statutorily required to file a report to Congress annually describing the administration of its functions under ECOA, summarizing public enforcement actions taken by

policy/final-rules/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b/.

other agencies with administrative enforcement responsibilities under ECOA, and providing an assessment of the extent to which compliance with ECOA has been achieved.⁸³ In addition, the CFPB’s annual HMDA reporting requirement calls for the CFPB, in consultation with HUD, to report annually on the utility of HMDA’s

⁸³ 15 U.S.C. 1691f.

requirement that covered lenders itemize certain mortgage loan data.⁸⁴

5.1. Reporting on ECOA Enforcement

The enforcement and compliance efforts and assessments made by the eleven agencies assigned enforcement authority under section 704 of ECOA are discussed in this section, as reported by the agencies.

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⁸⁴ 12 U.S.C. 2807.

TABLE 1: FFIEC AGENCIES WITH ADMINISTRATIVE ENFORCEMENT OF ECOA⁸⁵





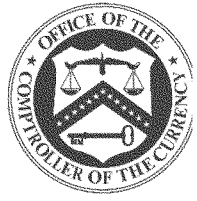
FFIEC AGENCIES					
	Bureau of Consumer Financial Protection (CFPB)	Federal Deposit Insurance Corporation (FDIC)	Federal Reserve Board (FRB)	National Credit Union Administration (NCUA)	Office of the Comptroller of the Currency (OCC)

TABLE 2: NON-FFIEC AGENCIES WITH ADMINISTRATIVE ENFORCEMENT OF ECOA

NON-FFIEC AGENCIES			
	Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA) ⁸⁶	Department of Transportation (DOT)	Farm Credit Administration (FCA)
			
Federal Trade Commission (FTC)	Securities and Exchange Commission (SEC)	Small Business Administration (SBA) ⁸⁷	

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5.1.1.1. Public Enforcement Actions

In 2022, of the Federal agencies with ECOA enforcement authority, the CFPB,

⁸⁵ Collectively, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Bureau of Consumer Financial Protection (Bureau) comprise the Federal Financial Institutions Examination Council (FFIEC). The State Liaison Committee was added to FFIEC in 2006 as a voting member. Federal Financial Institutions

together with DOJ, brought one public enforcement action for violations of ECOA and the FTC brought two

Examination Council, <http://www.ffiec.gov> (last visited Mar. 30, 2021).

⁸⁶ The Grain Inspection, Packers and Stockyards Administration (GIPSA) was eliminated as a stand-alone agency within USDA in 2017. The functions previously performed by GIPSA have been incorporated into the Agricultural Marketing Service (AMS), and ECOA reporting comes from the Packers and Stockyards Division, Fair Trade Practices Program, AMS.

⁸⁷ 15 U.S.C. 1691c.

enforcement actions for violations of ECOA.

On July 27, 2022, the CFPB, together with DOJ, brought a public enforcement action in Federal district court in the Eastern District of Pennsylvania against Trident Mortgage Company for unlawful discrimination against individuals and families living in majority-minority neighborhoods in the greater Philadelphia area. For more information on the Trident enforcement action, see section 1.2.1 of this report.

The FTC also brought enforcement actions for violations of ECOA. In 2022, the FTC and the State of Illinois brought an enforcement action against Napleton, a large multistate auto group based in Illinois, alleging, among other things, that defendants violated the ECOA and Regulation B by discriminating against Black consumers, charging them more in financing for interest rate markups, and illegal junk fees for unwanted “add-ons” that they sneaked onto customers’ bills.⁸⁸ According to the FTC’s complaint, among other things, defendants would often wait until the end of the hours-long negotiation process to slip junk fees for add-on products and services into consumers’ purchase contracts, which can run as long as 60 pages. Defendants agreed to pay \$10 million to settle all the charges, a record setting monetary judgment for an FTC auto lending case.⁸⁹ Defendants are also required to establish a fair lending program that will, among other components, cap the amount of any

additional interest markup they charge consumers. Also in 2022, the FTC brought an action in Federal court against Maryland-based Passport Automotive Group, alleging that defendants violated the ECOA and Regulation B, and also violated the FTC Act, by engaging in unfair practices, by discriminating against Black and Latino consumers, charging them higher financing costs and illegal junk fees.⁹⁰ In its complaint, the FTC alleges, among other things, that Passport regularly advertised certified, reconditioned, or inspected cars at specific prices, but then added extra certification, reconditioning, or inspection fees that it falsely claimed consumers are required to pay, charging Black and Latino consumers more for the fees and imposing the fees more often. The FTC also alleges that Passport charged Black and Latino consumers hundreds of dollars more in financing costs for interest rate markups than White consumers. Among other things,

Defendants agreed to pay more than \$3.3 million to settle the FTC’s lawsuit, which will be used to refund consumers harmed by Passport’s conduct; the order also requires Defendants to establish a fair lending program to ensure against discrimination going forward, including requiring each Passport dealership to either charge no financing markup or charge the same markup rate to all consumers.⁹¹

5.1.2. Number of Institutions Cited for ECOA/Regulation B Violations

In 2022, the Agencies and the CFPB collectively reported citing 174 institutions with violations of ECOA and/or Regulation B.

5.1.3. Violations Cited During ECOA Examinations

Among institutions examined for compliance with ECOA and Regulation B, the FFIEC agencies reported that the most frequently cited violations were as follows:

TABLE 5—REGULATION B VIOLATIONS CITED BY FFIEC AGENCIES, 2022

Regulation B violations: 2022	FFIEC Agencies reporting
12 CFR 1002.4, 1002.7(d)(1): Discrimination—Discrimination on a prohibited basis in a credit transaction; improperly requiring the signature of the applicant’s spouse or other person.	NCUA, ⁹² FRB, ⁹³ OCC, ⁹⁴ CFPB, ⁹⁵ FDIC.
12 CFR 1002.5(b), 12 CFR 1002.5(c), 12 CFR 1002.5(d): Inquiring about protected class—Inquiring about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction, except as permitted in § 1002.5(b)(1) and (b)(2), or § 1002.8 in the case of a special purpose credit program; requesting any information concerning an applicant’s spouse or former spouse, except as permitted in § 1002.5(c)(2); requesting the marital status of a person applying for individual, unsecured credit, except as permitted in § 1002.5(d)(1) (for credit other than individual, unsecured, a creditor may inquire about the applicant’s marital status, but must only use the terms “married,” “unmarried,” and “separated”); inquiring as to whether income stated in an application is derived from alimony, child support, or separate maintenance payments, except as permitted in § 1002.5(d)(2); or requesting information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children, except as permitted in § 1002.5(d)(3).	NCUA.
12 CFR 1002.6 (b)(2): Specific rules concerning use of information—Improperly evaluating age, receipt of public assistance in a credit transaction.	FDIC, ⁹⁶ NCUA, ⁹⁷ OCC, ⁹⁸ FRB, ⁹⁹ CFPB. ¹⁰⁰
12 CFR 1002.9(a)(1)(i), (a)(2), (b)(1); (b)(2); (c): Adverse Action—Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor’s approval of, counteroffer to, or adverse action on the application; failure to provide appropriate notice to the applicant 30 days after taking adverse action on an incomplete application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken.	OCC.
12 CFR 1002.12(b)(1): Record Retention—Failure to retain records of the original application or a copy thereof for 25 months after the data a creditor notifies an applicant of action taken on an application or of incompleteness.	FDIC, ¹⁰¹ OCC, ¹⁰² FRB. ¹⁰³
12 CFR 1002.14 (a)(1), (a)(2), (a)(3), (a)(4): Appraisals and Valuations—Failure to provide appraisals and other valuations.	

Among institutions examined for compliance with ECOA and Regulation

⁸⁸ *FTC v. North American Automotive Services, Inc.*, No. 22-cv-01690 (N.D. Ill., filed Mar. 31, 2022), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/2023195-napleton-auto>. Chair Khan and Commissioner Slaughter issued a concurring statement. See *Joint Statement of Chair Lina M. Khan and Commissioner Rebecca Kelly Slaughter in the Matter of Napleton Automotive Group* (Mar. 31, 2022), available at <https://www.ftc.gov/news-events/news/speeches/joint-statement-chair-lina-m-khan-commissioner-rebecca-kelly-slaughter-matter-napleton-automotive>.

⁸⁹ *FTC v. North Amer. Auto. Servs., Inc.*, No. 22-cv-01690 (N.D. Ill. Mar. 31, 2022) (stipulated order for permanent injunction, monetary judgment, and other relief), available at https://www.ftc.gov/system/files/ftc_gov/pdf/6-1%20Stipulated%20Order.pdf.

⁹⁰ *FTC v. Passport Auto. Grp., Inc.*, No. 8:22-cv-02670-GLS (D. Md., filed Oct. 18, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Complaint%20Passport%20Auto%20Group%2C%20Inc.%2C%20et%20al..pdf. This is the second FTC action against Passport in recent years. See <https://www.ftc.gov/news-events/news/press-releases/2018/10/washington-dc-area-car-dealerships-marketing-firm-settle-deceptive-advertising-charges>.

car-dealerships-marketing-firm-settle-deceptive-advertising-charges.

⁹¹ *FTC v. Passport Auto. Grp., Inc.*, No. 8:22-cv-02670 (D. Md. Oct. 18, 2022) (stipulated order for permanent injunction, monetary judgment, and other relief), available at https://www.ftc.gov/system/files/ftc_gov/pdf/Order%20As%20Filed.pdf.

⁹² 12 CFR 1002.4(a).

⁹³ 12 CFR 1002.7(d)(1).

⁹⁴ 12 CFR 1002.7(d)(1).

⁹⁵ 12 CFR 1002.4(a); 12 CFR 1002.4(b).

⁹⁶ 12 CFR 1002.9(a)(2); (b)(2).

⁹⁷ 12 CFR 1002.9(a)(1); (a)(2);(b)(2).

B, the Non-FFIEC agencies reported that the most frequently cited violations were as follows: the most frequently cited violations were as follows:

TABLE 6—REGULATION B VIOLATIONS CITED BY NON-FFIEC AGENCIES ENFORCING ECOA, 2022

Regulation B violations: 2022	Non-FFIEC Agencies reporting
12 CFR 1002.9(a)(1)(i): Adverse Action—Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor’s approval of, counteroffer to, or adverse action on the application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken; failure to provide ECOA notice.	FCA.

The AMS, SEC, and the SBA reported that they received no complaints based on ECOA or Regulation B in 2022. The FTC is an enforcement agency and does not conduct compliance examinations.

5.1.4. Referrals to the Department of Justice

The Agencies assigned enforcement authority under section 704 of ECOA must refer a matter to DOJ when there is reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.¹⁰⁴ They also may refer other potential ECOA violations to DOJ.¹⁰⁵ In 2022, four agencies (FDIC, NCUA, FRB, and CFPB) collectively made 23 such referrals to DOJ involving discrimination in violation of ECOA. This is an increase of 91 percent in such referrals from 12 in 2020. A brief description of those matters follows.

In 2022, the FDIC referred 12 fair lending matters to DOJ. The referrals included: two matters involving discrimination on the basis of national origin in auto loan pricing; one matter involving discrimination on the basis of sex in auto loan pricing; two matters involving discrimination on the basis of race in mortgage lending (redlining); one matter involving discrimination in underwriting consumer loans on the basis of marital status; two matters involving discrimination in underwriting credit cards on the basis of age; two matters involving discrimination in underwriting unsecured consumer loans on the basis of exercising rights under the Consumer Credit Protection Act; one matter involving discrimination in underwriting unsecured consumer loans on the basis of receipt of public assistance income; and one matter involving discrimination in pricing/underwriting of consumer loans on the basis of marital status.

As reported in section 1.2.2 above, in 2022, the CFPB referred five fair lending matters to DOJ. The referrals included four matters involving discrimination on the basis of race and national origin in mortgage lending (redlining) and one matter involving discrimination in underwriting mortgage loans on the basis of receipt of public assistance income.

In 2022, the NCUA referred five matters to DOJ. The referrals all involved discrimination in underwriting consumer loans on the basis of age, and one referral also involved discrimination in underwriting consumer loans on the basis of marital status.

The FRB referred one matter to DOJ during the reporting period, which involved discouragement of applicants or prospective applicants in mortgage lending on the basis of marital status.¹⁰⁶

5.2. Reporting on HMDA

The CFPB’s annual HMDA reporting requirement calls for the CFPB, in consultation with HUD, to report annually on the utility of HMDA’s requirement that covered lenders itemize loan data in order to disclose the number and dollar amount of certain mortgage loans and applications, grouped according to various characteristics.¹⁰⁷ The CFPB, in consultation with HUD, finds that itemization and tabulation of these data furthers the purposes of HMDA.

6. Looking Forward: the Future of Fair Lending

The ubiquity of advanced technologies throughout the consumer financial services marketplace calls for vigilance against discrimination using all of the CFPB’s available tools. Advanced algorithmic technologies, as well as old technology now marketed as artificial intelligence, are now often used throughout the entire life cycle of

financial services products. Beginning with the sophisticated digital marketing that targets individual consumers, continuing to the fraud screens and underwriting models that determine who gets offered credit and at what price, and finally to the chatbots and behavioral analytics that increasingly govern consumers’ experience post-origination, consumers increasingly cannot avoid these technologies. The CFPB has been increasing its expertise in data science and analytics to ensure that we can identify fair lending violations at each stage of the credit lifecycle and hold creditors and service providers accountable for fully complying with fair lending and other Federal consumer financial laws, regardless of the technology they choose to use.

The CFPB is keenly focused on the risks that these technologies present to individual consumers, small businesses, communities, and the market as a whole. Big tech platforms, with their vast consumer surveillance and data harvesting infrastructure, have the potential to undermine fairness and competition. Some of these platforms are collecting and monetizing highly sensitive consumer data, including the types of data that are not appropriate to use in the context of a credit decision. Indeed, vast troves of sensitive data available about consumers that institutions using more traditional methods would never have used in a credit decisioning context are now fueling highly complex, black box algorithms. As affirmed by our *Circular, Adverse Action Notification Requirements in Connection with Credit Decisions Based on Complex Algorithms*, creditors must follow the law and provide statements of specific reasons to applicants against whom adverse action is taken, regardless of the technology they use.

⁹⁸ 12 CFR 1002.9(a)(1)(i); (a)(2); (b)(1); (b)(2).

⁹⁹ 12 CFR 1002.9(a)(1)(i); (b)(2).

¹⁰⁰ 12 CFR 1002.9(a)(2).

¹⁰¹ 12 CFR 1002.14(a)(1)–(4).

¹⁰² 12 CFR 1002.14(a)(1); (a)(2).

¹⁰³ 12 CFR 1002.14(a)(2).

¹⁰⁴ 15 U.S.C. 1691e(g).

¹⁰⁵ *Id.*

¹⁰⁶ This referral also involved discrimination on the basis of familial status in violation of the Fair Housing Act.

¹⁰⁷ 12 U.S.C. 2807.

These risks, combined with digital marketing techniques that allow firms to target consumers with surgical precision and to leverage dark patterns, can have the potential to create an unfair marketplace that harms consumers and law-abiding institutions. As described in our interpretative rule, *Limited Applicability of Consumer Financial Protection Act’s “Time or Space” Exception to Digital Marketers*, digital marketers acting as service providers can be held liable by the CFPB or other law enforcers for committing unfair, deceptive, or abusive acts or practices as well as other consumer financial protection violations.

The CFPB will remain vigilant against these risks and encourages innovation that follows the law, promotes competitive markets, and delivers long-term benefits to consumers and small businesses in the form of sustainable

financial products and services. For example, the CFPB is considering as part of its personal financial data rights rulemaking to implement section 1033 of the Dodd-Frank Act, options that would allow consumers to more easily walk away from companies offering bad products and poor service and move towards companies competing for their business with alternate or innovative products and services. Technology should be used to complement responsible banking, rather than to undermine it.

The CFPB’s work in 2022 underscored that financial service providers are expected to play by the same rules no matter what technology they use. In 2023, the CFPB will continue to guard against violations throughout the entire credit lifecycle. We will continue to develop our ability to leverage advanced data analytics to identify and remedy

violations. Though some technologies may be billed as new, the risks of predation and exclusion that they may pose are not. The CFPB was founded in the wake of the 2008 financial crisis, when products initially billed as new and innovative resulted in catastrophic harm to consumers and communities across the country. The CFPB will continue to heed the lessons learned from that crisis. Product benefits based on atypical use cases should be questioned and tested to protect consumers and small businesses from future harm cloaked in vague promises of innovation and inclusion. The CFPB will continue to dedicate and develop resources to dive deeply into how financial institutions are using, understanding, testing, and improving these technologies through the entirety of the credit lifecycle.

Appendix A: Defined Terms

Term	Definition
AMS	Agricultural Marketing Service of the U.S. Department of Agriculture.
ASC	FFIEC’s Appraisal Subcommittee.
AVM	Automated Valuation Models.
CFPA	Consumer Financial Protection Act of 2010.
CFPB	Consumer Financial Protection Bureau.
CRA	Community Reinvestment Act.
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act.
DOJ	U.S. Department of Justice.
DOT	U.S. Department of Transportation.
ECOA	Equal Credit Opportunity Act.
FCA	Farm Credit Administration.
FDIC	Federal Deposit Insurance Corporation.
FHA	Fair Housing Act.
FHFA	Federal Housing Finance Agency.
Federal Reserve Board or FRB	Board of Governors of the Federal Reserve System.
FFIEC	Federal Financial Institutions Examination Council—the FFIEC member agencies are the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB). The State Liaison Committee was added to FFIEC in 2006 as a voting member.
FIRREA	Financial Institutions Reform, Recovery, and Enforcement Act of 1989.
FTC	Federal Trade Commission.
GIPSA	Grain Inspection, Packers and Stockyards Administration of the U.S. Department of Agriculture.
GAO	Government Accountability Office.
HMDA	Home Mortgage Disclosure Act.
HUD	U.S. Department of Housing and Urban Development.
MSA	Metropolitan Statistical Area.
NCUA	National Credit Union Administration.
OCC	Office of the Comptroller of the Currency.
PAVE	Property Appraisal and Valuation Equity.
RFI	Request for Information.
SBA	Small Business Administration.
SBREFA	Small Business Regulatory Enforcement Fairness Act of 1996.
SEC	Securities and Exchange Commission.
UDAAP	Unfair, Deceptive, or Abusive Acts or Practices.
USDA	U.S. Department of Agriculture.

Signing Authority

The Director of the Bureau, Rohit Chopra, having reviewed and approved

this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau

Federal Register Liaison, for purposes of publication in the **Federal Register**.

Laura Galban,

*Federal Register Liaison, Bureau of Consumer
Financial Protection.*

[FR Doc. 2023-14197 Filed 7-5-23; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF DEFENSE

Department of the Army, Army Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement for the Yazoo Backwater Area Water Management Project

AGENCY: U.S. Army Corps of Engineers,
Department of the Army, DoD.

ACTION: Notice of intent to prepare a
draft environmental impact statement
for the Yazoo Backwater Area water
management project, Sharkey, Yazoo,
Washington, and Issaquena, and
Humphrey Counties, Mississippi.

SUMMARY: The U.S. Army Corps of
Engineers (USACE), Vicksburg District,
is announcing its intent to prepare an
Environmental Impact Statement (EIS)
for the authorized Yazoo Basin, Yazoo
Backwater, Mississippi, Project
(Project). The EIS will analyze a new
water management solution for the
Project. The EIS will also examine
measures to avoid, minimize, and
mitigate environmental impacts
associated with the Proposed Action
which is the USACE Preferred
Alternative. The EIS process does not
foreclose the authorities of other State
and Federal agencies to assist those
Yazoo Backwater Area communities in
risk management, emergency response,
and community resilience. State and
Federal agencies, with applicable
authorities, would be continually
engaged as necessary throughout the
process.

DATES: All comments and suggestions
must be submitted by August 7, 2023.

ADDRESSES: To ensure the Corps has
sufficient time to consider public input
in the preparation of the Draft EIS,
scoping comments should be submitted
by email at [YazooBackwater@
usace.army.mil](mailto:YazooBackwater@usace.army.mil) or by surface mail to
Mike Renacker at U.S. Army Corps of
Engineer, Vicksburg District, ATTN:
CEMVK-PPMD, 4155 East Clay Street,
Room 248, Vicksburg, MS 39183.

FOR FURTHER INFORMATION CONTACT:
Stacey M. Jensen, in writing at the
Office of the Assistant Secretary of the
Army (Civil Works), 108 Army
Pentagon, Washington, DC 20318-0108;
by telephone at 703-695-6791; and by
email at [YazooBackwater@
usace.army.mil](mailto:YazooBackwater@usace.army.mil).

SUPPLEMENTARY INFORMATION:

1. *Project Background and
Authorization.* After the devastating
Mississippi River Flood of 1927,
Congress passed the 1928 Flood Control
Act (FCA) which authorized the
Mississippi River & Tributaries (MR&T)
project. The Mississippi River Levees
(MRL) project, which was authorized by
the 1928 FCA, as amended, is a
component of the MR&T project and
prevents inundation of the alluvial
valley of the lower Mississippi River
(LMR) which begins at Cape Girardeau,
Missouri, and gently slopes to the Gulf
of Mexico. The Mississippi River levees
protect major cities and towns,
developed industrial areas, valuable
farmlands, and wildlife habitats against
the Project Design Flood (PDF) by
confining flow to the leveed channel
except where it enters backwater areas
or is diverted purposely into floodway
areas. Backwater areas and floodways
were both integral features designed
into the overall MRL project.

Backwater areas are the necessary
result of gaps left in the main-stem
Mississippi River levee system at the
mouths of major tributaries that empty
into the river. During large flood events,
floodwaters from the Mississippi River
back into the gaps and/or block
discharges from the tributary systems
from exiting the backwater areas. The
MR&T project is augmented by four
backwater areas. The St. Francis River
Backwater Area and the White River
Backwater Area in the northern section
of the LMR, the Yazoo River Backwater
Area in the middle section of the LMR,
and Red River Backwater Area in the
southern section of the LMR. These
backwater areas typically operate
through the use of backwater levees
which tie into the MRL system, water
control structures, pumps, and
sometimes connecting channels. The St.
Francis River, White River, and Red
River backwater areas each have
operational pump stations; the Huxtable
pump station was built in 1977,
Graham-Burke pump station was built
in 1964, and Tensas-Cocodrie pump
station was built in 1986, respectively.

Floodways are intended to safely
divert excess floodwaters past critical
reaches in the levee system to prevent
the PDF from exceeding levee design
elevations. The original MR&T project
provided for five floodways which were
the Birds Point-New Madrid floodway
in the northern section of the LMR, the
Boeuf/Eudora floodway in the middle
section of the LMR, and the West
Atchafalaya, Morganza, and Bonnet
Carre floodways in the southern section
of the LMR. The Boeuf/Eudora
floodway, which would have diverted

water from the middle section of the
LMR, from the mouth of the Arkansas
River to Old River, during a PDF, was
the only authorized floodway that was
never implemented and was eventually
removed as an authorized component of
the MR&T project. The Boeuf/Eudora
floodway would have removed
approximately 700,000 cubic feet per
second (cfs) of floodwater flow from the
Mississippi River during the PDF.
Without the Boeuf/Eudora floodway, it
became necessary to confine the PDF
between higher and stronger levees
along the Mississippi River. Prior to the
1941 FCA and in an attempt to reduce
the necessity of the Boeuf/Eudora
Floodway, the cutoff and channel
realignment component of the MR&T
was initiated in 1932 for the middle
section of the LMR. The cutoff and
channel realignment component was
intended to eventually increase the
carrying capacity of the channel and
lower flood stages. Legal action was
initiated in 1929 from landowners over
the use of the Boeuf/Eudora floodway.
By 1941, with the legal conflicts still
unresolved, the Mississippi River
Commission re-examined the MR&T
project but made no formal
recommendation on the floodway issue.
The 1941 FCA formally abandoned all
components of the Boeuf/Eudora
floodway and authorized an increase in
the height of the Mississippi River
levees, a plan developed by the
Mississippi River Commission to
provide flood protection to the Yazoo
Backwater Area.

The Project was authorized by the
FCA of 1941 (Public Law (Pub. L.) 77-
228) and amended by the FCA of 1965
(Pub. L. 89-298). Section 103 of the
Water Resources Development Act
(WRDA) of 1986 established cost
sharing for flood control projects, or
separable elements thereof, on which
construction was initiated after April
30, 1986. This provision would have
required a local cost share to implement
the Project. WRDA of 1996 later
amended section 103 of WRDA 1986 to
define physical construction as the date
of the award of a construction contract,
which restored full Federal
responsibility for the Project. The FCA
of 1941 authorized flood protection to
the Yazoo Backwater Area through a
combination of levees, associated
drainage channels, water control
structures, and a pump station. By 1942
the cutoff and channel realignment
program was completed, and flood
stages were lowered on the Mississippi
River at Vicksburg. However, more
recent hydrologic studies have revealed
that these benefits have largely been

reversed, and peak stages on the Mississippi River at the Vicksburg gage are increasing. To date, the levee, three water control structures, and the connecting channel have been completed as part of the authorized project. The levee, known as the Yazoo Backwater Levee, is an extension of the Mississippi River east bank levee, generally along the west bank of the Yazoo River to a connection with the Will M. Whittington (Lower) Auxiliary Channel Levee in the vicinity of the mouth of the Big Sunflower River. The Yazoo Backwater levee was completed in 1978. The authorized water control structures include the Steele Bayou, Little Sunflower River, and Muddy Bayou structures which were completed in 1969, 1975, and 1978, respectively. These water control structures allow for gravity flow drainage. The connecting channel between the Little Sunflower and Steele Bayou water control structures was completed in 1978. The Yazoo Backwater Area is the only major backwater area in the MR&T project that has an authorized yet unconstructed pump station to evacuate impounded water.

The Yazoo Backwater Levee was designed to reduce flood risks from overbank flooding of the Yazoo River, which is a major tributary that empties into the Mississippi River. Water control structures were incorporated into the Yazoo Backwater Levee to facilitate the release of water from the landside to the riverside of the levee, which is dependent on the elevation of the Mississippi River, and subsequently the Yazoo River. For instance, when the Yazoo River stage is lower than the landside stage at the Steele Bayou water control structure, the structure remains open to allow for the gravity flow release of precipitation driven headwaters from within the Yazoo Basin. Likewise, when the Yazoo River stage is higher than the landside stage at the Steele Bayou water control structure, the structure is closed to prevent Yazoo River floodwaters from entering or backing into the Yazoo Backwater Area (typically referred to as backwater flooding). Closure of the Steele Bayou water control structure also impounds any surface water and precipitation from the 4,093 square mile (2.62 million acres) drainage area of the Yazoo Basin. Once these waters become trapped, due to closure of the structure and no drainage potential into the Yazoo River, the flooding becomes known as a backwater flood event. When these conditions are met, and the continued accumulation from local rainfall events within the Yazoo Basin

continue to drain southward, the backwater flooding is increased. A pump station would evacuate impounded backwater when the water control structures are closed.

The recurring backwater flooding has demonstrated the need to complete the remaining flood damage reduction feature of the Yazoo Basin, Yazoo Backwater, Mississippi, Project. In the twenty-first century alone, the Yazoo Backwater area has experienced some degree of backwater-induced flooding 19 out of the 23 years. The historic 2019 flood inundated over a half million acres of the Yazoo Backwater Area from February to August. Another backwater flood occurred in February of 2020 and devastated the already flood-ravaged area. The 2020 floodwaters peaked only 2 ft lower than in 2019 and flooded over 450,000 acres of land. More volume of water passed through the Mississippi River at Vicksburg during 2019 than ever before in our period of record (1927–2022). During 2020 the second-most volume of water passed through the Mississippi River at Vicksburg. The volume of water passing through in 2019 was more than twice the amount of volume that Lake Erie can hold.

During backwater flood events, stagnant water conditions can remain, often for extended periods of time, until the Yazoo River stage is lower than the landside stage at the Steele Bayou water control structure, at which time the structure can be opened to allow for gravity flow out of the interior Yazoo Basin Area, reducing the landside stages of a given flood event. During prolonged backwater flood events, stagnant conditions create low dissolved oxygen in the water column which impact aquatic species. The backwater flooding also affects terrestrial areas with significant depths of water, restricting usable habitat and available food for terrestrial species. Therefore, these species must leave the flood zone or face mortality. The human population of the Yazoo Backwater Area also suffers significantly. During the 2019 flood, hundreds were displaced from their flooded homes for over six months. Farmers lost their entire 2019 crop season in the affected area.

2. Joint Agency Collaboration Effort. In January 2023, the U.S. Department of the Army (Civil Works) and the Environmental Protection Agency (EPA) signed a Joint Memorandum of Collaboration stating that the agencies are committed to a collaborative and expeditious path forward to establish flood risk reduction in the Yazoo Backwater Area that would be compliant with the Clean Water Act (CWA) and all other applicable laws and

regulations. The U.S. Fish and Wildlife Service (USFWS) was also included in the collaborative effort. The Joint Memorandum identified activities “to enable the Army to deliver a preferred approach on flood risk reduction solution(s) for the YBA by June 2023.” The close collaboration between all three agencies throughout the process would serve the Federal Government in meeting flood risk management objectives, ensuring appropriate consideration of the National Environmental Policy Act (NEPA) and CWA section 404 requirements, addressing the needs of the affected communities, and addressing fish and wildlife issues. Since the issuance of the Joint Memorandum, the USACE, EPA, and USFWS have organized interagency technical and engagement teams to identify issues of concern and develop a draft water management solution. The USACE, EPA, and USFWS also jointly conducted public engagement sessions to allow the public to provide comments on preliminary options under consideration by USACE for a Project. All comments received were cooperatively reviewed by the interagency teams and considered in the development of the USACE Preferred Alternative.

A total of four public engagement sessions were held on February 15, 2023, and a total of four public engagement sessions were held on May 4 and 5, 2023, at the USACE Vicksburg District office. The February 2023 sessions were held to receive input from the communities on their needs and on development of a draft preferred approach, and the May 2023 sessions were held to receive input from the communities on the draft preferred approach. In addition, roundtable sessions were held on February 16, 2023, with various individuals, groups, and organizations, including a session for community leaders, local elected officials, agricultural interests, and environmental organizations. The input gathered throughout these early engagement sessions and on the draft preferred approach was used to inform the development of the USACE Preferred Alternative in this NOI. Transcripts from the May 2023 sessions can be found on the Yazoo Backwater Area Project web page.¹

Commenters spoke on a variety of topics regarding their concerns about, and lived experiences during, flood events, from lack of access to their homes and families, damages to their

¹ <https://www.mvk.usace.army.mil/Missions/Programs-and-Project-Management/Yazoo-Backwater/> (last accessed June 28, 2023).

homes, lack of access to emergency services and education, lack of access to roads and loss of infrastructure, loss of agricultural crops and inability to plant crops, loss of ability to receive payment from crop insurance, economic losses and business hardships with the community being supported generally by agricultural production, loss of recreational values, loss of wetlands through long duration of inundation, as well as trees and other flora, loss of environmental values and harms caused to fish and wildlife, environmental justice concerns, lack of community growth and development opportunities, and impacts to both physical and mental health. The majority of commenters supported a solution that included a structural component. A few commenters stated that only a fully non-structural or nature-based solution should be put forth for any proposed action.

The USACE used the information provided by engagements and comments and the joint agency collaborative efforts to develop its Preferred Alternative for purposes of NEPA compliance. The USACE used information received, such as information related to crop season dates, to modify what the agencies presented to the public in May 2023.

Through this collaborative process, the USACE developed a Preferred Alternative and must go through the NEPA process to identify a final selected alternative for the Project and will fully consider the alternatives described below in the EIS process. To be clear, USACE has not made any irreversible or irremediable commitment of resources regarding USACE's Preferred Alternative and seeks public input on all alternatives proposed for their ability to provide a community-driven flood risk reduction solution to the Yazoo Backwater Area.

3. The USACE Preferred Alternative. The USACE Preferred Alternative is a water management solution to reduce flood risk in the Yazoo Backwater Area, resulting from high stages of the Mississippi River, and consists of structural and nonstructural components. The Preferred Alternative provides flood risk reduction for communities and the local economy. Flood risk reduction will target primary residences (and roads isolating them), schools, infrastructure, commercial properties, and prime farmland while minimizing environmental losses.

The structural component consists of a 25,000 cfs pump operated to manage backwater flooding seasonally. The proposed location for the pump station would be on Steele Bayou adjacent to

the water control structure in Issaquena County, Mississippi. The backwater will be managed at 90.0 feet (ft), National Geodetic Vertical Datum (NGVD throughout) at the Steele Bayou gage, during the crop season of March 16th through October 15th and will be managed at 93.0 ft at the Steele Bayou gage during the non-crop season of October 16th through March 15th. These elevations are close to the elevations for the 2- (89.3 ft) and 5-year (92.0 ft) floodplains. Including a buffer on the extent of the 2- and 5-year floodplains will help to protect wetlands across the entire 2- and 5-year floodplains, particularly those riverine backwater wetlands located at the outer extent of the floodplains, receive sufficient backwater flood inundation to maintain ecological functioning. Managing water to any specific elevation requires the pumps to be initiated at a lower elevation and managing to 93.0 ft in the non-crop season will allow backwater flooding to benefit more wetlands before pumping is initiated. Similarly, managing to 90.0 ft during the crop season will allow backwater flooding to benefit more wetlands before pumping is initiated. Lastly, there are fewer wetlands anticipated to be impacted between the 90.0–93.0 ft elevations than between the 89.3–92.0 ft elevations, which translates to fewer wetlands to assess for impacts and likely less compensatory mitigation needs.

This seasonal water management solution will ensure flood risk reduction for the primary residences and vital infrastructure, preserving primary economic drivers in the community, while avoiding or minimizing adverse impacts to fish, wildlife, and wetland values. During the seasonal water management at the 93.0 ft elevation, minimal functional losses of aquatic resources are anticipated, while some functional losses, such as fish spawning and rearing habitat, are anticipated during the seasonal water management at the 90.0 ft elevation. However, the USACE Preferred Alternative is not anticipated to convert any wetlands to non-wetlands during operation of the water management solution.

The nonstructural component consists of various features to reduce future flood impacts. One nonstructural feature is modification of the operation of the Steele Bayou water control structure to minimize impacts. Currently the structure is operated to maintain water levels in the Yazoo Backwater Area between 68.5 and 70.0 ft. The Preferred Alternative will modify operation of the structure to maintain water levels in the Yazoo Backwater Area at approximately 75.0 ft. This feature would allow for

more exchange of water between the riverside and landside of the Yazoo Backwater Levee, mimicking more natural flood pulses and therefore benefiting the aquatic environment. Water levels would be maintained below top bank of the stream channels and therefore will not result in an increase in flood risk. Modifications to the Steele Bayou water control structure operation manual would be completed as a joint effort between USACE, EPA, and the USFWS. The remaining nonstructural features consist of acquisition (*i.e.*, property buyouts) or floodproofing of properties. Floodproofing of properties includes additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, and structures and their contents. Floodproofing options may include, but are not limited to, construction of ring levees, elevating homes, septic and sewer protection, and raising road elevations. Any floodproofing option outside of USACE authority will be coordinated with the appropriate State and/or Federal agency. A mitigation plan will be developed to fully compensate for all unavoidable environmental impacts and would be approved by USACE, EPA, and USFWS. In addition to the mitigation plan, a comprehensive monitoring and adaptive management plan will be developed as a joint effort between USACE, EPA, and USFWS. This plan will provide monitoring guidelines throughout the construction and operation of the Preferred Alternative and describe practical solutions to an array of potential environmental challenges in the Yazoo Backwater Area, as well as the Yazoo Basin, potentially associated with the USACE Preferred Alternative.

4. Other Alternatives to be Considered. The EIS will evaluate the USACE Preferred Alternative water management solution described above. As a result of the early joint agency public engagement in the pre-scoping process, three additional reasonable alternatives were developed for consideration in the EIS: the No Action Alternative; variations of the Preferred Alternative providing variations on the crop season dates; an alternative to not exceed the 90.0 ft elevation in water management year round (*i.e.*, no seasonal water management); and, a fully non-structural solution alternative (*i.e.*, without structural pumps) using the non-structural methods described above in the Preferred Alternative but more extensive to provide flood risk reduction for all primary residences

impacted in the Yazoo Backwater Area. Impacts and environmental consequences of the alternatives on the affected environment will be evaluated and compared for the future with project and future without project conditions.

5. *Scoping.* The USACE invites all affected Federal agencies, Tribal Nations, State and local agencies, community members with environmental justice concerns implicated by the project, other interested parties, and the general public to participate in the NEPA scoping process during development of the EIS. The purpose of the public scoping process is to provide information to the public, narrow the scope of analysis to significant environmental issues, serve as a mechanism to solicit agency and public input on potential alternatives and issues of concern, and ensure full and open participation in scoping for the EIS. As previously described, the USACE has already provided a number of public opportunities for input that helped inform the development of the USACE Preferred Alternative including robust early engagement and pre-scoping meetings and a written comment period. The engagement process continues in the scoping process described in this NOI. The USACE requests input from interested parties regarding any potential mitigation alternatives and information and analyses relevant to impacts associated with the alternatives, including the USACE Preferred Alternative. Project information can be found on the USACE project website.² Comments can be submitted via the methods in the **ADDRESSES** section above. All personally identifiable information (for example, name, address, etc.) voluntarily submitted by a commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

6. *Potentially Significant Issues.* The EIS will provide data and analyses on, but is not limited to, the following resources: bottomland hardwood wetlands and other wetland resources, endangered species, waterfowl, fisheries, water quality, downstream effects, cultural resources, environmental justice, recreation, and where appropriate consideration of ongoing and projected effects of climate change and greenhouse gas emissions. Wetlands, downstream effects, aquatics,

² <https://www.mvk.usace.army.mil/Missions/Programs-and-Project-Management/Yazoo-Backwater/> (last accessed on June 29, 2023).

and environmental justice are discussed briefly below.

Wetlands: The USACE Preferred Alternative will be designed to avoid and minimize wetland impacts. Aside from the minimal unavoidable wetland losses associated with construction of an expanded footprint of the pump station facility, the USACE's Preferred Alternative is designed to result in no conversion of wetlands to non-wetlands. Some wetland functional loss is anticipated to occur during the crop season water management period. The USACE will collaborate with EPA and USFWS to estimate wetland impacts and identify compensatory mitigation methods to offset unavoidable impacts.

Downstream Effects: Recent studies have shown the additional water from 25,000 cfs pumps, operating at full capacity, is approximately 1% of the Mississippi River highwater flow, representing a nearly immeasurable contribution to the outflow at the Vicksburg Gage. The additional flow would minimally increase the water surface stage, which would have no appreciable effect to downstream flooding. Water quality impacts are anticipated to be insignificant because the total load of nutrients and organic carbon that will be exported downstream would not be altered because of pump operation. The overall contribution of nutrients downstream, resultant from pump operation, will only affect the timing of nutrient delivery, but not the overall appreciable loading downstream in the Mississippi River.

Aquatics: The USACE Preferred Alternative is anticipated to result in some loss of spawning and rearing habitat, primarily during the crop season. The USACE will collaborate with EPA and USFWS to estimate impacts to fish and other aquatic species and identify compensatory mitigation methods to offset any impacts. Current data shows hypoxia occurs during major backwater flood events and this hypoxia negatively affects certain fish species and other aquatic organisms. Flood-induced hypoxia during the spring and early summer likely impacts successful spawning and rearing regardless of the amount of aquatic habitat available. The EIS will analyze environmental and adaptive management plans to reduce the spatial extent and duration of hypoxia.

Environmental Justice: Backwater flooding events cause severe economic damages to all populations in the Yazoo Backwater Area by destroying homes, farmland, wildlife resources, community infrastructure, and access routes used by residences and the

public safety system. The majority of the Yazoo Backwater Area is home to low-income or minority communities which meet the threshold criteria of at least 20 percent or more of households having incomes below poverty levels or an area having a majority of residents identifying as a minority. The Yazoo Backwater Area is also designated as disadvantaged by the Council on Environmental Quality's Climate and Economic Justice Screening Tool.³ Backwater flooding events create disproportionately high adverse human health and environmental effects to these minority, low-income, and underserved communities. Meaningful outreach to communities with environmental justice concerns will be conducted and the EIS will compare the current backwater flood conditions with the future flood conditions across the alternatives and analyze the impacts to each of the communities with environmental justice concerns.⁴

7. *Anticipated NEPA Schedule.* The current schedule anticipates the release of the draft EIS by the USACE for public review and comment in December 2023. After it is published, the USACE will hold a public meeting(s) to present the results of the analysis, to receive comments, and to address questions concerning the Preferred Alternative.

Approved by:
Michael L. Connor,
Assistant Secretary of the Army (Civil Works).
[FR Doc. 2023-14279 Filed 7-5-23; 8:45 am]
BILLING CODE 3720-58-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2023-SCC-0117]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for the International Research and Studies (IRS) Program (1894-0001)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

³ <https://screeningtool.geoplatform.gov/en> (last accessed June 25, 2023).

⁴ The EIS will also consider Executive Order 14096, Revitalizing Our Nation's Commitment to Environmental Justice For All, issued on April 26, 2023.

DATES: Interested persons are invited to submit comments on or before August 7, 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 Cheryl Gibbs, 202-453-5690.

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: Application for the International Research and Studies (IRS) Program (1894-0001).

OMB Control Number: 1840-0795.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 50.

Total Estimated Number of Annual Burden Hours: 3,333.

Abstract: This information collection (OMB 1840-0795) includes application instructions and forms for the International Research and Studies (IRS) Program (CFDA Number 84.017), authorized under title VI of the Higher Education Act of 1965, as amended (20 U.S.C. 1125). The program provides grants to institutions, public and private

agencies, organizations, and individuals to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields.

The type of collection is a revision of the previously approved information collection (application). A revision of the application instructions and forms is necessary for IFLE to conduct the future competitions and complete the Department's required grant-making activities.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894-0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: June 29, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023-14203 Filed 7-5-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2023-SCC-0122]

Agency Information Collection Activities; Comment Request; Educational Opportunity Centers Program (EOC) Annual Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before September 5, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2023-SCC-0122. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason,

the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 6W203, Washington, DC 20202-8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Marie Julienne, (202) 987-1054.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Educational Opportunity Centers Program (EOC) Annual Performance Report.

OMB Control Number: 1840-0830.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments; private sector.

Total Estimated Number of Annual Responses: 183.

Total Estimated Number of Annual Burden Hours: 1,464.

Abstract: The Department of Education (ED) collects Annual Performance Reports (APRs) from Educational Opportunity Centers (EOC) grantees under the authority of title IV, part A, subpart 2, division 1, sections 402A and 402B of the Higher Education Act of 1965, as amended, the program regulations in 34 CFR 644, and the Education Department General Administrative Regulations (EDGAR), in 34 CFR 74.51, 75.720, and 75.732. The information that grantees submit in their APRs allows ED to annually assess each grantee's progress in meeting their project's approved goals and objectives. The APR data that grantees submit are compared with the projects' approved objectives to determine the projects' accomplishments, to make decisions regarding whether funding should be continued, and to award "prior experience" points. The regulations for this program provide for awarding up to 15 points for prior experience (34 CR 644.22). During a competition for new grant awards, the prior experience points are added to the average of the peer reviewers' scores to arrive at a total score for each application. Funding recommendations and decisions are primarily based on the rank order of applications on the slate; therefore, assessment of prior experience points, based on data in the annual performance report, is a crucial part of the overall application process.

Further, this performance report form is the main source of data for the Department's response to the requirements of the Government Performance and Results Act (GPRA) for this program. In addition, the Department uses the annual performance reports to produce program level data for annual reporting, budget submissions to OMB, Congressional hearings and inquiries, and responding to inquiries from higher education interest groups and the general public.

EOC APRs are prepared and submitted by EOC grant projects. For each EOC grant project, the grant project director of record completes, or supervises the completion of the data submission process. The grant project director supervises the administration of an EOC grant. An EOC grant provides counseling and information on college admissions to qualified adults who want to enter or continue a program of postsecondary education. The program also provides services to improve the financial and economic literacy of participants. An important objective of the program is to counsel participants on financial aid options, including basic financial planning skills, and to assist in the application process. The goal of the

EOC program is to increase the number of adult participants who enroll in postsecondary education institutions.

The proposed revision to the APR entails replacement of Competitive Preference Priority (CPP) questions with new CPP questions of equal response time. In addition, the annual number of responses and total annual burden hours have been adjusted to reflect an increase in the size of the reporting universe.

Dated: June 29, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023-14207 Filed 7-5-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2023-SCC-0063]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Case Service Report (RSA-911)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before August 7, 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 Christopher Pope, (202) 245-7375.

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: Case Service Report (RSA-911).

OMB Control Number: 1820-0508.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 312.

Total Estimated Number of Annual Burden Hours: 12,236,731.

Abstract: The Case Service Report (RSA-911) is used to collect individual level data on State Vocational Rehabilitation (VR) program participants on a quarterly basis. The data collected in this report are mandated by section 101(a)(10) and 607 of the Rehabilitation Act of 1973 (Act) and section 116(d) of the Workforce Innovation and Opportunity Act. In addition, the Rehabilitation Services Administration (RSA) uses data reported through this collection to support its other responsibilities under the Act. Section 14(a) of the Act calls for the evaluation of programs authorized under the Act, as well as an assessment of the programs' effectiveness in relation to cost. Many of these evaluations use RSA-911 data. RSA also uses data captured through the RSA-911 during the conduct of both the annual review and periodic on-site monitoring of VR agencies required by section 107 of the Act to examine the effectiveness of program performance. Other important management activities, such as the provision of technical assistance, program planning, and budget preparation and development, are greatly enhanced through the use of RSA-911 data. In addition, RSA uses RSA-911 data in the exchange of data under a data sharing agreement with the Social Security Administration and the

U.S. Department of Health and Human Services as required by section 131 of the Act. Finally, the RSA-911 is considered to be one of the most robust databases in describing the demographics of the disabled population in the country and as such is used widely in researchers' disability-related analyses and reports.

The current RSA-911 expires on 05/31/2024, which occurs during Program Year 2023 (07/01/2023-06/30/2024). Because RSA must collect the same performance data for the entirety of a Program Year, RSA must begin Program Year 2024 with approval of this proposed revision in place. Thus, RSA is proposing to extend with revisions the RSA-911 for three years. If this revision is approved, VR agencies will collect and report data under this collection for Program Years 2024 through 2026. (07/01/2024-06/30/2027).

Dated: June 29, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023-14219 Filed 7-5-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD23-2-000]

North American Electric Reliability Corporation; Supplemental Notice of Joint Technical Conference

As announced in the Notice of Joint Technical Conference issued in this proceeding on May 30, 2023, the Federal Energy Regulatory Commission (Commission) and North American Electric Reliability Corporation (NERC) staff will convene a technical conference on August 10, 2023, from approximately 9:00 a.m. to 4:30 p.m. Eastern Time.

The purpose of this conference is to discuss physical security of the Bulk-Power System, including the adequacy of existing physical security controls, challenges, and solutions. The conference will include two parts and four panel discussions. Part 1 will address the effectiveness of Reliability Standard CIP-014-3 (Physical Security) and include two panels on the applicability of CIP-014-3 and minimum levels of physical protection. Part 2 will address solutions beyond Reliability Standard CIP-014-3 and

include two panels on physical security best practices and operational preparedness and planning a more resilient grid.

Attached to this Supplemental Notice is an agenda for the technical conference, which includes more detail for each panel. An additional supplemental notice will be issued with details on expected panelists. Only invited panelists and staff from the Commission and NERC will participate in the panel discussions. Interested parties may listen and observe, and written comments may be submitted after the conference in Docket No. RD23-2-000.

The conference will be held in-person at NERC's headquarters at 3353 Peachtree Road NE, Suite 600, North Tower, Atlanta, GA 30326. Information on travelling to NERC's Atlanta office is available here. The conference will be open for the public to attend, and there is no fee for attendance. It will be transcribed and webcast. Those observing via webcast may register here. Those who would like to attend in-person may register here. Space is limited for in-person attendance and therefore registration is required. In-person attendees are encouraged to ensure they have a confirmed in-person registration prior to finalizing any travel plans. Information on this conference will also be posted on the Calendar of Events on the Commission's website, www.ferc.gov, prior to the event.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to accessibility@ferc.gov, call toll-free (866) 208-3372 (voice) or (202) 208-8659 (TTY), or send a fax to (202) 208-2106 with the required accommodations. The conference will also be transcribed. Transcripts will be available for a fee from Ace Reporting, (202) 347-3700.

For more information about this technical conference, please contact Terrance Clingan at Terrance.Clingan@ferc.gov or (202) 502-8823. For information related to logistics, please contact Lonnie Ratliff at Lonnie.Ratliff@nerc.net or Sarah McKinley at Sarah.McKinley@ferc.gov or (202) 502-8004.

Dated: June 29, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-14261 Filed 7-5-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3025-032]

Green Mountain Power Corporation; Notice of Application for Surrender of License Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Surrender of license.
- b. *Project No:* P-3025-032.
- c. *Date Filed:* March 22, 2023.
- d. *Applicant:* Green Mountain Power Corporation.
- e. *Name of Project:* Kelley's Falls Hydroelectric Project.
- f. *Location:* The project is located on the Piscataquog River in Hillsborough County, New Hampshire (fill out as applicable to your project).
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.
- h. *Applicant Contact:* Jason Lisai, Director, Generation Operations, Green Mountain Power, 802-655-8723, jason.lisai@greenmountainpower.com.
- i. *FERC Contact:* Diana Shannon, (202) 502-6136, diana.shannon@ferc.gov.
- j. *Deadline for filing comments, motions to intervene, and protests:* July 31, 2023.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests 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 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 the

docket number P-3025-032. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* On March 30, 2022, the licensee filed a relicense application for the project. Upon determining that the project would not be financially viable given the expected requirements of any new license, the licensee proposes to instead surrender the project license. The licensee proposes to leave the facilities in place, including the project dam which is owned by the state of New Hampshire. No ground disturbing activities are proposed with surrender of the project license.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor 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.

p. 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 29, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-14255 Filed 7-5-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2079-111]

Placer County Water Agency; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 Code of Federal Regulations (CFR) part 380, Commission staff reviewed Placer County Water Agency's application for a non-capacity amendment of the license for the Middle Fork American River Project No. 2079 (project) and have prepared an Environmental Assessment (EA). The licensee proposes to amend the license to implement the Duncan Creek

Diversion Improvement Project. As proposed, the licensee would modify the diversion to facilitate instream flows and pulse flows required by the project license. The licensee proposes to modify the diversion by: (1) modifying the spillway; (2) adding a new intake bay, which would include a trash rack, fish screen, and downstream fish passage; and (3) installing two new micro-hydro units. The 223.788-megawatt project is in Placer and El Dorado counties, California on the Middle Fork of the American River, the Rubicon River, and Duncan Creek and North and South Fork Long Canyon creeks. The project occupies federal lands administered by the U.S. Forest Service.

The EA contains Commission staff's analysis of the potential environmental effects of the proposed amendment and concludes that it would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, (202) 502-8659.

You may also register online at <https://ferconline.ferc.gov/eSubscription.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact David Rudisail at 202-502-6376 or David.Rudisail@ferc.gov.

Dated: June 29, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-14260 Filed 7-5-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-1790-023; ER10-2273-005; ER10-2468-005; ER10-2481-007; ER10-2597-007; ER10-3196-005; ER11-2041-018;

ER11-2042-018; ER12-1825-037; ER13-33-008; ER14-2672-024; ER21-1716-005; ER22-2519-003; ER23-1470-001; ER23-1476-001.

Applicants: Cottontail Solar 8, LLC, Cottontail Solar 2, LLC, Bellflower Solar 1, LLC, BP Energy Company, BP Energy Retail Company LLC, Collegiate Clean Energy, LLC, BP Energy Retail Company California LLC, Seneca Energy, II LLC, Innovative Energy Systems, LLC, PEI Power LLC, Fowler Ridge III Wind Farm LLC, Ingenco Wholesale Power, L.L.C., Fowler Ridge Wind Farm LLC, PEI Power II, LLC, BP Energy Company.

Description: Triennial Market Power Analysis for Northeast Region of BP Energy Company, et al.

Filed Date: 6/27/23.

Accession Number: 20230627-5206.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER10-2527-011; ER10-2532-019; ER10-2535-013; ER20-1610-004; ER23-842-002; ER23-843-002; ER23-1497-001; ER23-1595-001.

Applicants: LRE Energy Services, LLC, GSG Wind, LLC, Oak Trail Solar, LLC, Big Plain Solar, LLC, Lone Tree Wind, LLC, Mendota Hills, LLC, Crescent Ridge LLC, Allegheny Ridge Wind Farm, LLC.

Description: Updated Market Power Analysis for Northeast Region and Notice of Non-Material Change in Status of Allegheny Ridge Wind Farm, LLC, et al.

Filed Date: 6/28/23.

Accession Number: 20230628-5187.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER10-2906-020; ER10-2908-020; ER12-1301-011; ER15-1637-001; ER17-19-001; ER19-1716-008.

Applicants: Morgan Stanley Energy Structuring, L.L.C., Red Oak Power, LLC, Bayonne Energy Center, LLC, Zone J Tolling Co., LLC, MS Solar Solutions Corp., Morgan Stanley Capital Group Inc.

Description: Updated Market Power Analysis for Northeast Region of Morgan Stanley Capital Group Inc., et al.

Filed Date: 6/28/23.

Accession Number: 20230628-5188.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER14-1140-006; ER10-1484-030; ER12-2381-016; ER13-1069-019; ER21-2001-001; ER22-1777-002; ER22-1779-002.

Applicants: Marion County Solar Project, LLC, Madison Fields Solar Project, LLC, Shell Chemical Appalachia LLC, MP2 Energy LLC, MP2 Energy NE LLC, Shell Energy North America (US), L.P., Inspire Energy Holdings, LLC.

Description: Updated Market Power Analysis for Northeast Region and

Notice of Non-Material Change in Status of Inspire Energy Holdings, LLC, et al.

Filed Date: 6/28/23.

Accession Number: 20230628-5190.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER16-1720-024; ER21-2137-008.

Applicants: IR Energy Management LLC, Invenergy Energy Management LLC.

Description: Triennial Market Power Analysis for Northeast Region of Invenergy Energy Management LLC, et al.

Filed Date: 6/28/23.

Accession Number: 20230628-5185.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER19-665-002; ER19-666-002; ER19-667-003; ER19-669-003; ER19-2621-002.

Applicants: FirstLight Power Management LLC, Northfield Mountain LLC, FirstLight MA Hydro LLC, FirstLight CT Hydro LLC, FirstLight CT Housatonic LLC.

Description: Updated Market Power Analysis for Northeast Region of FirstLight CT Housatonic LLC, et al.

Filed Date: 6/28/23.

Accession Number: 20230628-5189.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER21-1838-004; ER10-2133-026; ER11-3872-027.
Applicants: Stony Creek Energy LLC, Sheldon Energy LLC, Orangeville Energy Storage LLC.

Description: Triennial Market Power Analysis for Northeast Region of Orangeville Energy Storage LLC, et al.

Filed Date: 6/28/23.

Accession Number: 20230628-5186.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER23-66-002; ER20-2202-003; ER20-2032-003; ER10-2834-008; ER23-139-004; ER17-1438-004; ER17-2056-002; ER23-1500-001; ER10-1252-021; ER23-1501-001; ER23-1502-001; ER10-1246-021; ER10-2821-009; ER20-2671-007; ER23-138-003; ER12-1329-009.

Applicants: Wildcat Wind Farm I, LLC, Watlington Solar, LLC, Water Strider Solar, LLC, Stony Creek Wind Farm, LLC, RWE Clean Energy Wholesale Services, Inc., RWE Supply & Trading US, LLC, RWE Supply & Trading Americas, LLC, RWE Clean Energy Solutions, Inc., RWE Clean Energy QSE, LLC, RWE Renewables O&M, LLC, Radford's Run Wind Farm, LLC, Pleasant Hill Solar, LLC, Munnsville Wind Farm, LLC, Hardin Wind LLC, Cassadaga Wind LLC, Baron Winds LLC.

Description: Updated Market Power Analysis for Northeast Region of Baron Winds LLC, et al.

Filed Date: 6/28/23.

Accession Number: 20230628-5191.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER23-1855-001.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: Tariff Amendment: 2023-06-29_SA 3391 Ameren IL-Maple Flats Solar Energy Sub 3rd Rev GIA (J813) to be effective 4/25/2023.

Filed Date: 6/29/23.

Accession Number: 20230629-5007.

Comment Date: 5 p.m. ET 7/20/23.

Docket Numbers: ER23-2294-000.

Applicants: Vikings Energy Farm LLC.

Description: Baseline eTariff Filing: Vikings Energy Farm MBR Tariff to be effective 6/29/2023.

Filed Date: 6/28/23.

Accession Number: 20230628-5143.

Comment Date: 5 p.m. ET 7/19/23.

Docket Numbers: ER23-2296-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 6989; Queue No. AE1-040 to be effective 5/30/2023.

Filed Date: 6/29/23.

Accession Number: 20230629-5024.

Comment Date: 5 p.m. ET 7/20/23.

Docket Numbers: ER23-2297-000.

Applicants: Midcontinent Independent System Operator, Inc., Montana-Dakota Utilities Co.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2023-06-29 MDU Depreciation Rates to be effective 7/1/2023.

Filed Date: 6/29/23.

Accession Number: 20230629-5029.

Comment Date: 5 p.m. ET 7/20/23.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

The Commission's Office of Public Participation (OPP) supports meaningful

public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

Dated: June 29, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-14253 Filed 7-5-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER23-22-001, EL22-41-000]

Puget Sound Energy, Inc.; Notice of Conference Call

On Tuesday, July 11, 2023, Commission staff will hold a conference call with Puget Sound Energy, Inc. (Puget Sound) beginning at 3 p.m. (Eastern Time). The purpose of the conference call is to discuss Puget Sound's formula rate protocols. The discussion during the conference call will be limited to this matter.

All interested parties are invited to listen by phone. The conference call will not be webcasted or transcribed. However, an audio listen-only line will be provided. Those wishing to access the listen-only line must email Jonathan Taylor at *jonathan.taylor@ferc.gov* by 5 p.m. (Eastern Time) on Friday, July 7, 2023, with your name, email, and phone number, in order to receive the call-in information before the conference call. Please use the following text for the subject line, "ER23-22-001 and EL22-41-000 listen-only line registration."

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1 (866) 208-3372 (voice) or (202) 208-1659 (TTY), or send a FAX to (202) 208-2106 with the required accommodations.

For additional information, please contact Jonathan Taylor at (202) 502-6649 or *jonathan.taylor@ferc.gov*.

Dated: June 29, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-14254 Filed 7-5-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23-852-000.

Applicants: Natural Gas Pipeline

Company of America LLC.

Description: § 4(d) Rate Filing:

Negotiated Rate Agreement Filing—Macquarie #154222 to be effective 7/1/2023.

Filed Date: 6/28/23.

Accession Number: 20230628-5078.

Comment Date: 5 p.m. ET 7/10/23.

Docket Numbers: RP23-853-000.

Applicants: WTG Hugoton, LP.

Description: § 4(d) Rate Filing: Annual

Fuel Retention Percentage Filing 2023-2024 to be effective 8/1/2023.

Filed Date: 6/28/23.

Accession Number: 20230628-5167.

Comment Date: 5 p.m. ET 7/10/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

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 29, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-14256 Filed 7-5-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL23-78-000]

Big Plain Solar, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On June 28, 2023, the Commission issued an order in Docket No. EL23-78-000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Big Plain Solar, LLC's proposed Rate Schedule ¹ is unjust, unreasonable, unduly, discriminatory, or preferential, or otherwise unlawful. *Big Plain Solar, LLC*, 183 FERC ¶ 61,224 (2023).

The refund effective date in Docket No. EL23-78-000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL23-78-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2022), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued

¹ Big Plain Solar, LLC, Rate Schedule Tariff, FERC Electric Tariff, Reactive Power Compensation (0.0.0).

by the President on March 13, 2020. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TYY, (202) 502-8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the “eFile” link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission’s Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Dated: June 29, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-14257 Filed 7-5-23; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1930-090]

Southern California Edison Company; Notice of Intent To File License Application, Filing of Pre-Application Document (Pad), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Process.

b. *Project No.:* 1930-090.

c. *Dated Filed:* May 5, 2023.

d. *Submitted By:* Southern California Edison Company (SCE).

e. *Name of Project:* Kern River No. 1 Hydroelectric Project (Kern 1 Project).

f. *Location:* The Kern 1 Project is located on the lower Kern River on the western slope of the Sierra Nevada, approximately 15 miles east of the City of Bakersfield in Kern County, California. The existing FERC project boundary occupies federal lands within the Sequoia National Forest which is under the jurisdiction of the U.S. Forest Service.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission’s Regulations.

h. *Applicant Contact:* David Moore, Kern River No. 1 Relicensing Project Manager, Southern California Edison Company, 1515 Walnut Grove Avenue, Rosemead, CA 91770; (626) 302-9741; david.moore@sce.com.

i. *FERC Contact:* Jessica Fefer at (202) 502-6631 or email at jessica.fefer@ferc.gov.

j. *Cooperating Agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission’s policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

k. *With this notice, we are initiating informal consultation with:* (a) the U.S. Fish and Wildlife Service and/or the National Oceanic and Atmospheric Administration Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402 and (b) the State Historic Preservation Office, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating SCE as the Commission’s non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. SCE filed with the Commission a Pre-Application Document (PAD), including a proposed process plan and schedule, pursuant to 18 CFR 5.6 of the Commission’s regulations.

n. A copy of the PAD may be viewed on the Commission’s website (<http://www.ferc.gov>) using the “eLibrary” link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call

toll-free, (866) 208-3676 or TYY, (202) 502-8659.

You may register online at <https://ferconline.ferc.gov/FERCOnline.aspx> to be notified via email of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission staff’s Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents using the Commission’s eFiling system at <https://ferconline.ferc.gov/FERCOnline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.gov/QuickComment.aspx>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Support at FERCOnlineSupport@ferc.gov. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-1930-090.

All filings with the Commission must bear the appropriate heading: “Comments on Pre-Application Document,” “Study Requests,” “Comments on Scoping Document 1,” “Request for Cooperating Agency Status,” or “Communications to and from Commission Staff.” Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by September 5, 2023.¹

¹ The Commission’s Rules of Practice and Procedure provide that if a filing deadline falls on a Saturday, Sunday, holiday, or other day when the Commission is closed for business, the filing deadline does not end until the close of business on the next business day. 18 CFR 385.2007(a)(2)

p. 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.

q. The Commission's scoping process will help determine the required level of analysis and satisfy the National Environmental Policy Act (NEPA) scoping requirements, irrespective of whether the Commission prepares an environmental assessment or environmental impact statement.

Scoping Meetings

Commission staff will hold two scoping meetings for the project to receive input on the scope of the NEPA document. An evening meeting will be held at 6:00 p.m. on August 2, 2023, at the Hilton Garden Inn in Bakersfield, California, and will focus on receiving input from the public. A daytime meeting will be held at 9:00 a.m. on the same day, at the same location, and will focus on the concerns of resource agencies, non-governmental organizations (NGOs), and Indian tribes. We invite all interested agencies, Indian Tribes, non-governmental organizations, and individuals to attend one or both meetings. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date: Wednesday, August 2, 2023.

Time: 6:00 p.m. (PST).

Place: Hilton Garden Inn.

Address: 3625 Marriot Drive, Bakersfield, CA 93308.

Phone: (661) 716-1000.

Daytime Scoping Meeting

Date: Wednesday, August 2, 2023.

Time: 9:00 a.m. (PST).

Place: Hilton Garden Inn.

Address: 3625 Marriot Drive, Bakersfield, CA 93308.

Phone: (661) 716-1000.

SD1, which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list and SCE's distribution list. Copies of SD1 may be

viewed on the web at <http://www.ferc.gov>, using the "eLibrary" link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The applicant and Commission staff will conduct an environmental site review of the project. All interested individuals, agencies, tribes, and NGOs are invited to attend. All participants are responsible for their own transportation to/from the project and during the site visit. Participants must wear sturdy, closed-toe shoes, or boots. Please RSVP via email to David.Moore@sce.com or notify David Moore at (626) 302-9494 on or before July 28, 2023 if you plan to attend the environmental site review. The time and location of the environmental site review is as follows:

Kern River No. 1 Project

Date: Tuesday, August 1, 2023.

Time: 9:00 a.m. (PST).

Place: Kern 1 Powerhouse.

Address: 21400 CA-178, Bakersfield, CA 93306.

Participants must meet at the Kern 1 Powerhouse parking lot to begin promptly at 9:00 a.m. with a tour of the powerhouse. After the powerhouse, we will travel to the Democrat Dam and the Democrat put-in/take-out recreation site.

Meeting Objectives

At the scoping meetings, Commission staff will: (1) initiate scoping of the issues; (2) review and discuss existing conditions; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the potential of any federal or state agency or Indian tribe to act as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n of this document.

Meeting Procedures

Commission staff are moderating the scoping meetings. The meetings are recorded by an independent stenographer and become part of the formal record of the Commission proceeding on the project. Individuals, NGOs, Indian tribes, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the NEPA document.

Dated: June 29, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-14262 Filed 7-5-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15287-000]

HGE Energy Storage 3 LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 27, 2022, HGE Energy Storage LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Fort Ross Pumped Storage Project to be located in Sonoma County, California, adjacent to the Pacific Ocean, approximately 1.5 miles northwest of Fort Ross State Historic Park. The sole purpose of a preliminary permit 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 pumped storage hydropower project will consist of: (1) a new upper reservoir with a surface area of 23 acres and a storage volume of 5,600 acre-feet at a maximum water-surface elevation of 1,500 feet mean sea level; (2) a 12,000 foot-long, 10-foot-diameter steel-lined conduit that connects the reservoir to the powerhouse; (3) a 250-foot-long, 30-foot-wide, 100-foot-high, steel-reinforced concrete powerhouse constructed 100 feet below ground level, with five 250-megawatt (MW) reversible variable-speed pump-turbines, with a combined installed capacity of 1,250-MW that discharge into the Pacific Ocean; (4) a 100-foot-high, 30-foot-wide

(2022). Because the filing deadline falls on a Saturday (*i.e.*, September 2, 2023), the filing deadline is extended until the close of business on Tuesday, September 5, 2023.

vertical access tunnel from ground level to the powerhouse; (5) a vertical intake structure and breakwater of undetermined size and design to lead from the tailrace to the powerhouse and to dissipate discharge energy; (6) a 500-foot-long, 250-foot-wide concrete-lined tailrace; and (7) a 0.5-mile-long, 69-kilovolt line extending from the powerhouse to a planned AC–DC converter station. The estimated annual energy production of the project would be approximately 3,714,406 megawatt-hours.

Applicant Contact: Mr. Wayne Krouse, HGE Energy Storage 3 LLC, 2901 4th Avenue South, #B 253, Birmingham, AL 35233; email: wayne@hgenergy.com; phone: (877) 556–6566 X 709.

FERC Contact: Shannon Archuleta; email: shannon.archuleta@ferc.gov; phone (503) 552–2739.

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 filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or OPP@ferc.gov. Comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications should be submitted within 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 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/FEROnline.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 get in touch with FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll-free), or (202) 502–8659 (TTY). Instead 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–15287–000.

More information about this project, including a copy of the application, can be viewed on the Commission's website (<http://www.ferc.gov>) using the “eLibrary” link. Enter the docket number (P–15287) in the docket number field to access the document. For assistance, do not hesitate to get in touch with FERC Online Support.

Dated: June 29, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023–14258 Filed 7–5–23; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2290–122]

Southern California Edison; Notice of Environmental Site Review

On August 1, 2023, at 1:00 p.m. (Pacific Standard Time), Commission staff and Southern California Edison (SCE), the licensee for the Kern River No. 3 Hydroelectric Project No. 2290 (project), will conduct an environmental site review of the project. All interested individuals, agencies, Tribes, and non-governmental organizations are invited to attend.

The site review will include the project powerhouse, Corral Creek Diversion, Salmon Creek Diversion, and commence at Fairview Dam. Please note that all participants are responsible for their own transportation to/from the project and during the site review tour. If you are interested in attending, or have questions regarding the site review, please RSVP David Moore with SCE at David.Moore@sce.com or (626) 302–9494 on or before July 28, 2023.

Participants will meet at the put-in/take-out recreation site just downstream of the project's powerhouse located at: 15171 Sierra Way, Kernville, CA 93238. Participants should arrive early for coordination purposes and to begin the tour promptly at 1:00 p.m. Additionally, participants must wear sturdy, closed-toe shoes, or boots.

Dated: June 29, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023–14259 Filed 7–5–23; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 2

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–57–002.

Applicants: Lee County Generating Station, LLC v. PJM Interconnection, L.L.C.

Description: Joint Request of PJM Interconnection, L.L.C. and Lee County Generating Station, LLC for Waiver of Tariff Provisions, Expedited Consideration and Shortened Comment Period.

Filed Date: 6/28/23.

Accession Number: 20230628–5195.

Comment Date: 5 p.m. ET 7/3/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–1770–001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): AMEA Revised NITSA Amendment Filing (DNR LOC) to be effective 8/1/2023.

Filed Date: 6/29/23.

Accession Number: 20230629–5043.

Comment Date: 5 p.m. ET 7/20/23.

Docket Numbers: ER23–2295–000.
Applicants: Invenergy Solar Project Development LLC.

Description: Petition of Invenergy Solar Project Development LLC for Prospective One-Time Limited Waiver Request of the Deadline Set in Section 212.4(C) of PJM Interconnection, L.L.C. OATT.

Filed Date: 6/28/23.

Accession Number: 20230628–5184.

Comment Date: 5 p.m. ET 7/12/23.

Docket Numbers: ER23–2298–000.
Applicants: Midcontinent Independent System Operator, Inc., Union Electric Company.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2023–06–29_Union Electric d/b/a Ameren Missouri Depreciation Rates to be effective 7/1/2023.

Filed Date: 6/29/23.
Accession Number: 20230629–5045.
Comment Date: 5 p.m. ET 7/20/23.
Docket Numbers: ER23–2299–000.
Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC–Central NITSA–SA 447 to be effective 8/1/2023.

Filed Date: 6/29/23.

Accession Number: 20230629–5054.

Comment Date: 5 p.m. ET 7/20/23.

Docket Numbers: ER23–2300–000.

Applicants: Kentucky Utilities Company.

Description: § 205(d) Rate Filing: Amended APCO Borderline Service Agreement Appendix B to be effective 8/1/2023.

Filed Date: 6/29/23.

Accession Number: 20230629–5072.

Comment Date: 5 p.m. ET 7/20/23.

Docket Numbers: ER23–2301–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2023–06–29—Aurora Solar APSISA—741—0.0.0 to be effective 6/30/2023.

Filed Date: 6/29/23.

Accession Number: 20230629–5081.

Comment Date: 5 p.m. ET 7/20/23.

Docket Numbers: ER23–2302–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6970; Queue No. AE1–227 to be effective 5/30/2023.

Filed Date: 6/29/23.

Accession Number: 20230629–5088.

Comment Date: 5 p.m. ET 7/20/23.

Docket Numbers: ER23–2303–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Amendment: Notice of Cancellation of Rate Schedule No. 310 and Rate Schedule No. 318 to be effective 8/28/2023.

Filed Date: 6/29/23.

Accession Number: 20230629–5108.

Comment Date: 5 p.m. ET 7/20/23.

Docket Numbers: ER23–2304–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2023–06–29—TSGT—E&P—EIM Metering—746—Concurrence to be effective 5/30/2023.

Filed Date: 6/29/23.

Accession Number: 20230629–5109.

Comment Date: 5 p.m. ET 7/20/23.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or OPP@ferc.gov.

Dated: June 29, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14252 Filed 7–5–23; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Technological Advisory Council

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) Technological Advisory Council will hold a meeting on Thursday, August 17, 2023 in the Commission Meeting Room from 10:00 a.m. to 3 p.m. at the Federal Communications Commission, 45 L Street NE, Washington, DC 20554. Additionally, the meeting will be available to the public for viewing via the internet at <http://www.fcc.gov/live>.

DATES: Thursday August 17, 2023.

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

FOR FURTHER INFORMATION CONTACT: Martin Doczkat, Chief, Electromagnetic

Compatibility Division 202–418–2435; martin.doczkat@fcc.gov.

SUPPLEMENTARY INFORMATION: At the August 17th meeting, the TAC will continue to consider and advise the Commission on topics such as 6G, artificial intelligence, advanced spectrum sharing technologies, and emerging wireless technologies. This agenda may be modified at the discretion of the TAC Chair and the Designated Federal Officer (DFO). Meetings are broadcast live with open captioning over the internet from the FCC Live web page at <http://www.fcc.gov/live/>. The public may submit written comments before the meeting to Martin Doczkat, the FCC's Designated Federal Officer for Technological Advisory Council by email: martin.doczkat@fcc.gov or U.S. Postal Service Mail (Martin Doczkat, Federal Communications Commission, 45 L Street NE, Washington, DC 20554). 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 Office of Engineering and Technology at 202–418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted but may not be possible to fill.

Federal Communications Commission.

Ronald T. Repasi,

Chief, Office of Engineering and Technology.

[FR Doc. 2023–14226 Filed 7–5–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at Secretary@fmc.gov, or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are

available through the Commission's website (www.fmc.gov) or by contacting the Office of Agreements at (202)–523–5793 or tradeanalysis@fmc.gov.

Agreement No.: 201405.

Agreement Name: HLAG/ONE IN2 Slot Charter Agreement.

Parties: Hapag-Lloyd AG; and Ocean Network Express Pte., Ltd.

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The Agreement authorizes Hapag-Lloyd AG to charter space to Ocean Network Express Pte. Ltd. in the trades between the U.S. East Coast on the one hand, and India, the United Arab Emirates, Saudi Arabia, Egypt, Morocco and Spain, on the other hand. The parties have requested expedited review.

Proposed Effective Date: 8/13/2023.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/83502>.

Dated: June 30, 2023.

JoAnne O'Bryant,

Program Analyst.

[FR Doc. 2023–14264 Filed 7–5–23; 8:45 am]

BILLING CODE 6730–02–P

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2022–0017]

FEDERAL RESERVE SYSTEM

[Docket ID OP–1779]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA33

NATIONAL CREDIT UNION ADMINISTRATION

[Docket No. 2022–0123]

Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts

AGENCY: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and National Credit Union Administration.

ACTION: Final policy statement.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and National Credit Union Administration (NCUA) (the agencies), in consultation with state bank and credit union

regulators, are issuing a final policy statement for prudent commercial real estate loan accommodations and workouts. The statement is relevant to all financial institutions supervised by the agencies. This updated policy statement builds on existing supervisory guidance calling for financial institutions to work prudently and constructively with creditworthy borrowers during times of financial stress, updates existing interagency supervisory guidance on commercial real estate loan workouts, and adds a section on short-term loan accommodations. The updated statement also addresses relevant accounting standard changes on estimating loan losses and provides updated examples of classifying and accounting for loans modified or affected by loan accommodations or loan workout activity.

DATES: The final policy statement is available on July 6, 2023.

FOR FURTHER INFORMATION CONTACT:

OCC: Beth Nalyvayko, Credit Risk Specialist, Bank Supervision Policy, (202) 649–6670; or Kevin Korzeniewski, Counsel, Chief Counsel's Office, (202) 649–5490. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Board: Juan Climent, Assistant Director, (202) 872–7526; Carmen Holly, Lead Financial Institution Policy Analyst, (202) 973–6122; Ryan Engler, Senior Financial Institution Policy Analyst, (202) 452–2050; Kevin Chiu, Senior Accounting Policy Analyst, (202) 912–4608, Division of Supervision and Regulation; Jay Schwarz, Assistant General Counsel, (202) 452–2970; or Gillian Burgess, Senior Counsel, (202) 736–5564, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

FDIC: Thomas F. Lyons, Associate Director, Risk Management Policy, tlyons@fdic.gov, (202) 898–6850; Peter A. Martino, Senior Examination Specialist, Risk Management Policy, pmartino@fdic.gov, (813) 973–7046 x8113, Division of Risk Management Supervision; Gregory Feder, Counsel, gfeder@fdic.gov, (202) 898–8724; or Kate Marks, Counsel, kmarks@fdic.gov, (202) 898–3896, Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

NCUA: Naghi H. Khaled, Director of Credit Markets, and Simon Hermann, Senior Credit Specialist, Office of Examination and Insurance, (703) 518–6360; Ian Marena, Associate General

Counsel, Marvin Shaw and Ariel Pereira, Senior Staff Attorneys, Office of General Counsel, (703) 518–6540; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Background

On October 30, 2009, the agencies, along with the Federal Financial Institutions Examination Council (FFIEC) State Liaison Committee and the former Office of Thrift Supervision, adopted the Policy Statement on Prudent Commercial Real Estate Loan Workouts (2009 Statement).¹ The agencies view the 2009 Statement as being useful for the agencies' staff and financial institutions in understanding risk management and accounting practices for commercial real estate (CRE) loan workouts.

To incorporate recent policy and accounting changes, the agencies recently proposed updates and expanded the 2009 Statement and sought comment on the resulting proposed Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts (proposed Statement).² The agencies considered all comments received and are issuing this final Statement largely as proposed, with certain clarifying changes based on comments received. The final Statement is described in Section II of the Supplementary Information.

The agencies received 22 unique comments from banking organizations and credit unions, state and national trade associations, and individuals. A summary and discussion of comments and changes incorporated in the final Statement are described in Section III of the Supplementary Information.

The Paperwork Reduction Act is addressed in Section IV of the Supplementary Information. Section V of the Supplementary Information presents the final Statement which is available as of July 6, 2023. This final Statement supersedes the 2009 Statement for all supervised financial institutions.

¹ See FFIEC Press Release, October 30, 2009, available at: <https://www.ffiec.gov/press/pr103009.htm>.

² See OCC, FDIC, NCUA, Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts, 87 FR 47273 (Aug. 2, 2022); Board Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts, 87 FR 56658 (Sept. 15, 2022). While published at different times, the proposed policy statements are substantively the same and are referenced as a single statement in this notice.

II. Overview of the Final Statement

The risk management principles outlined in the final Statement remain generally consistent with the 2009 Statement. As in the proposed Statement, the final Statement discusses the importance of financial institutions³ working constructively with CRE borrowers who are experiencing financial difficulty and is consistent with U.S. generally accepted accounting principles (GAAP).⁴ The final Statement addresses supervisory expectations with respect to a financial institution's handling of loan accommodation and workout matters including (1) risk management, (2) loan classification, (3) regulatory reporting, and (4) accounting considerations. Additionally, the final Statement includes updated references to supervisory guidance⁵ and revised language to incorporate current industry terminology.

Consistent with safety and soundness standards, the final Statement reaffirms two key principles from the 2009 Statement: (1) financial institutions that implement prudent CRE loan accommodation and workout arrangements after performing a comprehensive review of a borrower's financial condition will not be subject to criticism for engaging in these efforts, even if these arrangements result in modified loans with weaknesses that result in adverse classification and (2) modified loans to borrowers who have the ability to repay their debts according to reasonable terms will not be subject to adverse classification solely because the value of the underlying collateral has declined to an amount that is less than the outstanding loan balance.

The agencies' risk management expectations as outlined in the final Statement remain generally consistent with the 2009 Statement, and incorporate views on short-term loan accommodations,⁶ information about

changes in accounting principles since 2009, and revisions and additions to the CRE loan workouts examples.

A. Short-Term Loan Accommodations

The agencies recognize that it may be appropriate for financial institutions to use short-term and less-complex loan accommodations before a loan warrants a longer-term or more-complex workout arrangement. Accordingly, the final Statement identifies short-term loan accommodations as a tool that could be used to mitigate adverse effects on borrowers and encourages financial institutions to work prudently with borrowers who are, or may be, unable to meet their contractual payment obligations during periods of financial stress. The final Statement incorporates principles consistent with existing interagency supervisory guidance on accommodations.⁷

B. Accounting Changes

The final Statement also reflects changes in GAAP since 2009, including those in relation to the current expected credit losses (CECL) methodology.⁸ In particular, the Regulatory Reporting and Accounting Considerations section of the Statement was modified to include CECL references, and Appendix 5 of the final Statement addresses the relevant accounting and supervisory guidance on estimating loan losses for financial institutions that use the CECL methodology.

C. CRE Loan Workouts Examples

The final Statement includes updated information about industry loan workout practices. In addition to revising the CRE loan workouts examples from the 2009 Statement, the proposed Statement included three new examples that were carried forward to the final Statement (Income Producing Property—Hotel, Acquisition, Development and Construction—Residential, and Multi-Family Property). All examples in the final Statement are intended to illustrate the application of

Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Revised): FIL-36-2020 (FDIC); Bulletin 2020-35 (OCC); Letter to Credit Unions 20-CU-13 (NCUA) and Joint Press Release April 7, 2020 (Board).

⁷ *Id.*

⁸ The Financial Accounting Standards Board's (FASB's) Accounting Standards Update 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* and subsequent amendments issued since June 2016 are codified in Accounting Standards Codification (ASC) Topic 326, *Financial Instruments—Credit Losses* (FASB ASC Topic 326). FASB ASC Topic 326 revises the accounting for allowances for credit losses (ACLs) and introduces the CECL methodology.

existing rules, regulatory reporting instructions, and supervisory guidance on credit classifications and the determination of nonaccrual status.

D. Other Items

The final Statement includes updates to the 2009 Statement's Appendix 2, which contains a summary of selected references to relevant supervisory guidance and accounting standards for real estate lending, appraisals, restructured loans, fair value measurement, and regulatory reporting matters.

The final Statement retains information in Appendix 3 about valuation concepts for income-producing real property from the 2009 Statement. Further, Appendix 4 provides the agencies' long-standing special mention and classification definitions that are applied to the examples in Appendix 1.

The final Statement is consistent with the *Interagency Guidelines Establishing Standards for Safety and Soundness* issued by the Board, FDIC, and OCC,⁹ which articulate safety and soundness standards for financial institutions to establish and maintain prudent credit underwriting practices and to establish and maintain systems to identify distressed assets and manage deterioration in those assets.¹⁰

III. Summary and Discussion of Comments

A. Summary of Comments

The agencies received 22 unique comments from banking organizations and credit unions, state and national trade associations, and individuals.¹¹

Many commenters supported the agencies' work to provide updated supervisory guidance to the industry. Some commenters stated that the proposed Statement was reasonable and reflected safe and sound business practices. Further, several commenters stated that the short-term loan accommodation section, accounting

⁹ 12 CFR part 30, appendix A (OCC); 12 CFR part 208 Appendix D-1 (Board); and 12 CFR part 364 appendix A (FDIC).

¹⁰ The NCUA issued the proposed Statement pursuant to its regulation in 12 CFR part 723, governing member business loans and commercial lending, 12 CFR 741.3(b)(2) on written lending policies that cover loan workout arrangements and nonaccrual standards, and appendix B to 12 CFR part 741 regarding loan workout arrangements and nonaccrual policy. Additional supervisory guidance is available in NCUA letter to credit unions 10-CU-02 "Current Risks in Business Lending and Sound Risk Management Practices," issued January 2010, and in the Commercial and Member Business Loans section of the NCUA Examiner's Guide.

¹¹ The agencies also received comments on topics outside the scope of the proposed Statement. Those comments are not addressed herein.

³ For purposes of this final Statement, financial institutions are those supervised by the Board, FDIC, NCUA, or OCC.

⁴ Federally insured credit unions with less than \$10 million in assets are not required to comply with GAAP, unless the credit union is state-chartered and GAAP compliance is mandated by state law (86 FR 34924 (July 1, 2021)).

⁵ Supervisory guidance outlines the agencies' supervisory practices or priorities and articulates the agencies' general views regarding appropriate practices for a given subject area. The agencies have each adopted regulations setting forth Statements Clarifying the Role of Supervisory Guidance. See 12 CFR 4, subpart F (OCC); 12 CFR 262, appendix A (Board); 12 CFR 302, appendix A (FDIC); and 12 CFR 791, subpart D (NCUA).

⁶ See *Joint Statement on Additional Loan Accommodations Related to COVID-19*: SR Letter 20-18 (Board), FIL-74-2020 (FDIC), Bulletin 2020-72 (OCC), and Press Release August 3, 2020 (NCUA). See also *Interagency Statement on Loan*

changes, and additional examples of CRE loan workouts would be a good reference source as lenders evaluate and determine a loan accommodation and workout plan for CRE loans.

Comments also contained numerous observations, suggestions, and recommendations on the proposed Statement, including asking for more detail on certain aspects of the proposed Statement. A number of the comments addressed similar topics including: requesting examiners base any collateral value adjustments on empirical evidence; considering local market conditions when evaluating the appropriateness of loan workouts; clarifying the “doubtful” classification; addressing the importance of global cash flow and considering a financial institution’s ability to support the calculation;¹² clarifying the frequency of obtaining updated financial and collateral information; clarifying and defining terminology; and emphasizing the importance of proactive engagement with borrowers. The following sections discuss in more detail the comments received, the agencies’ response, and the changes reflected in the final Statement.

B. Valuation Adjustments

Some commenters suggested that examiners should be required to provide empirical data to support collateral valuation adjustments made by examiners during loan reviews. The proposed Statement suggested such adjustments be made when a financial institution was unable or unwilling to address weaknesses in supporting loan documentation or appraisal or evaluation processes. For further clarification, the agencies affirmed that the role of examiners is to review and evaluate the information provided by financial institution management to support the financial institution’s valuation and not to perform a separate, independent valuation. Accordingly, the final Statement explains that the examiner may adjust the estimated value of the collateral for credit analysis and classification purposes when the examiner can establish that underlying facts or assumptions presented by the financial institution are irrelevant or inappropriate for the valuation or can support alternative assumptions based on available information.

C. Market Conditions

The proposed Statement referenced the review of general market conditions when evaluating the appropriateness of

loan workouts. Several commenters stated that examiners should focus primarily on local and state market conditions, with less emphasis on regional and national trends, when analyzing CRE loans and determining borrowers’ ability to repay. Considering local market conditions is consistent with the existing real estate lending standards or requirements¹³ issued by the agencies, which state that a financial institution should monitor real estate market conditions in its lending area. In response to these comments, the final Statement clarifies that market conditions include conditions at the state and local levels. Further, to better align the final Statement with regulatory requirements, the agencies included a footnote referencing real estate lending standards or requirements related to monitoring market conditions.

D. Classification

A commenter suggested wording changes in the discussion of a “doubtful” classification to clarify use of that term. The final Statement clarifies that “doubtful” is a temporary designation and subject to a financial institution’s timely reassessment of the loan once the outcomes of pending events have occurred or the amount of loss can be reasonably determined.

E. Global Cash Flow

Some commenters agreed with the importance of a global cash flow analysis as discussed in the proposed Statement. One commenter stated that the global cash flow analysis discussion should be enhanced. Another commenter noted that small institutions may not have information necessary to determine the global cash flow.

The proposed Statement emphasized the importance of financial institutions understanding CRE borrowers experiencing financial difficulty. Furthermore, the proposed Statement recognized that financial institutions that have sufficient information on a guarantor’s global financial condition, income, liquidity, cash flow, contingent liabilities, and other relevant factors (including credit ratings, when available) are better able to determine the guarantor’s financial ability to fulfill its obligation. Consistent with safety and soundness regulations, the agencies emphasize the need for financial

institutions to understand the overall financial condition and resources, including global cash flow, of CRE borrowers experiencing financial difficulty.

The final Statement lists actions that a financial institution should perform to not be criticized for engaging in loan workout arrangements. One such action is analyzing the borrower’s global debt service coverage. The final Statement clarifies that the debt service coverage analysis should include realistic projections of a borrower’s available cash flow and understanding of the continuity and accessibility of repayment sources.

F. Frequency of Obtaining Updated Financial and Collateral Information

Commenters suggested clarifying supervisory expectations for the frequency with which financial institutions should update financial and collateral information for financially distressed borrowers. Consistent with the agencies’ approach to supervisory guidance, the final Statement does not set bright lines; the appropriate frequency for updating such information will vary on a case-by-case basis, depending on the type of collateral and other considerations. Given that each loan accommodation and workout is case-specific, financial institutions are encouraged to use their best judgment when considering the guidance principles in the final Statement and consider each loan’s specific circumstances when assessing the need for updated collateral information and financial reporting from distressed borrowers.

G. Terminology

Some commenters requested that the agencies define certain terms used in the supervisory guidance to illustrate the level of analysis for reviewing CRE loans. Examples include when the term “comprehensive” described the extent of loan review activity and when “reasonable” described terms and conditions offered to borrowers in restructurings or accommodations. Given that each loan accommodation and workout is case-specific, the agencies are of the view that providing more specific definitions of these terms could result in overly prescriptive supervisory guidance. Accordingly, the final Statement does not define these terms. Financial institutions are encouraged to use their best judgment when considering the principles contained in the final Statement and adapt to the circumstances when dealing with problem loans or loan portfolios.

¹² Financial institutions use global cash flow to assess the combined cash flow of a group of people and/or entities to get a global picture of their ability to service their debt.

¹³ See 12 CFR 34.62(a) (OCC); 12 CFR 208.51(a) (Board); and 12 CFR 365.2(a) (FDIC) regarding real estate lending standards at financial institutions. For NCUA requirements, refer to 12 CFR part 723 for commercial real estate lending and 12 CFR part 741, appendix B, which addresses loan workouts, nonaccrual policy, and regulatory reporting of workout loans.

A few commenters requested changes or more specific supervisory guidance on the definition of a short-term loan accommodation. The agencies are of the view that the scope of coverage on accommodations, as proposed, maintains flexibility for financial institutions. The proposed Statement discussed characteristics that can constitute a short-term accommodation and remained consistent with earlier supervisory guidance issued on the topic. Further, the agencies agree that the proposed Statement's discussion of short-term loan accommodations and long-term loan workout arrangements in sections II and IV, respectively, sufficiently differentiated short-term accommodations and longer-term workouts as separate and distinct options when working with financially distressed borrowers. Accordingly, the agencies have not included revisions related to guidance on short-term loan accommodations¹⁴ in the final Statement.

H. Proactive Engagement With Borrowers

One commenter stated that the agencies should incentivize proactive engagement with borrowers. The agencies agree that proactive engagement is useful and have clarified in the final Statement that proactive engagement with the borrower often plays a key role in the success of a workout.

I. Responses to Questions

In addition to a request for comment on all aspects of the proposed Statement, the agencies asked for responses to five questions.

The first question asked, "*To what extent does the proposed Statement reflect safe and sound practices currently incorporated in a financial institution's CRE loan accommodation and workout activities? Should the agencies add, modify, or remove any elements, and, if so, which and why?*" Commenters noted that the Statement does reflect safe and sound practices and did not request significant changes to those elements of the Statement. Commenters generally agreed with the supervisory guidance and the revisions proposed and stated that the supervisory guidance is reasonable, clear, and useful in analyzing and managing CRE borrowers.

¹⁴ For the purposes of the final Statement, an accommodation includes any agreement to defer one or more payments, make a partial payment, forbear any delinquent amounts, modify a loan or contract, or provide other assistance or relief to a borrower who is experiencing a financial challenge.

The second question asked, "*What additional information, if any, should be included to optimize the guidance for managing CRE loan portfolios during all business cycles and why?*" One commenter responded that the supervisory guidance was sufficient as written and that no additional changes were needed. Another commenter suggested the agencies add an appendix containing the components of adequate policies and procedures. The final Statement contains several updated appendices with references to pertinent regulations and supervisory guidance. The final Statement also includes footnotes to highlight the supervisory guidance contained in the existing real estate lending regulation.

The third question asked, "*Some of the principles discussed in the proposed Statement are appropriate for Commercial & Industrial (C&I) lending secured by personal property or other business assets. Should the agencies further address C&I lending more explicitly, and if so, how?*" A few commenters suggested including more detail regarding C&I lending in the final Statement, while one commenter stated that no expansion was needed. The agencies recognize the unique risks associated with CRE lending and acknowledge the several commenters who cited the usefulness of having supervisory guidance that specifically addresses CRE risks. Accordingly, the final Statement remains directed to CRE lending. The final Statement acknowledges that financial institutions may find the supervisory guidance more broadly useful for commercial loan workout situations, stating "[c]ertain principles in this statement are also generally applicable to commercial loans that are secured by either real property or other business assets of a commercial borrower." In the future, the agencies may consider separate supervisory guidance to address non-CRE loan accommodations and workouts.

The fourth question asked, "*What additional loan workout examples or scenarios should the agencies include or discuss? Are there examples in Appendix 1 of the proposed Statement that are not needed, and if so, why not? Should any of the examples in the proposed Statement be revised to better reflect current practices, and if so, how?*" Two commenters had specific recommendations for certain examples in Appendix 1. One commenter said the examples should contain more detail; another suggested the agencies either change or delete a scenario in one of the examples. The final Statement retains all of the examples and scenarios largely

as proposed and includes additional detail clarifying the discussion of a multiple note restructuring.

The fifth question asked, "*To what extent do the TDR examples continue to be relevant in 2023 given that ASU 2022-02 eliminates the need for a financial institution to identify and account for a new loan modification as a TDR?*" The agencies received six comment letters on the accounting for workout loans in the examples in Appendix 1. The commenters asked the agencies to remove references to troubled debt restructurings (TDRs) from the examples, as the relevant accounting standards for TDRs will no longer be applicable after 2023. The agencies agree with the commenters and are removing discussion of TDRs from the examples. The agencies have also removed references to ASC Subtopic 310-10, "Receivables—Overall," and ASC Subtopic 450-20, "Contingencies—Loss Contingencies," and eliminated Appendix 6, "Accounting—Incurred Loss Methodology." Financial institutions that have not adopted ASC Topic 326, "Financial Instruments—Credit Losses," or ASU 2022-02 should continue to identify, measure, and report TDRs in accordance with regulatory reporting instructions.

Based on a commenter request, the agencies made clarifications to the accounting discussion in Example B, Scenario 3, and in Section V.D, *Classification and Accrual Treatment of Restructured Loans with a Partial Charge-Off*, as reflected in the final Statement. For the regulatory reporting of loan modifications, financial institution management should refer to the appropriate regulatory reporting instructions for supervisory guidance.

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies have determined that this Statement does not create any new, or revise any existing, collections of information pursuant to the Paperwork Reduction Act. Consequently, no information collection request will be submitted to the OMB for review.

V. Final Guidance

The text of the final Statement is as follows:

Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts

The agencies¹ recognize that financial institutions² face significant challenges when working with commercial real estate (CRE)³ borrowers who are experiencing diminished operating cash flows, depreciated collateral values, prolonged sales and rental absorption periods, or other issues that may hinder repayment. While such borrowers may experience deterioration in their financial condition, many borrowers will continue to be creditworthy and have the willingness and ability to repay their debts. In such cases, financial institutions may find it beneficial to work constructively with borrowers. Such constructive efforts may involve loan accommodations⁴ or more extensive loan workout arrangements.⁵

This statement provides a broad set of risk management principles relevant to CRE loan accommodations and workouts in all business cycles, particularly in challenging economic environments. A wide variety of factors can negatively affect CRE portfolios, including economic downturns, natural disasters, and local, national, and international events. This statement also describes the approach examiners will

use to review CRE loan accommodation and workout arrangements and provides examples of CRE loan workout arrangements as well as useful references in the appendices.

The agencies have found that prudent CRE loan accommodations and workouts are often in the best interest of the financial institution and the borrower. The agencies expect their examiners to take a balanced approach in assessing the adequacy of a financial institution's risk management practices for loan accommodation and workout activities. Consistent with the *Interagency Guidelines Establishing Standards for Safety and Soundness*,⁶ financial institutions that implement prudent CRE loan accommodation and workout arrangements after performing a comprehensive review of a borrower's financial condition will not be subject to criticism for engaging in these efforts, even if these arrangements result in modified loans that have weaknesses that result in adverse classification. In addition, modified loans to borrowers who have the ability to repay their debts according to reasonable terms will not be subject to adverse classification solely because the value of the underlying collateral has declined to an amount that is less than the outstanding loan balance.

I. Purpose

Consistent with the safety and soundness standards, this statement updates and supersedes previous supervisory guidance to assist financial institutions' efforts to modify CRE loans to borrowers who are, or may be, unable to meet a loan's current contractual payment obligations or fully repay the debt.⁷ This statement is intended to promote supervisory consistency among examiners, enhance the transparency of CRE loan accommodation and workout arrangements, and support supervisory policies and actions that do not inadvertently curtail the availability of credit to sound borrowers.

This statement addresses prudent risk management practices regarding short-term loan accommodations, risk management for loan workout programs,

long-term loan workout arrangements, classification of loans, and regulatory reporting and accounting requirements and considerations. The statement also includes selected references and materials related to regulatory reporting.⁸ The statement does not, however, affect existing regulatory reporting requirements or supervisory guidance provided in relevant interagency statements issued by the agencies or accounting requirements under U.S. generally accepted accounting principles (GAAP). Certain principles in this statement are also generally applicable to commercial loans that are secured by either real property or other business assets of a commercial borrower.

Five appendices are incorporated into this statement:

- Appendix 1 contains examples of CRE loan workout arrangements illustrating the application of this statement to classification of loans and determination of nonaccrual treatment.
- Appendix 2 lists selected relevant rules as well as supervisory and accounting guidance for real estate lending, appraisals, allowance methodologies,⁹ restructured loans, fair value measurement, and regulatory reporting matters such as nonaccrual status. The agencies intend this statement to be used in conjunction with materials identified in Appendix 2 to reach appropriate conclusions regarding loan classification and regulatory reporting.
- Appendix 3 discusses valuation concepts for income-producing real property.¹⁰
- Appendix 4 provides the special mention and adverse classification definitions used by the Board, FDIC, and OCC.¹¹
- Appendix 5 addresses the relevant accounting and supervisory guidance on estimating loan losses for financial institutions that use the current expected credit losses (CECL) methodology.

⁸ For banks, the FFIEC Consolidated Reports of Condition and Income (FFIEC Call Report), and for credit unions, the NCUA 5300 Call Report (NCUA Call Report).

⁹ The allowance methodology refers to the allowance for credit losses (ACL) under Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 326, *Financial Instruments—Credit Losses*.

¹⁰ Valuation concepts applied to regulatory reporting processes also should be consistent with ASC Topic 820, *Fair Value Measurement*.

¹¹ Credit unions must apply a relative credit risk score (*i.e.*, credit risk rating) to each commercial loan as required by 12 CFR part 723 Member Business Loans; Commercial Lending (see Section 723.4(g)(3)) or the equivalent state regulation as applicable.

¹ The Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC) (collectively, the agencies). This Policy Statement was developed in consultation with state bank and credit union regulators.

² For the purposes of this statement, financial institutions are those supervised by the Board, FDIC, NCUA, or OCC.

³ Consistent with the Board, FDIC, and OCC joint guidance on *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices* (December 2006), CRE loans include loans secured by multifamily property, and nonfarm nonresidential property where the primary source of repayment is derived from rental income associated with the property (that is, loans for which 50 percent or more of the source of repayment comes from third party, nonaffiliated, rental income) or the proceeds of the sale, refinancing, or permanent financing of the property. CRE loans also include land development and construction loans (including 1–4 family residential and commercial construction loans), other land loans, loans to real estate investment trusts (REITs), and unsecured loans to developers. For credit unions, “commercial real estate loans” refers to “commercial loans,” as defined in Section 723.2 of the NCUA Rules and Regulations, secured by real estate.

⁴ For the purposes of this statement, an accommodation includes any agreement to defer one or more payments, make a partial payment, forbear any delinquent amounts, modify a loan or contract, or provide other assistance or relief to a borrower who is experiencing a financial challenge.

⁵ Workouts can take many forms, including a renewal or extension of loan terms, extension of additional credit, or a restructuring with or without concessions.

⁶ 12 CFR part 30, appendix A (OCC); 12 CFR part 208 Appendix D–1 (Board); and 12 CFR part 364 appendix A (FDIC). For the NCUA, refer to 12 CFR part 741.3(b)(2), 12 CFR part 741 appendix B, 12 CFR part 723, and letter to credit unions 10–CU–02 “Current Risks in Business Lending and Sound Risk Management Practices” issued January 2010. Credit unions should also refer to the Commercial and Member Business Loans section of the NCUA Examiner's Guide.

⁷ This statement replaces the interagency *Policy Statement on Prudent Commercial Real Estate Loan Workouts* (October 2009). See FFIEC Press Release, October 30, 2009, available at: <https://www.ffiec.gov/press/pr103009.htm>.

II. Short-Term Loan Accommodations

The agencies encourage financial institutions to work proactively and prudently with borrowers who are, or may be, unable to meet their contractual payment obligations during periods of financial stress. Such actions may entail loan accommodations that are generally short-term or temporary in nature and occur before a loan reaches a workout scenario. These actions can mitigate long-term adverse effects on borrowers by allowing them to address the issues affecting repayment ability and are often in the best interest of financial institutions and their borrowers.

When entering into an accommodation with a borrower, it is prudent for a financial institution to provide clear, accurate, and timely information about the arrangement to the borrower and any guarantor. Any such accommodation must be consistent with applicable laws and regulations. Further, a financial institution should employ prudent risk management practices and appropriate internal controls over such accommodations. Weak or imprudent risk management practices and internal controls can adversely affect borrowers and expose a financial institution to increases in credit, compliance, operational, or other risks. Imprudent practices that are widespread at a financial institution may also pose a risk to its capital adequacy.

Prudent risk management practices and internal controls will enable financial institutions to identify, measure, monitor, and manage the credit risk of accommodated loans. Prudent risk management practices include developing and maintaining appropriate policies and procedures, updating and assessing financial and collateral information, maintaining an appropriate risk rating (or grading) framework, and ensuring proper tracking and accounting for loan accommodations. Prudent internal controls related to loan accommodations include comprehensive policies¹² and practices, proper management approvals, an ongoing credit risk review function, and timely and accurate reporting and communication.

III. Loan Workout Programs

When short-term accommodation measures are not sufficient or have not

¹² See 12 CFR 34.62(a) and 160.101(a) (OCC); 12 CFR 208.51(a) (Board); and 12 CFR 365.2(a) (FDIC) regarding real estate lending policies at financial institutions. For NCUA, refer to 12 CFR part 723 for commercial real estate lending and 12 CFR part 741, appendix B, which addresses loan workouts, nonaccrual policy, and regulatory reporting of workout loans.

been successful in addressing credit problems, financial institutions could proceed into longer-term or more complex loan arrangements with borrowers under a formal workout program. Loan workout arrangements can take many forms, including, but not limited to:

- Renewing or extending loan terms;
- Granting additional credit to improve prospects for overall repayment; or
- Restructuring¹³ the loan with or without concessions.

A financial institution's risk management practices for implementing workout arrangements should be appropriate for the scope, complexity, and nature of the financial institution's lending activity. Further, these practices should be consistent with safe and sound lending policies and supervisory guidance, real estate lending standards and requirements,¹⁴ and relevant regulatory reporting requirements. Examiners will evaluate the effectiveness of a financial institution's practices, which typically include:

- A prudent loan workout policy that establishes appropriate loan terms and amortization schedules and that permits the financial institution to reasonably adjust the loan workout plan if sustained repayment performance is not demonstrated or if collateral values do not stabilize;¹⁵
- Management infrastructure to identify, measure, and monitor the volume and complexity of the loan workout activity;
- Documentation standards to verify a borrower's creditworthiness, including financial condition, repayment ability, and collateral values;
- Management information systems and internal controls to identify and track loan performance and risk, including impact on concentration risk and the allowance;
- Processes designed to ensure that the financial institution's regulatory reports are consistent with regulatory reporting requirements;
- Loan collection procedures;
- Adherence to statutory, regulatory, and internal lending limits;

¹³ A restructuring involves a formal, legally enforceable modification in the loan's terms.

¹⁴ 12 CFR part 34, subpart D, and Appendix to 160.101 (OCC); 12 CFR 208.51 (Board); and 12 CFR part 365 (FDIC). For NCUA requirements, refer to 12 CFR part 723 for member business loan and commercial loan regulations, which addresses CRE lending, and 12 CFR part 741, Appendix B, which addresses loan workouts, nonaccrual policy, and regulatory reporting of workout loans.

¹⁵ Federal credit unions are reminded that in making decisions related to loan workout arrangements, they must take into consideration any applicable maturity limits (12 CFR 701.21(c)(4)).

- Collateral administration to ensure proper lien perfection of the financial institution's collateral interests for both real and personal property; and
- An ongoing credit risk review function.¹⁶

IV. Long-Term Loan Workout Arrangements

An effective loan workout arrangement should improve the lender's prospects for repayment of principal and interest, be consistent with sound banking and accounting practices, and comply with applicable laws and regulations. Typically, financial institutions consider loan workout arrangements after analyzing a borrower's repayment ability, evaluating the support provided by guarantors, and assessing the value of any collateral pledged. Proactive engagement with the financial institution with the borrower often plays a key role in the success of the workout.

Consistent with safety and soundness standards, examiners will not criticize a financial institution for engaging in loan workout arrangements, even though such loans may be adversely classified, so long as management has:

- For each loan, developed a well-conceived and prudent workout plan that supports the ultimate collection of principal and interest and that is based on key elements such as:
 - Updated and comprehensive financial information on the borrower, real estate project, and all guarantors and sponsors;
 - Current valuations of the collateral supporting the loan and the workout plan;
 - Appropriate loan structure (e.g., term and amortization schedule), covenants, and requirements for curtailment or re-margining; and
 - Appropriate legal analyses and agreements, including those for changes to original or subsequent loan terms;
- Analyzed the borrower's global debt¹⁷ service coverage, including realistic projections of the borrower's cash flow, as well as the availability, continuity, and accessibility of repayment sources;
- Analyzed the available cash flow of guarantors;

¹⁶ See *Interagency Guidance on Credit Risk Review Systems*. OCC Bulletin 2020-50 (May 8, 2020); FDIC Financial Institution Letter FIL-55-2020 (May 8, 2020); Federal Reserve Supervision and Regulation (SR) letter 20-13 (May 8, 2020); and NCUA press release (May 8, 2020).

¹⁷ Global debt service coverage is inclusive of the cash flows generated by both the borrower(s) and guarantor(s), as well as the combined financial obligations (including contingent obligations) of the borrower(s) and guarantor(s).

- Demonstrated the willingness and ability to monitor the ongoing performance of the borrower and guarantor under the terms of the workout arrangement;

- Maintained an internal risk rating or loan grading system that accurately and consistently reflects the risk in the workout arrangement; and

- Maintained an allowance methodology that calculates (or measures) an allowance, in accordance with GAAP, for loans that have undergone a workout arrangement and recognizes loan losses in a timely manner through provision expense and recording appropriate charge-offs.¹⁸

A. Supervisory Assessment of Repayment Ability of Commercial Borrowers

The primary focus of an examiner's review of a CRE loan, including binding commitments, is an assessment of the borrower's ability to repay the loan. The major factors that influence this analysis are the borrower's willingness and ability to repay the loan under reasonable terms and the cash flow potential of the underlying collateral or business. When analyzing a commercial borrower's repayment ability, examiners should consider the following factors:

- The borrower's character, overall financial condition, resources, and payment history;
- The nature and degree of protection provided by the cash flow from business operations or the underlying collateral on a global basis that considers the borrower's and guarantor's total debt obligations;

- Relevant market conditions,¹⁹ particularly those on a state and local level, that may influence repayment prospects and the cash flow potential of the business operations or the underlying collateral; and

- The prospects for repayment support from guarantors.

¹⁸ Additionally, if applicable, financial institutions should recognize in a separate liability account an allowance for expected credit losses on off-balance sheet credit exposures related to restructured loans (e.g., loan commitments) and should reverse interest accruals on loans that are deemed uncollectible.

¹⁹ See 12 CFR 34.62(c) and 160.101(c)(OCC); 12 CFR 208.51(a) (Board); and 12 CFR 365.2(c) (FDIC) regarding the need for financial institutions to monitor conditions in the real estate market in its lending area to ensure that its real estate lending policies continue to be appropriate for current market conditions. For the NCUA, refer to 12 CFR 723.4(f)(6) requiring that a federally insured credit union's commercial loan policy have underwriting standards that include an analysis of the impact of current market conditions on the borrower and associated borrowers.

B. Supervisory Assessment of Guarantees and Sponsorships

Examiners should review the financial attributes of guarantees and sponsorships in considering the loan classification. The presence of a legally enforceable guarantee from a financially responsible guarantor may improve the prospects for repayment of the debt obligation and may be sufficient to preclude adverse loan classification or reduce the severity of the loan classification. A financially responsible guarantor possesses the financial ability, the demonstrated willingness, and the incentive to provide support for the loan through ongoing payments, curtailments, or re-margining.

Examiners also review the financial attributes and economic incentives of sponsors that support a loan. Even if not legally obligated, financially responsible sponsors are similar to guarantors in that they may also possess the financial ability, the demonstrated willingness, and may have an incentive to provide support for the loan through ongoing payments, curtailments, or re-margining.

Financial institutions that have sufficient information on the guarantor's global financial condition, income, liquidity, cash flow, contingent liabilities, and other relevant factors (including credit ratings, when available) are better able to determine the guarantor's financial ability to fulfill its obligation. An effective assessment includes consideration of whether the guarantor has the financial ability to fulfill the total number and amount of guarantees currently extended by the guarantor. A similar analysis should be made for any material sponsors that support the loan.

Examiners should consider whether a guarantor has demonstrated the willingness to fulfill all current and previous obligations, has sufficient economic incentive, and has a significant investment in the project. An important consideration is whether any previous performance under its guarantee(s) was voluntary or the result of legal or other actions by the lender to enforce the guarantee(s).

C. Supervisory Assessment of Collateral Values

As the primary sources of loan repayment decline, information on the underlying collateral's estimated value becomes more important in analyzing the source of repayment, assessing credit risk, and developing an appropriate loan workout plan. Examiners will analyze real estate collateral values based on the financial

institution's original appraisal or evaluation, any subsequent updates, additional pertinent information (e.g., recent inspection results), and relevant market conditions. Examiners will assess the major facts, assumptions, and valuation approaches in the collateral valuation and their influence in the financial institution's credit and allowance analyses.

The agencies' appraisal regulations require financial institutions to review appraisals for compliance with the Uniform Standards of Professional Appraisal Practice.²⁰ As part of that process, and when reviewing collateral valuations, financial institutions should ensure that assumptions and conclusions used are reasonable. Further, financial institutions typically have policies²¹ and procedures that dictate when collateral valuations should be updated as part of financial institutions' ongoing credit risk reviews and monitoring processes, as relevant market conditions change, or as a borrower's financial condition deteriorates.²²

For a CRE loan in a workout arrangement, a financial institution should consider the current project plans and market conditions in a new or updated appraisal or evaluation, as appropriate. In determining whether to obtain a new appraisal or evaluation, a prudent financial institution considers whether there has been material deterioration in the following factors:

- The performance of the project;
- Conditions for the geographic market and property type;
- Variances between actual conditions and original appraisal assumptions;
- Changes in project specifications (e.g., changing a planned condominium project to an apartment building);
- Loss of a significant lease or a take-out commitment; or
- Increases in pre-sale fallout.

A new appraisal may not be necessary when an evaluation prepared by the financial institution appropriately updates the original appraisal assumptions to reflect current market conditions and provides a reasonable estimate of the underlying collateral's fair value.²³ If new money is being

²⁰ See 12 CFR part 34, subpart C (OCC); 12 CFR part 208, subpart E, and 12 CFR part 225, subpart C (Board); 12 CFR part 323 (FDIC); and 12 CFR part 722 (NCUA).

²¹ See Footnote 12.

²² For further reference, see *Interagency Appraisal and Evaluation Guidelines*, 75 FR 77450 (December 10, 2010).

²³ According to the FASB ASC Master Glossary, "fair value" is "the price that would be received to

advanced, financial institutions should refer to the agencies' appraisal regulations to determine whether a new appraisal is required.²⁴

The market value provided by an appraisal and the fair value for accounting purposes are based on similar valuation concepts.²⁵ The analysis of the underlying collateral's market value reflects the financial institution's understanding of the property's current "as is" condition (considering the property's highest and best use) and other relevant risk factors affecting the property's value. Valuations of commercial properties may contain more than one value conclusion and could include an "as is" market value, a prospective "as complete" market value, and a prospective "as stabilized" market value.

Financial institutions typically use the market value conclusion (and not the fair value) that corresponds to the workout plan objective and the loan commitment. For example, if the financial institution intends to work with the borrower so that a project will achieve stabilized occupancy, then the financial institution can consider the "as stabilized" market value in its collateral assessment for credit risk grading after confirming that the appraisal's assumptions and conclusions are reasonable. Conversely, if the financial institution intends to foreclose, then it is required for financial reporting purposes that the financial institution use the fair value (less costs to sell)²⁶ of the property in

sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date."

²⁴ See footnote 20.

²⁵ The term "market value" as used in an appraisal is based on similar valuation concepts as "fair value" for accounting purposes under GAAP. For both terms, these valuation concepts about the real property and the real estate transaction contemplate that the property has been exposed to the market before the valuation date, the buyer and seller are well informed and acting in their own best interest (that is, the transaction is not a forced liquidation or distressed sale), and marketing activities are usual and customary (that is, the value of the property is unaffected by special financing or sales concessions). The market value in an appraisal may differ from the collateral's fair value if the values are determined as of different dates or the fair value estimate reflects different assumptions from those in the appraisal. This may occur as a result of changes in market conditions and property use since the "as of" date of the appraisal.

²⁶ Costs to sell may be used in determining any allowance for collateral-dependent loans. Under ASC Topic 326, a loan is collateral dependent when the repayment is expected to be provided substantially through the operation or sale of the collateral when the borrower is experiencing financial difficulty based on the entity's assessment as of the reporting date. Costs to sell are used when the loan is dependent on the sale of the collateral.

its current "as is" condition in its collateral assessment.

If weaknesses exist in the financial institution's supporting loan documentation or appraisal or evaluation review process, examiners should direct the financial institution to address the weaknesses, which may require the financial institution to obtain additional information or a new collateral valuation.²⁷ However, in the rare instance when a financial institution is unable or unwilling to address weaknesses in a timely manner, examiners will assess the property's operating cash flow and the degree of protection provided by a sale of the underlying collateral as part of determining the loan's classification. In performing their credit analysis, examiners will consider expected cash flow from the property, current or implied value, relevant market conditions, and the relevance of the facts and the reasonableness of assumptions used by the financial institution. For an income-producing property, examiners evaluate:

- Net operating income of the property as compared with budget projections, reflecting reasonable operating and maintenance costs;
- Current and projected vacancy and absorption rates;
- Lease renewal trends and anticipated rents;
- Effective rental rates or sale prices, considering sales and financing concessions;
- Time frame for achieving stabilized occupancy or sellout;
- Volume and trends in past due leases; and
- Discount rates and direct capitalization rates (refer to Appendix 3 for more information).

Assumptions, when recently made by qualified appraisers (and, as appropriate, by qualified, independent parties within the financial institution) and when consistent with the discussion above, should be given reasonable deference by examiners. Examiners should also use the appropriate market value conclusion in their collateral assessments. For example, when the financial institution plans to provide the resources to complete a project, examiners can consider the project's prospective market value and the committed loan amount in their analyses.

Costs to sell are not used when the collateral-dependent loan is dependent on the operation of the collateral.

²⁷ See 12 CFR 34.43(c) (OCC); 12 CFR 225.63(c) (Board); 12 CFR 323.3(c) (FDIC); and 12 CFR 722.3(e) (NCUA).

Examiners generally are not expected to challenge the underlying assumptions, including discount rates and capitalization rates, used in appraisals or evaluations when these assumptions differ only marginally from norms generally associated with the collateral under review. The examiner may adjust the estimated value of the collateral for credit analysis and classification purposes when the examiner can establish that underlying facts or assumptions presented by the financial institution are irrelevant or inappropriate or can support alternative assumptions based on available information.

CRE borrowers may have commercial loans secured by owner occupied real estate or other business assets, such as inventory and accounts receivable, or may have CRE loans also secured by furniture, fixtures, and equipment. For these loans, examiners should assess the adequacy of the financial institution's policies and practices for quantifying the value of such collateral, determining the acceptability of the assets as collateral, and perfecting its security interests. Examiners should also determine whether the financial institution has appropriate procedures for ongoing monitoring of this type of collateral.

V. Classification of Loans

Loans that are adequately protected by the current sound worth and debt service ability of the borrower, guarantor, or the underlying collateral generally are not adversely classified. Similarly, loans to sound borrowers that are modified in accordance with prudent underwriting standards should not be adversely classified by examiners unless well-defined weaknesses exist that jeopardize repayment. However, such loans could be flagged for management's attention or for inclusion in designated "watch lists" of loans that management is more closely monitoring.

Further, examiners should not adversely classify loans solely because the borrower is associated with a particular industry that is experiencing financial difficulties. When a financial institution's loan modifications are not supported by adequate analysis and documentation, examiners are expected to exercise reasonable judgment in reviewing and determining loan classifications until such time as the financial institution is able to provide information to support management's conclusions and internal loan grades.

Refer to Appendix 4 for the classification definitions.²⁸

A. Loan Performance Assessment for Classification Purposes

The loan's record of performance to date should be one of several considerations when determining whether a loan should be adversely classified. As a general principle, examiners should not adversely classify or require the recognition of a partial charge-off on a performing commercial loan solely because the value of the underlying collateral has declined to an amount that is less than the loan balance. However, it is appropriate to classify a performing loan when well-defined weaknesses exist that jeopardize repayment.

One perspective on loan performance is based upon an assessment as to whether the borrower is contractually current on principal or interest payments. For many loans, the assessment of payment status is sufficient to arrive at a loan's classification. In other cases, being contractually current on payments can be misleading as to the credit risk embedded in the loan. This may occur when the loan's underwriting structure or the liberal use of extensions and renewals masks credit weaknesses and obscures a borrower's inability to meet reasonable repayment terms.

For example, for many acquisition, development, and construction projects, the loan is structured with an "interest reserve" for the construction phase of the project. At the time the loan is originated, the lender establishes the interest reserve as a portion of the initial loan commitment. During the construction phase, the lender recognizes interest income from the interest reserve and capitalizes the interest into the loan balance. After completion of the construction, the lender recognizes the proceeds from the sale of lots, homes, or buildings for the repayment of principal, including any of the capitalized interest. For a commercial construction loan where the property has achieved stabilized occupancy, the lender uses the proceeds

from permanent financing for repayment of the construction loan or converts the construction loan to an amortizing loan.

However, if the development project stalls and management fails to evaluate the collectability of the loan, interest income could continue to be recognized from the interest reserve and capitalized into the loan balance, even though the project is not generating sufficient cash flows to repay the loan. In this case, the loan will be contractually current due to the interest payments being funded from the reserve, but the repayment of principal may be in jeopardy. This repayment uncertainty is especially true when leases or sales have not occurred as projected and property values have dropped below the market value reported in the original collateral valuation. In this situation, adverse classification of the loan may be appropriate.

A second perspective for assessing a loan's classification is to consider the borrower's expected performance and ability to meet its obligations in accordance with the modified terms over the remaining life of the loan. Therefore, the loan classification is meant to measure risk over the term of the loan rather than just reflecting the loan's payment history. As a borrower's expected performance is dependent upon future events, examiners' credit analyses should focus on:

- The borrower's financial strength as reflected by its historical and projected balance sheet and income statement outcomes; and
- The prospects for the CRE property considering events and market conditions that reasonably may occur during the term of the loan.

B. Classification of Renewals or Restructurings of Maturing Loans

Loans to commercial borrowers can have short maturities, including short-term working capital loans to businesses, financing for CRE construction projects, or bridge loans to finance recently completed CRE projects for a period to achieve stabilized occupancy before obtaining permanent financing or selling the property. When there has been deterioration in collateral values, a borrower with a maturing loan amid an economic downturn may have difficulty obtaining short-term financing or adequate sources of long-term credit, despite the borrower's demonstrated and continued ability to service the debt. In such cases, financial institutions may determine that the most appropriate course is to restructure or renew the loan. Such actions, when done prudently, are often in the best

interest of both the financial institution and the borrower.

A restructured loan typically reflects an elevated level of credit risk, as the borrower may not be, or has not been, able to perform according to the original contractual terms. The assessment of each loan should be based upon the fundamental characteristics affecting the collectability of that loan. In general, renewals or restructurings of maturing loans to commercial borrowers who have the ability to repay on reasonable terms will not automatically be subject to adverse classification by examiners. However, consistent with safety and soundness standards, such loans should be identified in the financial institution's internal credit grading system and may warrant close monitoring. Adverse classification of a renewed or restructured loan would be appropriate if, despite the renewal or restructuring, well-defined weaknesses exist that jeopardize the orderly repayment of the loan pursuant to reasonable modified terms.

C. Classification of Problem CRE Loans Dependent on the Sale of Collateral for Repayment

As a general classification principle for a problem CRE loan that is dependent on the sale of the collateral for repayment, any portion of the loan balance that exceeds the amount that is adequately secured by the fair value of the real estate collateral less the costs to sell should be classified "loss." This principle applies to loans that are collateral dependent based on the sale of the collateral in accordance with GAAP and for which there are no other available reliable sources of repayment such as a financially capable guarantor.²⁹

The portion of the loan balance that is adequately secured by the fair value of the real estate collateral less the costs to sell generally should be adversely classified no worse than "substandard." The amount of the loan balance in excess of the fair value of the real estate collateral, or portions thereof, should be adversely classified "doubtful" when the potential for full loss may be mitigated by the outcomes of certain pending events, or when loss is expected but the amount of the loss cannot be reasonably determined. If warranted by the underlying circumstances, an examiner may use a "doubtful" classification on the entire loan balance. However, examiners should use a "doubtful" classification infrequently, as such a designation is temporary and subject to a financial

²⁸The NCUA does not require credit unions to adopt a uniform regulatory classification schematic of loss, doubtful, or substandard. A credit union must apply a relative credit risk score (i.e., credit risk rating) to each commercial loan as required by 12 CFR part 723, Member Business Loans; Commercial Lending, or the equivalent state regulation as applicable (see Section 723.4(g)(3)). Adversely classified refers to loans more severely graded under the credit union's credit risk rating system. Adversely classified loans generally require enhanced monitoring and present a higher risk of loss. Refer to the NCUA's Examiner's Guide for further information on credit risk rating systems.

²⁹ See footnote 26.

institution's timely reassessment of the loan once the outcomes of pending events have occurred or the amount of loss can be reasonably determined.

D. Classification and Accrual Treatment of Restructured Loans With a Partial Charge-Off

Based on consideration of all relevant factors, an assessment may indicate that a loan has well-defined weaknesses that jeopardize collection in full of all amounts contractually due and may result in a partial charge-off as part of a restructuring. When well-defined weaknesses exist and a partial charge-off has been taken, the remaining recorded balance for the restructured loan generally should be classified no more severely than "substandard." A more severe classification than "substandard" for the remaining recorded balance would be appropriate if the loss exposure cannot be reasonably determined. Such situations may occur when significant remaining risk exposures are identified but are not quantified, such as bankruptcy or a loan collateralized by a property with potential environmental concerns.

A restructuring may involve a multiple note structure in which, for example, a loan is restructured into two notes (referred to as Note A and Note B). Lenders may separate a portion of the current outstanding debt into a new, legally enforceable note (Note A) that is reasonably assured of repayment and performance according to prudently modified terms. When restructuring a collateral-dependent loan using a multiple note structure, the amount of Note A should be determined using the fair value of the collateral. This note may be placed back in accrual status in certain situations. In returning the loan to accrual status, sustained historical payment performance for a reasonable time prior to the restructuring may be taken into account. Additionally, a properly structured and performing Note A generally would not be adversely classified by examiners. The portion of the debt that is unlikely to be repaid or collected and therefore is deemed uncollectible (Note B) would be adversely classified "loss" and must be charged off.

In contrast, the loan should remain on, or be placed in, nonaccrual status if the financial institution does not split the loan into separate notes, but internally recognizes a partial charge-off. A partial charge-off would indicate that the financial institution does not expect full repayment of the amounts contractually due. If facts change after the charge-off is taken such that the full amounts contractually due, including

the amount charged off, are expected to be collected and the loan has been brought contractually current, the remaining balance of the loan may be returned to accrual status without having to first receive payment of the charged-off amount.³⁰ In these cases, examiners should assess whether the financial institution has well-documented support for its credit assessment of the borrower's financial condition and the prospects for full repayment.

VI. Regulatory Reporting and Accounting Considerations

Financial institution management is responsible for preparing regulatory reports in accordance with GAAP and regulatory reporting requirements. Management also is responsible for establishing and maintaining an appropriate governance and internal control structure over the preparation of regulatory reports. The agencies have observed this governance and control structure commonly includes policies and procedures that provide clear guidance on accounting matters. Accurate regulatory reports are critical to the transparency of a financial institution's financial position and risk profile and are imperative for effective supervision. Decisions related to loan workout arrangements may affect regulatory reporting, particularly interest accruals and loan loss estimates. Therefore, it is important that loan workout staff appropriately communicate with the accounting and regulatory reporting staff concerning the financial institution's loan restructurings and that the consequences of restructurings are presented accurately in regulatory reports.

In addition to evaluating credit risk management processes and validating the accuracy of internal loan grades, examiners are responsible for reviewing management's processes related to accounting and regulatory reporting. While similar data are used for loan risk monitoring, accounting, and reporting systems, this information does not necessarily produce identical outcomes. For example, loss classifications may not be equivalent to the associated allowance measurements.

³⁰ The charged-off amount should not be reversed or re-booked, under any condition, to increase the recorded investment in the loan or its amortized cost, as applicable, when the loan is returned to accrual status. However, expected recoveries, prior to collection, are a component of management's estimate of the net amount expected to be collected for a loan under ASC Topic 326. Refer to relevant regulatory reporting instructions for supervisory guidance on returning a loan to accrual status.

A. Allowance for Credit Losses

Examiners need to have a clear understanding of the differences between credit risk management and accounting and regulatory reporting concepts (such as accrual status and the allowance) when assessing the adequacy of the financial institution's reporting practices for on- and off-balance sheet credit exposures. Refer to Appendix 5 for a summary of the allowance standard under ASC Topic 326, *Financial Instruments—Credit Losses*. Examiners should also refer to regulatory reporting instructions in the FFIEC Call Report and the NCUA 5300 Call Report guidance as well as applicable accounting standards for further information.

B. Implications for Interest Accrual

A financial institution needs to consider whether a loan that was accruing interest prior to the loan restructuring should be placed in nonaccrual status at the time of modification to ensure that income is not materially overstated. Consistent with FFIEC and NCUA Call Report instructions, a loan that has been restructured so as to be reasonably assured of repayment and performance according to prudently modified terms need not be placed in nonaccrual status. Therefore, for a loan to remain in accrual status, the restructuring and any charge-off taken on the loan must be supported by a current, well-documented credit assessment of the borrower's financial condition and prospects for repayment under the revised terms. Otherwise, the restructured loan must be placed in nonaccrual status.

A restructured loan placed in nonaccrual status should not be returned to accrual status until the borrower demonstrates sustained repayment performance for a reasonable period prior to the date on which the loan is returned to accrual status. A sustained period of repayment performance generally would be a minimum of six months and would involve payments of cash or cash equivalents. It may also include historical periods prior to the date of the loan restructuring. While an appropriately designed restructuring should improve the collectability of the loan in accordance with a reasonable repayment schedule, it does not relieve the financial institution from the responsibility to promptly charge off all identified losses. For more detailed instructions about placing a loan in nonaccrual status and returning a nonaccrual loan to accrual status, refer

to the instructions for the FFIEC Call Report and the NCUA 5300 Call Report.

Appendix 1

Examples of CRE Loan Workout Arrangements

The examples in this appendix are provided for illustrative purposes only and are designed to demonstrate an examiner's analytical thought process to derive an appropriate classification and evaluate implications for interest accrual.³¹ Although not discussed in the examples below, examiners consider the adequacy of a financial institution's supporting documentation, internal analysis, and business decision to enter into a loan workout arrangement. The examples also do not address the effect of the loan workout arrangement on the allowance and subsequent reporting requirements. Financial institutions should refer to the appropriate regulatory reporting instructions for supervisory guidance on the recognition, measurement, and regulatory reporting of loan modifications.

Examiners should use caution when applying these examples to "real-life" situations, consider all facts and circumstances of the loan being evaluated, and exercise judgment before reaching conclusions related to loan classification and nonaccrual treatment.³²

A. Income Producing Property—Office Building

Base Case: A lender originated a \$15 million loan for the purchase of an office building with monthly payments based on an amortization of 20 years and a balloon payment of \$13.6 million at the end of year five. At origination, the loan had a 75 percent loan-to-value (LTV) based on an appraisal reflecting a \$20 million market value on an "as stabilized" basis, a debt service coverage (DSC) ratio of 1.30x, and a market interest rate. The lender expected to renew the loan when the balloon payment became due at the end of year five. Due to technological advancements and a workplace culture change since the inception of the loan, many businesses switched to hybrid work-from-home arrangements to reduce longer-term costs and improve employee retention. As a result, the property's cash flow declined as the borrower has had to grant rental concessions to either retain its existing tenants or attract new tenants, since the demand for office space has decreased.

Scenario 1: At maturity, the lender renewed the \$13.6 million loan for one year at a market interest rate that provides for the incremental risk and payments based on amortizing the principal over the remaining 15 years. The borrower had not been delinquent on prior payments and has

sufficient cash flow to service the loan at the market interest rate terms with a DSC ratio of 1.12x, based on updated financial information.

A review of the leases reflects that most tenants are stable occupants, with long-term leases and sufficient cash flow to pay their rent. The major tenants have not adopted hybrid work-from-home arrangements for their employees given the nature of the businesses. A recent appraisal reported an "as stabilized" market value of \$13.3 million for the property for an LTV of 102 percent. This reflects current market conditions and the resulting decline in cash flow.

Classification: The lender internally graded the loan pass and is monitoring the credit. The examiner agreed, because the borrower has the ability to continue making loan payments based on reasonable terms, despite a decline in cash flow and in the market value of the collateral.

Nonaccrual Treatment: The lender maintained the loan in accrual status. The borrower has demonstrated the ability to make the regularly scheduled payments and, even with the decline in the borrower's creditworthiness, cash flow appears sufficient to make these payments, and full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment.

Scenario 2: At maturity, the lender renewed the \$13.6 million loan at a market interest rate that provides for the incremental risk and payments based on amortizing the principal over the remaining 15 years. The borrower had not been delinquent on prior payments. Current projections indicate the DSC ratio will not drop below 1.12x based on leases in place and letters of intent for vacant space. However, some leases are coming up for renewal, and additional rental concessions may be necessary to either retain those existing tenants or attract new tenants. The lender estimates the property's current "as stabilized" market value is \$14.5 million, which results in a 94 percent LTV, but a current valuation has not been ordered. In addition, the lender has not asked the borrower or guarantors to provide current financial statements to assess their ability to support any cash flow shortfall.

Classification: The lender internally graded the loan pass and is monitoring the credit. The examiner disagreed with the internal grade and listed the credit as special mention. While the borrower has the ability to continue to make payments based on leases currently in place and letters of intent for vacant space, there has been a declining trend in the property's revenue stream, and there is most likely a reduced collateral margin. In addition, there is potential for further deterioration in the cash flow as more leases will expire in the upcoming months, while absorption for office space in this market has slowed. Lastly, the examiner noted that the lender failed to request current financial information and to obtain an updated collateral valuation,³³ representing administrative weaknesses.

Nonaccrual Treatment: The lender maintained the loan in accrual status. The borrower has demonstrated the ability to make regularly scheduled payments and, even with the decline in the borrower's creditworthiness, cash flow is sufficient at this time to make payments, and full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment.

Scenario 3: At maturity, the lender restructured the \$13.6 million loan on a 12-month interest-only basis at a below market interest rate. The borrower has been sporadically delinquent on prior principal and interest payments. The borrower projects a DSC ratio of 1.10x based on the restructured interest-only terms. A review of the rent roll, which was available to the lender at the time of the restructuring, reflects the majority of tenants have short-term leases, with three leases expected to expire within the next three months. According to the lender, leasing has not improved since the restructuring as market conditions remain soft. Further, the borrower does not have an update as to whether the three expiring leases will renew at maturity; two of the tenants have moved to hybrid work-from-home arrangements. A recent appraisal provided a \$14.5 million "as stabilized" market value for the property, resulting in a 94 percent LTV.

Classification: The lender internally graded the loan pass and is monitoring the credit. The examiner disagreed with the internal grade and classified the loan substandard due to the borrower's limited ability to service a below market interest rate loan on an interest-only basis, sporadic delinquencies, and an increase in the LTV based on an updated appraisal. In addition, there is lease rollover risk because three of the leases are expiring soon, which could further limit cash flow.

Nonaccrual Treatment: The lender maintained the loan in accrual status due to the positive cash flow and collateral margin. The examiner did not concur with this treatment as the loan was not restructured with reasonable repayment terms, and the borrower has not demonstrated the ability to amortize the loan and has limited ability to service a below market interest rate on an interest-only basis. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

B. Income Producing Property—Retail Properties

Base Case: A lender originated a 36-month, \$10 million loan for the construction of a shopping mall. The construction period was 24 months with a 12-month lease-up period to allow the borrower time to achieve stabilized occupancy before obtaining permanent financing. The loan had an interest reserve to cover interest payments over the three-year term. At the end of the third year, there is \$10 million outstanding on the loan, as the shopping mall has been built and the interest reserve, which has been

whether there is a regulatory requirement for either an evaluation or appraisal. See footnote 20.

³¹ The agencies view that the accrual treatments in these examples as falling within the range of acceptable practices under regulatory reporting instructions.

³² In addition, estimates of the fair value of collateral use assumptions based on judgment and should be consistent with measurement of fair value in ASC Topic 820, *Fair Value Measurement*; see Appendix 2.

³³ In relation to comments on valuations within these examples, refer to the appraisal regulations applicable to the financial institution to determine

covering interest payments, has been fully drawn.

At the time of origination, the appraisal reported an "as stabilized" market value of \$13.5 million for the property. In addition, the borrower had a take-out commitment that would provide permanent financing at maturity. A condition of the take-out lender was that the shopping mall had to achieve a 75 percent occupancy level.

Due to weak economic conditions and a shift in consumer behavior to a greater reliance on e-commerce, the property only reached a 55 percent occupancy level at the end of the 12-month lease up period. As a result, the original takeout commitment became void. In addition, there has been a considerable tightening of credit for these types of loans, and the borrower has been unable to obtain permanent financing elsewhere since the loan matured. To date, the few interested lenders are demanding significant equity contributions and much higher pricing.

Scenario 1: The lender renewed the loan for an additional 12 months to provide the borrower time for higher lease-up and to obtain permanent financing. The extension was made at a market interest rate that provides for the incremental risk and is on an interest-only basis. While the property's historical cash flow was insufficient at a 0.92x debt service ratio, recent improvements in the occupancy level now provide adequate coverage based on the interest-only payments. Recent events include the signing of several new leases with additional leases under negotiation; however, takeout financing continues to be tight in the market.

In addition, current financial statements reflect that the builder, who personally guarantees the debt, has cash on deposit at the lender plus other unencumbered liquid assets. These assets provide sufficient cash flow to service the borrower's global debt service requirements on a principal and interest basis, if necessary, for the next 12 months. The guarantor covered the initial cash flow shortfalls from the project and provided a good faith principal curtailment of \$200,000 at renewal, reducing the loan balance to \$9.8 million. A recent appraisal on the shopping mall reports an "as is" market value of \$10 million and an "as stabilized" market value of \$11 million, resulting in LTVs of 98 percent and 89 percent, respectively.

Classification: The lender internally graded the loan as a pass and is monitoring the credit. The examiner disagreed with the lender's internal loan grade and listed it as special mention. While the project continues to lease up, cash flows cover only the interest payments. The guarantor has the ability, and has demonstrated the willingness, to cover cash flow shortfalls; however, there remains considerable uncertainty surrounding the takeout financing for this loan.

Nonaccrual Treatment: The lender maintained the loan in accrual status as the guarantor has sufficient funds to cover the borrower's global debt service requirements over the one-year period of the renewed loan. Full repayment of principal and interest is reasonably assured from the project's and guarantor's cash resources, despite a decline

in the collateral margin. The examiner concurred with the lender's accrual treatment.

Scenario 2: The lender restructured the loan on an interest-only basis at a below market interest rate for one year to provide additional time to increase the occupancy level and, thereby, enable the borrower to arrange permanent financing. The level of lease-up remains relatively unchanged at 55 percent, and the shopping mall projects a DSC ratio of 1.02x based on the preferential loan terms. At the time of the restructuring, the lender used outdated financial information, which resulted in a positive cash flow projection. However, other file documentation available at the time of the restructuring reflected that the borrower anticipates the shopping mall's revenue stream will further decline due to rent concessions, the loss of a tenant, and limited prospects for finding new tenants.

Current financial statements indicate the builder, who personally guarantees the debt, cannot cover any cash flow shortfall. The builder is highly leveraged, has limited cash or unencumbered liquid assets, and has other projects with delinquent payments. A recent appraisal on the shopping mall reports an "as is" market value of \$9 million, which results in an LTV ratio of 111 percent.

Classification: The lender internally classified the loan as substandard. The examiner disagreed with the internal grade and classified the amount not protected by the collateral value, \$1 million, as loss and required the lender to charge-off this amount. The examiner did not factor costs to sell into the loss classification analysis, as the current source of repayment is not reliant on the sale of the collateral. The examiner classified the remaining loan balance, based on the property's "as is" market value of \$9 million, as substandard given the borrower's uncertain repayment ability and weak financial support.

Nonaccrual Treatment: The lender determined the loan did not warrant being placed in nonaccrual status. The examiner did not concur with this treatment because the partial charge-off is indicative that full collection of principal is not anticipated, and the lender has continued exposure to additional loss due to the project's insufficient cash flow and reduced collateral margin and the guarantor's inability to provide further support. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

Scenario 3: The loan has become delinquent. Recent financial statements indicate the borrower and the guarantor have minimal other resources available to support this loan. The lender chose not to restructure the \$10 million loan into a new single amortizing note of \$10 million at a market interest rate because the project's projected cash flow would only provide a 0.88x DSC ratio as the borrower has been unable to lease space. A recent appraisal which reasonably estimates the fair value on the shopping mall reported an "as is" market value of \$7 million, resulting in an LTV of 143 percent.

At the original loan's maturity, the lender restructured the \$10 million debt, which is

a collateral-dependent loan, into two notes. The lender placed the first note of \$7 million (Note A) on monthly payments that amortize the debt over 20 years at a market interest rate that provides for the incremental risk. The project's DSC ratio equals 1.20x for the \$7 million loan based on the shopping mall's projected net operating income. For the second note (Note B), the lender placed the remaining \$3 million, which represents the excess of the \$10 million debt over the \$7 million market value of the shopping mall, into a 2 percent interest-only loan that resets in five years into an amortizing payment. The lender then charged-off the \$3 million note due to the project's lack of repayment ability and to provide reasonable collateral protection for the remaining on-book loan of \$7 million. The lender also reversed accrued but unpaid interest. Since the restructuring, the borrower has made payments on both loans for more than six consecutive months and an updated financial analysis shows continued ability to repay under the new terms.

Classification: The lender internally graded the on-book loan of \$7 million as a pass loan due to the borrower's demonstrated ability to perform under the modified terms. The examiner agreed with the lender's grade as the lender restructured the original obligation into Notes A and B, the lender charged off Note B, and the borrower has demonstrated the ability to repay Note A. Using this multiple note structure with charge-off of the Note B enables the lender to recognize interest income.

Nonaccrual Treatment: The lender placed the on-book loan (Note A) of \$7 million loan in nonaccrual status at the time of the restructure. The lender later restored the \$7 million to accrual status as the borrower has the ability to repay the loan, has a record of performing at the revised terms for more than six months, and full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment. Interest payments received on the off-book loan have been recorded as recoveries because full recovery of principal and interest on this loan (Note B) was not reasonably assured.

Scenario 4: Current financial statements indicate the borrower and the guarantor have minimal other resources available to support this loan. The lender restructured the \$10 million loan into a new single note of \$10 million at a market interest rate that provides for the incremental risk and is on an amortizing basis. The project's projected cash flow reflects a 0.88x DSC ratio as the borrower has been unable to lease space. A recent appraisal on the shopping mall reports an "as is" market value of \$9 million, which results in an LTV of 111 percent. Based on the property's current market value of \$9 million, the lender charged-off \$1 million immediately after the renewal.

Classification: The lender internally graded the remaining \$9 million on-book portion of the loan as a pass loan because the lender's analysis of the project's cash flow indicated a 1.05x DSC ratio when just considering the on-book balance. The examiner disagreed with the internal grade and classified the \$9 million on-book balance as substandard due

to the borrower's marginal financial condition, lack of guarantor support, and uncertainty over the source of repayment. The DSC ratio remains at 0.88x due to the single note restructure, and other resources are scant.

Nonaccrual Treatment: The lender maintained the remaining \$9 million on-book portion of the loan on accrual, as the borrower has the ability to repay the principal and interest on this balance. The examiner did not concur with this treatment. Because the lender restructured the debt into a single note and had charged-off a portion of the restructured loan, the repayment of the principal and interest contractually due on the entire debt is not reasonably assured given the DSC ratio of 0.88x and nominal other resources. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual. The loan can be returned to accrual status³⁴ if the lender can document that subsequent improvement in the borrower's financial condition has enabled the loan to be brought fully current with respect to principal and interest and the lender expects the contractual balance of the loan (including the partial charge-off) will be fully collected. In addition, interest income may be recognized on a cash basis for the partially charged-off portion of the loan when the remaining recorded balance is considered fully collectible. However, the partial charge-off would not be reversed.

C. Income Producing Property—Hotel

Base Case: A lender originated a \$7.9 million loan to provide permanent financing for the acquisition of a stabilized 3-star hotel property. The borrower is a limited liability company with underlying ownership by two families who guarantee the loan. The loan term is five years, with payments based on a 25-year amortization and with a market interest rate. The LTV was 79 percent based on the hotel's appraised value of \$10 million.

At the end of the five-year term, the borrower's annualized DSC ratio was 0.95x. Due to competition from a well-known 4-star hotel that recently opened within one mile of the property, occupancy rates have declined. The borrower progressively reduced room rates to maintain occupancy rates, but continued to lose daily bookings. Both occupancy and Revenue per Available Room (RevPAR)³⁵ declined significantly over the past year. The borrower then began working on an initiative to make improvements to the property (*i.e.*, automated key cards, carpeting, bedding, and lobby renovations) to increase competitiveness, and a marketing campaign is planned to announce the improvements and new price structure.

The borrower had paid principal and interest as agreed throughout the first five years, and the principal balance had reduced to \$7 million at the end of the five-year term.

Scenario 1: At maturity, the lender renewed the loan for 12 months on an interest-only basis at a market interest rate

that provides for the incremental risk. The extension was granted to enable the borrower to complete the planned renovations, launch the marketing campaign, and achieve the borrower's updated projections for sufficient cash flow to service the debt once the improvements are completed. (If the initiative is successful, the loan officer expects the loan to either be renewed on an amortizing basis or refinanced through another lending entity.) The borrower has a verified, pledged reserve account to cover the improvement expenses. Additionally, the guarantors' updated financial statements indicate that they have sufficient unencumbered liquid assets. Further, the guarantors expressed the willingness to cover any estimated cash flow shortfall through maturity. Based on this information, the lender's analysis indicates that, after deductions for personal obligations and realistic living expenses and verification that there are no contingent liabilities, the guarantors should be able to make interest payments. To date, interest payments have been timely. The lender estimates the property's current "as stabilized" market value at \$9 million, which results in a 78 percent LTV.

Classification: The lender internally graded the loan as a pass and is monitoring the credit. The examiner agreed with the lender's internal loan grade. The examiner concluded that the borrower and guarantors have sufficient resources to support the interest payments; additionally, the borrower's reserve account is sufficient to complete the renovations as planned.

Nonaccrual Treatment: The lender maintained the loan in accrual status as full repayment of principal and interest is reasonably assured from the hotel's and guarantors' cash flows, despite a decline in the borrower's cash flow due to competition. The examiner concurred with the lender's accrual treatment.

Scenario 2: At maturity of the original loan, the lender restructured the loan on an interest-only basis at a below market interest rate for 12 months to provide the borrower time to complete its renovation and marketing efforts and increase occupancy levels. At the end of the 12-month period, the hotel's renovation and marketing efforts were completed but unsuccessful. The hotel continued to experience a decline in occupancy levels, resulting in a DSC ratio of 0.60x. The borrower does not have ability to offer additional incentives to lure customers from the competition. RevPAR has also declined. Current financial information indicates the borrower has limited ability to continue to make interest payments, and updated projections indicate that the borrower will be below break-even performance for the next 12 months. The borrower has been sporadically delinquent on prior interest payments. The guarantors are unable to support the loan as they have limited unencumbered liquid assets and are highly leveraged. The lender is in the process of renewing the loan again.

The most recent hotel appraisal, dated as of the time of the first restructuring, reports an "as stabilized" appraised value of \$7.2 million (\$6.7 million for the real estate and

\$500,000 for the tangible personal property of furniture, fixtures, and equipment), resulting in an LTV of 97 percent. The appraisal does not account for the diminished occupancy, and its assumptions significantly differ from current projections. A new valuation is needed to ascertain the current value of the property.

Classification: The lender internally classified the loan as substandard and is monitoring the credit. The examiner agreed with the lender's treatment due to the borrower's diminished ongoing ability to make payments, the guarantors' limited ability to support the loan, and the reduced collateral position. The lender is obtaining a new valuation and will adjust the internal classification, if necessary, based on the updated value.

Nonaccrual Treatment: The lender maintained the loan on an accrual basis because the borrower demonstrated an ability to make interest payments. The examiner did not concur with this treatment as the loan was not restructured on reasonable repayment terms, the borrower has insufficient cash resources to service the below market interest rate on an interest-only basis, and the collateral margin has narrowed and may be narrowed further with a new valuation, which collectively indicates that full repayment of principal and interest is in doubt. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

Scenario 3: At maturity of the original loan, the lender restructured the debt for one year on an interest-only basis at a below market interest rate to give the borrower additional time to complete renovations and increase marketing efforts. While the combined borrower/guarantors' liquidity indicated they could cover any cash flow shortfall until maturity of the restructured note, the borrower only had 50 percent of the funds to complete its renovations in reserve. Subsequently, the borrower attracted a sponsor to obtain the remaining funds necessary to complete the renovation plan and marketing campaign.

Eight months later, the hotel experienced an increase in its occupancy and achieved a DSC ratio of 1.20x on an amortizing basis. Updated projections indicated the borrower would be at or above the 1.20x DSC ratio for the next 12 months, based on market terms and rate. The borrower and the lender then agreed to restructure the loan again with monthly payments that amortize the debt over 20 years, consistent with the current market terms and rates. Since the date of the second restructuring, the borrower has made all principal and interest payments as agreed for six consecutive months.

Classification: The lender internally classified the most recent restructured loan substandard. The examiner agreed with the lender's initial substandard grade at the time of the subject restructuring, but now considers the loan as a pass as the borrower was no longer having financial difficulty and has demonstrated the ability to make payments according to the modified principal and interest terms for more than six consecutive months.

Nonaccrual Treatment: The original restructured loan was placed in nonaccrual

³⁴ Refer to the supervisory guidance on "nonaccrual status" in the FFIEC Call Report and NCUA 5300 Call Report instructions.

³⁵ Total guest room revenue divided by room count and number of days in the period.

status. The lender initially maintained the most recent restructured loan in nonaccrual status as well, but returned it to an accruing status after the borrower made six consecutive monthly principal and interest payments. The lender expects full repayment of principal and interest. The examiner concurred with the lender's accrual treatment.

Scenario 4: The lender extended the original amortizing loan for 12 months at a market interest rate. The borrower is now experiencing a six-month delay in completing the renovations due to a conflict with the contractor hired to complete the renovation work, and the current DSC ratio is 0.85x. A current valuation has not been ordered. The lender estimates the property's current "as stabilized" market value is \$7.8 million, which results in an estimated 90 percent LTV. The lender did receive updated projections, but the borrower is now unlikely to achieve break-even cash flow within the 12-month extension timeframe due to the renovation delays. At the time of the extension, the borrower and guarantors had sufficient liquidity to cover the debt service during the twelve-month period. The guarantors also demonstrated a willingness to support the loan by making payments when necessary, and the loan has not gone delinquent. With the guarantors' support, there is sufficient liquidity to make payments to maturity, though such resources are declining rapidly.

Classification: The lender internally graded the loan as pass and is monitoring the credit. The examiner disagreed with the lender's grading and listed the loan as special mention. While the borrower and guarantor can cover the debt service shortfall in the near-term, the duration of their support may not extend long enough to replace lost cash flow from operations due to delays in the renovation work. The primary source of repayment does not fully cover the loan as evidenced by a DSC ratio of 0.85x. It appears that competition from the new hotel will continue to adversely affect the borrower's cash flow until the renovations are complete, and if cash flow deteriorates further, the borrower and guarantors may be required to use more liquidity to support loan payments and ongoing business operations. The examiner also recommended the lender obtain a new valuation.

Nonaccrual Treatment: The lender maintained the loan in accrual status. The borrower and guarantors have demonstrated the ability and willingness to make the regularly scheduled payments and, even with the decline in the borrower's creditworthiness, global cash resources appear sufficient to make these payments, and the ultimate full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment.

D. Acquisition, Development and Construction—Residential

Base Case: The lender originated a \$4.8 million acquisition and development (A&D) loan and a \$2.4 million construction revolving line of credit (revolver) for the development and construction of a 48-lot

single-family project. The maturity for both loans is three years, and both are priced at a market interest rate; both loans also have an interest reserve. The LTV on the A&D loan is 75 percent based on an "as complete" value of \$6.4 million. Up to 12 units at a time will be funded under the construction revolver at the lesser of 80 percent LTV or 100 percent of costs. The builder is allowed two speculative ("spec") units (including one model). The remaining units must be pre-sold with an acceptable deposit and a pre-qualified mortgage. As units are settled, the construction revolver will be repaid at 100 percent (or par); the A&D loan will be repaid at 120 percent, or \$120,000 (\$4.8 million/48 units × 120 percent). The average sales price is projected to be \$500,000, and total construction cost to build each unit is estimated to be \$200,000. Assuming total cost is lower than value, the average release price will be \$320,000 (\$120,000 A&D release price plus \$200,000 construction costs). Estimated time for development is 12 months; the appraiser estimated absorption of two lots per month for total sell-out to occur within three years (thus, the loan would be repaid upon settlement of the 40th unit, or the 32nd month of the loan term). The borrower is required to curtail the A&D loan by six lots, or \$720,000, at the 24th month, and another six lots, or \$720,000, by the 30th month.

Scenario 1: Due to issues with the permitting and approval process by the county, the borrower's development was delayed by 18 months. Further delays occurred because the borrower was unable to pave the necessary roadways due to excessive snow and freezing temperatures. The lender waived both \$720,000 curtailment requirements due to the delays. Demand for the housing remains unchanged.

At maturity, the lender renewed the \$4.8 million outstanding A&D loan balance and the \$2.4 million construction revolver for 24 months at a market interest rate that provides for the incremental risk. The interest reserve for the A&D loan has been depleted as the lender had continued to advance funds to pay the interest charges despite the delays in development. Since depletion of the interest reserve, the borrower has made the last several payments out-of-pocket.

Development is now complete, and construction has commenced on eight units (two "spec" units and six pre-sold units). Combined borrower and guarantor liquidity show they can cover any debt service shortfall until the units begin to settle and the project is cash flowing. The lender estimates that the property's current "as complete" value is \$6 million, resulting in an 80 percent LTV. The curtailment schedule was re-set to eight lots, or \$960,000, by month 12, and another eight lots, or \$960,000, by month 18. A new appraisal has not been ordered; however, the lender noted in the file that, if the borrower does not meet the absorption projections of six lots/quarter within six months of booking the renewed loan, the lender will obtain a new appraisal.

Classification: The lender internally graded the restructured loans as pass and is monitoring the credits. The examiner agreed, as the borrower and guarantor can continue making payments on reasonable terms and

the project is moving forward supported by housing demand and is consistent with the builder's development plans. However, the examiner noted weaknesses in the lender's loan administrative practices as the financial institution did not (1) suspend the interest reserve during the development delay and (2) obtain an updated collateral valuation.

Nonaccrual Treatment: The lender maintained the loans in accrual status. The project is moving forward, the borrower has demonstrated the ability to make the regularly scheduled payments after depletion of the interest reserve, global cash resources from the borrower and guarantor appears sufficient to make these payments, and full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment.

Scenario 2: Due to weather and contractor issues, development was not completed until month 24, a year behind the original schedule. The borrower began pre-marketing, but sales have been slow due to deteriorating market conditions in the region. The borrower has achieved only eight pre-sales during the past six months. The borrower recently commenced construction on the pre-sold units.

At maturity, the lender renewed the \$4.8 million A&D loan balance and \$2.4 million construction revolver on a 12-month interest-only basis at a market interest rate, with another 12-month option predicated upon \$1 million in curtailments having occurred during the first renewal term (the lender had waived the initial term curtailment requirements). The lender also renewed the construction revolver for a one-year term and reduced the number of "spec" units to just one, which also will serve as the model. A recent appraisal estimates that absorption has dropped to four lots per quarter for the first two years and assigns an "as complete" value of \$5.3 million, for an LTV of 91 percent. The interest reserve is depleted, and the borrower has been paying interest out-of-pocket for the past few months. Updated borrower and guarantor financial statements indicate the continued ability to cover interest-only payments for the next 12 to 18 months.

Classification: The lender internally classified the loan as substandard and is monitoring the credit. The examiner agreed with the lender's treatment due to the deterioration and uncertainty surrounding the market (as evidenced by slower than anticipated sales on the project), the lack of principal reduction, and the reduced collateral margin.

Nonaccrual Treatment: The lender maintained the loan on an accrual basis because the development is complete, the borrower has pre-sales and construction has commenced, and the borrower and guarantor have sufficient means to make interest payments at a market interest rate until the earlier of maturity or the project begins to cash flow. The examiner concurred with the lender's accrual treatment.

Scenario 3: Lot development was completed on schedule, and the borrower quickly sold and settled the first 10 units. At maturity, the lender renewed the \$3.6 million A&D loan balance (\$4.8 million reduced by the sale and settlement of the 10 units

(\$120,000 release price \times 10) to arrive at \$3.6 million) and \$2.4 million construction revolver on a 12-month interest-only basis at a below market interest rate.

The borrower then sold an additional 10 units to an investor; the loan officer (new to the financial institution) mistakenly marked these units as pre-sold and allowed construction to commence on all 10 units. Market conditions then deteriorated quickly, and the investor defaulted under the terms of the bulk contract. The units were completed, but the builder has been unable to re-sell any of the units, recently dropping the sales price by 10 percent and engaging a new marketing firm, which is working with several potential buyers.

A recent appraisal estimates that absorption has dropped to three lots per quarter and assigns an "as complete" value of \$2.3 million for the remaining 28 lots, resulting in an LTV of 156 percent. A bulk appraisal of the 10 units assigns an "as-is" value of the units of \$4.0 million (\$400,000/unit). The loans are cross-defaulted and cross-collateralized; the LTV on a combined basis is 95 percent (\$6 million outstanding debt (A&D plus revolver) divided by \$6.3 million in combined collateral value). Updated borrower and guarantor financial statements indicate a continued ability to cover interest-only payments for the next 12 months at the reduced rate; however, this may be limited in the future given other troubled projects in the borrower's portfolio that have been affected by market conditions.

The lender modified the release price for each unit to net proceeds; any additional proceeds as units are sold will go towards repayment of the A&D loan. Assuming the units sell at a 10 percent reduction, the lender calculates the average sales price would be \$450,000. The financial institution's prior release price was \$320,000 (\$120,000 for the A&D loan and \$200,000 for the construction revolver). As such (by requiring net proceeds), the financial institution will be receiving an additional \$130,000 per lot, or \$1.3 million for the completed units, to repay the A&D loan (\$450,000 average sales price less \$320,000 bank's release price equals \$130,000). Assuming the borrower will have to pay \$30,000 in related sales/settlement costs leaves approximately \$100,000 remaining per unit to apply towards the A&D loan, or \$1 million total for the remaining 10 units (\$100,000 times 10).

Classification: The lender internally classified the loan as substandard and is monitoring the credit. The examiner agreed with the lender's treatment due to the borrower and guarantor's diminished ability to make interest payments (even at the reduced rate), the stalled status of the project, and the reduced collateral protection.

Nonaccrual Treatment: The lender maintained the loan on an accrual basis because the borrower had previously demonstrated an ability to make interest payments. The examiner disagreed as the loan was not restructured on reasonable repayment terms. While the borrower and guarantor may be able to service the debt at a below market interest rate in the near term using other unencumbered liquid assets,

other projects in their portfolio are also affected by poor market conditions and may require significant liquidity contributions, which could affect their ability to support the loan. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

E. Construction Loan—Single Family Residence

Base Case: The lender originated a \$1.2 million construction loan on a single-family "spec" residence with a 15-month maturity to allow for completion and sale of the property. The loan required monthly interest-only payments at a market interest rate and was based on an "as completed" LTV of 70 percent at origination. During the original loan construction phase, the borrower was able to make all interest payments from personal funds. At maturity, the home had been completed, but not sold, and the borrower was unable to find another lender willing to finance this property under similar terms.

Scenario 1: At maturity, the lender restructured the loan for one year on an interest-only basis at a below market interest rate to give the borrower more time to sell the "spec" home. Current financial information indicates the borrower has limited ability to continue to make interest-only payments from personal funds. If the residence does not sell by the revised maturity date, the borrower plans to rent the home. In this event, the lender will consider modifying the debt into an amortizing loan with a 20-year maturity, which would be consistent with this type of income-producing investment property. Any shortfall between the net rental income and loan payments would be paid by the borrower. Due to declining home values, the LTV at the renewal date was 90 percent.

Classification: The lender internally classified the loan substandard and is monitoring the credit. The examiner agreed with the lender's treatment due to the borrower's diminished ongoing ability to make payments and the reduced collateral position.

Nonaccrual Treatment: The lender maintained the loan on an accrual basis because the borrower demonstrated an ability to make interest payments during the construction phase. The examiner did not concur with this treatment because the loan was not restructured on reasonable repayment terms. The borrower had limited ability to continue to service the debt, even on an interest-only basis at a below market interest rate, and the deteriorating collateral margin indicated that full repayment of principal and interest was not reasonably assured. The examiner instructed the lender to place the loan in nonaccrual status.

Scenario 2: At maturity of the original loan, the lender restructured the debt for one year on an interest-only basis at a below market interest rate to give the borrower more time to sell the "spec" home. Eight months later, the borrower rented the property. At that time, the borrower and the lender agreed to restructure the loan again with monthly payments that amortize the debt over 20 years at a market interest rate for a residential

investment property. Since the date of the second restructuring, the borrower had made all payments for over six consecutive months.

Classification: The lender internally classified the restructured loan substandard. The examiner agreed with the lender's initial substandard grade at the time of the restructuring, but now considered the loan as a pass due to the borrower's demonstrated ability to make payments according to the reasonably modified terms for more than six consecutive months.

Nonaccrual Treatment: The lender initially placed the restructured loan in nonaccrual status but returned it to accrual after the borrower made six consecutive monthly payments. The lender expects full repayment of principal and interest from the rental income. The examiner concurred with the lender's accrual treatment.

Scenario 3: The lender restructured the loan for one year on an interest-only basis at a below market interest rate to give the borrower more time to sell the "spec" home. The restructured loan has become more than 90 days past due, and the borrower has not been able to rent the property. Based on current financial information, the borrower does not have the ability to service the debt. The lender considers repayment to be contingent upon the sale of the property. Current market data reflects few sales, and similar new homes in this property's neighborhood are selling within a range of \$750,000 to \$900,000 with selling costs equaling 10 percent, resulting in anticipated net sales proceeds between \$675,000 and \$810,000.

Classification: The lender graded \$390,000 loss (\$1.2 million loan balance less the maximum estimated net sales proceeds of \$810,000), \$135,000 doubtful based on the range in the anticipated net sales proceeds, and the remaining balance of \$675,000 substandard. The examiner agreed, as this classification treatment results in the recognition of the credit risk in the collateral-dependent loan based on the property's value less costs to sell. The examiner instructed management to obtain information on the current valuation on the property.

Nonaccrual Treatment: The lender placed the loan in nonaccrual status when it became 60 days past due (reversing all accrued but unpaid interest) because the lender determined that full repayment of principal and interest was not reasonably assured. The examiner concurred with the lender's nonaccrual treatment.

Scenario 4: The lender committed an additional \$48,000 for an interest reserve and extended the \$1.2 million loan for 12 months at a below market interest rate with monthly interest-only payments. At the time of the examination, \$18,000 of the interest reserve had been added to the loan balance. Current financial information obtained during the examination reflects the borrower has no other repayment sources and has not been able to sell or rent the property. An updated appraisal supports an "as is" value of \$952,950. Selling costs are estimated at 15 percent, resulting in anticipated net sales proceeds of \$810,000.

Classification: The lender internally graded the loan as pass and is monitoring the credit.

The examiner disagreed with the internal grade. The examiner concluded that the loan was not restructured on reasonable repayment terms because the borrower has limited ability to service the debt, and the reduced collateral margin indicated that full repayment of principal and interest was not assured. After discussing regulatory reporting requirements with the examiner, the lender reversed the \$18,000 interest capitalized out of the loan balance and interest income. Further, the examiner classified \$390,000 loss based on the adjusted \$1.2 million loan balance less estimated net sales proceeds of \$810,000, which was classified substandard. This classification treatment recognizes the credit risk in the collateral-dependent loan based on the property's market value less costs to sell. The examiner also provided supervisory feedback to management for the inappropriate use of interest reserves and lack of current financial information in making that decision. The remaining interest reserve of \$30,000 is not subject to adverse classification because the loan should be placed in nonaccrual status.

Nonaccrual Treatment: The lender maintained the loan in accrual status. The examiner did not concur with this treatment. The loan was not restructured on reasonable repayment terms, the borrower has limited ability to service a below market interest rate on an interest-only basis, and the reduced collateral margin indicates that full repayment of principal and interest is not assured. The lender's decision to provide a \$48,000 interest reserve was not supported, given the borrower's inability to repay it. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual, and reversed the capitalized interest to be consistent with regulatory reporting instructions. The lender also agreed to not recognize any further interest income from the interest reserve.

F. Construction Loan—Land Acquisition, Condominium Construction and Conversion

Base Case: The lender originally extended a \$50 million loan for the purchase of vacant land and the construction of a luxury condominium project. The loan was interest-only and included an interest reserve to cover the monthly payments until construction was complete. The developer bought the land and began construction after obtaining purchase commitments for 1/3 of the 120 planned units, or 40 units. Many of these pending sales were speculative with buyers committing to buy multiple units with minimal down payments. The demand for luxury condominiums in general has declined since the borrower launched the project, and sales have slowed significantly over the past year. The lack of demand is attributed to a slowdown in the economy. As a result, most of the speculative buyers failed to perform on their purchase contracts and only a limited number of the other planned units have been pre-sold.

The developer experienced cost overruns on the project and subsequently determined it was in the best interest to halt construction with the property 80 percent completed. The outstanding loan balance is \$44 million with funds used to pay construction costs,

including cost overruns and interest. The borrower estimates an additional \$10 million is needed to complete construction. Current financial information reflects that the developer does not have sufficient cash flow to pay interest (the interest reserve has been depleted); and, while the developer does have equity in other assets, there is doubt about the borrower's ability to complete the project.

Scenario 1: The borrower agreed to grant the lender a second lien on an apartment project in its portfolio, which provides \$5 million in additional collateral support. In return, the lender advanced the borrower \$10 million to finish construction. The condominium project was completed shortly thereafter. The lender also agreed to extend the \$54 million loan (\$44 million outstanding balance plus \$10 million in new money) for 12 months at a market interest rate that provides for the incremental risk, to give the borrower additional time to market the property. The borrower agreed to pay interest whenever a unit was sold, with any outstanding balance due at maturity.

The lender obtained a recent appraisal on the condominium building that reported a prospective "as complete" market value of \$65 million, reflecting a 24-month sell-out period and projected selling costs of 15 percent of the sales price. Comparing the \$54 million loan amount against the \$65 million "as complete" market value plus the \$5 million pledged in additional collateral (totaling \$70 million) results in an LTV of 77 percent. The lender used the prospective "as complete" market value in its analysis and decision to fund the completion and sale of the units and to maximize its recovery on the loan.

Classification: The lender internally classified the \$54 million loan as substandard due to the units not selling as planned and the project's limited ability to service the debt despite the 1.3x gross collateral margin. The examiner agreed with the lender's internal grade.

Nonaccrual Treatment: The lender maintained the loan in accrual status due to the protection afforded by the collateral margin. The examiner did not concur with this treatment due to the uncertainty about the borrower's ability to sell the units and service the debt, raising doubts as to the full repayment of principal and interest. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

Scenario 2: A recent appraisal of the property reflects that the highest and best use would be conversion to an apartment building. The appraisal reports a prospective "as complete" market value of \$60 million upon conversion to an apartment building and a \$67 million prospective "as stabilized" market value upon the property reaching stabilized occupancy. The borrower agreed to grant the lender a second lien on an apartment building in its portfolio, which provides \$5 million in additional collateral support. In return, the lender advanced the borrower \$10 million, which is needed to finish construction and convert the project to an apartment complex. The lender also agreed to extend the \$54 million loan for 12

months at a market interest rate that provides for the incremental risk, to give the borrower time to lease the apartments. Interest payments are deferred. The \$60 million "as complete" market value plus the \$5 million in other collateral results in an LTV of 83 percent. The prospective "as complete" market value is primarily relied on as the loan is funding the conversion of the condominium to apartment building.

Classification: The lender internally classified the \$54 million loan as substandard due to the units not selling as planned and the project's limited ability to service the debt. The collateral coverage provides adequate support to the loan with a 1.2x gross collateral margin. The examiner agreed with the lender's internal grade.

Nonaccrual Treatment: The lender determined the loan should be placed in nonaccrual status due to an oversupply of units in the project's submarket, and the borrower's untested ability to lease the units and service the debt, raising concerns as to the full repayment of principal and interest. The examiner concurred with the lender's nonaccrual treatment.

G. Commercial Operating Line of Credit in Connection With Owner Occupied Real Estate

Base Case: Two years ago, the lender originated a CRE loan at a market interest rate to a borrower whose business occupies the property. The loan was based on a 20-year amortization period with a balloon payment due in three years. The LTV equaled 70 percent at origination. A year ago, the lender financed a \$5 million operating line of credit for seasonal business operations at market terms. The operating line of credit had a one-year maturity with monthly interest payments and was secured with a blanket lien on all business assets. Borrowings under the operating line of credit are based on accounts receivable that are reported monthly in borrowing base reports, with a 75 percent advance rate against eligible accounts receivable that are aged less than 90 days old. Collections of accounts receivable are used to pay down the operating line of credit. At maturity of the operating line of credit, the borrower's accounts receivable aging report reflected a growing trend of delinquency, causing the borrower temporary cash flow difficulties. The borrower has recently initiated more aggressive collection efforts.

Scenario 1: The lender renewed the \$5 million operating line of credit for another year, requiring monthly interest payments at a market interest rate, and principal to be paid down by accounts receivable collections. The borrower's liquidity position has tightened but remains satisfactory, cash flow available to service all debt is 1.20x, and both loans have been paid according to the contractual terms. The primary repayment source for the operating line of credit is conversion of accounts receivable to cash. Although payments have slowed for some customers, most customers are paying within 90 days of invoice. The primary repayment source for the real estate loan is from business operations, which remain satisfactory, and an updated appraisal is not considered necessary.

Classification: The lender internally graded both loans as pass and is monitoring the credits. The examiner agreed with the lender's analysis and the internal grades. The lender is monitoring the trend in the accounts receivable aging report and the borrower's ongoing collection efforts.

Nonaccrual Treatment: The lender determined that both the real estate loan and the renewed operating line of credit may remain in accrual status as the borrower has demonstrated an ongoing ability to perform, has the financial ability to pay a market interest rate, and full repayment of principal and interest is reasonably assured. The examiner concurred with the lender's accrual treatment.

Scenario 2: The lender restructured the operating line of credit by reducing the line amount to \$4 million, at a below market interest rate. This action is expected to alleviate the borrower's cash flow problem. The borrower is still considered to be a viable business even though its financial performance has continued to deteriorate, with sales and profitability declining. The trend in accounts receivable delinquencies is worsening, resulting in reduced liquidity for the borrower. Cash flow problems have resulted in sporadic over advances on the \$4 million operating line of credit, where the loan balance exceeds eligible collateral in the borrowing base. The borrower's net operating income has declined but reflects the ability to generate a 1.08x DSC ratio for both loans, based on the reduced rate of interest for the operating line of credit. The terms on the real estate loan remained unchanged. The lender estimated the LTV on the real estate loan to be 90 percent. The operating line of credit currently has sufficient eligible collateral to cover the outstanding line balance, but customer delinquencies have been increasing.

Classification: The lender internally classified both loans substandard due to deterioration in the borrower's business operations and insufficient cash flow to repay the debt at market terms. The examiner agreed with the lender's analysis and the internal grades. The lender will monitor the trend in the business operations, accounts receivable, profitability, and cash flow. The lender may need to order a new appraisal if the DSC ratio continues to fall and the overall collateral margin further declines.

Nonaccrual Treatment: The lender reported both the restructured operating line of credit and the real estate loan on a nonaccrual basis. The operating line of credit was not renewed on market interest rate repayment terms, the borrower has an increasingly limited ability to service the below market interest rate debt, and there is insufficient support to demonstrate an ability to meet the new payment requirements. The borrower's ability to continue to perform on the operating line of credit and real estate loan is not assured due to deteriorating business performance caused by lower sales and profitability and higher customer delinquencies. In addition, the collateral margin indicates that full repayment of all of the borrower's indebtedness is questionable, particularly if the borrower fails to continue as a going concern. The examiner concurred with the lender's nonaccrual treatment.

H. Land Loan

Base Case: Three years ago, the lender originated a \$3.25 million loan to a borrower for the purchase of raw land that the borrower was seeking to have zoned for residential use. The loan terms were three years interest-only at a market interest rate; the borrower had sufficient funds to pay interest from cash flow. The appraisal at origination assigned an "as is" market value of \$5 million, which resulted in a 65 percent LTV. The zoning process took longer than anticipated, and the borrower did not obtain full approvals until close to the maturity date. Now that the borrower successfully obtained the residential zoning, the borrower has been seeking construction financing to repay the land loan. At maturity, the borrower requested a 12-month extension to provide additional time to secure construction financing which would include repayment of the subject loan.

Scenario 1: The borrower provided the lender with current financial information, demonstrating the continued ability to make monthly interest payments and principal curtailments of \$150,000 per quarter. Further, the borrower made a principal payment of \$250,000 in exchange for a 12-month extension of the loan. The borrower also owned an office building with an "as stabilized" market value of \$1 million and pledged the property as additional unencumbered collateral, granting the lender a first lien. The borrower's personal financial information also demonstrates that cash flow from personal assets and the rental income generated by the newly pledged office building are sufficient to fully amortize the land loan over a reasonable period. A decline in market value since origination was due to a change in density; the project was originally intended as 60 lots but was subsequently zoned as 25 single-family lots because of a change in the county's approval process. A recent appraisal of the raw land reflects an "as is" market value of \$3 million, which results in a 75 percent LTV when combined with the additional collateral and after the principal reduction. The lender restructured the loan into a \$3 million loan with quarterly curtailments for another year at a market interest rate that provides for the incremental risk.

Classification: The lender internally graded the loan as pass due to adequate cash flow from the borrower's personal assets and rental income generated by the office building to make principal and interest payments. Also, the borrower provided a principal curtailment and additional collateral to maintain a reasonable LTV. The examiner agreed with the lender's internal grade.

Nonaccrual Treatment: The lender maintained the loan in accrual status, as the borrower has sufficient funds to cover the debt service requirements for the next year. Full repayment of principal and interest is reasonably assured from the collateral and the borrower's financial resources. The examiner concurred with the lender's accrual treatment.

Scenario 2: The borrower provided the lender with current financial information that indicated the borrower is unable to

continue to make interest-only payments. The borrower has been sporadically delinquent up to 60 days on payments. The borrower is still seeking a loan to finance construction of the project and has not been able to obtain a takeout commitment; it is unlikely the borrower will be able to obtain financing, since the borrower does not have the equity contribution most lenders require as a condition of closing a construction loan. A decline in value since origination was due to a change in local zoning density; the project was originally intended as 60 lots but was subsequently zoned as 25 single-family lots. A recent appraisal of the property reflects an "as is" market value of \$3 million, which results in a 108 percent LTV. The lender extended the \$3.25 million loan at a market interest rate for one year with principal and interest due at maturity.

Classification: The lender internally graded the loan as pass because the loan is currently not past due and is at a market interest rate. Also, the borrower is trying to obtain takeout construction financing. The examiner disagreed with the internal grade and adversely classified the loan. The examiner concluded that the loan was not restructured on reasonable repayment terms because the borrower does not have the ability to service the debt and full repayment of principal and interest is not assured. The examiner classified \$550,000 loss (\$3.25 million loan balance less \$2.7 million, based on the current appraisal of \$3 million less estimated cost to sell of 10 percent or \$300,000). The examiner classified the remaining \$2.7 million balance substandard. This classification treatment recognizes the credit risk in this collateral-dependent loan based on the property's market value less costs to sell.

Nonaccrual Treatment: The lender maintained the loan in accrual status. The examiner did not concur with this treatment and instructed the lender to place the loan in nonaccrual status because the borrower does not have the ability to service the debt, value of the collateral is permanently impaired, and full repayment of principal and interest is not assured.

I. Multi-Family Property

Base Case: The lender originated a \$6.4 million loan for the purchase of a 25-unit apartment building. The loan maturity is five years, and principal and interest payments are based on a 30-year amortization at a market interest rate. The LTV was 75 percent (based on an \$8.5 million value), and the DSC ratio was 1.50x at origination (based on a 30-year principal and interest amortization).

Leases are typically 12-month terms with an additional 12-month renewal option. The property is 88 percent leased (22 of 25 units rented). Due to poor economic conditions, delinquencies have risen from two units to eight units, as tenants have struggled to make ends meet. Six of the eight units are 90 days past due, and these tenants are facing eviction.

Scenario 1: At maturity, the lender renewed the \$5.9 million loan balance on principal and interest payments for 12 months at a market interest rate that provides

for the incremental risk. The borrower had not been delinquent on prior payments. Current financial information indicates that the DSC ratio dropped to 0.80x because of the rent payment delinquencies. Combining borrower and guarantor liquidity shows they can cover cash flow shortfall until maturity (including reasonable capital expenditures since the building was recently renovated). Borrower projections show a return to break-even within six months since the borrower plans to decrease rents to be more competitive and attract new tenants. The lender estimates that the property's current "as stabilized" market value is \$7 million, resulting in an 84 percent LTV. A new appraisal has not been ordered; however, the lender noted in the file that, if the borrower does not meet current projections within six months of booking the renewed loan, the lender will obtain a new appraisal.

Classification: The lender internally graded the renewed loan as pass and is monitoring the credit. The examiner disagreed with the lender's analysis and classified the loan as substandard. While the borrower and guarantor can cover the debt service shortfall in the near-term using additional guarantor liquidity, the duration of the support may be less than the lender anticipates if the leasing fails to materialize as projected. Economic conditions are poor, and the rent reduction may not be enough to improve the property's performance. Lastly, the lender failed to obtain an updated collateral valuation, which represents an administrative weakness.

Nonaccrual Treatment: The lender maintained the loan in accrual status. The borrower has demonstrated the ability to make the regularly scheduled payments and, even with the decline in the borrower's creditworthiness, the borrower and guarantor appear to have sufficient cash resources to make these payments if projections are met, and full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment.

Scenario 2: At maturity, the lender renewed the \$5.9 million loan balance on a 12-month interest-only basis at a below market interest rate. In response to an event that caused severe economic conditions, the federal and state governments enacted moratoriums on all evictions. The borrower has been paying as agreed; however, cash flow has been severely impacted by the rent moratoriums. While the moratoriums do not forgive the rent (or unpaid fees), they do prevent evictions for unpaid rent and have been in effect for the past six months. As a result, the borrower's cash flow is severely stressed, and the borrower has asked for temporary relief of the interest payments. In addition, a review of the current rent roll indicates that five of the 25 units are now vacant. A recent appraisal values the property at \$6 million (98 percent LTV). Updated borrower and guarantor financial statements indicate the continued ability to cover interest-only payments for the next 12 to 18 months at the reduced rate of interest. Updated projections that indicate below break-even performance over the next 12 months remain uncertain given that the end of the moratorium (previously extended) is a "soft" date and that tenant behaviors may not follow historical norms.

Classification: The lender internally classified the loan as substandard and is monitoring the credit. The examiner agreed with the lender's treatment due to the borrower's diminished ability to make interest payments (even at the reduced rate) and lack of principal reduction, the uncertainty surrounding the rent moratoriums, and the reduced and tight collateral position.

Nonaccrual Treatment: The lender maintained the loan on an accrual basis because the borrower demonstrated an ability to make principal and interest payments and has some ability to make payments on the interest-only terms at a below market interest rate. The examiner did not concur with this treatment as the loan was not restructured on reasonable repayment terms, the borrower has insufficient cash flow to amortize the debt, and the slim collateral margin indicates that full repayment of principal and interest may be in doubt. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

Scenario 3: At maturity, the lender renewed the \$5.9 million loan balance on a 12-month interest-only basis at a below market interest rate. The borrower has been sporadically delinquent on prior principal and interest payments. A review of the current rent roll indicates that 10 of the 25 units are vacant after tenant evictions. The vacated units were previously in an advanced state of disrepair, and the borrower and guarantors have exhausted their liquidity after repairing the units. The repaired units are expected to be rented at a lower rental rate. A post-renovation appraisal values the property at \$5.5 million (107 percent LTV). Updated projections indicate the borrower will be below break-even performance for the next 12 months.

Classification: The lender internally classified the loan as substandard and is monitoring the credit. The examiner agreed with the lender's concerns due to the borrower's diminished ability to make principal or interest payments, the guarantor's limited ability to support the loan, and insufficient collateral protection. However, the examiner classified \$900,000 loss (\$5.9 million loan balance less \$5 million (based on the current appraisal of \$5.5 million less estimated cost to sell of 10 percent, or \$500,000)). The examiner classified the remaining \$5 million balance substandard. This classification treatment recognizes the collateral dependency.

Nonaccrual Treatment: The lender maintained the loan on accrual basis because the borrower demonstrated a previous ability to make principal and interest payments. The examiner did not concur with the lender's treatment as the loan was not restructured on reasonable repayment terms, the borrower has insufficient cash flow to service the debt at a below market interest rate on an interest-only basis, and the impairment of value indicates that full repayment of principal and interest is in doubt. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

Appendix 2

Selected Rules, Supervisory Guidance, and Authoritative Accounting Guidance

Rules

- Federal regulations on real estate lending standards and the *Interagency Guidelines for Real Estate Lending Policies*: 12 CFR part 34, subpart D, and appendix A to subpart D (OCC), 160.100, 160.101, and Appendix to 160.101 (OCC); 12 CFR part 208, subpart E and appendix C (Board); and 12 CFR part 365 and appendix A (FDIC). For NCUA, refer to 12 CFR part 723 for member business loan and commercial loan regulation which addresses commercial real estate lending and 12 CFR part 741, appendix B, which addresses loan workouts, nonaccrual policy, and regulatory reporting of workout loans.

- Federal regulations on the *Interagency Guidelines Establishing Standards for Safety and Soundness*: 12 CFR part 30, appendix A (OCC); 12 CFR part 208 Appendix D-1 (Board); and 12 CFR part 364 appendix A (FDIC). For NCUA safety and soundness regulations and supervisory guidance, see 12 CFR 741.3(b)(2); 12 CFR part 741, appendix B; 12 CFR part 723; and NCUA letters to credit unions 10-CU-02 "Current Risks in Business Lending and Sound Risk Management Practices" issued January 2010 (NCUA). Credit unions should also refer to the Commercial and Member Business Loans section of the NCUA Examiner's Guide.

- Federal appraisal regulations: 12 CFR part 34, subpart C (OCC); 12 CFR part 208, subpart E and 12 CFR part 225, subpart G (Board); 12 CFR part 323 (FDIC); and 12 CFR part 722 (NCUA).

Supervisory Guidance

- FFIEC Instructions for Preparation of Consolidated Reports of Condition and Income* (FFIEC 031, FFIEC 041, and FFIEC 051 Instructions) and *NCUA 5300 Call Report Instructions*.

- Interagency Policy Statement on Allowances for Credit Losses (Revised April 2023)*, issued April 2023.

- Interagency Guidance on Credit Risk Review Systems*, issued May 2020.

- Interagency Supervisory Examiner Guidance for Institutions Affected by a Major Disaster*, issued December 2017.

- Board, FDIC, and OCC joint guidance entitled *Statement on Prudent Risk Management for Commercial Real Estate Lending*, issued December 2015.

- Interagency Appraisal and Evaluation Guidelines*, issued October 2010.

- Board, FDIC, and OCC joint guidance on *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices*, issued December 2006.

- Interagency FAQs on Residential Tract Development Lending*, issued September 2005.

Authoritative Accounting Standards

- ASC Topic 310, Receivables*
- ASC Topic 326, Financial Instruments—Credit losses*
- ASC Topic 820, Fair Value Measurement*
- ASC Subtopic 825-10, Financial Instruments—Overall*

Appendix 3

Valuation Concepts for Income Producing Real Estate

Several conceptual issues arise during the process of reviewing a real estate loan and in using the present value calculation to determine the value of collateral. The following discussion sets forth the meaning and use of those key concepts.

The Discount Rate and the Present Value: The discount rate used to calculate the present value is the rate of return that market participants require for the specific type of real estate investment. The discount rate will vary over time with changes in overall interest rates and in the risk associated with the physical and financial characteristics of the property. The riskiness of the property depends both on the type of real estate in question and on local market conditions. The present value is the value of a future payment or series of payments discounted to the date of the valuation. If the income producing real estate is a property that requires cash outlays, a net present value calculation may be used in the valuation of collateral. Net present value considers the present value of capital outlays and subtracts that from the present value of payments received for the income producing property.

Direct Capitalization (“Cap” Rate) Technique: Many market participants and analysts use the “cap” rate technique to relate the value of a property to the net operating income it generates. In many applications, a “cap” rate is used as a short cut for computing the discounted value of a property’s income streams.

The direct income capitalization method calculates the value of a property by dividing an estimate of its “stabilized” annual income by a factor called a “cap” rate. Stabilized annual income generally is defined as the yearly net operating income produced by the property at normal occupancy and rental rates; it may be adjusted upward or downward from today’s actual market conditions. The “cap” rate, usually defined for each property type in a market area, is viewed by some analysts as the required rate of return stated in terms of current income. The “cap” rate can be considered a direct observation of the required earnings-to-price ratio in current income terms. The “cap” rate also can be viewed as the number of cents per dollar of today’s purchase price investors would require annually over the life of the property to achieve their required rate of return.

The “cap” rate method is an appropriate valuation technique if the net operating income to which it is applied is representative of all future income streams or if net operating income and the property’s selling price are expected to increase at a fixed rate. The use of this technique assumes that either the stabilized annual income or the “cap” rate used accurately captures all relevant characteristics of the property relating to its risk and income potential. If the same risk factors, required rate of return, financing arrangements, and income projections are used, the net present value approach and the direct capitalization technique will yield the same results.

The direct capitalization technique is not an appropriate valuation technique for troubled real estate since income generated by the property is not at normal or stabilized levels. In evaluating troubled real estate, ordinary discounting typically is used for the period before the project reaches its full income potential. A “terminal cap rate” is then utilized to estimate the value of the property (its reversion or sales price) at the end of that period.

Differences between Discount and Cap Rates: When used for estimating real estate market values, discount and “cap” rates should reflect the current market requirements for rates of return on properties of a given type. The discount rate is the required rate of return accomplished through periodic income, the reversion, or a combination of both. In contrast, the “cap” rate is used in conjunction with a stabilized net operating income figure. The fact that discount rates for real estate are typically higher than “cap” rates reflects the principal difference in the treatment of periodic income streams over a number of years in the future (discount rate) compared to a static one-year analysis (“cap” rate).

Other factors affecting the “cap” rate (but not the discount rate) include the useful life of the property and financing arrangements. The useful life of the property being evaluated affects the magnitude of the “cap” rate because the income generated by a property, in addition to providing the required return on investment, has to be sufficient to compensate the investor for the depreciation of the property over its useful life. The longer the useful life, the smaller the depreciation in any one year, hence, the smaller the annual income required by the investor, and the lower the “cap” rate. Differences in terms and the extent of debt financing and the related costs are also taken into account.

Selecting Discount and Cap Rates: The choice of the appropriate values for discount and “cap” rates is a key aspect of income analysis. In markets marked by both a lack of transactions and highly speculative or unusually pessimistic attitudes, analysts consider historical required returns on the type of property in question. Where market information is available to determine current required yields, analysts carefully analyze sales prices for differences in financing, special rental arrangements, tenant improvements, property location, and building characteristics. In most local markets, the estimates of discount and “cap” rates used in an income analysis generally should fall within a fairly narrow range for comparable properties.

Holding Period versus Marketing Period: When the net present value approach is applied to troubled properties, the chosen time frame should reflect the period over which a property is expected to achieve stabilized occupancy and rental rates (stabilized income). That period is sometimes referred to as the “holding period.” The longer the period is before stabilization, the smaller the reversion value will be within the total value estimate. The marketing period is the time that may be required to sell the property in an open market.

Appendix 4

Special Mention and Adverse Classification Definitions³⁶

The Board, FDIC, and OCC use the following definitions for assets adversely classified for supervisory purposes as well as those assets listed as special mention:

Special Mention

Special Mention Assets: A Special Mention asset has potential weaknesses that deserve management’s close attention. If left uncorrected, these potential weaknesses may result in deterioration of the repayment prospects for the asset or in the institution’s credit position at some future date. Special Mention assets are not adversely classified and do not expose an institution to sufficient risk to warrant adverse classification.

Adverse Classifications

Substandard Assets: A substandard asset is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Assets so classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the institution will sustain some loss if the deficiencies are not corrected.

Doubtful Assets: An asset classified doubtful has all the weaknesses inherent in one classified substandard with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable.

Loss Assets: Assets classified loss are considered uncollectible and of such little value that their continuance as bankable assets is not warranted. This classification does not mean that the asset has absolutely no recovery or salvage value, but rather it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may be effected in the future.

Appendix 5

Accounting—Current Expected Credit Losses Methodology (CECL)

This appendix addresses the relevant accounting and supervisory guidance for

³⁶Federal banking agencies loan classification definitions of Substandard, Doubtful, and Loss may be found in the Uniform Agreement on the Classification and Appraisal of Securities Held by Depository Institutions Attachment 1—Classification Definitions (OCC: OCC Bulletin 2013–28; Board: SR Letter 13–18; and FDIC: FIL–51–2013). The Federal banking agencies definition of Special Mention may be found in the Interagency Statement on the Supervisory Definition of Special Mention Assets (June 10, 1993). The NCUA does not require credit unions to adopt the definition of special mention or a uniform regulatory classification schematic of loss, doubtful, substandard. A credit union must apply a relative credit risk score (*i.e.*, credit risk rating) to each commercial loan as required by 12 CFR part 723 Member Business Loans; Commercial Lending (see Section 723.4(g)(3)) or the equivalent state regulation as applicable. Adversely classified refers to loans more severely graded under the credit union’s credit risk rating system. Adversely classified loans generally require enhanced monitoring and present a higher risk of loss.

financial institutions in accordance with Accounting Standards Update (ASU) 2016–13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* and its subsequent amendments (collectively, ASC Topic 326) in determining the allowance for credit losses (ACL). Additional supervisory guidance for the financial institution’s estimate of the ACL and for examiners’ responsibilities to evaluate these estimates is presented in the *Interagency Policy Statement on Allowances for Credit Losses (Revised April 2023)*. Additional information related to identifying and disclosing modifications for regulatory reporting under ASC Topic 326 is located in the FFIEC Call Report and NCUA 5300 Call Report instructions.

In accordance with ASC Topic 326, expected credit losses on restructured or modified loans are estimated under the same CECL methodology as all other loans in the portfolio. Loans, including loans modified in a restructuring, should be evaluated on a collective basis unless they do not share similar risk characteristics with other loans. Changes in credit risk, borrower circumstances, recognition of charge-offs, or cash collections that have been fully applied to principal, often require reevaluation to determine if the modified loan should be included in a different pool of assets with similar risks for measuring expected credit losses.

Although ASC Topic 326 allows a financial institution to use any appropriate loss estimation method to estimate the ACL, there are some circumstances when specific measurement methods are required. If a financial asset is collateral dependent,³⁷ the ACL is estimated using the fair value of the collateral. For a collateral-dependent loan, regulatory reporting requires that if the amortized cost of the loan exceeds the fair value³⁸ of the collateral (less costs to sell if the costs are expected to reduce the cash flows available to repay or otherwise satisfy the loan, as applicable), this excess is included in the amount of expected credit losses when estimating the ACL. However, some or all of this difference may represent a loss for classification purposes that should be charged off against the ACL in a timely manner.

Financial institutions also should consider the need to recognize an allowance for expected credit losses on off-balance sheet credit exposures, such as loan commitments,

³⁷ The repayment of a collateral-dependent loan is expected to be provided substantially through the operation or sale of the collateral when the borrower is experiencing financial difficulty based on the entity’s assessment as of the reporting date. Refer to the glossary entry in the FFIEC Call Report instructions for “Allowance for Credit Losses—Collateral-Dependent Financial Assets.”

³⁸ The fair value of collateral should be measured in accordance with FASB ASC Topic 820, *Fair Value Measurement*. For allowance measurement purposes, the fair value of collateral should reflect the current condition of the property, not the potential value of the collateral at some future date.

in other liabilities consistent with ASC Topic 326.

Michael J. Hsu,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on May 31, 2023.

James P. Sheesley,

Assistant Executive Secretary.

By order of the Board of the National Credit Union Administration.

Dated at Alexandria, VA, this 26th of June 2023.

Melane Conyers-Ausbrooks,

Secretary of the Board, National Credit Union Administration.

[FR Doc. 2023–14247 Filed 7–5–23; 8:45 am]

BILLING CODE 4810–33–P; 6714–01–P; 7535–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board’s Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW,

Washington, DC 20551–0001, not later than August 7, 2023.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Mergers & Acquisitions) 2200 North Pearl St., Dallas, Texas 75201–2272. Comments can also be sent electronically to Comments.applications@dal.frb.org:

1. *Patrons Holdings, Inc., Dallas, Texas*; to become a bank holding company by acquiring Eden Financial Corporation, San Angelo, Texas, and thereby indirectly acquiring Texas Financial Bank, Eden, Texas, and Amistad Bank, Del Rio, Texas.

Board of Governors of the Federal Reserve System.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2023–14268 Filed 7–5–23; 8:45 am]

BILLING CODE P

OFFICE OF GOVERNMENT ETHICS

Updated OGE Senior Executive Service Performance Review Board

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of a member to the OGE Senior Executive Service (SES) Performance Review Board.

DATES: The notification in this document is effective July 6, 2023.

FOR FURTHER INFORMATION CONTACT: Shelley K. Finlayson, Chief of Staff and Program Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917; Telephone: 202–482–9300; TTY: 800–877–8339; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION: The rule at 5 U.S.C. 4314(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management at 5 CFR part 430, subpart C, and § 430.310 thereof in particular, one or more Senior Executive Service performance review boards. As a small executive branch agency, OGE has just one board. In order to ensure an adequate level of staffing and to avoid a constant series of recusals, the designated members of OGE’s SES Performance Review Board are being drawn, as in the past, in large measure from the ranks of other executive branch agencies. The board shall review and evaluate the initial appraisal of each OGE senior executive’s performance by his or her supervisor, along with any recommendations in each instance to the appointing authority relative to the performance of the senior executive.

This notice updates the membership of OGE's SES Performance Review Board as it was most recently published at 86 FR 53303 (September 27, 2021).

Due to the departure of Kathleen Silbaugh, the following official has been appointed to the SES Performance Review Board of the Office of Government Ethics: Elizabeth Fischmann, Designated Agency Ethics Official, National Credit Union Administration. The remaining Board members are Shelley K. Finlayson (Chair), Chief of Staff and Program Counsel, Office of Government Ethics; Sean Dent, Senior Deputy General Counsel, Federal Housing Finance Agency, and Peter J. Constantine, Associate Solicitor for Legal Counsel, Office of the Solicitor, Department of Labor.

Approved: June 29, 2023.

Emory A. Rounds, III,

Director, U.S. Office of Government Ethics.

[FR Doc. 2023-14245 Filed 6-30-23; 11:15 am]

BILLING CODE 6345-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Delegation of Authority

Notice is hereby given that I have delegated to the Inspector General, Office of Inspector General, the authority vested in the Secretary of Health and Human Services under section 3022(b)(2)(A) of the Public Health Service Act [42 U.S.C. 300jj-52(b)(2)(A)], as amended, to impose civil money penalties on individuals and entities described in section 3022(b)(1)(A) and (C) of the Public Health Service Act that the Inspector General determines to have committed information blocking.

I hereby affirm and ratify any actions taken by the Inspector General, or any subordinates, that involved the exercise of the authority delegated herein prior to the effective date of the delegation.

This delegation is effective upon date of signature.

This delegation of authority may be redelegated.

Dated: June 29, 2023.

Xavier Becerra,

Secretary.

[FR Doc. 2023-14205 Filed 7-5-23; 8:45 am]

BILLING CODE 4152-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2023 Notice of Supplemental Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services (HHS).

ACTION: Notice of intent to award supplemental funding.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) is supporting an administrative supplement in scope of the parent award for one grant recipient funded in FY 2020 under the National Peer-Run Training and TA Center for Addiction Recovery Peer Support grant, Notice of Funding Opportunity (NOFO) TI-20-004. The recipient may receive up to \$941,960. The recipient has a project end date of August 30, 2024.

FOR FURTHER INFORMATION CONTACT:

David Awadalla, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857, telephone 240-276-0205; email: David.awadalla@samhsa.hhs.gov.

SUPPLEMENTARY INFORMATION: The supplemental funding will be used to:

- Expand/target direct and proactive technical assistance (TA) core content areas.
- Expand TA efforts to collegiate recovery settings.
- Expand and support Recovery Community Organizations (RCO) with development and billing strategies.
- Expand strategies of support for RCOs, with a special emphasis on billing and reimbursement practices.
- Encourage the adoption of SAMHSA's National Model Standards for Peer Support Certification, which can include the development of guidance documents, fact sheets, webinars, trainings, and other resources that support adoption (*e.g.*, a national peer certification Code of Ethics), and sub-awards for state certifications to help support the implementation of innovative pilot ways to adopt the standards.

Funding Opportunity Title: National Peer-Run Training and TA Center for Addiction Recovery Peer Support, TI-20-004.

Assistance Listing Number: 93.243.

Authority: Section 7152 of the SUPPORT Act for Patients and Communities.

Justification: University of Missouri-Kansas City (UMKC) is the only

SAMHSA-funded grant recipient of this NOFO and has the capacity and expertise to provide recovery-related technical assistance (TA). This supplement is to expand recovery-related TA, including TA related to peer recover support services and collegiate recovery.

This is not a formal request for application. Assistance will only be provided to the grant recipient funded in FY 2020 under the National Peer-Run Training and TA Center for Addiction Recovery Peer Support [TI-20-004] based on the receipt of a satisfactory application and associated budget that is approved by a review group.

Dated: June 30, 2023.

Ann Ferrero,

Public Health Analyst.

[FR Doc. 2023-14278 Filed 7-5-23; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7071-N-11]

60-Day Notice of Proposed Information Collection: Mortgage Insurance Termination, Application for Premium Refund, Tracer Claimant Refund Case Request, Online HUD-27050-B; OMB Control No.: 2502-0414

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:* September 5, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be submitted within 60 days of publication of this notice to 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 or email at PaperworkReductionActOffice@hud.gov.

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 and communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. 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: Mortgage Insurance Termination Application for Premium Refund, Tracer Claimant Refund Case Request.

OMB Approval Number: OMB-2502-0414.

OMB Expiration Date: 12/31/2023.

Type of Request: Revision of currently approved OMB collection.

Form Number: Mortgage Insurance Termination HUD-27050-A is submitted electronically; Application for Premium Refund HUD-27050-B.

Description of the need for the information and proposed use: Mortgage Insurance Termination information is used by servicing mortgagees to comply with HUD requirements for reporting termination of FHA mortgage insurance. This information is used whenever FHA mortgage insurance is terminated and no claim for insurance benefits will be filed. This information is submitted on the internet or via EDI and is used to issue mortgage insurance premium (MIP) refunds directly to eligible

claimants. This condition occurs when the form passes the criteria of certain system edits. As a result, the system generates a disbursement to the eligible claimant for the refund consisting of the unused portion of the paid premium. The information collected is used to update HUD's Single Family Insurance System. The billing of mortgage insurance premiums is discontinued as a result of the transaction. Without this information, the premium collection/monitoring function would be severely impeded and program data would be unreliable. Currently when the form is processed but does not pass the criteria in the series of system edits, the system generates the HUD 27050-B Application for Premium Refund for the claimant to complete and return to HUD for further processing of the refund. In general, a Premium Refund is the difference between the amount of prepaid premium and the amount of the premium that has been earned by HUD up to the time the mortgage is terminated. The Tracer Claimant Refund Case Request is used to collect information on the claimant from the tracer.

Information collection	Number of respondents	Frequency of response	Total annual responses	Hours per response	Total annual hours
Mortgage Insurance Termination HUD-27050-A	1,898	Varies	1,310,031	0.08	104,802
Application for Premium Refund HUD-27050-B	10,394	1	10,394	0.25	2,599
Tracer-Claimant Refund Case Request	360	1	360	.25	90
Online Application for Premium Refund HUD 27050-B	15,592	1	15,592	.25	3,898
Totals	28,244		1,336,377	.....	111,389

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 comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Jeffrey D. Little,
General Deputy Assistant Secretary for Housing.

[FR Doc. 2023-14229 Filed 7-5-23; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7071-N-12]

60-Day Notice of Proposed Information Collection: Disclosure of Adjustable Rate Mortgage (ARM) Rates; OMB Control No.: 2502-0322

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:* September 5, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be submitted within 60 days of publication of this notice to 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 or email at PaperworkReductionActOffice@hud.gov.

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: Disclosure of Adjustable Rate Mortgage (ARM) Rates.

OMB Approval Number: 2502–0322.

OMB Expiration Date: 8–31–2023.

Type of Request: Extension.

Form Number: None.

Description of the need for the information and proposed use: Mortgage lenders must provide loan applicants wishing to obtain an FHA-insured Adjustable Rate Mortgage (ARM) with a pre-loan disclosure that includes a written explanation of the ARM loan features. Loan servicers must also provide mortgagors with adjustable rate mortgages an annual ARM Disclosure Notice at least 25 days before any adjustment to a mortgagor’s monthly payment may occur, advising the

borrower of the new interest rate, the new monthly payment, index value and how the adjustment was calculated. Lenders generate the ARM Disclosures electronically and generally provide these disclosures on paper to their borrowers or in electronic formats. HUD collects the pre-loan ARM disclosure as part of the origination case binder. HUD may collect post-closing ARM disclosures as part of HUD’s program monitoring and enforcement activities, e.g., when a loan is selected for HUD’s post-endorsement quality review, or the lender sends the file to HUD for claim. HUD may review collected disclosures to ensure compliance with the ARM disclosure requirements.

Respondents: Lenders.

Estimated Number of Respondents: 2,250.

Estimated Number of Responses: 60,401.

Frequency of Response: One per FHA-insured adjustable rate loan.

Average Hours per Response: .05.

Total Estimated Burden: 3,020.

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 for Housing.

[FR Doc. 2023–14232 Filed 7–5–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF JUSTICE

Notice of Proposed Modification of Consent Decree Under the Clean Water Act

On June 29, 2023, the Department of Justice lodged a proposed First Modification of Consent Decree (“Modification”) in the United States District Court for the District of Puerto Rico in the lawsuit entitled *United States v. Puerto Rico Aqueduct and Sewer Authority*, No. 3:15–CV–02283. In this action, filed on September 15, 2015, the United States alleged that the Puerto Rico Aqueduct and Sewer Authority (“PRASA”) had violated the Clean Water Act (“CWA”), 33 U.S.C. 1251, *et seq.*, with regard to 52 PRASA wastewater treatment plants (“WWTPs”) and their associated wastewater collection systems, 768 wastewater pump stations, 119 water treatment plants (“WTPs”), and PRASA’s Puerto Nuevo Regional WWTP Sewer System (“Puerto Nuevo Sewer System”), the sewer system that services San Juan. On May 23, 2016, the United States District Court for the District of Puerto Rico entered a Consent Decree (“Decree”) that required extensive injunctive relief. The Modification makes certain changes to the requirements of the Decree, including granting extensions of time for PRASA to complete certain projects. The most significant revisions of the Decree are as follows:

The Decree required PRASA to implement six projects to address washwater discharges from drinking water treatment plants by various deadlines from December 2017 to December 2020. PRASA has not completed one of these projects. The deadline for this project has been extended to May 31, 2027.

The Decree required PRASA to implement 17 projects to address various problems in its sanitary wastewater system by various dates from December 2015 to December 2020. PRASA has completed ten of these projects. The Modification provides an extension of time for seven of the projects with new deadlines ranging from December 31, 2023, to December 31, 2028.

The Decree required that PRASA implement a Sewer System Reconnaissance involving the inspection and cleaning of the sewers located in the Puerto Nuevo Sewer System. The Modification extends certain of the deadlines for these projects and establishes deadlines for other aspects of these projects.

The Decree required that PRASA begin reporting the amount of wet weather and dry weather discharges from combined sewer (sewers conveying both wastewater and stormwater) outfalls by September 15, 2018, including estimated flow, and that, if PRASA determined that it could not estimate flow by that date, explain why such reporting was not feasible and provide a date by which such reporting would be feasible. The Modification provides that, by May 31, 2025, PRASA have a calibrated and validated model for the Puerto Nuevo Sewer System that will enable PRASA to estimate, based on combined sewer outfall level monitoring and sewer system modeling, the volume of each Combined Sewer Overflow (“CSO”) discharge and that PRASA begin to report the location, time, and estimated volume of each CSO discharge.

The Decree required PRASA to include in its Spill Response and Clean-up Plan criteria and strategies for public notification of SSOs/CSOs. The Modification requires PRASA to post to its website a table providing information concerning SSOs and CSOs. The Modification also requires PRASA to provide information on its website concerning where CSOs occur, the dangers posed by CSOs, methods for reporting CSOs, and its efforts to control CSOs.

In addition to the changes to the Decree discussed above, the Modification also requires PRASA to implement 17 new wastewater projects, at a total estimated cost of about \$530 million. The deadlines for completion of these projects range from December 31, 2024, to December 31, 2030.

The publication of this notice opens a period for public comment on the Modification. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Puerto Rico Aqueduct and Sewer Authority*, No. 3:15–CV–02283 (D.P.R.), D.J. Ref. No. 90–5–1–1–08385/4. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	<i>pubcomment-ees.enrd@usdoj.gov</i> .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Modification may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. The Department of Justice will provide a paper copy of the Modification upon written request. Please email your request to *pubcomment-ees.enrd@usdoj.gov* or mail your request to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Henry Friedman,
Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–14263 Filed 7–5–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0002]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Application for Restoration of Firearms Privileges—ATF Form 3210.1

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 5, 2023

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, contact: Laura O’Lena, Explosives Enforcement Branch, either by mail at 3750 Corporal Road, Huntsville, AL 35898, by email at *FROD@atf.gov* or telephone at 256–261–7640.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary

- for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Abstract: The information requested on Application for Restoration of Firearms Privileges—ATF Form 3210.1, fulfills the requirements of 18 U.S.C. chapter 44. Under Federal law, individuals prohibited from purchasing, possessing, receiving, or transporting firearms are permitted to apply for restoration of their firearms privileges. Currently, only corporations may apply for relief as Congress has not appropriated funds for individuals who are prohibited. Information Collection (IC) OMB 1140–0002 is being revised to change the name of the form to “Application for Relief from Federal Firearms Disabilities” to reflect the process characterized in U.S.C. 925(c) and its implementing regulations at 27 CFR 478.144.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.
2. *The Title of the Form/Collection:* Application for Restoration of Firearms Privileges.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*
Form number: ATF Form 3210.1.
Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.
4. *Affected public who will be asked or required to respond, as well as the obligation to respond:*
Affected Public: Private Sector—business or other for-profit.
The obligation to respond is required to obtain or retain a benefit under 18 U.S.C. chapter 44.
5. *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: An estimated 10 respondents will utilize the form annually, and it will take each respondent approximately 30 minutes to complete their responses.

6. *An estimate of the total annual burden (in hours) associated with the*

collection: The estimated annual public burden associated with this collection is 5 hours, which is equal to 10 (total respondents) * 1 (# of response per respondent) * .5 (30 minutes or the time to complete each response).

7. *An estimate of the total annual cost burden associated with the collection, if*

applicable: Although postage costs increased from \$0.55 per respondent during 2020 to \$0.63 currently, the total public cost burden is \$6.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min.)	Total annual burden (hours)
ATF Form 3210.1	10	1/annually	10	30	5

If additional information is required contact: John Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: June 29, 2023.

John Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023-14271 Filed 7-5-23; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

[OMB Number 1140-0098]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; ATF F 5070.1, Prevent All Cigarette Trafficking (PACT) Act Registration Form and ATF F 5070.1A, Prevent All Cigarette Trafficking (PACT) Act Registration Continuation Sheet—ATF Form 5070.1/5070.1A

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 5, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time,

suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, contact: Moliki Alexander, Operational Intelligence Division, either by mail at 90 K Street NE, Suite 250, Washington, DC 20002, by email at Moliki.alexander@atf.gov or telephone at 202-648-7720.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Abstract: This form is required for Electronic Nicotine Delivery System (ENDS), for delivery sellers to register with ATF, States and localities that these products are shipped into and report sales into these jurisdictions and requires distributors who engage in delivery sales to comply with State and local tax, and regulatory laws involving the distribution of ENDS to minors.

Effective March 27, 2021, electronic nicotine delivery systems (ENDS) became subject to regulation under the Prevent All Cigarette Trafficking (PACT) Act (15 U.S.C. 375 et seq.).

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Prevent All Cigarette Trafficking (PACT) Act Registration Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: ATF Form 5070.1/5070.1A.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Private Sector—business or other for-profit. The obligation to respond is mandatory per 15 U.S.C. 375 et seq.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 800 respondents will utilize the form annually, and it will take each respondent approximately 1 hour to complete their responses.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 800 total hours, which is equal to 800 (total respondents) * 1 (# of response per respondent) * 1 (60 minutes taken to prepare each response).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* ATF estimates the cost to businesses impacted will be \$27,368 collectively.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hour)	Total annual burden (hours)
ATF Form 5070.1/5070.1A	800	1/annually	800	1	800

If additional information is required contact: John Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: June 30, 2023.
John Carlson,
Department Clearance Officer for PRA, U.S. Department of Justice.
 [FR Doc. 2023-14275 Filed 7-5-23; 8:45 am]
BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

[OMB Number 1140-0013]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Application for Tax-Exempt Transfer of Firearm and Registration to Special Occupational Taxpayer—ATF Form 3 (5320.3)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 5, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments

especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, contact: Melissa Mason, NFA, either by mail at 244 Needy Road, Martinsburg, West Virginia 25405, by email: NFAOMBCOMMENTS@ATF.GOV, or telephone at 304-616-4500.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Abstract: ATF Form 3 (5320.3) is filed by Federal firearms licensees who have paid the special (occupational) tax to import, manufacture or deal in NFA

firearms to transfer an NFA firearm to a similarly qualified licensee.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.
2. *The Title of the Form/Collection:* Application for Tax-Exempt Transfer of Firearm and Registration to Special Occupational Taxpayer.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*
Form number: ATF Form 3 (5320.3).
Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.
4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Private Sector—business or other for-profit, Federal Government. The obligation to respond is mandatory under the provisions of 26 U.S.C. 5812.
5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 255,888 respondents will utilize the form annually, and it will take each respondent approximately 30 minutes to complete their responses.
6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 127,944, which is equal to 255,888 (total respondents) * 1 (# of response per respondent) * .5 (30 minutes).
7. *An estimate of the total annual cost burden associated with the collection, if applicable:* \$3,020 (If used full universe of 255,888 × \$.63 = \$161,209).

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min.)	Total annual burden (hours)
ATF Form 3 (5320.3)	255,888	1/annually	255,888	30	127,944

If additional information is required contact: John Carlson, Department Clearance Officer, United States

Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution

Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: June 29, 2023.

John Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023-14272 Filed 7-5-23; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

[OMB Number 1140-0017]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Annual Firearms Manufacturing and Exportation Report (AFMER) Under 18 U.S.C. Chapter 44, Firearms—ATF Form 5300.11

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 5, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, contact: Leslie Anderson, Office ATF-FFLC, either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at Leslie.anderson@atf.gov, or telephone at 301-616-4634.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should

address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Abstract: The information collected is used to compile statistics on the manufacture and exportation of firearms. The furnishing of this information is mandatory under 18 U.S.C. 923(g)(5)(A). This form must be submitted annually for every Type 07 and Type 10 Federal Firearms Licensees (FFLs), even if no firearms were exported or distributed into commerce. The information collection (IC) OMB #1140-0017 is being revised due to material and non-material changes to the form, such as added instructions, definitions, formatting changes (to adjust form length), bolded lines (to fillable boxes), grammatical changes (sentence rephrasing/statement modification), and instruction clarification.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Annual Firearms Manufacturing and

Exportation Report (AFMER) Under 18 U.S.C. Chapter 44, Firearms.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 5300.11.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:*

Affected Public: Private Sector—Business or other for-profit.

The obligation to respond is Mandatory and required to obtain or retain a benefit. The statutory requirements are implemented under 18 U.S.C. chapter 44.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 19,200 respondents will utilize the form annually, and it will take each respondent approximately 20 minutes to complete their responses.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 6,400 hours, which is equal to 19,200 (total respondents) * 1 (# of response per respondent) * .33333 (20 minutes).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* No new cost is associated with this collection. All respondents can electronically submit the AFMER to ATF free of charge, however, it is estimated that half the respondents submit the form to the Federal Firearms Licensing Center by mail. The annual cost has increased due to a change in the postal rate from \$0.55 during the last renewal in 2020, to \$0.63 in 2023. Consequently, the new public cost burden will be reported as \$6,048.00, which is equal to \$0.63 (mailing cost per respondent) * 19,200 (# of respondents) * 50% (percentage of responses submitted by mail).

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min.)	Total annual burden (hours)
ATF Form 5300.11	19,200	1/annually	19,200	20	6,400

If additional information is required contact: John Carlson, Department Clearance Officer, United States

Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution

Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: June 29, 2023.

John Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023-14273 Filed 7-5-23; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

[OMB Number 1140-NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Request for Restricted 922(o) Machine Gun (National Firearms Act)—ATF Form 5320.24

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on Monday, April 1st, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until August 7, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Connor Brandt, by email at nfaombcomments@atf.gov, or by telephone at 304-616-4500.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and/or
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering in title. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.
2. *Title of the Form/Collection:* Request for Restricted 922(o) Machine Gun (National Firearms Act).
3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 5320.24. *Component:* Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.
4. Affected public who will be asked or required to respond, as well as a brief abstract: *Affected Public:* Business or other for-profit, Federal Government, State, Local or Tribal Government. *Abstract:* The Request for Restricted 922(o) Machine Gun (National Firearms Act) (NFA)—ATF Form 5320.24 must be filed by Federal Firearms Licensees who have paid the special (occupational) tax to import, manufacture, deal in, or transfer an NFA firearm to a similarly qualified licensee. The completed ATF Form 5320.24 will also serve as supporting documentation for the Application for Tax-Exempt Transfer of

Firearm and Registration to Special Occupational Taxpayer—ATF Form 3 (5320.3) (ATF Form 3), which must be completed by a law enforcement authority requesting demonstration of 922(o) restricted machine guns.

5. *Obligation to Respond:* Mandatory under statutory requirements implemented in Title 27, CFR 479.105.

6. *Total Estimated Number of Respondents:* 1,850 respondents.

7. *Estimated Time per Respondent:* 20 minutes.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden:* 616 hours.

10. *Total Estimated Annual Other Costs Burden:* The estimated annual cost to the Federal Government is \$185.50.

If additional information is required, contact: John R. Carlson, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W-218 Washington, DC 20530.

Dated: June 29, 2023.

John Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023-14217 Filed 7-5-23; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

[OMB Number 1140-0076]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Application for Restoration of Explosives Privileges—ATF Form 5400.29

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 5, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection

instrument with instructions or additional information, contact: Laura O'Lena, Explosives Enforcement Branch, either by mail at 3750 Corporal Road, Huntsville, AL 35898, by email at FROD@atf.gov, or telephone at 256-261-7640.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic,

mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Abstract: Persons who wish to ship, transport, receive, or possess explosive materials, but are prohibited from doing so, will complete this form. The form will be submitted to ATF to determine whether the person who provided the information is likely to act in a manner dangerous to public safety and that the granting of relief is not contrary to the public interest. The information collection (IC) OMB #1140-0076 is being revised due to minor material changes to the form, such as adding instruction clarification and "month/year" (to block (b) and (c) of item 9 and block (c) and (d) of item 10).

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.
2. *The Title of the Form/Collection:* Application for Restoration of Explosives Privileges.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 5400.29.
Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Individuals or households, private sector—business or other for-profit. The obligation to respond is required to obtain/retain a benefit under 27 CFR part 555.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 300 respondents will utilize the form annually, and it will take each respondent approximately 30 minutes to complete the form.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 150 hours, which is equal to 300 (total respondents) * 1 (# of response per respondent) * .5 (30 minutes).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* ATF estimates the cost to individuals impacted will be \$9,789 collectively.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min.)	Total annual burden (hours)
ATF Form 5400.29	300	1/annually	300	30	150

If additional information is required contact: John Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: June 29, 2023.

John Carlson,
 Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023-14270 Filed 7-5-23; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

[OMB Number 1140-0070]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for Explosives License or Permit—ATF F 5400.13/5400.16

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on Monday, May 15, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until August 7, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Shawn Stevens, Federal Explosives Licensing Center, by email at Shawn.Stevens@atf.gov or by telephone at 304-616-4400.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

- whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the information collection or the OMB Control Number 1140–0070. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.
2. *Title of the Form/Collection:* Application for Explosives License or Permit.
3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF F 5400.13/5400.16.
Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:* **Affected Public:** Private Sector—business or other for-profit, Individuals or households.
Abstract: Each person (individual, partnership, corporation, or association)

applying for a Federal explosives license or permit must submit ATF Form 5400.13/5400.16. The information collected on the application is used to determine if the applicant is qualified to be a licensee or permittee under the provisions of the statute. The form will be submitted to ATF to determine whether the person who provided the information, is qualified to be issued a license or permit.

5. *Obligation to Respond:* Mandatory. The statutory requirements are implemented in 18 U.S.C. 843(a).

6. *Total Estimated Number of Respondents:* 10,200 respondents.

7. *Estimated Time per Respondent:* 1.5 hours.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden:* 15,300 hours.

10. *Total Estimated Annual Other Costs Burden:* \$4,659.00.

If additional information is required, contact: John Carlson, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: June 29, 2023.

John Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–14269 Filed 7–5–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request, National Database of Childcare Prices, Reinstatement With Change

AGENCY: Women’s Bureau, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents is properly assessed. Currently, the

Department of Labor is soliciting comments concerning the collection of data for the National Database of Childcare Prices. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 5, 2023.

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

Email: ndcp@dol.gov; *Mail or Courier:* U.S. Department of Labor, Women’s Bureau, Room S–3002, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, contact Liana Christin Landivar by telephone at (202) 693–6713 or by email at ndcp@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background: This proposed information collection seeks to update the National Database of Childcare Prices (NDCP). The NDCP is the most comprehensive federal source of childcare prices at the county level. The NDCP was first made available to the public in 2022 and it currently provides data for the years 2008 through 2018. The NDCP is based on data collected by each state in their childcare market rate surveys (MRS). State-administered MRS are conducted by state human services or workforce development offices (*i.e.*, Lead Agencies) according to federal regulations to receive Child Care and Development Block Grants (CCDBG). MRS provide market prices of various types of child care (*e.g.*, center-based, home-based) by age of children (*e.g.*, infants, toddlers, preschoolers, school-age children) and by geography. MRS are used to establish reimbursement rates for childcare subsidies. MRS sample eligible centers and care providers in the priced market and obtain the full market price of care. MRS data are a rich source of local childcare price data. However, these data are not reported to the federal government and they are retained by the states. As a result, reporting metrics are not

standardized across states and some of the data is not accessible to the public.

MRS are currently collected in three-year cycles. The most current MRS data collection cycle reflects the years 2019 through 2021. Some states may have applied for waivers and conducted data collection or reporting activities in 2022 due to disruptions caused by the COVID-19 pandemic. This information collection would request MRS data for surveys conducted between 2019 and 2022 from all states and the District of Columbia. Data requested would have already been collected by each state to meet federal regulations; no new data collection obligation is created. The Department of Labor would reconcile measures for uniformity across the states and geography would be standardized at the county level to be able to combine these data for analysis with county characteristics that are publicly available from the American Community Survey. The resulting database (NDCP) would be evaluated to protect respondent confidentiality, implementing proper disclosure avoidance techniques in counties with small samples. The database would be made available to the public as a research tool to understand childcare prices at the county level and changes

in childcare prices over time. Section 2 of Public Law 66-259 that established the Women’s Bureau authorizes this information collection. See 29 U.S.C. 13.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

II. Desired Focus of Comments: This **Federal Register** Notice provides the opportunity to comment on the proposed data collection. The Department of Labor is particularly interested in comments that do the following:

- Evaluate whether the proposed collection of information is necessary for the proper performance functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s burden estimate of the

proposed information collection, including the validity of the methodology and assumptions;

- Enhance the quality, utility, and clarity of the information to be collected; and

○ Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology—for example, permitting electronic submissions of responses.

III. Current Actions: At this time, the Department of Labor is requesting clearance to request market rate survey data collected by the states and the District of Columbia between 2019 and 2022 to update the National Database of Childcare Prices.

Type of Review: Reinstatement with Change.

OMB Control Number: 1290-0025.

Affected Public: State, Local, and Tribal Governments.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

ESTIMATED ANNUAL BURDEN HOURS

Type of instrument (form/activity)	Number of respondents	Number of responses per respondent	Total number of responses	Average burden time per response (hours)	Estimated burden hours
Collection of market rate survey reports and data files ¹	51	1	51	2	102

¹ State government agencies (Lead Agencies) will submit electronic copies of market rate survey reports and data files they have available for the years 2019 through 2022.

Wendy Chun-Hoon,
 Director, Women’s Bureau, U.S. Department of Labor.
 [FR Doc. 2023-14211 Filed 7-5-23; 8:45 am]
BILLING CODE 4510-HD-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Asbestos in Shipyards

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with

the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before August 7, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and

cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202-693-0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Standard requires employers to train workers about the hazards of asbestos, to monitor worker exposure, to provide medical surveillance, and maintain accurate records of worker exposure to asbestos. These records will be used by employers, workers, and the Government to ensure that workers are

not harmed by exposure to asbestos in the workplace. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 31, 2023 (88 FR 19329).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Asbestos in Shipyards.

OMB Control Number: 1218–0195.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 255.

Total Estimated Number of Responses: 3,597.

Total Estimated Annual Time Burden: 1,038 hours.

Total Estimated Annual Other Costs Burden: \$ 34,639.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–14216 Filed 7–5–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Acting Secretary

All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to Section 315(c) of the Federal Election Campaign Act of 1971, as amended (Pub. L. 92–225), 52 U.S.C. 30116(c), the Secretary of Labor has certified to the Chair of the Federal Election Commission and publishes this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (CPI–U) (1967=100) increased 493.5 percent from its 1974

annual average of 147.7 to its 2022 annual average of 876.664 and it increased 65.3 percent from its 2001 annual average of 530.4 to its 2022 annual average of 876.664. Using 1974 as a base (1974=100), I certify that the CPI–U increased 493.5 percent from its 1974 annual average of 100 to its 2022 annual average of 593.544. Using 2001 as a base (2001=100), I certify that the CPI–U increased 65.3 percent from its 2001 annual average of 100 to its 2022 annual average of 165.284. Using 2006 as a base (2006=100), I certify that the CPI–U increased 45.2 percent from its 2006 annual average of 100 to its 2022 annual average of 145.167.

Signed at Washington, DC.

Julie A. Su,

Acting Secretary of Labor.

[FR Doc. 2023–14212 Filed 7–5–23; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Student Data Form

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before August 7, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and

clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT:

Nicole Bouchet by telephone at 202–693–0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: OSHA Student Data Form 182 is used to collect student group and emergency contact information from OSHA Training Institute students. The collected information is used to contact a designated person in case of an emergency. Student group data is used for reports, and tuition receipts. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 21, 2023 (88 FR 17026).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Student Data Form.

OMB Control Number: 1218–0172.

Affected Public: Private sector—individuals or households.

Total Estimated Number of Respondents: 2,000.

Total Estimated Number of Responses: 2,000.

Total Estimated Annual Time Burden: 167 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–14277 Filed 7–5–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR**Office of the Acting Secretary****All Items Consumer Price Index for All Urban Consumers; United States City Average**

Pursuant to section 33105(c) of title 49, United States Code, and the delegation of the Secretary of Transportation's responsibilities under that Act to the Administrator of the Federal Highway Administration (49 CFR 1.95(a)), the Secretary of Labor has certified to the Administrator and published this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 181.8 percent from its 1984 annual average of 311.1 to its 2022 annual average of 876.664.

Signed at Washington, DC.

Julie A. Su,

Acting Secretary of Labor.

[FR Doc. 2023-14213 Filed 7-5-23; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR**Agency Information Collection Activities; Submission for OMB Review; Comment Request; Asbestos in General Industry Standard**

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before August 7, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of

the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT:

Nicole Bouchet by telephone at 202-693-0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This standard requires employers to monitor employee exposure, provide medical surveillance, and to maintain accurate records of employee exposure to asbestos. These records will be used by employers, employees, and the Government to ensure that employees are not harmed by exposure to asbestos in the workplace. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 3, 2023 (88 FR 19682).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-OSHA.

Title of Collection: Asbestos in General Industry Standard.

OMB Control Number: 1218-0133.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 121.

Total Estimated Number of Responses: 30,269.

Total Estimated Annual Time Burden: 10,124 hours.

Total Estimated Annual Other Costs Burden: \$877,203.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023-14218 Filed 7-5-23; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR**Mine Safety and Health Administration****Petition for Modification of Application of Existing Mandatory Safety Standards**

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before August 7, 2023.

ADDRESSES: You may submit comments identified by Docket No. MSHA-2023-0027 by any of the following methods:

1. *Federal eRulemaking Portal:*

<https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA-2023-0027.

2. *Fax:* 202-693-9441.

3. *Email:* petitioncomments@dol.gov

4. *Regular Mail or Hand Delivery:*

MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), Petitionsformodification@dol.gov (email), or 202-693-9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2023–001–M.

Petitioner: Bunker Hill Mining Corp., 1 Mine Road, Kellogg, ID 83837.

Mine: Bunker Hill Mine, MSHA ID No. 10–00083, located in Shoshone County, Idaho.

Regulation Affected: 30 CFR 57.11052(d), Refuge areas.

Modification Request: The petitioner requests a modification of 30 CFR 57.11052(d) to allow the mine to use compressed air cylinders to supply air inside the refuge chamber in lieu of the use of a compressed air line and to provide commercially purchased water in sealed bottles inside the refuge chamber in lieu of a waterline.

The petitioner states that:

(a) The mine is an underground silver, zinc, and lead mine with one refuge chamber that is purpose built with sealed cinder block walls integrated into the mine infrastructure.

(b) Mining access is by single, lateral development drifts driven through waste rock adjacent to the ore body with entry points on different levels for ore body exploration and development.

(c) There are generally 15 miners working in the mine when development activities are underway and typically 6 miners working on the same level as the refuge chamber, one to two times a week, for approximately 6 hours at each time.

(d) There is no natural or potable water source at the mine readily available to supply water through a waterline. The storage of commercially purchased bottled water will ensure that high-quality water is available to miners in the refuge chamber, without risk of damage to a waterline.

(e) The mine does not have usable compressed air lines throughout the

mine. Due to insufficient power supply, the mine currently uses portable diesel compressors to supply compressed air periodically. However, portable diesel compressors are subject to damage or failure, so the use of portable diesel compressors to supply constant air through compressed air lines for refuge chambers is not practical or safe.

The petitioner proposes the following alternative method:

(a) The refuge chamber shall have drinking water supplied with commercially purchased water in sealed bottles inside the chamber.

(1) The water provided shall be sufficient for 6 miners for a 96 hour period. Six cases, each consisting of 32, 16.9 fluid ounce bottles of commercially bottled water shall be maintained in the refuge chamber.

(2) The bottled water shall be visually inspected monthly.

(3) The bottled water shall be replaced every 2 years or sooner in the event of damage, usage, or degradation.

(b) There shall be 4 compressed air cylinders, supplied by OXARC, inc., in the refuge chamber, each providing 322 cubic feet of compressed air.

(1) Each compressed air cylinder shall provide a minimum of 24 hours of air at a setting of 6 liters per minute or 1.32 cubic feet per hour per person of air. The total time of sufficient air provided by the 4 compressed air cylinders shall be at least 96 hours.

(2) The compressed air cylinders shall be inspected monthly during escapeway inspections to ensure that the cylinders have sufficient air and are properly maintaining pressure.

(3) Carbon dioxide (CO₂) scrubbing inside the refuge chamber shall be administered using ChemBio Enviro curtains (MSHA approval #07–LPA130002).

(4) There shall be 6 units of curtains in the refuge chamber with each curtain supplying each miner with 96 hours of CO₂ scrubbing capability.

(c) All underground personnel shall be trained on the operation of the air cylinders to release air and water rationing for a 96-hour period.

The petitioner provided a ventilation and emergency escape map that shows the refuge chamber location and primary and secondary escapeways, among other information.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same

measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2023–14210 Filed 7–5–23; 8:45 am]

BILLING CODE 4520–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 23–069]

Name of Information Collection: The NASA Visitor Management System for Intermittent Access to NASA Hosted/ Sponsored Events and Activities

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by July 6, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–7998, or b.edwards-bodmer@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA hosts/sponsors numerous events on federally owned/leased property which are open to NASA affiliates and members of the public. The events include but are not limited to meetings, conferences, briefings, public outreach activities, tours, focus groups, etc. Visitor access is substantiated by a credentialed NASA sponsor who validates the visitor’s need to access a building/area, guest networking services, etc. for a specific event/purpose. Information is collected

to validate identity and enable intermittent access to activities.

Currently, visitor registration is accomplished via several electronic and paper processes. The NASA Office of Protective Services is transitioning to a one-NASA process to manage access for visitors with an affiliation less than 30-days.

NASA may collect event registration information to include but not limited to a visitor's name, address, citizenship, biometric data, purpose of visit, the location to be visited, escort/sponsor name with contact data, and preferred meeting/event sessions when options are available. When parking is provided on Federal owned/leased space, driver's license information as well as vehicle make/model/tag information will be collected.

When visitors/vendors are permitted to bring equipment and/or event set-up materials such as booths and displays, information will be collected to issue property passes and coordinate equipment/property delivery. Information will also be collected, when applicable, to include other associated requirements such as electrical power needs, internet access, etc.

NASA collects, stores, and secures information from individuals requiring routine and intermittent access in a manner consistent with the Constitution and applicable laws, including the Privacy Act (5 U.S.C. 552a) and the Paperwork Reduction Act.

II. Methods of Collection

Electronic.

III. Data

Title: The NASA Visitor Management System for Intermittent Access to NASA Hosted/Sponsored Events and Activities.

OMB Number: 2700-0165.

Type of Review: Reinstatement without change of a currently approved information collection.

Affected Public: Individuals.

Estimated Annual Number of Activities: 400,000.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 400,000.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 53,333 hours.

Estimated Total Annual Cost: \$2,000,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including

whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

William Edwards-Bodmer,
NASA PRA Clearance Officer.

[FR Doc. 2023-14200 Filed 7-5-23; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL CREDIT UNION ADMINISTRATION

[NCUA-2023-0072]

Request for Comment Regarding National Credit Union Administration Operating Fee Schedule Methodology

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The NCUA Board (Board) is requesting comment on changes to the methodology it uses to determine how it apportions operating fees charged to Federal credit unions (FCUs). The Board uses operating fees to fund part of the NCUA's annual budget. In this notice, the Board proposes to change the exemption threshold below which Federal Credit Unions would not be required to pay the operating fee and proposes to establish a process to update the exemption threshold in future years based on the credit union system's annual asset growth.

DATES: Comments must be received on or before August 7, 2023.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal:* <https://www.regulations.gov/>. Follow the instructions for submitting comments for Docket Number NCUA-2023-0072.

- *NCUA website:* <https://www.ncua.gov/regulation-supervision/rulemakings-proposals-comment>.

Follow the instructions for submitting comments.

- *USPS/Hand Delivery/Courier:* Address to Melane Conyers-Ausbrooks,

Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- *Public Inspection:* You may view all public comments on the Federal eRulemaking Portal at <https://www.regulations.gov>, as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. If you are unable to access public comments on the internet, you may contact the NCUA for alternative access by calling (703) 518-6540 or emailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: James Holm, Supervisory Budget Analyst, Office of the Chief Financial Officer, at (703) 518-6570.

SUPPLEMENTARY INFORMATION:

I. Legal Background

The NCUA charters, regulates, and insures deposits in FCUs and insures deposits in federally insured State-chartered credit unions (FISCUs). To cover expenses related to its tasks, the Board adopts a biennial budget in the fall of each year. The Federal Credit Union Act (FCU Act) provides two primary sources to fund the budget: (1) requisitions from the National Credit Union Share Insurance Fund, referred to as the overhead transfer rate (OTR);¹ and (2) operating fees charged to FCUs.²

With regard to the operating fee, the FCU Act requires each FCU to, "in accordance with rules prescribed by the Board, . . . pay to the [NCUA] an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed."³ The fee must "be determined according to a schedule, or schedules, or other method determined by the Board to be appropriate, which gives due consideration to the expenses of the [NCUA] in carrying out its responsibilities under the [FCU Act] and to the ability of [FCUs] to pay the fee."⁴ The statute requires the Board to, among other things, "determine the periods for

¹ See, e.g., 12 U.S.C. 1783(a) (making the Share Insurance Fund available "for such administrative and other expenses incurred in carrying out the purpose of [Title II of the FCU Act] as [the Board] may determine to be proper.").

² 12 U.S.C. 1755(a) ("In accordance with rules prescribed by the Board, each [FCU] shall pay to the [NCUA] an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed.") and 12 U.S.C. 1766(j)(3). Other sources of income for the operating budget include interest income, funds from publication sales, parking fee income, and rental income.

³ 12 U.S.C. 1755(a).

⁴ 12 U.S.C. 1755(b).

which the fee shall be assessed and the date or dates for the payment of the fee or increments thereof.”⁵

Accordingly, the FCU Act imposes three requirements on the Board related to assessing an operating fee on FCUs: (1) the fee must be assessed according to a schedule or schedules, or other method that the Board determines to be appropriate, which gives due consideration to NCUA’s responsibilities in carrying out the FCU Act and the ability of FCUs to pay the fee; (2) the Board must determine the period for which the fee will be assessed and the due date for payment; and (3) the Board must deposit collected fees into the Treasury to defray the Board’s expenses in carrying out the FCU Act. Once collected, operating fees, “may be expended by the Board to defray the expenses incurred in carrying out the provisions of [the FCU Act,] including the examination and supervision of [FCUs].”⁶

The NCUA’s regulations govern certain of the operating fee processes.⁷ The regulation establishes: (i) the basis for charging operating fees; (ii) a notice process; (iii) rules for new charters, conversions, mergers, and liquidations; and (iv) administrative fees and interest for late payment, among other principles and processes.⁸ Certain aspects of and adjustments to the operating fee process, such as changes to which FCUs are exempt from operating fees or the multipliers used to determine fees applicable to FCUs that fall within designated asset tiers, are usually not published in the **Federal Register**. Instead, in November 2015, the Board delegated authority to the NCUA’s Chief Financial Officer to administer the Board-approved operating fee methodology and to set the operating fees as calculated per the approved methodology during each annual budget cycle beginning with 2016. Although it is not required to do so under the Administrative Procedure Act,⁹ in January 2016, the Board published its methodology in the **Federal Register** and requested public comment on the same.¹⁰ The Board provided notice of several revisions to the operating fee in July 2020 and adopted a final operating fee rule in December 2020.

The Board first proposed its operating fee methodology in 1979, after Congress passed the Financial Institutions

Regulatory and Interest Rate Control Act of 1978.¹¹ This legislation permitted the Board to consolidate previously separate chartering, supervision, and examination fees into a single operating fee, charged “in accordance with schedules, and for time periods, as determined by the Board, in an amount necessary to offset the expenses of the Administration at a rate consistent with a credit union’s ability to pay.”¹² In combination with a proposed change to section 701.6 of the NCUA’s regulations in 1979, the Board proposed an initial fee schedule in the **Federal Register**, including rates for 12 asset tiers.¹³ It later published a final rule in the **Federal Register**, which included a finalized fee schedule for 1979.¹⁴

On four additional occasions prior to the July 2020 notice, the Board had requested comments on potential changes to the operating fee schedule through a **Federal Register** notice, independent of any changes to 12 CFR 701.6. First, in 1990, the Board provided notice to the public that it was considering consolidating the operating fee schedule from 14 asset tiers to two asset tiers, retaining an exemption for FCUs with total assets of less than \$50,000, and implementing a \$100 minimum fee.¹⁵ Second, in 1992, the Board requested comments on a plan to limit operating fees to the first \$1 billion of each FCU’s assets.¹⁶ Third, in 1995, the Board requested comments on a plan to restructure the operating fee schedule for natural person FCUs and to exempt FCUs with assets of \$500,000 or less based on concern about small FCUs’ ability to pay the fees.¹⁷ The Board also requested comments on imposing a minimum fee of \$100 on all natural person FCUs with assets over \$500,000 but less than or equal to \$750,000.¹⁸

In 2016, the Board published an updated methodology in detail in the **Federal Register** and solicited comment. The Board made no changes in response to comments on the methodology published in 2016 and delegated authority to the NCUA Chief Financial Officer to apply the published methodology. In 2020, the Board adopted three revisions to the methodology: (1) including the budget for capital projects within the total annual budget subject to the OTR; (2) including projected miscellaneous

revenues within the total annual budget subject to the OTR; and (3) for purposes of determining the annual adjustment to the rate tier thresholds, comparing the average of total system assets reported in Call Reports for the four quarters available at the time the Board approves the budget to the average of total system assets in Call Reports for the four quarters of the respective previous years. Since that time, the Chief Financial Officer has applied the published operating fee methodology and explained its application in the NCUA’s annual budget documents.

In general, the Board has not used **Federal Register** notices in connection with annual adjustments to the asset tiers and rates of the operating fee schedule. Instead, the Board has opted to adopt such changes at its open meetings. As recently as 2012, for example, the Board increased the asset threshold used to exempt FCUs from operating fees from \$500,000 to \$1 million at an open meeting, without requesting advance comment in the **Federal Register**.¹⁹ While the Board has varied its practice with respect to operating fee schedule changes, it has done so within the FCU Act’s broad directive that the operating fee schedule should be as “determined by the Board to be appropriate,” subject to its consideration of its expenses and the ability of FCUs to pay.²⁰ In addition, the NCUA’s regulation on operating fee processes includes a standing invitation for written comments from FCUs on existing operating fee schedules.²¹ Each year the Board also invites comments on the draft NCUA budget, which includes a detailed explanation of how the operating fee is calculated and how changes to the operating fee rates are determined based on application of the published methodology.

II. Methodology for Determining the Aggregate Operating Fee Amount

The Board adopts an annual budget in the fall of each year, which includes an operating budget for the costs of day-to-day operations such as employee compensation, travel and training expenses, support purchased through contracts, and other miscellaneous administrative expenses. The annual budget also includes a capital budget for the estimated spending on critical projects, such as for computer hardware and software, and for investments in agency-owned real property and equipment. The annual budget provides

¹¹ 44 FR 11785 (Mar. 2, 1979).

¹² *Id.* at 11786.

¹³ *Id.* at 11787.

¹⁴ 44 FR 27379 (May 10, 1979).

¹⁵ 55 FR 29857 (July 23, 1990).

¹⁶ 57 FR 34152 (Aug. 3, 1992).

¹⁷ 60 FR 32925 (June 26, 1995).

¹⁸ *Id.*

¹⁹ Board Action Memorandum on 2013 Operating Fee (Nov. 15, 2012).

²⁰ 12 U.S.C. 1755(b).

²¹ 12 CFR 701.6(c).

⁵ *Id.*

⁶ 12 U.S.C. 1755(d).

⁷ 12 CFR 701.6.

⁸ *Id.*

⁹ 5 U.S.C. 551 *et seq.*

¹⁰ 81 FR 4674 (Jan. 27, 2016).

the resources required to execute the goals and objectives as outlined in the NCUA's strategic plan.²²

Adjustments to the Budget. When calculating the aggregate annual operating fee requirements, the Board adds together the operating budget and capital budget to determine the total annual budget required for the agency's operations and investments.²³ The Board then subtracts from the total annual budget its estimate for miscellaneous revenues that the agency will collect during the year, such as rent collected from other Federal agencies that share NCUA facilities and parking fee revenues. The NCUA owns a share of the parking garage underneath the complex of buildings that includes the agency's Central Office, and the NCUA receives its share of the revenue collected from fees charged to those who park in the garage.

Overhead Transfer Rate: As discussed previously, the FCU Act authorizes the NCUA to expend funds from the National Credit Union Share Insurance Fund for administrative and other expenses related to Federal share insurance.²⁴ The transfer from the National Credit Union Share Insurance Fund covers the expenses associated with insurance-related functions of the NCUA's operations. The OTR is one of the funding sources for the budget, but the OTR does not affect the amount of the annual budget. The Board approves the annual budget separately and without regard to the OTR. The OTR is applied to actual expenses incurred each month, and the OTR share of monthly expenses is transferred from the National Credit Union Share Insurance Fund to the NCUA's Operating Fund. The estimated annual OTR is subtracted from the total annual budget, net of miscellaneous revenues, to determine the portion of the annual budget financed by the operating fee.

Interest Income and Other Adjustments: The Board reduces the portion of the annual budget financed by the operating fee by its estimate of interest income and by other adjustments in order to compute the net

level of collections required to finance the agency's programs. Interest income reduces the required operating fees by providing an additional source of funds to cover regulatory (*i.e.*, non-insurance) related aspects of operating the NCUA. The NCUA collects interest income by investing balances of operating fee collections in short-term Treasury securities because the collected funds are not immediately required to pay expenses. Other adjustments made by the Board include an estimate of prior-years' operating fee collections that are unlikely to be spent and that therefore reduce the need for new operating fee collections.

Operating Fee Requirements. The result of adjusting the total annual budget by the OTR share, interest income, and other adjustments is the net budget subject to the operating fee and payable by both natural person and corporate FCUs. The natural person FCU operating fees are determined by deducting the corporate FCU operating fees from the total budget operating fee requirements.

The corporate credit union fee schedule was established in 1979 and has changed little over the years. Corporate FCUs hold assets of natural person credit unions, which are already assessed under the natural person operating fees for those members that are FCUs. Assessing corporate FCUs at the same rate would, effectively, assess the same assets twice for natural person FCU members of corporate FCUs. Raising operating fee assessments for corporate FCUs would result in higher expenses for corporate FCUs. Corporate FCUs would need to pass the higher expenses to natural person credit unions in the form of higher fees and lower investment yields. The corporate FCU operating fee schedule is a method of charging corporate FCUs a supervisory fee to defray costs and is now published annually in the budget.

III. Methodology for Determining the Operating Fee Schedule

The Board delegated authority to the Chief Financial Officer to administer the methodology approved by the Board for calculating the operating fees charged to natural person FCUs and to set the operating fee schedule as calculated per the approved methodology, beginning in 2016. After determining the operating fee requirements for natural person FCUs, the Chief Financial Officer creates the natural person FCU operating fee schedule for the upcoming year. The FCU operating fee schedule is published annually in the budget.

The current fee schedule for natural person FCUs uses three asset tiers. A

different assessment rate is applied to each tier, and the threshold for each tier is adjusted annually to reflect growth of the credit union system. Currently, FCUs with \$1 million or less in assets pay no operating fee.

There are two steps used to determine adjustments to the operating fee schedule for the upcoming year: (1) updating the prior-year asset tier thresholds using the computed rate of natural person FCU asset growth; and (2) updating the prior-year assessment rates for each asset tier by determining the average assessment rate adjustment.

Updating prior year asset levels. The first step in determining the new operating fee schedule is to adjust the threshold for each asset tier from the prior year by comparing the average of total system assets reported in Call Reports for the four quarters available at the time the Board approves the budget to the average of total system assets in Call Reports for the four quarters of the respective previous years. The tier thresholds are adjusted annually in this manner to preserve the same relative relationship of the scale to the applicable asset base.

Updating the prior year's assessment rates. After updating the prior-year asset tier thresholds, the next step is to project operating fees using the updated asset tier thresholds and the prior-year assessment rates charged for each tier. The percentage difference between the projected operating fee collections using the prior-year assessment rates and the total operating fee collections required to support the budget is the average rate adjustment.

The average rate adjustment is used to amend the prior-year's assessment rates for each asset tier either upwards or downwards. If the projected amount of operating fees is less than the required budgeted amount, then the assessment rates for each asset tier are adjusted upwards. If the projected amount is more than the required budgeted amount, the assessment rates for each asset tier are adjusted downwards.

The resulting new operating fee schedule and due date are communicated through a Letter to Federal Credit Unions and posted online to *NCUA.gov* within 30 days of Board approval of the annual budget. The Board also makes available on the NCUA website an online operating fee calculator for FCUs to estimate their individual operating fees for the upcoming year. No later than March of each year, natural person FCUs with assets greater than \$1 million will receive an invoice for their operating fee. Operating fees are based on the average of the assets reported for the

²² Additional information on the NCUA budget may be found at: <http://www.ncua.gov/About/Pages/budget-strategic-planning/supplementary-materials.aspx>.

²³ The NCUA Board considers a separate budget for administrative activities related solely to the NCUA's insurance program, which are financed directly from the National Credit Union Share Insurance Fund. In addition, the operations of the Central Liquidity Facility are considered by the Central Liquidity Facility Board, which is an instrumentality of the United States within the NCUA and managed by the Board, and has a separate budget funded from its own resources.

²⁴ 12 U.S.C. 1783(a).

previous four quarters available when the Board approves the budget. The NCUA combines operating fee and capitalization deposit adjustments into a single invoice normally due in April. As required by the FCU Act, the NCUA will deposit the collected fees in the United States Treasury.²⁵

IV. Change to Operating Fee Methodology and Request for Comment

The Board seeks comment on a change to the exemption level below which FCUs are not charged an operating fee and invites comment on other aspects of the operating fee methodology, as described below.

1. Threshold for Exemption From Paying an Operating Fee

Currently, FCUs reporting average assets of \$1,000,000 or less during the preceding four calendar quarters are exempt from paying an operating fee, because the Board considered and determined that such credit unions do not have the ability to pay the fee. The \$1,000,000 average asset exemption level has been in place since 2012 and has not been adjusted since that time. In the intervening 11 years, average assets across FCUs have approximately doubled. To account for this growth in the size of the credit union system, the Board is proposing to raise the average asset exemption level for FCUs to \$2,000,000 and to adjust the exemption threshold annually in future years by the computed rate of asset growth in the credit union system. This inflationary adjustment would be included in the operating fee calculation presented in the annual draft NCUA budget published by the Chief Financial Officer pursuant to 12 U.S.C. 1789(b). The NCUA would adjust the exemption threshold by the percentage by which average quarterly assets reported for the credit union system for the most-current four quarters have increased compared to the previous four quarters, using the Call report data available at the time the NCUA budget is published. For example, when the Board approved the 2023–2024 operating budget in December 2022, the average credit union system assets for the four most-current quarters (*i.e.*, the third and fourth quarters of 2021 and the first two quarters of 2022) were 8.5 percent higher than the previous four quarters (*i.e.*, the third and fourth quarter of 2020 and the first two quarters of 2021). This increase in assets can be expressed as an inflation multiplier (1.085 in the

example given) and applied to the exemption threshold to determine the adjusted level.

The Board believes that this change would appropriately maintain its current policy of exempting the smallest natural person credit unions from paying the operating fee based on those institutions' inability to pay such a fee.

2. Other Aspects of the Operating Fee Methodology

The Board has not substantially modified the current three-tier operating fee schedule since 1993. The current operating fee schedule is regressive; that is, credit unions with a larger amount of total assets pay a lower marginal rate on those assets above the threshold levels for the lower tiers. Given growth and consolidation in the credit union system, the Board is interested in whether such an approach is an equitable method for allocating the operating fee. There is a potentially wide range of approaches for assessing the operating fee. For example, the Board could adopt a single, flat-rate operating fee for all credit unions with total assets that exceed a standard exemption threshold. Overall, a flat-rate operating fee would shift fees away from relatively smaller credit unions to relatively larger ones, making the operating fee schedule less regressive. The Board could also make the operating fee schedule less regressive by increasing the rates for the second and third tiers on the schedule. Alternatively, adjusting the rates upward for the first and second tiers of the current operating fee would create a more regressive schedule. The Board is interested in receiving public comments on whether or how it should consider modifying the operating fee schedule and what specific aspects and conditions of the credit union system it should evaluate when making such decisions.

The Board is also interested in specific suggestions that would increase the equitable distribution of the operating fee across FCUs. Because the operating fee methodology allocates the non-OTR portion of the NCUA budget to all FCUs subject to it, changes to the methodology do not lower total operating fee collections but instead shift the fees to those FCUs required to pay it. The Board is interested in understanding how any proposals to change the methodology can be justified as fair and equitable not only for those FCUs whose operating fee would decrease, but also for those FCUs whose operating fees would increase and therefore bear a greater fee burden compared to the current methodology.

Authority: 12 U.S.C. 1755.

By the National Credit Union Administration Board on June 29, 2023.

Melane Conyers-Ausbrooks,
Secretary of the Board.

[FR Doc. 2023–14201 Filed 7–5–23; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Privacy Act of 1974: Systems of Records

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the National Credit Union Administration (NCUA) gives notice of a proposed modified Privacy Act system of records titled NCUA–11, “Office of Inspector General (OIG) Investigative Records.” The OIG Investigative Records system of records documents the investigative work of the OIG, including complaints received through the OIG Hotline, OIG mail, and otherwise, enabling the OIG to secure and maintain necessary investigative information and to coordinate with other law enforcement agencies as appropriate.

DATES: Submit comments on or before August 7, 2023. This modification will be effective immediately, and new routine uses will be effective on August 7, 2023.

ADDRESSES: You may submit comments by any of the following methods, but please send comments by one method only:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *NCUA website:* http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Marta Erceg, Counsel to the Inspector General/Assistant Inspector General, Office of the Inspector General, (703) 518–6350, or Jennifer Harrison, Attorney-Advisor, Office of General

²⁵ 12 U.S.C. 1755(d); <https://www.ncua.gov/files/agenda-items/AG20191212Item1b.pdf>, pages 57 to 64.

Counsel, (703) 518-6540, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION: The NCUA has made the following substantive changes to this System of Records Notice:

1. NCUA has updated the Purpose(s) of the System to provide additional details of why records are being collected.

2. NCUA has updated the Categories of Records in the System to provide additional details of what types of records are being collected.

3. NCUA has updated its Routine Uses. NCUA has added a routine use relating to obtaining legal advice from the Department of Justice and other prosecutors. NCUA has added a routine use to entities responsible for the oversight of Federal funds. NCUA has added a routine use for disclosure records relating to suspension and debarment actions. NCUA has added a routine use for disclosure of records to the Council of the Inspectors General for Integrity and Efficiency. NCUA has added a routine use to allow the OIG to disclose records to a complainant's employer who at the time of the alleged reprisal was an NCUA contractor, subcontractor, grantee, or subgrantee, without requiring the complainant's consent, to comply with the requirements of 41 U.S.C. 4712(b)(1). NCUA has also added text of the routine uses that had been previously contained in the agency's "Standard Routine Uses." Finally, NCUA has added two routine uses relating to the disclosure of records in the event of a suspected or actual privacy breach.

4. NCUA has updated Policies and Practices for Storage of Records to reflect that records are electronically maintained.

5. NCUA has updated Policies and Practices for Retention and Disposal of Records to reflect that NCUA uses National Archives and Records Administration-approved records schedules.

6. NCUA has updated Administrative, Technical, and Physical Safeguards to accurately reflect how these records are protected.

7. NCUA has updated Record Access, Contesting Record, and Notification Procedures to accurately reflect the NCUA procedures as detailed in 12 CFR 792.55.

8. NCUA has updated History to accurately reflect the SORN's publication history. Non-substantive modifications have also been made to ensure that the format NCUA-11 aligns with the guidance set forth in Office of Management and Budget Circular A-108.

By the National Credit Union Administration Board on June 30, 2023.

Melane Conyers-Ausbrooks,
Secretary of the Board.

SYSTEM NAME AND NUMBER:

NCUA-11, Office of Inspector General (OIG) Investigative Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Inspector General, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

SYSTEM MANAGER(S):

Counsel to the Inspector General/ Assistant Inspector General for Investigations, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Credit Union Act, 12 U.S.C. 1751, *et seq.*, and the Inspector General Act of 1978, 5 U.S.C. 401, *et seq.*

PURPOSE(S) OF THE SYSTEM:

This system is maintained for the purposes of:

1. Conducting and documenting investigations by the OIG or other investigative agencies regarding NCUA programs, operations, personnel, and contractors, and reporting the results of investigations to NCUA management, other Federal agencies, and other public authorities or professional organizations that have the authority to bring criminal prosecutions or civil or administrative actions, or to impose disciplinary sanctions;

2. Documenting the outcome of OIG investigations;

3. Maintaining a record of the activities that were the subject of investigations;

4. Reporting investigative findings for use in operating and evaluating NCUA programs or operations and in the imposition of sanctions;

5. Maintaining a record of complaints and allegations received regarding NCUA programs, operations, and personnel, and documenting the outcome of OIG reviews and disposition of those complaints and allegations;

6. Coordinating relationships with other Federal agencies, State and local governmental agencies, and nongovernmental entities in matters relating to the statutory responsibilities of the OIG and reporting to such entities on government-wide efforts pursuant to the oversight of Federal funds;

7. Acting as a repository and source for information necessary to fulfill the

reporting requirements of the Inspector General Act, 5 U.S.C. 401-424;

8. Reporting on OIG activities to the Council of Inspectors General for Integrity and Efficiency (CIGIE); and

9. Participating in CIGIE's investigative qualitative assessment review process.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of investigation, complainants, and witnesses referred to in complaints or investigative cases, reports, accompanying documents, and correspondence prepared by, compiled by, or referred to the OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system is comprised of OIG investigation files and complaint files. These files include reports of investigations with related exhibits, statements, affidavits, or other pertinent documents. Files may contain memoranda; computer-generated background information; location information; payroll, time sheets, and travel records; correspondence, including call, text, and email records; and reports from or to other law enforcement bodies pertaining to violations or potential violations of criminal laws, fraud, or abuse with respect to administration of NCUA programs and operations, and violations of employee and contractor standards of conduct. Records in this system may contain personally identifiable information such as names, Social Security numbers, dates of birth, and addresses. This system may also contain such information as employment history, bank account information, driver's licenses, vehicle registration, educational records, criminal history, photographs, voice recordings, and other information of a personal nature provided or obtained in connection with an investigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the NCUA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. If a record in a system of records indicates a violation or potential violation of civil or criminal law or a regulation, and whether arising by general statute or particular program statute, or by regulation, rule, or order, the relevant records in the system of records may be disclosed as a routine use to the appropriate agency, whether

Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto;

2. A record in a system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained;

3. A record in a system of records may be disclosed as a routine use to the Department of Justice, when: (a) NCUA, or any of its components or employees acting in their official capacities, is a party to litigation; or (b) Any employee of NCUA in his or her individual capacity is a party to litigation and where the Department of Justice has agreed to represent the employee; or (c) The United States is a party in litigation, where NCUA determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and NCUA determines that use of such records is relevant and necessary to the litigation;

4. A record in a system of records may be disclosed as a routine use in a proceeding before a court or adjudicative body before which NCUA is authorized to appear (a) when NCUA or any of its components or employees are acting in their official capacities; (b) where NCUA or any employee of NCUA in his or her individual capacity has agreed to represent the employee; or (c) where NCUA determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and NCUA determines that use of such records is relevant and necessary to the litigation;

5. A record from a system of records may be disclosed as a routine use to contractors, experts, consultants, and the agents thereof, and others performing or working on a contract, service, cooperative agreement, or other assignment for NCUA when necessary to accomplish an agency function or administer an employee benefit program. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to NCUA employees;

6. A record from a system of records may be disclosed as a routine use to the Department of Justice, including its U.S. Attorney's Offices, and State and local prosecutors, to the extent necessary to

obtain legal advice on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG;

7. A record from a system of records may be disclosed as a routine use to any Federal agency, entity, or board responsible for coordinating and conducting oversight of Federal funds, in order to prevent fraud, waste, and abuse related to Federal funds, or for assisting in the enforcement, investigation, prosecution, or oversight of violations of administrative, civil, or criminal law or regulation, if that information is relevant to any enforcement, regulatory, investigative, prosecutorial, or oversight responsibility of the NCUA or of the receiving entity;

8. A record from a system of records may be disclosed as a routine use to another Federal agency considering suspension or debarment action if the information is relevant to the suspension or debarment action. The OIG also may disclose information to another agency to gain information in support of the NCUA's own debarment and suspension actions;

9. A record from a system of records may be disclosed as a routine use to the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to assist in its preparation of reports, analysis, surveys, coordination of investigations, and other CIGIE activities;

10. A record from a system of records may be disclosed as a routine use to other Federal entities, such as other Offices of Inspector General, to the Government Accountability Office, or to a private party with which the OIG or the NCUA has contracted or with which it contemplates contracting, for the purpose of auditing or reviewing the performance or internal management of the OIG's audit or investigative programs.

11. A record from a system of records may be disclosed as a routine use to a complainant alleging whistleblower reprisal and the complainant's employer (current or former) that at the time of the alleged reprisal was a grantee, subgrantee, contractor, or subcontractor of the NCUA, to fulfill the whistleblower reprisal investigation reporting requirements of 41 U.S.C. 4712(b)(1) or any other whistleblower reprisal law requiring a disclosure to a complainant or an entity that employs or employed the complainant;

12. A record from a system of records may be disclosed to appropriate agencies, entities, and persons when (1) NCUA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) NCUA has

determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by NCUA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NCUA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm; and

13. A record from a system of records may be disclosed to another Federal agency or Federal entity, when the NCUA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records and backups are stored on secure servers, approved by NCUA's Office of the Chief Information Officer (OCIO), within a FedRAMP-authorized commercial Cloud Service Provider's (CSP) Software-as-a-Service solution hosting environment and accessed only by authorized personnel.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is retrieved by case number, general subject matter, or name of the subject of investigation.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and disposed in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or an NCUA records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

NCUA and the Cloud Service Provider have implemented the appropriate administrative, technical, and physical controls in accordance with the Federal Information Security Modernization Act of 2014, Public Law 113-283, S. 2521, and NCUA's information security policies to protect the confidentiality, integrity, and availability of the

information system and the information contained therein. Access is limited only to individuals authorized through NIST-compliant Identity, Credential, and Access Management policies and procedures. The records are maintained behind a layered defensive posture consistent with all applicable Federal laws and regulations, including OMB Circular A-130 and NIST Special Publication 800-37.

RECORD ACCESS PROCEDURES:

Individuals wishing access to their records should submit a written request to the Senior Agency Official for Privacy, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

1. Full name.
2. Any available information regarding the type of record involved.
3. The address to which the record information should be sent.
4. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. Individuals requesting access must also comply with NCUA's Privacy Act regulations regarding verification of identity and access to records (12 CFR 792.55).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request an amendment to their records should submit a written request to the Senior Agency Official for Privacy, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

1. Full name.
2. Any available information regarding the type of record involved.
3. A statement specifying the changes to be made in the records and the justification therefore.
4. The address to which the response should be sent.
5. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

NOTIFICATION PROCEDURES:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Senior Agency Official for Privacy, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

1. Full name.
2. Any available information regarding the type of record involved.

3. The address to which the record information should be sent.

4. You must sign your request. Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. Individuals requesting access must also comply with NCUA's Privacy Act regulations regarding verification of identity and access to records (12 CFR 792.55).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records is exempt from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of the Act. This exemption applies to information in the system that relates to criminal law enforcement and meets the criteria of the (j)(2) exemption. Pursuant to 5 U.S.C. 552a(k)(2), to the extent that the system contains investigative material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), this system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 12 CFR 792.66 of the NCUA regulations.

HISTORY:

This SORN was published originally as NCUA-20, "Investigation Files," at 53 FR 37372 (Sept. 26, 1988); renamed to "Office of Inspector General Investigative Records" at 60 FR 18149 (April 10, 1995); and renumbered as NCUA-11 at 65 FR 3486 (Feb. 20, 2000). Subsequent modifications were published at 71 FR 77807 (Dec. 27, 2006) and 75 FR 41539 (July 16, 2010).

[FR Doc. 2023-14274 Filed 7-5-23; 8:45 am]

BILLING CODE 7535-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2022-0217]

Information Collection: NRC Form 974 Privacy Act Complaint Form

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a proposed collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, NRC Form 974 "Privacy Act Complaint Form."

DATES: Submit comments by August 7, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: 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.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2022-0217 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-2022-0217.

- *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. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML23089A290. The supporting statement is available in ADAMS under Accession No. ML23081A464.

- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without

charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

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.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

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

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a proposed collection of information to OMB for review entitled NRC Form 974 "Privacy Act Complaint Form." The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on February 16, 2023, 88 FR 10149.

1. *The title of the information collection:* NRC Form 974 "Privacy Act Complaint Form."

2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.

3. *Type of submission:* New.

4. *The form number, if applicable:* Form 974.

5. *How often the collection is required or requested:* On occasion.

6. *Who will be required or asked to respond:* The public.

7. *The estimated number of annual responses:* 12.

8. *The estimated number of annual respondents:* 12.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 3.

10. *Abstract:* The NRC provides an electronic mechanism for the public to voluntarily register a complaint concerning privacy data collection practices at the NRC. The complainant provides the following information: Name, Telephone Number, Email Address, Summary of Privacy Complaint, Summary of any other steps already take if any by them or NRC to resolve complaint, and Preferred method of contact.

Dated: June 30, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023-14235 Filed 7-5-23; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

[Notice BSC-HCM-2023-0004; Docket No. BSC-HCM-2023-0004; Sequence 1]

Business Standards Council Review of Human Capital Federal Integrated Business Framework Business Standards: Request for Public Comment

AGENCY: Office of Personnel Management (OPM).

ACTION: Request for public comment.

SUMMARY: This notice informs the public of the opportunity to provide input on the Human Capital Federal Integrated Business Framework Business Standards (HC-FIBF) and the Human Capital Information Model version 5.2 (HCIM v5.2). The HC-FIBF contains proposed service activities, business capabilities, and service measures for Agency Human Capital Strategy, Policies, and Operation Plan; Employee Accountability; Labor Relations; Human Capital Analytics and Employee Records; Agency Human Capital Evaluation; and Personnel Action Request (PAR) Processing (Human Capital Business Reference Model (HCBRM) Functions A1, A7-A10, and

X1), and standard data elements for HCBRM Functions A1, A7-A10. The HCIM v5.2 contains the Registry, Domain Values, and Systems and Forms Mapping products, along with Release Notes that detail the specific updates included in HCIM v5.2. HCIM v5.2 focuses on HCBRM Functions A1 and A7-A10. This input will be used in formulation of business standards for Federal human capital management.

DATES: Comments due: Interested parties should submit comments via the method outlined in the **ADDRESSES** section on or before August 7, 2023.

ADDRESSES: Submit comments in response to Notice BSC-HCM-2023-0004 by *Regulations.gov*: <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "Notice BSC-HCM-2023-0004". Select the link "Comment Now" that corresponds with "Notice BSC-HCM-2023-0004". Follow the instructions provided at the screen. Please include your name, company name (if any), and "Notice BSC-HCM-2023-0004" on your attached document.

- *Instructions:* Please submit comments only and cite "Notice BSC-HCM-2023-0004," in all correspondence related to this notice. 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 <https://www.regulations.gov>, approximately two-to-three business days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Pollack, Human Resources Line of Business (HRLOB) Program Manager, at 202-936-0068, or by email at jeffrey.pollack@opm.gov.

SUPPLEMENTARY INFORMATION: On April 26, 2019, the Office of Management and Budget published OMB memorandum 19-16, Centralized Mission Support Capabilities for the Federal Government (available at <https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-16.pdf>). Mission support business standards, established and agreed to by agencies, using the Federal Integrated Business Framework (FIBF) website at <https://ussm.gsa.gov/fibf/>, enable the Federal Government to better coordinate on the decision-making needed to determine what can be adopted and commonly shared. These business standards are an essential first step towards agreement on outcomes, data, and cross-functional end to end processes that will drive economies of scale and leverage the

government's buying power. The business standards will be used as the foundation for common mission support services shared by Federal agencies.

OPM serves as the Human Capital Management (HCM) business standards lead on the Business Standards Council (BSC). The goal of the HCM business standards is to standardize Human Capital Management across the Federal government. The HCM business capabilities, service metrics, and standard data elements document the key activities, inputs, outputs, data elements, and other functional area intersections. OPM is seeking public feedback on these draft business standards, including comments on understandability of the standards, suggested changes, and usefulness of the draft standards to industry and agencies.

Guiding questions in standard development include:

- Do the draft business standards appropriately document the business processes covered?
- Are the draft business standards easy to understand?
- Will your organization be able to show how your solutions and/or services can meet these draft business standards?
- What would you change about the draft business standards? Is there anything missing?

Comments will be used in formulation of the final business standards.

U.S. Office of Personnel Management.

Kayyonne Marston,
Federal Register Liaison.

[FR Doc. 2023-13961 Filed 7-5-23; 8:45 am]

BILLING CODE 6325-63-P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service, Parcel Select & Parcel Return Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 6, 2023.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202-268-3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 28, 2023, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service, Parcel Select & Parcel Return Service Contract 1 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023-177, CP2023-181.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2023-14223 Filed 7-5-23; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 6, 2023.

FOR FURTHER INFORMATION CONTACT:

Elizabeth A. Reed, 202-268-3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 23, 2023, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service & Parcel Select Contract 30 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023-174, CP2023-178.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2023-14214 Filed 7-5-23; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to

the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 6, 2023.

FOR FURTHER INFORMATION CONTACT:

David S. Bettwy, 202-268-4429.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 29, 2023, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service & Parcel Select Contract 31 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023-178, CP2023-182.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2023-14220 Filed 7-5-23; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—First-Class Package Service & Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 6, 2023.

FOR FURTHER INFORMATION CONTACT:

Elizabeth A. Reed, 202-268-3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 23, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add First-Class Package Service & Parcel Select Service Contract 4 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023-176, CP2022-180.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2023-14222 Filed 7-5-23; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE**Product Change—First-Class Package Service & Parcel Select Service Negotiated Service Agreement**

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 6, 2023.

FOR FURTHER INFORMATION CONTACT:

Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION:

The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 23, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add First-Class Package Service & Parcel Select Service Contract 3 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023–175, CP2022–179.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2023–14215 Filed 7–5–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–598, OMB Control No. 3235–0655]

Submission for OMB Review; Comment Request; Extension: Regulation 14N and Schedule 14N*Upon Written Request Copies Available*

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Schedule 14N (17 CFR 240.14n–101) requires the filing of certain information with the Commission by shareholders who submit a nominee or nominees for director pursuant to applicable state law, or a company’s governing documents. Schedule 14N provides

notice to the company of the shareholder’s or shareholder group’s intent to have the company include the shareholder’s or shareholder group’s nominee or nominees for director in the company’s proxy materials. This information is intended to assist shareholders in making an informed voting decision with regards to any nominee or nominees put forth by a nominating shareholder or group, by allowing shareholders to gauge the nominating shareholder’s interest in the company, longevity of ownership, and intent with regard to continued ownership in the company. We estimate that Schedule 14N takes approximately 40 hours per response and will be filed by approximately 10 issuers annually. In addition, we estimate that 75% of the 40 hours per response (30 hours per response) is prepared by the issuer for an annual reporting burden of 300 hours (30 hours per response × 10 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by August 7, 2023 to (i) www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: June 30, 2023.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2023–14241 Filed 7–5–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–456, OMB Control No. 3235–0515]

Submission for OMB Review; Comment Request; Extension: Schedule TO*Upon Written Request Copies Available*

From: Securities and Exchange Commission, Office of FOIA Services,

100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget the request for extension of the previously approved collection of information discussed below.

Schedule TO (17 CFR 240.14d–100) must be filed by a reporting company that makes a tender offer for its own securities. Also, persons other than the reporting company making a tender offer for equity securities registered under Section 12 of the Exchange Act (15 U.S.C. 78l) (which offer, if consummated, would cause that person to own over 5% of that class of the securities) must file Schedule TO. The purpose of Schedule TO is to improve communications between public companies and investors before companies file registration statements involving tender offer statements. Schedule TO takes approximately 44.752 hours per response and is filed by approximately 1,378 issuers annually. We estimate that 50% of the 44.752 hours per response (22.376 hours) is prepared by the issuer for an annual reporting burden of 30,834 hours (22.376 hours per response × 1,378 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by August 7, 2023 to (i) www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: June 30, 2023.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2023–14242 Filed 7–5–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–112, OMB Control No. 3235–0101]

Submission for OMB Review; Comment Request; Extension: Form 144—Notice of Proposed Sale of Securities Pursuant to Rule 144 Under the Securities Act of 1933

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget this request for extension of the previously approved collections of information discussed below.

Form 144 (17 CFR 239.144) is used to report the sale of securities during any three-month period that exceeds 5,000 shares or other units and has an aggregate sales price that does not exceed \$50,000. Under Sections 2(a)(11), 4(a)(1), 4(a)(2), 4(a)(4) and 19(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)(11), 77d(a)(1), 77d(a)(2), 77d(a)(4) and 77s (a)) and Rule 144 (17 CFR 230.144) there under, the Commission is authorized to solicit the information required to be supplied by Form 144. The objectives of the rule could not be met if the information collection was not required. The information collected must be filed with the Commission and is publicly available. Form 144 takes approximately one burden hour per response and is filed by 33,725 respondents for a total of 33,725 total burden hours.

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by August 7, 2023 to (i) www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John

Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: June 30, 2023.

J. Lynn Taylor,
Assistant Secretary.

[FR Doc. 2023–14240 Filed 7–5–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–323, OMB Control No. 3235–0362]

Submission for OMB Review; Comment Request; Extension: Form 5—Annual Statement of Beneficial Ownership

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Under Section 16(a) of the Securities Exchange Act of 1934 (“Exchange Act”) (15 U.S.C. 78a *et seq.*) every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which registered pursuant to Section 12 of the Exchange Act, or who is a director or an officer of the issuer of such security (collectively “reporting persons”), must file statements setting forth their security holdings in the issuer with the Commission. Form 5 (17 CFR 249.105) is an annual statement of beneficial ownership of securities. The information disclosure provided on Form 5 is mandatory. All information is provided to the public for review. We estimate that approximately 5,939 reporting persons file Form 5 annually and we estimate that it takes approximately one hour to prepare the form for a total of 5,939 annual burden hours.

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular

information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by August 7, 2023 to (i) www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: June 30, 2023.

J. Lynn Taylor,
Assistant Secretary.

[FR Doc. 2023–14239 Filed 7–5–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97824; File No. SR–MEMX–2023–11]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Common Criteria and Procedures for Halting and Resuming Trading in Equity Securities in the Event of Regulatory or Operational Issues, Reorganize the Text of the Current Relevant Rule, and Make Conforming Changes to Related Rules

June 29, 2023.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on June 23, 2023, MEMX LLC (“MEMX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁴ and Rule 19b–4(f)(6) thereunder.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).² 15 U.S.C. 78a.³ 17 CFR 240.19b–4.⁴ 15 U.S.C. 78s(b)(3)(A)(iii).⁵ 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule to establish common criteria and procedures for halting and resuming trading in equity securities in the event of regulatory or operational issues, reorganize the text of the current relevant rule, and make conforming changes to related rules. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In conjunction with adoption of an amended Nasdaq UTP Plan proposed by its participants ("Amended Nasdaq UTP Plan"),⁶ the Exchange is amending and re-locating its current Rule 11.16 to integrate several definitions and concepts from the Amended Nasdaq UTP Plan and to reorganize the rule in light of the Exchange's experience with applying the rule as a national securities exchange.⁷ The Exchange proposes to

⁶ On February 11, 2021, the Nasdaq UTP Plan participants filed Amendment 50 to the Plan, to revise provisions governing regulatory and operational halts. See Letter from Robert Brooks, Chairman, UTP Operating Committee, Nasdaq UTP Plan, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated February 11, 2021. The Nasdaq UTP Plan subsequently filed two partial amendments to the 50th Amendment, on March 31, 2021 and on April 7, 2021. The SEC approved the amendments on May 28, 2021. See Securities Exchange Act Release No. 34-92071 (May 28, 2021), 86 FR 29846 (June 3, 2021) (S7-24-89). The Amended Nasdaq UTP Plan includes provisions requiring participant self-regulatory organizations ("SROs") to honor a Regulatory Halt declared by the Primary Listing Market. The provisions in the Nasdaq UTP Plan, and the plan for consolidation of data for non-Nasdaq-listed securities, the Consolidated Tape System and Consolidated Quotations System (collectively, the "CTA/CQS Plan"), include provisions similar to the changes proposed by the Exchange in this filing.

⁷ The Exchange notes that The Nasdaq Stock Market, LLC ("Nasdaq"), filed a similar proposed

replace Rule 11.16, entitled Trading Halts Due to Extraordinary Market Volatility, with two new rules, Rules 11.22 and 11.23. The rules set forth the Exchange's authority to halt trading under various circumstances. The Exchange is a participant of the transaction reporting plan governing Tape C Securities ("Nasdaq UTP Plan").⁸ As part of these changes, the Exchange will amend categories of regulatory and operational halts, adopt defined terms from the Amended Nasdaq UTP Plan and move current Rule 11.16 into Rules 11.22 and 11.23 for clarity and organizational purposes. Last, the Exchange is updating cross references in other rules that are affected by the proposed changes.

Background

The Exchange has been working with other SROs to establish common criteria and procedures for halting and resuming trading in equity securities in the event of regulatory or operational issues. These common standards are designed to ensure that events which might impact multiple exchanges are handled in a consistent manner that is transparent. The Exchange believes that implementation of these common standards will assist the SROs in maintaining fair and orderly markets. Notwithstanding the development of these common standards, the Exchange will retain discretion in certain instances as to whether and how to handle halts, as is discussed below.

rule change with the Commission. See Securities Exchange Act Release No. 94370 (March 7, 2022), 87 FR 14071 (March 11, 2022); Securities Exchange Act Release No. 94838 (May 3, 2022), 87 FR 27683 (May 9, 2022). The Commission approved the proposed rule change on June 8, 2022. See Securities Exchange Act Release No. 95069 (June 8, 2022), 87 FR 36018 (June 14, 2022). The Exchange's proposal provides the Exchange with less authority to declare halts in the event of regulatory or operational issues than under Nasdaq's proposal because the Exchange, unlike Nasdaq, is not a Primary Listing Market. Given the Exchange's status as a non-Primary Listing Market, certain definitions and concepts from the Amended Nasdaq UTP Plan, integrated in Nasdaq's proposal, are not included herein.

⁸ Each transaction reporting plan has a securities information processor ("SIP") responsible for consolidation of information for the plan's securities, pursuant to Rule 603 of Regulation NMS. The transaction reporting plan for Nasdaq-listed securities is known as The Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis or the "Nasdaq UTP Plan." Pursuant to the Nasdaq UTP Plan, the UTP SIP, which is Nasdaq, consolidates order and trade data from all markets trading Nasdaq-listed securities. The Exchange uses the term "UTP SIP" herein when referring specifically to the SIP responsible for consolidation of information in Nasdaq-listed securities.

Every U.S.-listed equity security has its primary listing on a specific stock exchange that is responsible for a number of regulatory functions.⁹ These include confirming that the security continues to meet the exchange's listing standards, monitoring trading in that security and taking action to halt trading in the security when necessary to protect investors and to ensure a fair and orderly market. While these core responsibilities remain with the primary listing venue, trading in the security can occur on multiple exchanges that have unlisted trading privileges for the security¹⁰ or in the over-the-counter market, regulated by the Financial Industry Regulatory Authority, Inc. ("FINRA"). The exchanges and FINRA are responsible for monitoring activity on the markets over which they have oversight, but also must abide by the regulatory decisions made by the Primary Listing Market. For example, a venue trading a security pursuant to unlisted trading privileges must halt trading in that security during a Regulatory Halt, which is a defined term under the proposed rules,¹¹ and may only trade the security once the Primary Listing Market has cleared the security to resume trading. While the Exchange and the other SROs intend to harmonize certain aspects of their trading halt rules, other elements of the rules will continue to be unique to each market. The Exchange believes that this is appropriate to reflect different products listed or traded on each market. In addition to establishing common criteria and procedures for halting and resuming trading in equity securities in the event of regulatory or operational issues, the Exchange is moving current Rule 11.16 into Rules 11.22 and Rule 11.23 in order to reorganize the rule to improve its overall clarity. The Exchange is also making a handful of non-substantive changes to rule text to improve its clarity. The Exchange will implement all of the changes proposed herein in conjunction with other SROs implementing the necessary rule changes. The Exchange will publish a trader alert at least 30 business days

⁹ The Exchange is proposing to adopt Primary Listing Market as a new term, defined in Nasdaq UTP Plan, Section X.A.8, as follows: "[T]he national securities exchange on which an Eligible Security is listed. If an Eligible Security is listed on more than one national securities exchange, Primary Listing Market means the exchange on which the security has been listed the longest."

¹⁰ In addition, securities may be listed on more than one listing exchange ("dually listed"). See, e.g., The Nasdaq Stock Market, LLC Rules 5005(a)(11), 5220 and IM5220.

¹¹ See proposed Rule 11.22(a)(9).

prior to implementing the proposed changes.

Definitions

The Exchange proposes adding a definitions section as Rule 11.22(a) to consolidate the various definitions that will be used in the Rules, some of which are taken from the Amended Nasdaq UTP Plan. The Exchange is adopting the following terms from the Amended Nasdaq UTP Plan: “Operating Committee,” “Operational Halt,” “Primary Listing Market,” “Processor,”¹² “Regulatory Halt,” “Regular Trading Hours,” “SIP Halt,” and “SIP Halt Resume Time.” The Exchange is adopting a modified form of the term “Extraordinary Market Activity” from the Amended Nasdaq UTP Plan, as described below. The definitions of “UTP Exchange Traded Product”, “Pre-Market Session”, and “Post-Market Session” are included in the definitions section with cross references to their current definitions in the Exchange’s Rulebook.¹³ The Exchange will add definitions of “Trust Shares,” “Index Fund Shares,” “Managed Fund Shares,” and “Trust Issued Receipts”, as subcategories to the defined term “UTP Exchange Traded Product”, and those terms will have the same meanings as those found currently in the rules of at least one other exchange.¹⁴

First, the Exchange proposes to add the definition of “Primary Listing Market”¹⁵ to Rule 11.22(a), which will have the same meaning as in the Amended Nasdaq UTP Plan, Section X.A.8. As is currently the case under the Nasdaq UTP Plan, all Regulatory Halt decisions are made by the market on which the security has its primary listing. This reflects the regulatory

responsibility that the Primary Listing Market has for fair and orderly trading in the securities that list on its market and its direct access to its listed companies, which are required to advise it of certain events and maintain lines of communication with the Primary Listing Market. The proposed definition makes clear that if a security is listed on more than one market (a dually-listed security), the Primary Listing Market means the exchange on which the security has been listed the longest. This provision matches language used in the definition of “Primary Listing Exchange” in the Limit-Up Limit-Down Plan and will avoid conflict in the event of dually-listed securities.

Second, the Exchange proposes to add the definition of “Extraordinary Market Activity” to Rule 11.22,¹⁶ which would represent a modified version of the term defined in the Amended Nasdaq UTP Plan, Section X.A.1.¹⁷ Specifically, the Exchange proposes to remove the concept of a “market-wide basis” from the Amended Nasdaq UTP Plan’s definition of Extraordinary Market Activity for purposes of the Exchange’s Rules because the term “Extraordinary Market Activity” would only be used in the Exchange’s Rules as a basis for the Exchange to initiate an Operational Halt, which would only occur on the market declaring the halt (*i.e.*, the Exchange).¹⁸ The current rule does not

include a definition for Extraordinary Market Activity. The third set of new proposed definitions would be specific to events involving the SIP. While the Exchange recognizes that many events involving the SIP would also meet the definition of “Extraordinary Market Activity” (as defined in the Amended Nasdaq UTP Plan), the Exchange believes that the critical role of the SIPs in market infrastructure factors in favor of additional guidance on how such events will be handled. The definitions of “SIP Halt Resume Time” and “SIP Halt” are intended to provide additional guidance to address this subset of potential market issues.¹⁹ In addition, the Exchange is proposing to define terms related to SIP governance needed in order to understand these definitions:

- “Processor” or “SIP”²⁰ have the same meaning as the term “Processor” set forth in the Nasdaq UTP Plan, namely the entity selected by the Participants to perform the processing functions set forth in the Plan.

Because the terms “Processor” and “SIP” are also used throughout the Rules, at times, to apply to processors of information furnished pursuant to the CTA Plan, the term “Processor” and “SIP” may, in those applicable circumstances, refer to the processor of transactions in Tape A and B securities, as set forth in the CTA Plan.

- “SIP Plan”²¹ is defined as the national market system plan governing the SIP.

- “Operating Committee”²² is defined as having the same meaning as in the Nasdaq UTP Plan, namely the committee charged with administering the Nasdaq UTP Plan.

The Exchange is proposing to adopt a category of Regulatory Halt, called a “SIP Halt,”²³ which will have the same meaning as that term is defined in Section X.A.11. of the Nasdaq UTP Plan, namely “a Regulatory Halt to trading in one or more securities that a Primary Listing Market declares in the event of a SIP Outage or Material SIP Latency.” This new category of Regulatory Halt will address situations where the Primary Listing Market declares a Regulatory Halt in one or more

one or more Trading Centers or their members; or (iii) the unavailability of quoting, order, or transaction information for a sustained period.

¹⁹The Exchange proposes to define the terms “SIP Halt Resume Time” and “SIP Halt” to have the same meaning as in the Amended Nasdaq UTP Plan.

²⁰ See proposed Rule 11.22(a)(8).

²¹ See proposed Rule 11.22(a)(13).

²² See proposed Rule 11.22(a)(3).

²³ See proposed Rule 11.22(a)(11).

¹²The Exchange proposes to also define the term “SIP” to have the same meaning as the term “Processor” as set forth in the Amended Nasdaq UTP Plan. Because the terms “Processor” and “SIP” are also used throughout the Rules, at times, to apply to processors of information furnished pursuant to the Consolidated Tape Association Plan (“CTA Plan”), the term “Processor” may, in those applicable circumstances, refer to the processor of transactions in Tape A and B securities, as set forth in the CTA Plan.

¹³“UTP Exchange Traded Product”, is currently defined in Rule 1.5(kk). Post-Market Session is defined in Rule 1.5(w). Pre-Market Session is currently defined in Rule 1.5(x).

¹⁴The Exchange notes that Nasdaq PHLX LLC (“PHLX”), filed a similar proposed rule change with the Commission. See Securities Exchange Act Release No. 96574 (December 22, 2022), 87 FR 80213 (December 29, 2022) (the “PHLX Proposal”). Accordingly, the Exchange referenced PHLX’s current and proposed relevant rules and notes that the terms “Trust Shares,” “Index Fund Shares,” “Managed Fund Shares,” and “Trust Issued Receipts” are currently defined in Rule 3100(b)(1)(A)–(D) of PHLX’s rulebook.

¹⁵ See proposed Rule 11.22(a)(7).

¹⁶ See proposed Rule 11.22(a)(2).

¹⁷In the Amended Nasdaq UTP Plan, “Extraordinary Market Activity” means a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated by, or linked to, the Processor or a Trading Center or a member of such Trading Center that has a severe and continuing negative impact, on a market-wide basis, on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this definition, a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or their members; or (iii) the unavailability of quoting, order, or transaction information for a sustained period.

¹⁸The Exchange proposes to define “Extraordinary Market Activity” to mean a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated by, or linked to, the Processor or a Trading Center or a member of such Trading Center that has a severe and continuing negative impact on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this definition, a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between

securities as a result of a SIP outage²⁴ or material SIP latency.²⁵

The Exchange proposes to add a definition of “Regulatory Halt”²⁶ as having the same meaning as in the Amended Nasdaq UTP Plan. Specifically, the Exchange has proposed to define Regulatory Halt to mean a halt declared by the Primary Listing Market in trading in one or more securities on all Trading Centers for regulatory purposes, including for the dissemination of material news, news pending, suspensions, or where otherwise necessary to maintain a fair and orderly market. A Regulatory Halt includes a trading pause triggered by Limit Up-Limit Down, a halt based on Extraordinary Market Activity (as defined in the Amended Nasdaq UTP Plan), a trading halt triggered by a Market-Wide Circuit Breaker, and a SIP Halt.

The Exchange proposes to add a definition of “Operational Halt,”²⁷ which is defined as having the same meaning as in the Amended Nasdaq UTP Plan. Specifically, the Exchange is proposing to define Operational Halt to mean a halt in trading in one or more securities only on the market declaring the halt and is not a Regulatory Halt. An Operational Halt is effective only on the Exchange; other markets are not required to halt trading in the impacted securities. In practice, the Exchange has always had the capacity to implement operational halts in specified circumstances.²⁸ The proposed change would provide greater clarity on when an Operational Halt may be implemented and the process for halting and resuming trading in the event of an

Operational Halt. An Operational Halt is not a Regulatory Halt.

Regulatory Halt

Proposed Rule 11.22(b)(1)(A)(i)–(iii) includes four situations in which the Exchange must halt trading pursuant to a Regulatory Halt: under the Limit Up-Limit Down Plan, pursuant to Extraordinary Market Volatility (Market-Wide Circuit Breakers), when the Primary Listing Market declares a SIP halt, or when the Primary Listing Market declares a trading halt based on Extraordinary Market Activity, as defined in the Nasdaq UTP Plan. Proposed Rule 11.22(b)(1)(A)(i) retains without substantive modification the existing rule with respect to the Limit Up-Limit Down Plan (current Rule 11.16(e)). The Exchange, as a non-Primary Listing Market, does not itself declare trading pauses pursuant to the Limit Up-Limit Down Plan, but rather implements such pauses declared by Primary Listing Markets. The Exchange proposes to make clear in Rule 11.22(b)(1)(A)(ii) that a trading halt pursuant to Extraordinary Market Volatility (Market-Wide Circuit Breakers), as is described in proposed Rule 11.23, constitutes a Regulatory Halt. The Exchange would also add subsections concerning Regulatory Halts declared by Primary Listing Markets based on a SIP halt or Extraordinary Market Activity in Rule 11.22(b)(1)(A)(iii). As is the case under the current Rule 11.16, the Exchange would honor a Regulatory Halt. The Exchange proposes to add Rule 11.22(b)(1)(A)(iv), which states that the Exchange will halt trading for any security traded on the Exchange when the Primary Listing Market declares a Regulatory Halt for any such security. The Exchange also proposes to add Rule 11.22(b)(1)(A)(iv)(a), which makes clear that the start time of a Regulatory Halt is the time the Primary Listing Market declares the Regulatory Halt, regardless of whether communications issues impact the dissemination of notice of the Halt.²⁹ This proposal would provide market participants with certainty on the official start time of the Regulatory Halt. Under the proposed rule, the start time is fixed by the Primary Listing Market; it is not dependent on whether notice is disseminated immediately. This will avoid possible disagreement if the Regulatory Halt time were tied to dissemination or receipt of notification, which may occur at different times. The Exchange recognizes that in situations

where communication is interrupted, trades may continue to occur until news of the Regulatory Halt reaches all trading centers. However, a fixed “official” Regulatory Halt time will allow SROs to revisit trades after the fact and determine in a consistent manner whether specific trades should stand.

Resumption of Trading After a Regulatory Halt

The SROs have jointly developed processes to govern the resumption of trading in the event of a Regulatory Halt. While the actual process of re-launching trading will remain unique to each exchange, the proposed rule would harmonize certain common elements of the reopening process that would benefit from consistency across markets. These common elements include the primacy of the Primary Listing Market in resumption decisions, the requirement that the Primary Listing Market make its determination to resume trading in good faith,³⁰ and certain parts of the complex process of reopening trading after a SIP Halt. With respect to a SIP Halt, common elements of the reopening process include the interaction among SROs (including the Primary Listing Market with the SIP), the requirement that the Primary Listing Market terminate a SIP Halt with a notification that specifies a SIP Halt Resume Time, the minimum quoting times before resumption of trading, the cutoff time after which trading would not resume during Regular Trading Hours, and the time when trading may resume if the Primary Listing Market does not open a security within the amount of time specified in its rules after the SIP Halt Resume Time. Proposed Rule 11.22(b)(2) provides the process to be followed when resuming trading upon the conclusion of a Regulatory Halt. The new rule, which incorporates Section X.E.1 and X.F.3 of the Amended Nasdaq UTP Plan, is divided into the following two subsections concerning resumption of trading: (A) after a Regulatory Halt other than a SIP Halt; and (B) after a SIP Halt. Proposed Rule 11.22(b)(2)(A)(i) provides that, for a Regulatory Halt other than a SIP Halt, the Exchange may resume trading subject to the Regulatory Halt after the Exchange receives notification from the Primary Listing Market that the Regulatory Halt has been terminated. The Exchange does not conduct halt crosses and, therefore, the resumption of trading in these securities will occur

²⁴ SIP outage means a situation in which the Processor has ceased, or anticipates being unable, to provide updated and/or accurate quotation or last sale price information in one or more securities for a material period that exceeds the time thresholds for an orderly failover to backup facilities established by mutual agreement among the Processor, the Primary Listing Market for the affected securities, and the Operating Committee unless the Primary Listing Market, in consultation with the Processor and the Operating Committee, determines that resumption of accurate data is expected in the near future. See Amended Nasdaq UTP Plan, Section X.A.13.

²⁵ Material SIP latency means a delay of quotation or last sale price information in one or more securities between the time data is received by the Processor and the time the Processor disseminates the data over the Processor’s vendor lines, which delay the Primary Listing Market determines, in consultation with, and in accordance with, publicly disclosed guidelines established by the Operating Committee, to be (a) material and (b) unlikely to be resolved in the near future. See Amended Nasdaq UTP Plan, Section X.A.5.

²⁶ See proposed Rule 11.22(a)(9).

²⁷ See proposed Rule 11.22(a)(4).

²⁸ See Exchange Rules 11.1(c) and 11.16(d).

²⁹ This is consistent with the Amended Nasdaq UTP Plan. See Amended Nasdaq UTP Plan, Section X.D.1.

³⁰ See Partial Amendment No. 1 of Trading Halt Amendments to the UTP Plan, dated March 31, 2021.

once notice from the Primary Listing Market is received. Proposed Rule 11.22(b)(2)(B)(i) provides that, for securities subject to a SIP Halt initiated by another exchange that is the Primary Listing Market, during Regular Trading Hours, the Exchange may resume trading after trading has resumed on the Primary Listing Market or notice has been received from the Primary Listing Market that trading may resume. During Regular Trading Hours, if the Primary Listing Market does not open a security within the amount of time specified by the rules of the Primary Listing Market after the SIP Halt Resume Time, the Exchange may resume trading in that security. Outside Regular Trading Hours, the Exchange may resume trading immediately after the SIP Halt Resume Time.³¹ Proposed Rule 11.22(b)(2) is consistent with current practice. Proposed Rule 11.22(b)(3) retains without substantive modification existing Rule 11.16(f). Proposed Rule 11.22(b)(3) states that on the occurrence of any Regulatory Halt pursuant to this Rule all outstanding orders in the System will be cancelled, the Exchange will not accept new orders, and at the end of the Regulatory Halt, the Exchange shall re-open the security and again begin accepting orders. Last, consistent with Section X.G of the Nasdaq UTP Plan, the Exchange is proposing to add Rule 11.22(c), which will more broadly require the Exchange to halt trading of a UTP security if the Primary Listing Market declares a Regulatory Halt in that security, and more specifically, governs trading halts in certain Exchange Traded Products traded on the Exchange pursuant to unlisted trading privileges during pre-market, regular trading hours, and post-market sessions.

Operational Halt

The Exchange proposes in Rule 11.22(d) to address Operational Halts, which are non-regulatory in nature and apply only to the exchange that calls the halt. The ability to call an Operational Halt has existed for a long time. As part of the Exchange's assessment with the other SROs of the halting and resumption of trading, the Exchange believes that the markets would benefit from greater clarity regarding when an Operational Halt may be appropriate.³² In part, the proposed change is designed to cover situations similar to those that might constitute a Regulatory Halt, but

where the impact is limited to a single market. For example, just as a market disruption might trigger a Regulatory Halt for Extraordinary Market Activity (as defined in the Amended Nasdaq UTP Plan) if it affects multiple markets, so too a disruption at the Exchange, such as a technical issue affecting trading in one or more securities, could impact trading on the Exchange so significantly that an Operational Halt is appropriate in one or more securities. In such an instance, it would be in the public interest to institute an Operational Halt to minimize the impact of a disruption that, if trading were allowed to continue, might negatively affect a greater number of market participants. An Operational Halt does not implicate other trading centers. Proposed Rule 11.22(d) would authorize the Exchange to implement an Operational Halt for any security trading on the Exchange:

- if it is experiencing Extraordinary Market Activity³³ on the Exchange; or
- when otherwise necessary to maintain a fair and orderly market or in the public interest.

Proposed Rule 11.22(d)(2) provides the process for initiating an Operational Halt. Under the proposed rule, on the occurrence of any Operational Halt all outstanding orders in the System will be cancelled. Further, the Exchange must notify the SIP if it has concerns about its ability to collect and transmit Quotation Information or Transaction Reports, or if it has declared an Operational Halt or suspension of trading in one or more Eligible Securities, pursuant to the procedures adopted by the Operating Committee. Proposed Rule 11.22(d)(3) will clarify how the Exchange resumes trading after an Operational Halt. Proposed Rule 11.22(d)(3)(A) provides that the Exchange would resume trading when it determines that trading may resume in a fair and orderly manner consistent with the Exchange's rules. Proposed Rule 11.22(d)(3)(B) provides that orders entered during the Operational Halt will not be accepted. Proposed Rule 11.22(d)(3)(C) provides that trading in a halted security shall resume at the time specified by the Exchange in a notice. Proposed Rule 11.22(d)(3)(C) also specifies that Exchange will notify all other Plan participants and the SIP of such an Operational Halt as well as provide notice that an Operational Halt has been lifted using such protocols and other emergency procedures as may be

mutually agreed to between the Operating Committee and the Exchange. If the SIP is unable to disseminate notice of an Operational Halt or the Exchange is not open for trading, the Exchange will take reasonable steps to provide notice of an Operational Halt, which shall include both the type and start time of the Operational Halt. Each Plan participant shall continuously monitor communication protocols established by the Operating Committee and the Processor during market hours to disseminate notice of an Operational Halt, and the failure of a participant to do so shall not prevent the Exchange from initiating an Operational Halt.

Trading Halts Due to Extraordinary Market Volatility

Lastly, as stated above, the Exchange proposes moving a large portion of current Rule 11.16 into a new proposed Rule 11.23, in order to separate out the previously established rules related to Trading Halts Due to Extraordinary Market Volatility (*i.e.* Market-Wide Circuit Breakers). These halts, which fall under the category of Regulatory Halts, are cross referenced in proposed Rule 11.22(b)(i)(A)(ii). The text of the proposed Rule 11.23 does not materially differ from what is currently in place under Rule 11.16(a)–(d)³⁴ and Rule 11.16(h)–(j).³⁵ The Exchange believes separating this text from Rule 11.22 is appropriate in order to remain consistent with similar rule filings proposed by other Exchanges.³⁶

Conforming Changes to Other Rules

The Exchange is proposing to modify Rule 11.10(a)(3), Rule 11.11(b), Rules 11.20(d)(2)(D) and (E), and Rule 14.1(b)(3) that cross reference current Rules 11.16(e), 11.16(e), 11.16(b), 11.16(b), and 11.16, respectively. In light of the proposed deletion of Rule 11.16, the Exchange proposes to modify the cross references in Rule 11.10(a)(3) and Rule 11.11(b) to cross reference proposed Rule 11.22(b)(1)(A)(i), which contains the same text as current Rule

³⁴ These provisions outline the processes related to Market-Wide Circuit Breaker halts.

³⁵ These provisions outline the processes related to Market-Wide Circuit Breaker testing.

³⁶ PHLX's current Rule 3101, "Trading Halts Due to Extraordinary Market Volatility" sets forth similar provisions related to Market-Wide Circuit Breakers and Market-Wide Circuit Breaker Testing. In turn, in its recent rule filing, PHLX's proposed Rule 3100(b)(ii), which would state: "The Exchange shall implement a trading halt due to extraordinary market volatility, as set forth in Rule 3101." See PHLX Proposal, *supra* note 13. Accordingly, the Exchange believes it consistent to include the full text of these relevant provisions in a separate rule (proposed Rule 11.23), with a cross reference to such in its proposed Rule 11.22.

³¹ See Partial Amendment No. 2 of Trading Halt Amendments to the UTP Plan, dated April 7, 2021.

³² Differences between Nasdaq and the Exchange's proposals as it relates to Operational Halts stem from Nasdaq's status as a Primary Listing Market, unlike the Exchange.

³³ "Extraordinary Market Activity" in proposed Rule 11.22(d) would have the meaning proposed by the Exchange, which is a modified form of the term from the Amended Nasdaq UTP Plan, as described above.

11.16(e).³⁷ The Exchange proposes to modify the cross references in Rules 11.20(d)(D) and (E) to cross reference proposed Rule 11.23(b), which also contains the same text as current Rule 11.16(b).³⁸ Lastly, the Exchange proposes to modify the cross references in Rule 14.1(b)(3) to cross reference proposed Rules 11.22 and 11.23, which collectively will replace the current Rule 11.16.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,³⁹ in general, and furthers the objectives of Sections and 6(b)(5) of the Act,⁴⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

As described above, the Exchange and other SROs are seeking to adopt harmonized rules related to halting and resuming trading in U.S.-listed equity securities. The Exchange believes that the proposed rules will provide greater transparency and clarity with respect to the situations in which trading will be halted and the process through which that halt will be implemented and terminated. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. equities exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposed rules are consistent with Section 6(b)(5) of the Act⁴¹ because they will foster cooperation and coordination with persons engaged in regulating and facilitating transactions in securities.

As discussed previously, the Exchange believes that the various provisions of the proposed rules that will apply to all SROs are focused on the type of cross-market event where a consistent approach will assist market participants and reduce confusion during a crisis. Because market participants often trade the same security across multiple venues and trade securities listed on different exchanges as part of a common strategy,

the Exchange believes that the proposed rules will lessen the risk that market participants holding a basket of securities will have to deal with divergent outcomes depending on where the securities are listed or traded. Conversely, the proposed rules would still allow individual SROs to react differently to events that impact various securities or markets in different ways. This avoids the “brittle market” risk where an isolated event at a single market forces all markets trading equities securities to halt or halts trading in all securities where the issue impacted only a subset of securities. By addressing both concerns, the Exchange believes that the proposed rules further the Act’s goal of maintaining fair and orderly markets. The Exchange believes that the proposed rules’ focus of responsibility on the Primary Listing Market for decisions related to a Regulatory Halt and the resumption of trading is consistent with the Act, which itself imposes obligations on exchanges with respect to issuers that are listed. As is currently the case, the Primary Listing Market would be responsible for the many regulatory functions related to its listings, including the determination of when to declare a Regulatory Halt. While these core responsibilities remain with the Primary Listing Market, trading in the security can occur on multiple exchanges that have unlisted trading privileges for the security, such as on the Exchange, or in the over-the-counter market, regulated by FINRA. The Exchange is responsible for monitoring activity on its own markets, but also must honor a Regulatory Halt. The proposed changes relating to Regulatory Halts would ensure that all SROs handle the situations covered therein in a consistent manner that would prevent conflicting outcomes in cross-market events and ensure that all trading centers recognize a Regulatory Halt declared by the Primary Listing Market. The changes are consistent with and implement the Amended Nasdaq UTP Plan.

The Exchange believes that the definitions in the proposed rules are also consistent with the Act. The Exchange proposes adding a definitions section as Rule 11.22(a) to consolidate the various definitions that will be used in the Rule, some of which are taken from the Amended Nasdaq UTP Plan. The Exchange is adopting a modified form of the term “Extraordinary Market Activity” from the Amended Nasdaq UTP Plan, as described above. In addition, several other definitions have been moved into the definitions section

from elsewhere in the current rule without changes in the definitions. As noted, certain definitions are consistent with the definitions in the Amended Nasdaq UTP Plan, furthering the Act’s goal of promoting fair and orderly markets. For example, the Exchange is proposing to adopt a definition of “SIP Halt,” to explicitly address a situation that may disrupt the markets, and this definition is identical to the definition in the Amended Nasdaq UTP Plan. In addition to “SIP Halt,” the Exchange is adopting the following terms from the Amended Nasdaq UTP Plan: “Operating Committee,” “Operational Halt,” “Primary Listing Market,” “Processor,” “Regulatory Halt,” “Regular Trading Hours,” and “SIP Halt Resume Time,” as discussed above.

The Exchange believes that the proposed rules, which make halts more consistent across exchange rules, are consistent with the Act in that they will foster cooperation and coordination with persons engaged in regulating the equities markets. In particular, the Exchange believes it is important for SROs to coordinate when there is a widespread and significant event, as multiple trading centers are impacted in such an event. Further, while the Exchange recognizes that the proposed rule will not guarantee a consistent result on every market in all situations, the Exchange does believe that it will assist in that outcome. While the proposed rules relating to Regulatory Halts focus primarily on the kinds of cross-market events that would likely impact multiple markets, individual SROs will still retain flexibility to deal with unique products or smaller situations confined to a particular market. Also consistent with the Act, and with the Amended Nasdaq UTP Plan, is the Exchange’s proposal in Rule 11.22(d) to address Operational Halts, which are nonregulatory in nature and apply only to the exchange that calls the halt. As noted earlier, the Exchange presently has the ability to call an Operational Halt. The Exchange believes that the markets would benefit from greater clarity regarding when an Operational Halt may be appropriate. The proposed change is designed to cover situations where the impact is limited to a single market. For example, a disruption at the Exchange, such as a technical issue affecting trading in one or more securities, could impact trading on the Exchange so significantly that an Operational Halt is appropriate in one or more securities. In such an instance, it would be in the public interest to institute an Operational Halt to minimize the impact of a disruption

³⁷ Current Rule 11.16(e) and proposed Rule 11.22(b)(1)(A)(i) govern Limit Up-Limit Down procedures.

³⁸ Current Rule 11.16(b) and proposed Rule 11.23(b) speak to Market-Wide Circuit Breaker halts.

³⁹ 15 U.S.C. 78f(b).

⁴⁰ 15 U.S.C. 78f(b)(5).

⁴¹ *Id.*

that, if trading were allowed to continue, might negatively affect a greater number of market participants. An Operational Halt does not implicate other trading centers. Proposed Rule 11.22(d) would authorize the Exchange to implement an Operational Halt for any security trading on the Exchange: (i) if it is experiencing Extraordinary Market Activity on the Exchange; or (ii) when otherwise necessary to maintain a fair and orderly market or in the public interest. The Exchange believes that the broader language provided by the definition of Extraordinary Market Activity in proposed Rule 11.22(d) will better serve the interests of investors by allowing the Exchange to act where appropriate. Other sections of current Rule 11.16 are reorganized and retained without substantive modifications into proposed Rule 11.23, as described above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act⁴² in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below. Importantly, the Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all SROs to harmonize and improve the process related to the halting and resumption of trading in U.S.-listed equity securities, consistent with the Amended Nasdaq UTP Plan. In this area, the Exchange believes that all SROs should have consistent rules to the extent possible in order to provide additional transparency and certainty to market participants and to avoid inconsistent outcomes that could cause confusion and erode market confidence. The proposed changes would ensure that all SROs handle the situations covered therein in a consistent manner and ensure that all trading centers handle a Regulatory Halt consistently. The Exchange understands that all other non-Primary Listing Markets intend to file proposals that are substantially similar to this proposal. The Exchange does not believe that its proposals concerning Operational Halts impose an undue burden on competition. Under the existing Rules, the Exchange already possesses discretionary authority to impose Operational Halts for various reasons and, as described earlier, the proposed Rule change clarifies the circumstances

in which the Exchange may impose such Halts, and specifies procedures for both imposing and lifting them. The Exchange does not intend for these proposals to have any competitive impact whatsoever. Indeed, the Exchange expects that other exchanges will adopt similar rules and procedures to govern operational halts, to the extent that they have not done so already. The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally. In addition, information regarding the halting and resumption of trading will be disseminated using several freely accessible sources to ensure broad availability of information in addition to the SIP data and proprietary data feeds offered by the Exchange and other SROs that are available to subscribers. In addition, the declaration and timing of trading halts and the resumption of trading is designed to avoid any advantage to those who can react more quickly than other participants. The proposals encourage early and frequent communication among the SROs, SIPs and market participants to enable the dissemination of timely and accurate information concerning the market to market participants.

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) of the Act⁴³ and Rule 19b-4(f)(6)⁴⁴ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2023-11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-MEMX-2023-11. This file number should be included in the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MEMX-2023-11 and should be submitted on or before July 27, 2023.

⁴² 15 U.S.C. 78f(b)(8).

⁴³ 15 U.S.C. 78s(b)(3)(A).

⁴⁴ 17 CFR 240.19b-4.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2023-14206 Filed 7-5-23; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 17980; Pennsylvania Disaster Number PA-00135 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the Commonwealth of Pennsylvania

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the Commonwealth of Pennsylvania dated 06/29/2023.

Incident: Interstate 95 Bridge Collapse.

Incident Period: 06/11/2023 and continuing.

DATES: Issued on 06/29/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 03/29/2024.

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 EIDL declaration, applications for economic injury 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: Philadelphia.

Contiguous Counties:

Pennsylvania: Bucks, Delaware, Montgomery.

New Jersey: Burlington, Camden, Gloucester.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

⁴⁵ 17 CFR 200.30-3(a)(12).

	Percent
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for economic injury is 179800.

The States which received an EIDL Declaration #17980 are New Jersey, Pennsylvania.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023-14243 Filed 7-5-23; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 17973; Pennsylvania Disaster Number PA-00134 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the Commonwealth of Pennsylvania

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the Commonwealth of Pennsylvania dated 06/28/2023.

Incident: R.M. Palmer Company Factory Explosion.

Incident Period: 03/24/2023.

DATES: Issued on 06/28/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 03/28/2024.

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 EIDL declaration, applications for economic injury 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: Berks.

Contiguous Counties:

Pennsylvania: Chester, Lancaster, Lebanon, Lehigh, Montgomery, Schuylkill.

The Interest Rates are:

	Percent
Businesses and 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 economic injury is 179730.

The State which received an EIDL Declaration #17973 is Pennsylvania.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023-14246 Filed 7-5-23; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 17971 and # 17972; Georgia Disaster Number GA-00153]

Administrative Declaration of a Disaster for the State of Georgia

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Georgia dated 06/28/2023.

Incident: Severe Storms, Straight line Winds, Tornadoes, and Flooding.

Incident Period: 03/25/2023 through 03/27/2023.

DATES: Issued on 06/28/2023.

Physical Loan Application Deadline Date: 08/28/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 03/28/2024.

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: Troup.

Contiguous Counties:

Georgia: Coweta, Harris, Heard, Meriwether.
Alabama: Chambers, Randolph.
The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	4.750
Homeowners without Credit Available Elsewhere	2.375
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
<i>For Economic Injury:</i>	
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 17971 C and for economic injury is 17972 0.

The States which received an EIDL Declaration # are Alabama, Georgia. (Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,
Administrator.

[FR Doc. 2023-14244 Filed 7-5-23; 8:45 am]

BILLING CODE 8026-09-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36647]

Pennsylvania & Southern Railway, LLC—Acquisition and Operation Exemption—Letterkenny Industrial Development Authority

Pennsylvania & Southern Railway, LLC (PSCC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Letterkenny Industrial Development Authority (LIDA) and to operate approximately 25 miles of rail line and associated right-of-way serving the Cumberland Valley Business Park and the Letterkenny Army Depot near Chambersburg, Franklin County, Pa., (the Lines). PSCC states that there are no mileposts on the Lines.

According to the verified notice, PSCC has operated over the Lines pursuant to an agreement between PSCC and the Franklin County General Authority (FCGA) since 2004, and now PSCC seeks authority to acquire

ownership of the Lines from LIDA.¹ PSCC states that the purchase would provide it with incentive to invest in the tracks and further development of the rail business. (Notice 4.)

The verified notice states that the parties entered into an Agreement of Sale for PSCC to own and operate the Lines and that the transaction closed at the end of September 2022. PSCC states that, because it was already the operator of the Lines, it inadvertently did not file for the acquisition of the Lines at that time. PSCC states that it will commence operation of the Lines as the owner pursuant to the agreement as of the effective date of this notice of exemption.

PSCC certifies that the proposed acquisition of the Lines does not involve any interchange commitments. PSCC further certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III carrier and will not exceed \$5 million.

The transaction may be consummated on or after July 20, 2023, the effective date of the exemption (30 days after the verified notice 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 July 13, 2023.

All pleadings referring to Docket No. FD 36647, should 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, one copy of each pleading must be served on PSCC’s representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market Street, Suite 2620, Philadelphia, PA 19103.

According to PSCC, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: June 30, 2023.

¹ According to the verified notice, LIDA owns the property and/or the easements on which the Lines are located. (Notice 4 n.2). LIDA previously assigned the easements to FCGA, which entered into operating agreements with PSCC. See *Pa. & S. Ry.—Operation Exemption—Franklin Cnty. Gen. Auth.*, FD 34461 (STB served Feb. 12, 2004); See *Pa. & S. Ry.—Operation Exemption—Franklin Cnty. Gen. Auth.*, FD 35893 (STB served Jan. 8, 2015). FCGA, in turn, subsequently reassigned the easements back to LIDA. (Id.)

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2023-14294 Filed 7-5-23; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA-2023-0014]

Agency Information Collection Activity under OMB Review

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve a new information collection: Public Transportation Safety Program.

DATES: Comments must be submitted before September 5, 2023.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Website:* <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site. (Note: The U.S. Department of Transportation’s (DOT’s) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at <http://www.regulations.gov>. Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202-366-7951. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

3. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail.

For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to internet users, without change, to <http://www.regulations.gov>. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit <http://www.regulations.gov>.

Docket: For access to the docket to read background documents and comments received, go to <http://www.regulations.gov> at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Emily Jessup, Office of Chief Counsel, (202) 366-8907 or email: Emily.Jessup@dot.gov.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Public Transportation Safety Program.

Background: Congress directed FTA to establish a comprehensive Public Transportation Safety Program in the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112-141; July 6, 2012) (MAP-21), which was reauthorized by the Fixing America's Surface Transportation Act (Pub. L. 114-94; December 4, 2015). The Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117-58; November 15, 2021), continues FTA's authority to regulate public transportation systems that receive Federal financial assistance under chapter 53.

49 U.S.C. 5329(f) authorizes FTA to "require the production of documents by, and prescribe recordkeeping and reporting requirements for, a recipient

or a State safety oversight agency" for the purposes of carrying out the Federal Public Transportation Safety Program. FTA is seeking approval of an information collection that will allow FTA to collect safety related data from transit agencies, State Safety Oversight Agencies (SSOAs), and States. FTA will use this information collection to assess how recipients of Federal financial assistance under chapter 53 are complying with FTA safety requirements and recommendations and ensuring safe transportation systems for the riders and patrons using each system, the workers operating each system, and the pedestrians interacting with each system. FTA may also use this collection to assist in determining whether there is a need for new or revised safety requirements. This collection is different from the existing safety related collections associated with the Public Transportation Agency Safety Plan Program (2132-0580), the Public Transportation Safety Certification Training Program (2132-0578), and the State Safety Oversight Program (2132-0558). The aforementioned collections are approved to collect information related to the requirements of those safety programs while this new collection is intended to cover other safety issues, including emerging safety concerns.

The information captured through this data collection will enable FTA to respond to existing safety issues and be proactive to address potential and emerging safety concerns. This information collection is essential to FTA's safety oversight and grant-making roles—both critical to the Agency's mission of improving public transportation for America's communities.

Respondents: Transit agencies, State safety oversight agencies, and States.

Estimated Annual Number of Respondents: 855 (768 transit agencies, 31 SSOAs, 56 States including the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands).

Estimated Annual Number of Responses: 1,710 responses.

Estimated Total Annual Burden: 20,520 hours.

Frequency: Periodic.

Emily Anderson,

Director, Office of Management Planning.

[FR Doc. 2023-14249 Filed 7-5-23; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT-OST-2023-0109]

Agency Requests for Reinstatement of a Previously Approved Information Collection(s) With Changes: Agency Information Collection Activities: Renewed Approval of Information Collection; Docket No. DOT-OST-2015-0061

AGENCY: Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection is necessary for the administration of discretionary grant funding, under the "Local and Regional Project Assistance Program," established by the Infrastructure Investment and Jobs Act of 2021 (November 15, 2021, "Bipartisan Infrastructure Law" or "BIL"), referred to as the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) program. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Written comments should be submitted by September 5, 2023.

ADDRESSES: You may submit comments [identified by Docket No. DOT-OST-2023-0109] through one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1-202-493-2251.

- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Augustine, 202-366-5437, Office of Infrastructure Finance, and Innovation, Office of the Secretary for Transportation Policy, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: XXXX-XXXX.

Title: Local and Regional Project Assistance Program or "RAISE Transportation Discretionary Grants".

Form Numbers: None.

Type of Review: Reinstatement of a previously approved information collection.

Background: The Rebuilding American Infrastructure with Sustainability and Equity or RAISE Discretionary Grant program was authorized by the Bipartisan Infrastructure Law, 2021, and further funded through annual appropriations, under the National Infrastructure Investments program. This program provides a unique opportunity for the DOT to invest in road, rail, transit and port projects that promise to achieve national objectives. Previously known as the Better Utilizing Investments to Leverage Development (BUILD) and Transportation Investment Generating Economic Recovery (TIGER) Discretionary Grants, Congress has dedicated over \$14 billion for fourteen rounds of National Infrastructure Investments to fund projects that have a significant local or regional impact.

RAISE recipients provide information to the Government so that the Government may monitor the financial conditions and construction progress of RAISE-supported projects and the effectiveness of those projects using performance measurement metrics negotiated between the recipients and the Government.

This notice seeks comments on the previous information collection, which collects information from grantees that is necessary for grant applications and the reporting requirements agreed to by recipients of RAISE Grants (formerly BUILD/TIGER).

The reporting requirements for the program is as follows:

In order to be considered to receive a TIGER/BUILD/RAISE grant, a project sponsor must submit an application to DOT containing a project narrative, as detailed in the Notice of Funding Opportunity (NOFO). The project narrative should include the information necessary for the Department to determine that the project satisfies eligibility requirements as warranted by law. This request renews the existing clearance to cover applications solicited for future National Infrastructure Investments appropriations (authorized under the Local and Regional Project Assistance Program in the BIL), solicited in a manner similar to the solicitation for TIGER and BUILD applications.

Following the announcement of a funding award, the recipient and DOT will negotiate and sign a grant agreement. In the grant agreement, the recipient must describe the project that DOT agreed to fund, which is typically the project that was described in the TIGER/BUILD/RAISE application or a reduced-scope version of that project. The grant agreement must also include

a detailed breakdown of the project schedule and a budget listing all major activities that will be completed as part of the project.

During the project management stage, grantees will submit reports on the financial condition of the project and the project's progress. Grantees will submit progress and monitoring reports to the Government on a quarterly basis, beginning on the 20th of the first month of the calendar-year quarter following the execution of a grant agreement, and on the 20th of the first month of each calendar-year quarter thereafter until completion of the project. The report will include an executive summary and sections to show: Project activities; outstanding issues; project schedule; project cost; project funding status; and project quality, along with an SF-425 Federal Financial Report.

This information will be used to monitor grantees' use of Federal funds, ensuring accountability and financial transparency in the TIGER/BUILD/RAISE program.

Grantees will also submit reports on project performance using certain performance measures that the grantee and the Government select through negotiations. The Grantees will submit a Pre-project Report that will consist of current baseline data for each of the performance measures specified in the grant agreement. The Pre-project Report will include a detailed description of data sources, assumptions, variability, and the estimated level of precision for each measure. The Grantees will submit annual interim Project Performance Measurement Reports to the Government for each of the performance measures. Grantees will submit reports for three years. The Grantees will submit a Project Outcomes Report after the project is completed that will consist of a narrative discussion detailing project successes and/or the influence of external factors on project expectations. This information collected will be used to analyze project performance.

For New Applications:

Respondents: Eligible applicants include States and the District of Columbia, any territory or possession of the United States; a unit of local government; a public agency or publicly chartered authority established by 1 or more States; a special purpose district or public authority with a transportation function, including a port authority; a federally recognized Indian Tribe or a consortium of such Indian Tribes; a transit agency; and a multi-State or multijurisdictional group of entities.

Expected Number of Respondents: 1,000 applications per year.

Frequency: Once per year.
Estimated Average Burden per Response: 100 hours for each new application.

For Funding Agreements:

Expected Number of Respondents: Approximately 150 each year for the next three years.

Frequency: Once per year.
Estimated Average Burden per Response: 6 hours for each new Funding Agreement.

For Project Progress Monitoring-Quarterly Reports:

Expected Number of Respondents: Approximately 800 each year for the next three years.

Frequency: Quarterly
Estimated Average Burden per Response: 5 hours for each request for Quarterly Progress Report.

For Performance Measurement Reports-Annual Reports:

Expected Number of Respondents: Approximately 150 each year for the next three years.

Frequency: Once per year.
Estimated Average Burden per Response: 5 hours for each new Funding Agreement.

Application Stage

To be considered to receive a RAISE grant, a project sponsor must submit an application to DOT containing a project narrative, as detailed in the Notice of Funding Opportunity. The project narrative should include the information necessary for the Department to determine that the project satisfies eligibility requirements.

Applications must be submitted through <https://www.Grants.gov>. Instructions for submitting applications can be found at <https://www.transportation.gov/RAISEgrants/apply>. The application must include the Standard Form 424 (Application for Federal Assistance), Standard Form 424, Project Narrative, and a recommended Project Information Form.

The application should include a table of contents, maps, and graphics, as appropriate, to make the information easier to review. The Department recommends that the application be prepared with standard formatting preferences (*i.e.*, a single-spaced document, using a standard 12-point font such as Times New Roman, with 1-inch margins). The project narrative may not exceed 30 pages in length, excluding cover pages and table of contents. The only substantive portions that may exceed the 30-page limit are documents supporting assertions or conclusions made in the 30-page project narrative. If possible, website links to supporting documentation should be

provided rather than copies of these supporting materials. If supporting documents are submitted, applicants should clearly identify within the project narrative the relevant portion of the project narrative that each supporting document supports. At the applicant's discretion, relevant materials provided previously to a modal administration in support of a different USDOT financial assistance program may be referenced and described as unchanged.

OST estimates that it takes approximately 100 person-hours to compile an application package for a RAISE application. Since OST expects to receive 1,000 applications per funding round, the total hours required are estimated to be 100,000 hours (100 hours \times 1000 applications = 10,000 hours) on a one-time basis, per funding round.

Funding Agreement Stage

DOT enters a funding agreement with each recipient. In the agreement, the recipient describes the project that DOT agreed to fund, which is typically the project that was described in the RAISE application or a reduced-scope version of that project. The agreement also includes a project schedule, budget, and project related climate change and equity planning and policies.

OST estimates that it takes approximately 6 person-hours to respond to provide the information necessary for funding agreements. Based on previous rounds of RAISE awards, OST estimates that there will likely be 150 agreements negotiated per additional funding round. The total hours required are estimated to be 900 (6 hours \times 150 agreements = 900 hours) on a one-time basis, per funding round.

Project Progress Monitoring Report

OST requires each recipient to submit quarterly reports during the project to ensure the proper and timely expenditure of Federal funds under the grant.

The requirements comply with 2 CFR part 200 and are restated in the funding agreement. During the project monitoring stage, the grantee will complete Quarterly Progress Reports to allow DOT to monitor the project budget and schedule.

OST estimates that it takes approximately 5 person-hours to develop and submit a quarterly progress report. OST expects approximately 150 projects to be awarded per future funding round, while grants awarded in prior years will reach completion during the year and would no longer need to submit these reports. OST expects

recipients and awardees from 2016–2021 will require 7,700 hours (385 projects \times 4 quarterly reports \times 5 hours each) to submit quarterly progress reports while new recipients and awardees will require 9,000 hours (450 projects \times 4 quarterly reports \times 5 hours each from 2022–2024).

Grantees use the following structure when preparing this report:

The following list enumerates the required sections in the quarterly progress reports. At the discretion of the USDOT, modifications or additions can be made to produce a quarterly reporting format that will most effectively serve both the Recipient and the USDOT. Some projects will have a more extensive quarterly status than others. For smaller projects, the USDOT may determine that the content of the quarterly reports will be streamlined, and project status meetings will be held on a less-frequent basis. The first quarterly progress report should include a detailed description, and where appropriate, drawings, of the items funded.

(a) *Project Overall Status.* This section provides an overall status of the project's scope, schedule and budget. The Recipient shall note and explain any deviations from the scope of work described in the agreement.

(b) *Project Significant Activities and Issues.* This section provides highlights of key activities, accomplishments, and issues occurring on the project during the previous quarter. Activities and deliverables to be reported on should include meetings, audits and other reviews, design packages submitted, advertisements, awards, construction submittals, construction completion milestones, submittals related to any applicable Recovery Act requirements, media or Congressional inquiries, value engineering/constructability reviews, and other items of significance.

(c) *Action Items/Outstanding Issues.* This section should draw attention to, and track the progress of, highly significant or sensitive issues requiring action and direction in order to resolve. The Recipient should include administrative items and outstanding issues that could have a significant or adverse impact to the project's scope, budget, schedule. Status, responsible person(s), and due dates should be included for each action item/outstanding issue. Action items requiring action or direction should be included in the quarterly status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.

(d) *Project Scope Overview.* The purpose of this section is to provide a further update regarding the project scope. If the original scope contained in the grant agreement is still accurate, this section can simply state that the scope is unchanged.

(e) *Project Schedule.* An updated master program schedule reflecting the current status of the program activities should be included in this section. A Gantt (bar) type chart is probably the most appropriate for quarterly reporting purposes, with the ultimate format to be agreed upon between the Recipient and the USDOT. It is imperative that the master program schedule be integrated, *i.e.*, the individual contract milestones tied to each other, such that any delays occurring in one activity will be reflected throughout the entire program schedule, with a realistic completion date being reported. Narratives, tables, and/or graphs should accompany the updated master program schedule, basically detailing the current schedule status, delays and potential exposures, and recovery efforts. The following information should also be included:

- Current overall project completion percentage vs. latest plan percentage.
- Completion percentages vs. latest plan percentages for major activities such as right-of-way, major or critical design contracts, major or critical construction contracts, and significant force accounts or task orders. A schedule status description should also be included for each of these major or critical elements.

- Any delays or potential exposures to milestone and final completion dates. The delays and exposures should be quantified, and overall schedule impacts assessed. The reasons for the delays and exposures should be explained, and initiatives being analyzed or implemented in order to recover the schedule should be detailed.

(f) *Project Cost.* An updated cost spreadsheet reflecting the current forecasted cost vs. the latest approved budget vs. the baseline budget should be included in this section. One way to track project cost is to show: (1) Baseline Budget, (2) Latest Approved Budget, (3) Current Forecasted Cost Estimate, (4) Expenditures or Commitments to Date, and (5) Variance between Current Forecasted Cost and Latest Approved Budget. Line items should include all significant cost centers, such as prior costs, right-of-way, preliminary engineering, environmental mitigation, general engineering consultant, section design contracts, construction administration, utilities, construction packages, force accounts/task orders, wrap-up

insurance, construction contingencies, management contingencies, and other contingencies. The line items can be broken-up in enough detail such that specific areas of cost change can be sufficiently tracked, and future improvements made to the overall cost estimating methodology. A Program Total line should be included at the bottom of the spreadsheet. Narratives, tables, and/or graphs should accompany the updated cost spreadsheet, basically detailing the current cost status, reasons for cost deviations, impacts of cost overruns, and efforts to mitigate cost overruns. The following information should be provided:

- Reasons for each line-item deviation from the approved budget, impacts resulting from the deviations, and initiatives being analyzed or implemented in order to recover any cost overruns.
- Transfer of costs to and from contingency line items, and reasons supporting the transfers.
- Speculative cost changes that potentially may develop in the future, a quantified dollar range for each potential cost change, and the current status of the speculative change. Also, a comparison analysis to the available contingency amounts should be included, showing that reasonable and sufficient amounts of contingency remain to keep the project within the latest approved budget.
- Detailed cost breakdown of the general engineering consultant (GEC) services (if applicable), including such line items as contract amounts, task orders issued (amounts), balance remaining for tasks, and accrued (billable) costs.
- Federal obligations and/or disbursements for the project, compared to planned obligations and disbursements.

(g) *Federal Financial Report (SF-425)*. The Federal Financial Report (SF-425) is a financial reporting form used throughout the Federal Government Grant system. Recipients shall complete this form and attach it to each quarterly Project Progress and Monitoring Report. The form is available at <https://www.grants.gov/forms/post-award-reporting-forms.html>.

(h) *Certifications*.

- i. A certification that the Recipient is in compliance with 2 CFR 200.303 (Internal Controls) and 2 CFR part 200, subpart F (Audit Requirements).
- ii. The certification required under 2 CFR 200.415(a).

Performance Measurement Reports

RAISE Transportation Discretionary Grant program grantees will submit

Performance Measure Reports on the performance (or projected performance) of the project using the performance measures that the grantee and the Government selected through negotiations with the following timing and frequency requirements:

OST estimates that it takes approximately 5 person-hours to develop and submit an annual performance measure report. Grants awarded in prior years will reach completion and will begin to submit these reports. OST expects recipients and awardees from 2009–2012 have passed this reporting period, awardees from 2013–2015 will require 800 hours (160 projects × 5 hours each) to submit annual performance measurement reports while recipients and awardees from 2016–2018 will require 750 hours (150 projects × 5 hours each) in the next three years.

Grantees should use the following structure when preparing this report:

1. *Performance Measure Data Collection*. The Recipient shall collect the data necessary to report on each performance measure that is identified in the grant agreement. Grantees may select performance measures from the list available at <https://www.transportation.gov/administrations/office-policy/tiger-performance-measurement-guidance-appendix>, according to the type of project.

2. *Pre-project Performance Measurement Report*. The Recipient shall submit to DOT, on or before the Pre-project Report Date that is stated in the grant agreement, a Pre-project Performance Measurement Report that contains:

- a. Baseline data for each performance measure that is identified in the grant agreement, accurate as of the Pre-project Measurement Date; and
- b. A detailed description of the data sources, assumptions, variability, and estimated levels of precision for each measure.

3. *Interim Performance Measurement Reports*. After project completion, the Recipient shall submit to DOT on or before each of the periodic reporting dates specified in the Performance Measurement Table in the grant agreement, an Interim Performance Measurement Report containing data for each performance measure that is identified in that table, accurate as of the final date of the measurement period specified in that table. If an external factor significantly affects the value of a performance measure during a measurement period, then in the Interim Performance Measurement Report the Recipient shall identify that external

factor and discuss its influence on the performance measure.

4. *Project Outcomes Report*. The Recipient shall submit to DOT, on or before the Project Outcomes Report Date that is stated in the grant agreement, a Project Outcomes Report that contains:

- a. A narrative discussion detailing project successes and the influence of external factors on project expectations;
- b. All baseline and interim performance measurement data that the Recipient reported in the Pre-project Performance Measurement Report and the Interim Performance Measurement Reports; and

(3) an *ex post* examination of project effectiveness relative to the baseline data that the Recipient reported in the Pre-project Performance Measurement Report.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on June 29, 2023.

John Augustine,

Director of the Office of Infrastructure Finance and Innovation, Office of the Under Secretary for Transportation Policy.

[FR Doc. 2023-14228 Filed 7-5-23; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0829]

Agency Information Collection Activity: 21P-0969 Income and Asset Statement in Support of Claim for Pension or Parents' Dependency and Indemnity Compensation (DIC)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an

opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 5, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0829" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266-4688 or email maribel.aponte@va.gov. Please refer to "OMB Control No. 2900-0829" in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is

being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: U.S. Code: 38 U.S.C. 1503; U.S. Code: 38 U.S.C. 1541; U.S. Code: 38 U.S.C. 1543; U.S. Code: 38 U.S.C. 1315.

Title: 21P-0969 Income and Asset Statement in Support of Claim for Pension or Parents' Dependency and Indemnity Compensation (DIC).

OMB Control Number: 2900-0829.

Type of Review: Revision of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA) through its Veterans Benefits Administration (VBA) administers an integrated program of benefits and services, established by law, for Veterans, service personnel, and their dependents and/or beneficiaries. Title 38 U.S.C. 5101(a), 38 CFR 1502, 38 CFR 1503 provides that a specific claim in the form provided by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by the Secretary. VA Form 21P-0969, Income and Asset Statement

in Support of Claim for Pension or Parents' Dependency and Indemnity Compensation (DIC), is the prescribed form for Veterans Pension applications.

The following updates were made:

- Reorganized the layout to group instructions first, then questions.
- Income and asset types reorganized for easier completion by claimants and faster processing.
- Income and Asset information has been expanded.
- Updated instructions.
- New standardization data points; to include optical character recognition boxes. This is a non-substantive change.
- Date range added to better aid in processing and allows for claimants to report historical information.
- Specific options provided for specific questions to reduce ambiguity.
- Questions regarding trusts and annuities expanded to reduce development.
- Signature blocks added to allow for standalone submissions.

Affected Public: Individuals and households.

Estimated Annual Burden: 22,917 hours.

Estimated Average Burden per Respondent: 25 minutes.

Frequency of Response: One time, or as needed.

Estimated Number of Respondents: 55,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023-14208 Filed 7-5-23; 8:45 am]

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Part II

Department of Transportation

National Highway Traffic Safety Administration
Federal Motor Carrier Safety Administration

49 CFR Parts 393, 396, 571, et al.

Heavy Vehicle Automatic Emergency Braking; AEB Test Devices; Notice of Proposed Rule

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Parts 571 and 596**

[Docket No. NHTSA–2023–0023]

RIN 2127–AM36

Federal Motor Carrier Safety Administration**49 CFR Parts 393 and 396**

[Docket No. FMCSA–2022–0171]

RIN 2126–AC49

Heavy Vehicle Automatic Emergency Braking; AEB Test Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM proposes to adopt a new Federal Motor Vehicle Safety Standard (FMVSS) to require automatic emergency braking (AEB) systems on heavy vehicles, *i.e.*, vehicles with a gross vehicle weight rating greater than 4,536 kilograms (10,000 pounds). This notice also proposes to amend FMVSS No. 136 to require nearly all heavy vehicles to have an electronic stability control system that meets the equipment requirements, general system operational capability requirements, and malfunction detection requirements of FMVSS No. 136. An AEB system uses multiple sensor technologies and sub-systems that work together to sense when the vehicle is in a crash imminent situation and automatically applies the vehicle brakes if the driver has not done so or automatically applies more braking force to supplement the driver's applied braking. This NPRM follows NHTSA's 2015 grant of a petition for rulemaking from the Truck Safety Coalition, the Center for Auto Safety, Advocates for Highway and Auto Safety and Road Safe America, requesting that NHTSA establish a safety standard to require AEB on certain heavy vehicles. This NPRM also responds to a mandate under the Bipartisan Infrastructure Law, as enacted as the Infrastructure Investment and Jobs Act, directing the Department to prescribe an FMVSS that requires heavy commercial vehicles with FMVSS-required electronic stability control systems to be equipped with an AEB system, and also promotes DOT's January 2022 National Roadway

Safety Strategy to initiate a rulemaking to require AEB on heavy trucks. This NPRM also proposes Federal Motor Carrier Safety Regulations requiring the electronic stability control and AEB systems to be on during vehicle operation.

DATES: Comments must be received on or before September 5, 2023.

Proposed compliance dates: NHTSA proposes a two-tiered phase-in schedule for meeting the proposed standard. For vehicles currently subject to FMVSS No. 136, "Electronic stability control systems for heavy vehicles," any vehicle manufactured on or after the first September 1 that is three years after the date of publication of the final rule would be required to meet the proposed heavy vehicle AEB standard. For vehicles with a gross vehicle weight rating greater than 4,536 kilograms (10,000 pounds) not currently subject to FMVSS No. 136, any vehicle manufactured on or after the first September 1 that is four years after the date of publication of the final rule would be required to meet the proposed AEB requirements and the proposed amendments to the ESC requirements. Small-volume manufacturers, final-stage manufacturers, and alterers would be provided an additional year to comply with this proposal beyond the dates identified above.

FMCSA proposes that vehicles currently subject to FMVSS No. 136 would be required to comply with FMCSA's proposed ESC regulation on the final rule's effective date. Vehicles with a GVWR greater than 4,536 kilograms (10,000 pounds) not currently subject to FMVSS No. 136 would be required to meet the proposed ESC regulation on or after the first September 1 that is five years after the date of publication of the final rule.

FMCSA proposes that, for vehicles currently subject to FMVSS No. 136, any vehicle manufactured on or after the first September 1 that is three years after the date of publication of the final rule would be required to meet FMCSA's proposed AEB regulation. FMCSA proposes that vehicles with a gross vehicle weight rating greater than 4,536 kilograms (10,000 pounds) not currently subject to FMVSS No. 136 and vehicles supplied to motor carriers by small-volume manufacturers, final-stage manufacturers, and alterers would be required to meet the proposed AEB regulation on or after the first September 1 that is five years after the date of publication of the final rule.

This proposed implementation timeframe simplifies FMCSR training and enforcement because the Agency

expects a large number of final stage manufacturers supplying vehicles to motor carriers in the category of vehicles with a gross vehicle weight rating greater than 4,536 kilograms (10,000 pounds).

FMCSA's phase-in schedule would require the ESC and AEB systems to be inspected and maintained in accordance with § 396.3.

Early compliance is permitted but optional.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

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

- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call 202–366–9332 before coming.

- *Fax:* 202–493–2251.

Regardless of how you submit your comments, please provide the docket number of this document.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to <https://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. In order to facilitate comment tracking and response, the agency encourages commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

Docket: For access to the docket to read background documents or

comments received, go to <https://www.regulations.gov>, or the street address listed above. To be sure someone is there to help you, please call 202-366-9322 before coming. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT:

NHTSA: For non-legal issues: Hisham Mohamed, Office of Crash Avoidance Standards (telephone: 202-366-0307). For legal issues: David Jasinski, Office of the Chief Counsel (telephone: 202-366-2992, fax: 202-366-3820). The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. FMCSA: For FMCSA issues: David Sutula, Office of Vehicle and Roadside Operations Division (telephone: 202-366-9209). The mailing address for this official is: Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

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Abbreviations Frequently Used in This Document

The following table is provided for the convenience of readers for illustration purposes only.

TABLE 1—ABBREVIATIONS

Abbreviation	Full term	Notes
ABS	Antilock Braking System	Automatically controls the degree of longitudinal wheel slip during braking to prevent wheel lock and minimize skidding by sensing the rate of angular rotation of each wheel and modulating the braking force at the wheels to keep the wheels from slipping.
AEB	Automatic Emergency Braking	Applies a vehicle’s brakes automatically to avoid or mitigate an impending forward crash.
CIB	Crash Imminent Braking	Applies automatic braking when forward-looking sensors indicate a crash is imminent and the driver has not applied the brakes.
CMV	Commercial Motor Vehicle	Has the meaning given the term in 49 U.S.C. 31101.
CRSS	Crash Report Sampling System	A sample of police-reported crashes involving all types of motor vehicles, pedestrians, and cyclists, ranging from property-damage-only crashes to those that result in fatalities.
DBS	Dynamic Brake Support	Supplements the driver’s application of the brake pedal with additional braking when sensors determine the driver-applied braking is insufficient to avoid an imminent crash.
ESC	Electronic Stability Control	Able to determine intended steering direction (steering wheel angle sensor), compare it to the actual vehicle direction, and then modulate braking forces at each wheel to induce a counter yaw when the vehicle starts to lose lateral stability.
FARS	Fatality Analysis Reporting System	A nationwide census providing annual data regarding fatal injuries suffered in motor vehicle crashes.

TABLE 1—ABBREVIATIONS—Continued

Abbreviation	Full term	Notes
FCW	Forward Collision Warning	An auditory and visual warning provided to the vehicle operator by the AEB system that is designed to induce an immediate forward crash avoidance response by the vehicle operator.
FMCSR	Federal Motor Carrier Safety Regulations.	49 CFR parts 350–399.
FMVSS	Federal Motor Vehicle Safety Standards.	
GES	General Estimates System	Data from a nationally representative sample of police reported motor vehicle crashes of all types, from minor to fatal.
GVWR	Gross Vehicle Weight Rating	The value specified by the manufacturer as the maximum design loaded weight of a single vehicle.
BIL	Bipartisan Infrastructure Law	Public Law 117–58 (Nov. 15, 2021).
MAIS	Maximum Abbreviated Injury Scale.	A means of describing injury severity based on an ordinal scale. An MAIS 1 injury is a minor injury and an MAIS 5 injury is a critical injury.
MAP–21	The Moving Ahead for Progress in the 21st Century Act.	A funding and authorization bill to govern United States Federal surface transportation spending. It was enacted into law on July 6, 2012.
NCAP	New Car Assessment Program	
PDO	Property-damage-only	A police-reported crash involving a motor vehicle in transport on a trafficway in which no one involved in the crash suffered any injuries.
PDOV	Property-Damage-Only-Vehicles.	Damaged vehicles involved in property-damage-only crashes.
TTC	Time to collision	The theoretical time, given the current speed of the vehicles, after which a rear-end collision with the lead vehicle would occur if no corrective action was taken.
VRTC	Vehicle Research and Test Center.	NHTSA’s in-house laboratory.
VTD	Vehicle Test Device	A test device used to test AEB system performance.

I. Executive Summary

There were 38,824 people killed in motor vehicle crashes on U.S. roadways in 2020 and early estimates put the number of fatalities at 42,915 for 2021.¹ The Department established the National Roadway Safety Strategy in January 2022 to address this rising number of transportation deaths occurring on this country’s streets, roads, and highways.² This NPRM takes a crucial step in implementing this strategy by proposing to adopt a new Federal motor vehicle safety standard (FMVSS) that would require heavy vehicles to have automatic emergency braking (AEB) systems that mitigate the frequency and severity of rear-end collisions with vehicles.

The crash problem addressed by heavy vehicle AEB is substantial, as are the safety benefits to be gained. This NPRM addresses lead vehicle rear-end, rollover, and loss of control crashes, and their associated fatalities, injuries, and property damage. The NPRM also

proposes new Federal Motor Carrier Safety Regulations requiring the electronic stability control and AEB systems to be on during vehicle operation. Considering the effectiveness of AEB and electronic stability control technology (ESC) at avoiding these crashes, the proposed rule would conservatively prevent an estimated 19,118 crashes, save 155 lives, and reduce 8,814 non-fatal injuries annually once all vehicles covered in this rule are equipped with AEB and ESC. In addition, it would eliminate 24,828 property-damage-only crashes annually.

In this NPRM, the term “heavy vehicles” refers to vehicles with a gross vehicle weight rating (GVWR) greater than 4,536 kilograms (10,000 pounds). For application of the FMVSS, it is often necessary to further categorize these heavy vehicles, as the FMVSS must be appropriate for the particular type of motor vehicle for which they are prescribed.^{3,4} Certain vehicles have common characteristics relevant to the

application of AEB, and categorizing those vehicles accordingly allows for useful analyses, proposals, or other considerations that are particularly appropriate for the vehicle group and application of the safety standards.

One useful way to categorize vehicles further is by GVWR. This NPRM uses vehicle class numbers designed by NHTSA in 49 CFR 565, “Vehicle identification number requirements,” and the Federal Highway Administration that are based on GVWR.⁵ These class numbers, shown in Table 2 below, are widely used by industry and States in categorizing vehicles. In this NPRM, “heavy vehicle” and “class 3 through 8” both refer to all vehicles with a GVWR greater than 4,536 kg (10,000 lbs.). The term “class 3 through 6” refers to vehicles with a GVWR greater than 4,536 kg (10,000 lbs.) and up to 11,793 kg (26,000 lbs.), while the term “class 7 to 8” refers to vehicles with a GVWR greater than 11,793 kg (26,000 lbs.).

¹ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813266>, <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813283>, <https://www.nhtsa.gov/press-releases/early-estimate-2021-traffic-fatalities#:~:text=Preliminary%20data%20reported%20by%20the,from%201.34%20fatalities%20in%202020>.

² https://www.transportation.gov/sites/dot.gov/files/2022-01/USDOT_National_Roadway_Safety_Strategy_0.pdf. Last accessed August 23, 2022.

³ As required by 49 U.S.C 30111(b)(3), NHTSA shall consider whether a proposed standard is reasonable, practicable, and appropriate for the particular type of motor vehicle or motor vehicle equipment for which it is prescribed.

⁴ This NPRM excludes heavy trailers because they typically do not have braking components necessary for AEB.

⁵ See <https://ops.fhwa.dot.gov/publications/fhwahop10014/s5.htm#f21> (Last viewed on May 5, 2022).

TABLE 2—VEHICLE CLASS BY GVWR

Vehicle class	GVWR
1	Not greater than 2,722 kg (6,000 lbs.).
2a	Greater than 2,722 kg (6,000 lbs.) and up to 3,856 kg (8,500 lbs.).
2b	Greater than 3,856 kg (8,500 lbs.) and up to 4,536 kg (10,000 lbs.).
3	Greater than 4,536 kg (10,000 lbs.) and up to 6,350 kg (14,000 lbs.).
4	Greater than 6,350 kg (14,000 lbs.) and up to 7,257 kg (16,000 lbs.).
5	Greater than 7,257 kg (16,000 lbs.) and up to 8,845 kg (19,500 lbs.).
6	Greater than 8,845 kg (19,500 lbs.) and up to 11,793 kg (26,000 lbs.).
7	Greater than 11,793 kg (26,000 lbs.) and up to 14,969 kg (33,000 lbs.).
8	Greater than 14,969 kg (33,000 lbs.).

NHTSA and FMCSA have jointly developed this NPRM. Both agencies will have complementary standards that respond to mandates in Section 23010 of the Bipartisan Infrastructure Law (BIL), as enacted as the Infrastructure Investment and Jobs Act. Section 23010(b) requires the Secretary to prescribe an FMVSS that requires any commercial motor vehicle subject to FMVSS No. 136, “Electronic stability control systems for heavy vehicles,” to be equipped with an AEB system meeting performance requirements established in the new FMVSS not later than two years after enactment. Section 23010(c) requires the Secretary to prescribe a Federal Motor Carrier Safety Regulation (FMCSR) that requires, for commercial motor vehicles subject to FMVSS No. 136, that an AEB system installed pursuant to the new Federal motor vehicle safety standard must be used at any time during which the commercial motor vehicle is in operation. This NPRM sets forth NHTSA’s proposed FMVSS and FMCSA’s proposed FMCSR issued pursuant to these provisions of the BIL. In order to provide the benefits of AEB to a greater number of vehicles, this proposal would also require that many heavy vehicles not currently subject to FMVSS No. 136, including vehicles in classes 3 through 6, be equipped with ESC and AEB systems under the authority provided in the Motor Vehicle Safety Act. Pursuant to section 23010(d) of the BIL, NHTSA seeks public comment on this proposal.

NHTSA’s Statutory Authority

NHTSA is proposing this NPRM under the National Traffic and Motor Vehicle Safety Act (“Motor Vehicle Safety Act”) and in response to the Bipartisan Infrastructure Law. Under 49 U.S.C. Chapter 301, Motor Vehicle Safety (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in

objective terms. “Motor vehicle safety” is defined in the Motor Vehicle Safety Act as “the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in a crash, and includes nonoperational safety of a motor vehicle.” “Motor vehicle safety standard” means a minimum performance standard for motor vehicles or motor vehicle equipment. When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information. The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the types of motor vehicles or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths. The responsibility for promulgation of Federal motor vehicle safety standards is delegated to NHTSA.

In developing this NPRM, NHTSA carefully considered these statutory requirements, and relevant Executive Orders, Departmental Orders, and administrative laws and procedures. NHTSA is also issuing this NPRM in response to the Bipartisan Infrastructure Law. Section 23010 of BIL⁶ requires the Secretary to prescribe a Federal motor vehicle safety standard to require all commercial motor vehicles subject to a particular brake system standard to be equipped with an AEB system meeting established performance requirements. BIL directs the Secretary to prescribe the standard not later than two years after the date of enactment of the Act.

FMCSA’s Statutory Authority

For purposes of this NPRM, FMCSA’s authority is found in the Motor Carrier Act of 1935 (1935 Act, 49 U.S.C. 31502)

and the Motor Carrier Safety Act of 1984 (1984 Act, 49 U.S.C. 31132 *et seq.*), both as amended. The authorities assigned to the Secretary in these two acts are delegated to the FMCSA Administrator in 49 CFR 1.87(i) and (f), respectively. In addition, section 23010(c) of the BIL, Public Law 117–58, 135 Stat. 429, 766–767, Nov. 15, 2021, requires FMCSA to adopt an AEB regulation consistent with the companion NHTSA AEB regulation.

The 1935 Act authorizes the DOT to “prescribe requirements for—(1) qualifications and maximum hours of service of employees of and safety of operation and equipment of a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operations” (49 U.S.C. 31502(b)). FMCSA’s proposed ESC and AEB regulations, which incorporate the ESC and AEB requirements of the NHTSA rule, will require most motor carriers to maintain and use the ESC and AEB systems required by the corresponding NHTSA regulations to promote safety of operations.

The 1984 Act confers on DOT the authority to regulate drivers, motor carriers, and vehicle equipment. “At a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators; and (5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 or chapter 313 of this title” (49 U.S.C. 31136(a)(1)–(5)).

⁶Public Law 117–58, (Nov. 15, 2021).

FMCSA's proposed rule will help to ensure that commercial motor vehicles (CMVs) equipped with the ESC and AEB systems mandated by NHTSA are maintained and operated safely, as required by 49 U.S.C. 31136(a)(1). While the FMCSA proposal does not explicitly address the remaining provisions of section 31136, it will enhance the ability of drivers to operate safely, consistent with 49 U.S.C. 31136(a)(2)–(4).

Section 23010(c) of BIL requires FMCSA to prescribe a regulation under 49 U.S.C. 31136 that requires that an automatic emergency braking system installed in a commercial motor vehicle manufactured after the effective date of the NHTSA standard that is in operation on or after that date and is subject to 49 CFR 571.136 be used at any time during which the commercial motor vehicle is in operation" (135 Stat. 767). Consistent with the BIL mandate, part of FMCSA's proposal would require that motor carriers operating CMVs manufactured subject to FMVSS No. 136 maintain and use the required AEB devices as prescribed by NHTSA whenever the CMV is operating.

AEB and ESC Systems

An AEB system employs multiple sensor technologies and sub-systems that work together to sense when a vehicle is in a crash imminent situation with a lead vehicle and, when necessary, automatically apply the vehicle brakes if the driver has not done so, or apply the brakes to supplement the driver's applied braking. Current systems use radar and camera-based sensors or combinations thereof. AEB builds upon older forward collision warning-only systems. An FCW-only system provides an alert to a driver of an impending rear-end collision with a lead vehicle to induce the driver to take action to avoid the crash but does not automatically apply the brakes. This proposal would require both FCW and AEB systems. For simplicity, when referring to AEB systems in general, this proposal is referring to both FCW and AEB unless the context suggests otherwise.

This proposal follows up on NHTSA's October 16, 2015 notice granting a petition for rulemaking submitted by the Truck Safety Coalition, the Center for Auto Safety, Advocates for Highway and Auto Safety, and Road Safe America.⁷ The petitioners requested that NHTSA establish a safety standard to require automatic forward collision avoidance and mitigation systems on heavy vehicles. This rulemaking also

addresses recommendations made to NHTSA by the National Transportation Safety Board.

The safety problem addressed by AEB is substantial. An annualized average of 2017 to 2019 data from NHTSA's Fatality Analysis Reporting System (FARS) and the Crash Report Sampling System (CRSS) shows that heavy vehicles are involved in around 60,000 rear-end crashes in which the heavy vehicle was the striking vehicle annually, which represents 11 percent of all crashes involving heavy vehicles.⁸ These rear-end crashes resulted in 388 fatalities annually, which comprises 7.4 percent of all fatalities in heavy vehicle crashes. These crashes resulted in approximately 30,000 injuries annually, or 14.4 percent of all injuries in heavy vehicle crashes, and 84,000 damaged vehicles with no injuries or fatalities.

Considering vehicle size, approximately half of the rear-end crashes, injuries, and fatalities resulting from rear-end crashes where the heavy vehicle was the striking vehicle involved vehicles with a gross vehicle weight rating above 4,536 kilograms (10,000 pounds) up to 11,793 kilograms (26,000 pounds). Similarly, half of all rear-end crashes and the fatalities and injuries resulting from those crashes where the heavy vehicle was the striking vehicle involved vehicles with a gross vehicle weight rating of greater than 11,793 kilograms (26,000 pounds).

The speed of the striking vehicle is an important factor in the severity of a crash. For example, in approximately 53 percent of crashes, the striking vehicle was traveling at or under 30 mph (47 km/h). Those crashes, though, were responsible for only approximately 1 percent of fatalities. In contrast, in approximately 17 percent of crashes, the striking vehicle was traveling over 55 mph (89 km/h). Those crashes resulted in 89 percent of the fatalities from rear-end crashes involving heavy vehicles. While the majority of crashes occur at low speeds, the overwhelming majority of fatalities result from high-speed crashes. For AEB systems to address this safety problem, they must function at both low and high speeds.

NHTSA has been studying AEB technologies since their conception over 15 years ago. NHTSA and FMCSA have recognized the potential of heavy vehicle AEB for many years and continued to research this technology as it evolved from early generations to its current state. As part of NHTSA's efforts to better understand these new collision prevention technologies, NHTSA

sponsored and conducted numerous research projects, including ones focused on AEB and FCW for heavy trucks. NHTSA conducted testing at its in-house testing facility, the Vehicle Research and Test Center, to examine the effectiveness of AEB in different crash scenarios and speeds. NHTSA and FMCSA have also sponsored or conducted projects with a specific focus on the heavy vehicle rear-end crash problem.

International standards for the regulation of AEB systems on heavy vehicles exist and are under development. The European Union and Asian countries have either already adopted or are considering AEB regulations for heavy vehicles. More information can be found in Appendix A of this document.

In 2016, NHTSA published its first report of track testing of heavy vehicles equipped with AEB systems. NHTSA used its light vehicle test procedures, similar to those used in NHTSA's New Car Assessment Program,⁹ as a framework to adapt for use on heavy vehicles. These scenarios included a stopped lead vehicle scenario, a slower moving lead vehicle scenario, a decelerating lead vehicle scenario, and a false positive scenario that consisted of driving over a steel trench plate. NHTSA's initial testing of AEB systems focused on vehicles equipped with ESC—primarily Class 8 truck tractors and motorcoaches. Adjustments had to be made to the scenarios to account for the greater stopping distances of heavy vehicles compared to light vehicles and to the surrogate vehicle and towing device to ensure that the systems performed as they would on the road. Testing of early heavy vehicle systems indicated that vehicles did not automatically brake when encountering a stopped lead vehicle. The false positive test also resulted in FCW alerts, but no automatic braking.

Later testing was intended to evaluate the evolution of AEB systems, to further refine the test procedures, and to test other vehicle types such as single-unit trucks and class 3 through 6 vehicles. Newer FCW and AEB systems on heavy vehicles generally performed better than older versions. Testing of these updated systems exhibited less severe rear-end collisions through velocity reductions before a collision or avoided contact with a lead vehicle entirely. The refined test procedures addressed previous

⁹NHTSA's New Car Assessment Program (NCAP) provides comparative information on the safety performance of new vehicles to assist consumers with vehicle purchasing decisions and to encourage safety improvements.

⁷ 80 FR 62487.

⁸ These rear-end crashes are cases where the heavy vehicle was the striking vehicle.

issues with timing, range parameters, and the vehicle test device.

NHTSA's most recent testing of a 2021 Freightliner Cascadia, a class 8 truck tractor, indicated that the AEB system was able to prevent a collision with a lead vehicle at speeds between 40 km/h and 85 km/h. Collisions occurred with the lead vehicle at lower speeds, although significant speed reductions were still achieved. This suggests that collision avoidance at lower speed cannot necessarily be extrapolated to performance outcomes at higher speed and may depend on the specific ways AEB systems may be programmed. It also indicates that AEB systems that prevent collisions at higher speeds are practicable.

NHTSA and FMCSA studies have also examined system availability across all types of heavy vehicles. Across larger (class 7 and 8) air braked truck tractors and motorcoaches, AEB systems are widely available. A market analysis of class 3 through 6 heavy vehicles showed that nearly all manufacturers had at least one vehicle model within each class available with AEB. Two manufacturers had AEB advertised as standard equipment on at least one model. All vehicles that were offered with AEB systems were also equipped with ESC systems. A few models that offered FCW-only systems (not capable of automatic brake application) did so without also having ESC.

Based on these factors, and consistent with the Motor Vehicle Safety Act and the BIL, NHTSA is proposing a new FMVSS that would require nearly all heavy vehicles to be equipped with AEB systems.¹⁰ Furthermore, FMCSA is proposing that all commercial vehicles equipped with ESC and AEB systems required by NHTSA's proposed rule be used any time the commercial vehicle is in operation. NHTSA is further proposing minimum performance criteria for AEB systems to meet the need for safety. These performance criteria would ensure that AEB systems function at a wide range of speeds that address the safety problem associated with rear-end crashes, injuries, and fatalities.

Based on NHTSA's survey of publicly available data on ESC and AEB system availability, all manufacturers that have equipped vehicles with AEB systems (other than FCW-only systems) have done so only if the vehicle is also equipped with an ESC system. Furthermore, NHTSA has consulted

with two AEB system manufacturers for heavy vehicles and both indicated that they would equip vehicles with AEB only if they were also equipped with ESC.¹¹ An ESC system provides stability under braking by using differential braking and engine torque reduction to reduce lateral instability that could induce rollover or loss of directional control. An ABS system also provides lateral stability under braking. ABS systems are currently required on all vehicles subject to this proposal under FMVSS Nos. 105 and 121. However, the absence of any AEB systems available without ESC leads NHTSA to believe that manufacturers have identified scenarios in which the operation of an AEB system without ESC may have adverse safety effects that are not adequately addressed by ABS systems alone.

Summary of the Proposal

NHTSA has tentatively concluded based upon this information that a safety need exists for an ESC system to be installed on a vehicle equipped with AEB. Consequently, this proposal also requires nearly all heavy vehicles to be equipped with an ESC system.¹² Even separate from the benefits of AEB, the safety problem related to the vehicles addressed by the FMVSS No. 136 amendments is also substantial. Class 3 through 6 heavy vehicles are involved in approximately 17,000 rollover and loss of control crashes annually. These crashes resulted in 178 fatalities annually, approximately 4,000 non-fatal injuries, and 13,000 damaged vehicles. Currently, pursuant to FMVSS No. 136, only class 7 and 8 truck tractors and certain large buses are required to have ESC systems. FMVSS No. 136 includes both vehicle equipment requirements and performance requirements. This proposal would amend FMVSS No. 136 to require nearly all heavy vehicles to have an ESC system that meets the equipment requirements, the general system operational capability requirements, and malfunction detection requirements of FMVSS No. 136. It would not, as proposed, require vehicles not currently required to have ESC systems to meet any test track performance requirements for ESC systems, though the agency does request comment on whether to include a performance test and, if so, what that test should be. In designing any

potential test, NHTSA wishes to remain conscious of the potential testing burden on small businesses and the multi-stage vehicle manufacturers.

The proposed standard includes certain requirements for AEB systems. First, vehicles would be required to provide the driver with a forward collision warning at any forward speed greater than 10 km/h (6.2 mph). NHTSA is proposing that the forward collision warning be auditory and visual with limited specifications for each of the warning modalities. NHTSA has tentatively concluded that no further specification of the warning is necessary.

Second, vehicles would be required to have an AEB system that applies the service brakes automatically at any forward speed greater than 10 km/h (6.2 mph) when a collision with a lead vehicle is imminent. This requirement serves to ensure that AEB systems operate at all speeds above 10 km/h, even if they are above the speeds tested by NHTSA. This requirement also assures at least some level of AEB system performance in rear-end crashes other than those for which NHTSA has test procedures.

Third, the AEB system would be required to prevent the vehicle from colliding with a lead vehicle when tested according to the proposed standard's test procedures. Vehicles with AEB systems meeting the proposed standard would have to automatically activate the braking system when they encounter a stopped lead vehicle, a slower moving lead vehicle, or a decelerating lead vehicle.

The proposed requirements also include two tests to ensure that the AEB system does not inappropriately activate when no collision is actually imminent. These false positive tests provide some assurance that an AEB system is capable of differentiating between an actual imminent collision and a non-threat. While these tests are not comprehensive, they establish a minimum performance for non-activation of AEB systems. The two scenarios NHTSA proposes to test are driving over a steel trench plate and driving between two parked vehicles.

The final proposed requirement for AEB systems is that they be capable of detecting a system malfunction and notify the driver of any malfunction that causes the AEB system not to operate. This proposed requirement would include any malfunction solely attributable to sensor obstruction, such as by accumulated snow or debris, dense fog, or sunlight glare. The malfunction telltale must remain active as long as the malfunction exists, and

¹⁰ The vehicles excluded from this proposal include trailers, which by definition, are towed by other vehicles, and vehicles already excluded from NHTSA's braking requirements. For details, see section V.F.

¹¹ On September 29, 2021, NHTSA met with Daimler Truck North America (DTNA) and on October 22, 2021, NHTSA met with Bendix to discuss the AEB systems of heavy vehicles.

¹² The vehicles excluded from the proposed ESC requirements are the same vehicles excluded from the proposed AEB requirements.

the vehicle's starting system is on. The proposal does not include any specifications for the form of this notification to the driver.

The NPRM also includes proposed test procedures. In this NPRM, the heavy vehicle being evaluated with AEB is referred to as the "subject vehicle." Other vehicles involved in the test are referred to as "vehicle test devices," (VTDs) and a specific type of VTD called the "lead vehicle" refers to a vehicle which is ahead in the same lane, in the path of the moving subject vehicle. To ensure repeatable test conduct that reflects how a subject vehicle might respond in the real world, this proposal includes broad specifications for a vehicle test device to be used as a lead vehicle or principal other vehicle during testing. NHTSA is proposing that the vehicle test device is based on the specifications in the International Organization for Standardization (ISO) standard 19206-3:2021.¹³ The vehicle test device is a tool that NHTSA would use in the agency's compliance tests to measure the performance of automatic emergency braking systems required by the FMVSS. For its research testing, NHTSA has been using a full-size surrogate vehicle, the Global Vehicle Target (GVT). The GVT falls within the specifications of ISO 19206-3:2021. These specifications include specifications for the dimensions, color and reflectivity, and the radar cross section of a vehicle test device that ensure it appears like a real vehicle to vehicle sensors.

NHTSA has included three test scenarios in this proposed rule for AEB when approaching a lead vehicle—a stopped lead vehicle, a slower moving lead vehicle, and a decelerating lead vehicle. The stopped lead vehicle scenario consists of the subject vehicle—that is, the vehicle being tested—traveling straight at a constant speed approaching a stopped lead vehicle in the center of its path. To satisfy the proposed performance requirement, the subject vehicle must provide an FCW and stop prior to colliding with the lead vehicle. NHTSA proposes to conduct this scenario both with no manual brake application and with manual brake application. Testing with manual brake application is similar to the DBS test procedure that is included in New Car Assessment Program for light vehicles. While DBS is

not generally advertised as a feature of AEB systems on air braked vehicles, driver-applied braking should not suppress automatic braking. Testing without manual brake application would be conducted at any constant speed between 10 km/h and 80 km/h. The 80 km/h upper bound of testing reflects safety limitations that would result from any collision resulting from a failure of an AEB system to activate in the testing environment. However, with manual brake application, NHTSA proposes to test vehicles up to 100 km/h. This is possible because the manual brake application ensures at least some level of speed reduction even in a test failure where automatic braking does not occur.

The second test scenario is a slower moving lead vehicle. In this scenario, the subject vehicle is traveling straight at a constant speed, approaching a lead vehicle traveling at a slower speed in the subject vehicle's path. To satisfy the proposed performance test requirement, the subject vehicle must provide an FCW and slow to a speed equal to or below the lead vehicle's speed without colliding with the lead vehicle. As with the stopped lead vehicle test, NHTSA proposes to perform this test with both no manual brake application and manual brake application. The subject vehicle speed without manual brake application would be any constant speed between 40 km/h and 80 km/h, and with manual brake application, testing would be conducted at any constant speed between 70 km/h and 100 km/h. The lead vehicle would travel at 20 km/h in all tests.

The third test scenario is a decelerating lead vehicle. In this scenario, the subject vehicle and lead vehicle are travelling at the same constant speed in the same path and the lead vehicle begins to decelerate. To satisfy the proposed performance test requirement, the subject vehicle must provide an FCW and stop without colliding with the lead vehicle. As with the other AEB tests approaching a lead vehicle, this test is performed both with and without manual brake application. However, the test speeds are the same for both scenarios—either 50 km/h or 80 km/h. The lead vehicle would decelerate with a magnitude between 0.3g and 0.4g and the headway between the vehicles would be any distance between 21 m and 40 m (for 50 km/h tests) or 28 m and 40 m (for 80 km/h tests). The upper bound of the lead vehicle deceleration and the lower bound of the headway were chosen to ensure that the corresponding test scenarios would not require a brake performance beyond what is necessary

to satisfy the minimum stopping distance requirements in the FMVSS applicable to brake performance.

This proposal would require that all of the NHTSA AEB requirements be phased in within four years of publication of a final rule. Truck tractors and certain large buses with a GVWR of greater than 11,793 kilograms (26,000 pounds) that are currently subject to FMVSS No. 136 would be required to meet all requirements within three years. Vehicles not currently subject to FMVSS No. 136 would be required to have ESC and AEB systems within four years of publication of a final rule. Small-volume manufacturers, final-stage manufacturers, and alterers would be allowed one additional year (five years total) of lead time.

Consistent with the BIL mandate, FMCSA proposes to require that motor carriers operating CMVs manufactured subject to FMVSS No. 136, maintain and use the required AEB and ESC systems as prescribed by NHTSA for the effective life of the CMV. FMCSA's proposed rule is intended to ensure that commercial motor vehicles equipped with the ESC and AEB systems mandated by NHTSA are maintained and operated safely, as required by 49 U.S.C. 31136(a)(1). While the FMCSA proposal does not explicitly address the remaining provisions of section 31136, it will enhance the ability of drivers to operate safely, consistent with 49 U.S.C. 31136(a)(2)–(4). FMCSA's proposal would require the ESC and AEB systems to be inspected and maintained in accordance with 49 CFR part 396, Inspection, Repair, and Maintenance (§ 396.3).

The proposed requirements would ensure that the benefits resulting from CMVs equipped with ESC and AEB systems are sustained through proper maintenance and operation. The maintenance costs include annual costs required to keep the ESC and AEB systems operative. FMCSA believes the cost of maintaining the ESC and AEB systems over their lifetimes is minimal compared to the cost of equipping trucks with ESC and AEB systems and may be covered by regular annual maintenance.

NHTSA and FMCSA have jointly determined not to propose retrofitting requirements AEB for existing heavy vehicles and ESC for vehicles not currently subject to FMVSS No. 136. For technical reasons, AEB and ESC retrofits are difficult to apply broadly, generically, or inexpensively and thus this NPRM does not propose a retrofit requirement.

NHTSA and FMCSA seek comments and suggestions on any aspect of this

¹³ ISO 19206-3:2021, "Road vehicles—Test devices for target vehicles, vulnerable road users and other objects, for assessment of active safety functions—Part 3: Requirements for passenger vehicle 3D targets." <https://www.iso.org/standard/70133.html>. May 2021.

proposal and any alternative requirements to address this safety problem. NHTSA and FMCSA also request comments on the proposed lead time for meeting these requirements, and how the lead time can be structured to maximize the benefits that can be realized most quickly while ensuring that the standard is practicable. Finally, NHTSA and FMCSA seek comment on

whether and how this proposal may disproportionately impact small businesses and how NHTSA and FMCSA could revise this proposal to minimize any disproportionate impact.

Benefits and Costs

NHTSA and FMCSA have issued a Preliminary Regulatory Impact Analysis (PRIA) that analyzes the potential

impacts of this proposed rule. The PRIA is available in the docket for this NPRM.¹⁴ This proposed rule is expected to substantially decrease risks associated with rear-end, rollover, and loss of control crashes. The effectiveness of AEB and ESC at avoiding rear-end, rollover, and loss of control crashes is summarized in Table 3 for AEB and Table 4 for ESC.

TABLE 3—AEB EFFECTIVENESS (%) BY VEHICLE CLASS RANGE AND CRASH SCENARIO

Vehicle class range	Stopped lead vehicle	Slower-moving lead vehicle	Decelerating lead vehicle
7–8	38.5	49.2	49.2
3–6	43.0	47.8	47.8

TABLE 4—ESC EFFECTIVENESS (%) BY CRASH SCENARIO

Vehicle class range	Rollover	Loss of control
3–6	48.0	14.0

Considering the annual rear-end, rollover, and loss of control crashes, as well as the effectiveness of AEB and ESC at avoiding these crashes, the proposed rule would prevent an

estimated 19,118 crashes, save 155 lives, and reduce 8,814 non-fatal injuries, annually. In addition, the proposed rule would eliminate an estimated 24,828 property-damage-only-vehicles

(PDOVs), annually. Table 5 shows these estimated benefits also by vehicle class and technology.

TABLE 5—ESTIMATED ANNUAL BENEFITS OF THE PROPOSED RULE

	Crashes avoided	Fatalities avoided	Non-fatal injuries avoided	PDOVs avoided
By Vehicle Class				
Class 7–8	5,691	40	2,822	7,958
Class 3–6	13,427	115	5,992	16,870
Total	19,118	155	8,814	24,828
By Technology				
AEB	16,224	106	8,058	22,713
ESC	2,894	49	756	2,115
Total	19,118	155	8,814	24,828

There are two potential unintended consequences that cannot be quantified: the impact of false activations on safety and the potential impact of sensor degradation over time on AEB performance. However, the required malfunction indicator combined with FMCSA’s proposed AEB and ESC inspection and maintenance requirements would help vehicle operators maintain AEB systems and substantially reduce degradation of AEB sensor performance. We seek comments on these two issues and ask for any data

that can help us to quantify these impacts.

The benefits estimate includes assumptions that likely result in the underestimation of the benefits of this proposal because it does not quantify the benefits from crash mitigation. That is, the benefits only reflect those resulting from crashes that are avoided as a result of AEB and ESC. It is likely that AEB will also reduce the severity of crashes that are not prevented. Some of these crashes mitigated may include fatalities and significant injuries that will be prevented or mitigated by AEB.

Finally, this NPRM does not quantify any potential benefits that AEB could provide during adverse environmental conditions (night, wet, etc.). While AEB is likely to be effective in many of these crashes, NHTSA is not aware of any data to quantify the performance degradation of AEB in adverse conditions.

The benefits of this proposed rule, monetized and analyzed with the total annual cost, are summarized in Table 6. The total annual cost, considering the implementation of both AEB and ESC technologies proposed in this rule, is

¹⁴ The PRIA may be obtained by downloading it or by contacting Docket Management at the address

or telephone number provided at the beginning of this document.

estimated to be \$353 million. The proposed rule would generate a net benefit of \$2.58 to \$1.81 billion, annually under 3 and 7 percent

discount rates. The proposed rule would be cost-effective given that the highest estimated net cost per fatal equivalent would be \$0.50 million. Maintenance

costs are considered de minimis and therefore not included in the cost estimate.

TABLE 6—ESTIMATED ANNUAL COST, MONETIZED BENEFITS, COST-EFFECTIVENESS, AND NET BENEFITS OF THE PROPOSED RULE
[2021 Dollars in millions]

Discount rates	Annual cost*	Monetized benefits	Net cost per fatal equivalent	Net benefits
3 Percent	\$353.3	\$2,937.0	¹⁵ –\$0.12	\$2,583.7
7 Percent	353.3	2,158.0	0.50	1,807.1

*Paid at purchasing; no need to discount.

NHTSA has issued an NPRM that proposes to adopt an FMVSS for AEB requirements for light vehicles, including pedestrian AEB. ¹⁶ NHTSA notes that it may decide to issue final rules adopting the AEB requirements for light and heavy vehicles in a way that incorporates the AEB requirements into a single Federal motor vehicle safety standard for all vehicle classes.

The following is a brief explanation of terms and technologies used to describe AEB systems. More detailed information can be found in Appendix A to this preamble.

Radar-Based Sensors

Heavy vehicle AEB systems typically employ radar sensors. At its simplest, radar is a time-of-flight sensor that measures the time between when a radio wave is transmitted and its reflection is recorded. This time-of-flight is then used to calculate how far away the object is that caused the reflection. Information about the reflecting object, such as the speed at which it is travelling, can also be determined. Radar units are compact, relatively easy to mount, and do not require a line of sight to function properly. Radar can penetrate most rubbers and plastics, allowing for the units to be installed behind grilles and bumper fascia, increasing mounting options. Radar can detect objects in low-light situations and also works well in environmental conditions like precipitation and fog.

Camera Sensors

Cameras are passive sensors in which optical data are recorded then processed to allow for object detection and classification. Cameras are an important part of many automotive AEB systems, and one or more cameras are typically

mounted behind the front windshield and often up high near the rearview mirror. Cameras at this location provide a good view of the road and are protected by the windshield from debris, grease, dirt, and other contaminants that can cover the sensor. Systems that utilize two or more cameras can see stereoscopically, allowing the processing system to determine range information along with detection and classification.

Electronically Modulated Braking Systems

Automatic actuation of the vehicle brakes requires more than just systems to sense when a collision is imminent. In addition to the sensing system, hardware is needed to physically apply the brakes without relying on the driver to apply the brake pedal. AEB leverages two foundational braking technologies, antilock braking systems (ABS) and electronic stability control. AEB uses the hardware equipped for ESC and electronically applies the brakes to avoid certain scenarios where a crash with a vehicle is imminent.

ABS: Antilock braking systems automatically control the degree of longitudinal wheel slip during braking to prevent wheel lock and minimize skidding by sensing the rate of angular rotation of the wheels and modulating the braking force at the wheels to keep the wheels from locking. Preventing wheel lock, and therefore skidding, greatly increases the controllability of the vehicle during a panic stop. Modern ABS systems have wheel speed sensors, independent brake modulation at each wheel, and can increase or decrease braking pressures as needed. During modulation of a brake application, the ABS system repeatedly relieves and regenerates pressure to quickly release and reapply, or “pulse,” the brake.

ESC: ESC builds upon the antilock brakes system by adding two sensors, a steering wheel angle sensor and an inertial measurement unit. These

sensors allow the ESC controller to determine intended steering direction (steering wheel angle sensor), compare it to the actual vehicle direction, and then modulate braking forces at each wheel to induce a corrective yaw moment when the vehicle starts to lose lateral stability. An ESC system can control the brakes even when the vehicle operator is not pressing the brake pedal.

When an AEB system activates in response to an imminent collision, much of the same or similar hardware from ESC systems is used to automatically control and modulate the brakes. Like ESC, an AEB system includes components that give the vehicle the capacity to automatically apply the brakes even when the vehicle operator is not pressing the brake pedal. To do this in hydraulic brake systems, hydraulic brake pressure is generated by a pump similarly as with ABS. In a pneumatic brake system, the air pressure is already available via the air reservoir and air compressor, and the ESC system must direct this pressure accordingly. Additionally, the safety benefits of ESC enable an AEB system to operate at its potential. Especially under the high-speed, heavy-deceleration emergency braking events that potentially occur during AEB activation, ESC could improve vehicle stability and reduce the propensity for loss of control or rollover crashes that may result from a steering response to an impending rear-end collision.

Forward Collision Warning

A forward collision warning (FCW) system uses the camera and radar sensors described above, and couples them with an alert mechanism. An FCW system can monitor a vehicle’s speed, the speed of the vehicle in front of it, and the distance between the two vehicles. If the FCW system determines that the distance from the driver’s vehicle to the vehicle in front of it is too short, and the closing velocity between

¹⁵ The negative net cost per fatal equivalent reflects the fact that savings from reducing traffic congestion and damaged property is greater the total compliance costs of the proposed rule.

¹⁶ 88 FR 38632 (June 13, 2023).

the two vehicles too high, the system warns the driver of an impending rear-end collision. Warning systems in use today provide drivers with a visual display, such as a light on the instrument panel, an auditory signal (e.g., beeping tone or chime), and/or a haptic signal that provides tactile feedback to the driver (e.g., rapid vibrations of the seat pan or steering wheel or a momentary brake pulse) to alert the driver of an impending crash so they may manually intervene. The alerts provided by FCW systems, even those that include momentary brake pulses, are not intended to provide significant and sustained vehicle deceleration. Rather, the FCW system is intended to inform the driver that they must take corrective action in certain rear-end crash-imminent driving situations.

Automatic Emergency Braking

An automatic emergency braking system automatically applies the brakes to help drivers avoid or mitigate the severity of rear-end crashes. AEB has two primary functions, crash imminent braking (CIB) and a brake support system that supplements a driver's applied braking, which is referred to as dynamic brake support (DBS) in the light vehicle context. CIB systems apply automatic braking when forward-looking sensors indicate a crash is imminent and the driver has not applied the brakes, while supplemental brake support systems use the same forward-looking sensors, but also supplement the driver's application of the brake pedal with enhanced braking when sensors determine the driver-applied braking is insufficient to avoid the imminent crash. This NPRM does not split the terminology of these CIB and supplemental brake support functionalities, and instead considers both functions as part of AEB. The proposed standard includes performance tests that would entail installation of AEB that has both CIB and supplemental brake support functionalities.

"AEB" as Used in This NPRM

As used in this NPRM, when we refer to "AEB," we mean a system that has: (a) a forward collision warning (FCW) component to alert the driver to an impending collision; (b) a crash imminent braking component (CIB) that automatically applies the vehicle's brakes if the driver does not respond to an imminent crash in the forward direction regardless of whether there's an FCW alert; and, (c) a supplemental brake support component that automatically supplements the driver's

brake application if the driver applies insufficient manual braking.

II. Safety Problem

Overview

There were 38,824 people killed in motor vehicle crashes on U.S. roadways in 2020 and 42,939 in 2021.^{17 18} The 2021 data are the highest numbers of fatalities since 2005. While the upward trend in fatalities may be related to increases in risky driving behaviors during the COVID-19 pandemic,¹⁹ NHTSA data from 2010 to 2019 show an increase of approximately 3,000 fatalities since 2010. There has also been an upward trend since 2010 in the total number of motor vehicle crashes, which corresponds to an increase in fatalities, injuries, and property damage. NHTSA uses data from its FARS and the CRSS, to account for and understand motor vehicle crashes.²⁰

Rear-End Crashes

As defined in a NHTSA technical manual relating to data entry for FARS and CRSS, rear-end crashes are incidents where the first event is defined as the frontal area of one vehicle striking a vehicle ahead in the same travel lane. In a rear-end crash, as instructed by the FARS/CRSS Coding and Validation Manual, the vehicle ahead is categorized as intending to head either straight, left or right, and is

¹⁷ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813266>; [https://www.nhtsa.gov/press-releases/early-estimate-2021-traffic-fatalities#:~:text=](https://www.nhtsa.gov/press-releases/early-estimate-2021-traffic-fatalities#:~:text=Preliminary%20data%20reported%20by%20the,from%201.34%20fatalities%20in%202020)

¹⁸ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813435>; <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813283>; <https://www.nhtsa.gov/press-releases/early-estimate-2021-traffic-fatalities#:~:text=Preliminary%20data%20reported%20by%20the,from%201.34%20fatalities%20in%202020>.

¹⁹ These behaviors relate to increases in impaired driving, the non-use of seat belts, and speeding.

²⁰ The Crash Report Sampling System (CRSS) builds on a previous, long-running National Automotive Sampling System General Estimates System (NASS GES). CRSS is a sample of police-reported crashes involving all types of motor vehicles, pedestrians, and cyclists, ranging from property-damage-only crashes to those that result in fatalities. CRSS is used to estimate the overall crash picture, identify highway safety problem areas, measure trends, drive consumer information initiatives, and form the basis for cost and benefit analyses of highway safety initiatives and regulations. FARS contains data on every fatal motor vehicle traffic crash within the 50 States, the District of Columbia, and Puerto Rico. To be included in FARS, a traffic crash must involve a motor vehicle traveling on a public trafficway that results in the death of a vehicle occupant or a nonoccupant within 30 days of the crash.

either stopped, travelling at a lower speed, or decelerating.²¹

Heavy Vehicle Rear-End Crashes

On average from 2017 to 2019, there were 6.65 million annual police-reported crashes resulting in 36,888 fatalities. Of the police-reported crashes, approximately 550,000 involved a heavy vehicle (a vehicle with a GVWR greater than 4,536 kg (10,000 pounds)), resulting in 5,255 fatalities.²² Thus, heavy vehicle crashes represented 8.3 percent of the total number of crashes and resulted in 14.2 percent of all fatalities. Annually, the entire U.S. fleet traveled a total of 3,237,449 million miles, and 9.3 percent of total vehicle miles traveled were in heavy vehicles.²³

A typical heavy vehicle rear-end crash is characterized by a heavy vehicle travelling on a roadway and colliding with another vehicle ahead of it travelling in the same direction, but which is stopped, moving slower, or decelerating, usually within the same lane. While these crashes occur nationwide on all types of roads and in all environments, they overwhelmingly take place on straight roadways (99 percent) and in dry conditions (85 percent). Approximately 60,000 (11 percent of heavy vehicle crashes annually), were rear-end crashes in which the heavy vehicle was the striking vehicle. These rear-end crashes resulted in 388 fatalities annually (7.4 percent of all fatalities in heavy vehicle crashes), approximately 30,000 injuries (14.3 percent of injuries in all heavy vehicle crashes.), and approximately 84,000 damaged vehicles (without injuries or fatalities).²⁴

The PRIA accompanying this proposal includes a complete review and analysis of the relevant crash data and provides full details about the target population of this NPRM. A summary of the PRIA is contained in section XI. of this proposal.

Rear-End Crashes by Heavy Vehicle Class

Installing AEB on vehicles is related to the installation of ESC on vehicles. ESC is required by FMVSS No. 136 for truck tractors and certain large buses with a GVWR greater than 11,793 kg

²¹ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813251> Category II Configuration D. Rear-End.

²² Data are from 2017–2019 FARS and CRSS crash databases, as discussed in the accompanying PRIA.

²³ See the Traffic Safety Report at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813141> (Last viewed September 22, 2022).

²⁴ All data in this paragraph are from 2017–2019 FARS and CRSS crash databases, and are discussed in the accompanying PRIA.

(26,000 lbs.). Although the group of heavy vehicles that is not subject to FMVSS No. 136 and the group of heavy vehicles that is subject to FMVSS No. 136 are not solely defined by GVWR range, those not subject to FMVSS No. 136 can be generally characterized as class 3–6 vehicles, while those that are subject to FMVSS No. 136 can be generally characterized as class 7–8 vehicles. Accordingly, NHTSA has further examined rear-end crash data for each of these vehicle class ranges.

The lower weight range of class 3 through 6 includes vehicles such as delivery vans, utility trucks, and smaller buses. Sales data for 2018 and 2019 show that on average 454,692 class 3–6 vehicles per year were sold in the U.S.²⁵ Approximately 57 percent of these were class 3 vehicles. Based on crash data, NHTSA determined that class 3–6 vehicles are involved in an annual average of 29,493 rear-end crashes where the heavy vehicle is the striking vehicle. As a result of these crashes, there were 184 fatalities, 14,675 injuries, and 41,285 PDOVs per year on average. A NHTSA study also shows

²⁵ This information is available in the S&P Global's presentation titled "MHCV Safety Technology Study," which has been placed in the docket identified in the heading of this NPRM.

that, according to FARS data, fatalities related to crashes involving these vehicles are on the rise.²⁶ In 2015, trucks and buses in this category were involved in 2 percent of all fatal crashes in the U.S., but that increased to 4 percent in 2019.²⁷

The higher weight range of class 7 and 8 includes vehicles such as larger single-unit trucks, combination tractor-trailers, transit buses, and motorcoaches (GVWR greater than 11,793 kg (26,000 lbs.)).²⁸ Sales data for 2018 and 2019 shows that on average 332,558 class 7–8 vehicles per year were sold in the U.S. Approximately 77 percent of these were class 8 vehicles. NHTSA estimates that class 7 and 8 vehicles are involved in 30,416 rear-end crashes where the heavy vehicle is the striking vehicle. As a result of these crashes, there were an annual average of 204 fatalities, 15,117 injuries, and 42,466 PDOVs. As these data indicate, the numbers of crashes,

²⁶ Mynatt, M., Zhang, F., Brophy, J., Subramanian, R., Morgan, T. (2022, September). Medium Truck Special Study (Report No. DOT HS 813 371). Washington, DC: National Highway Traffic Safety Administration.

²⁷ In 2015, 655 of the 32,538 total fatalities involved a class 3–6 truck. In 2019, it increased to 1,301 of the 33,244 total fatalities.

²⁸ These vehicles are subject to FMVSS No. 136 and so must have ESC.

fatalities, injuries, and PDOVs are very similar for both class 3–6 and class 7–8.

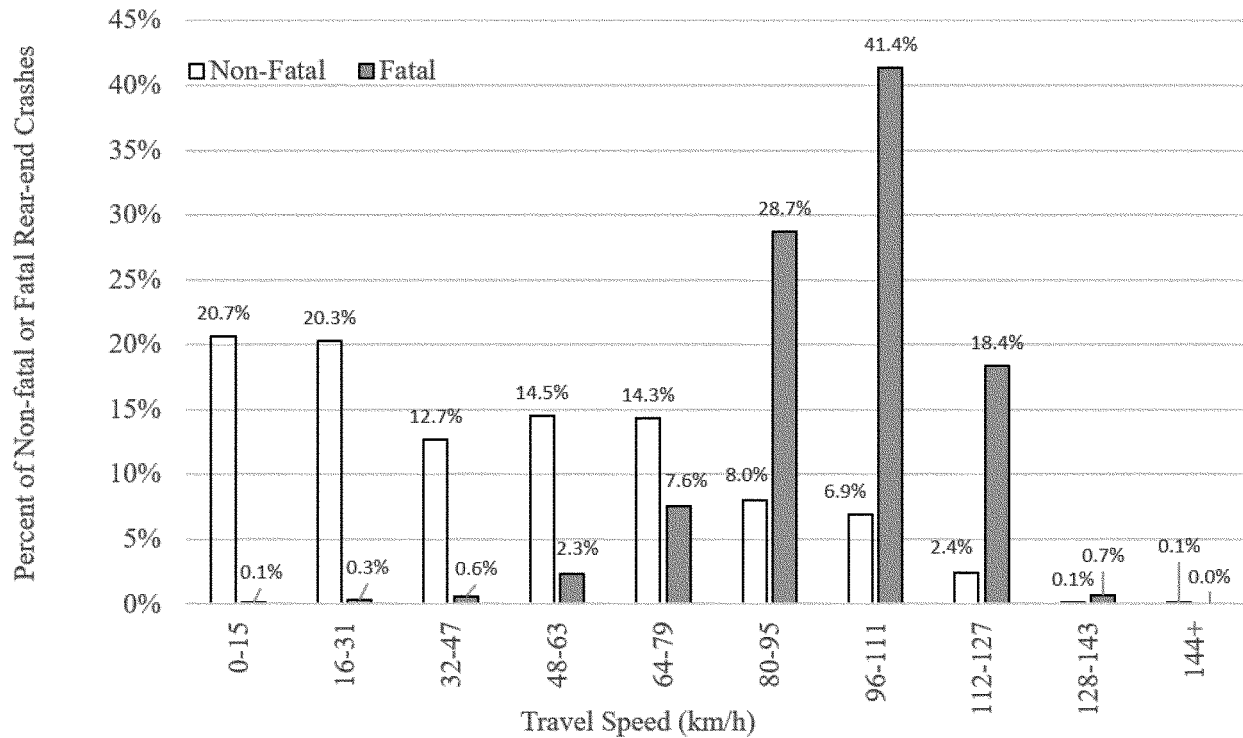
Rear-End Crashes by Vehicle Travel Speed and Roadway Speed Limit

Pre-crash vehicle travel speed is highly important in understanding the heavy vehicle rear-end crash problem and is perhaps the most influential factor in outcome of these crashes. In NHTSA's analysis of the data, travel speed of the striking vehicle was markedly different when comparing non-fatal and fatal rear-end truck crashes. As shown in Figure 1, the percentage of heavy vehicle rear-end crashes with a fatality is greatest at higher travel speeds.²⁹ Approximately 89 percent of fatal heavy vehicle rear-end crashes occur at above 80 km/h (50 mph). For non-fatal heavy vehicle rear-end crashes, the trend is more or less reversed, with approximately 83 percent of these crashes occurring at travel speeds below 80 km/h (50 mph). These data illustrate the distribution of a crash problem across all travel speeds.

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²⁹ Note that the figure shows percentage of the total number of fatal or non-fatal crashes. The total number of crashes is much greater for non-fatal crashes.

Figure 1. Distribution of Fatal and Non-fatal Rear-End Crashes by Travel Speed of the Striking Heavy Vehicle³⁰



The speed limits in heavy vehicle rear-end crashes also show a similar trend. NHTSA categorized the fatal and non-fatal crash data according to posted speed limit at the crash location, as illustrated in Figure 2.³¹ These data show that over 90 percent of heavy

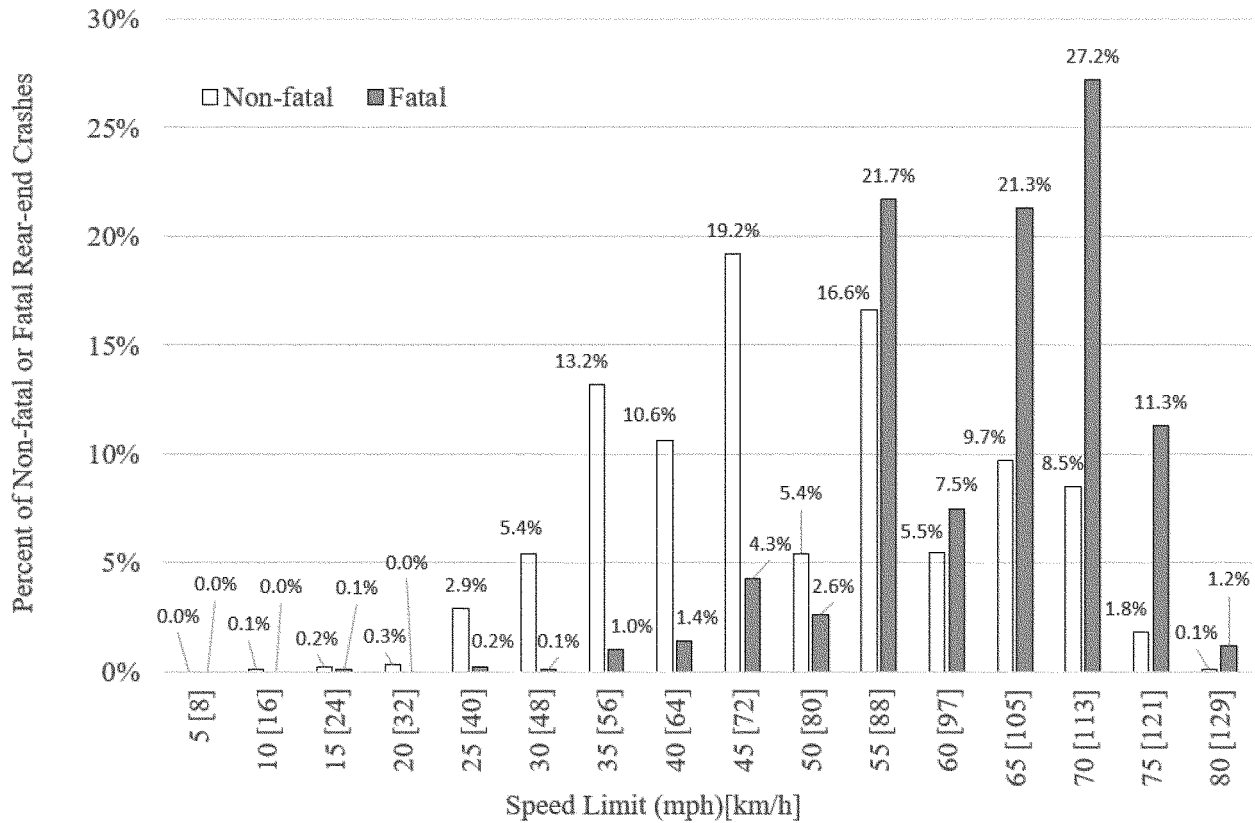
vehicle rear-end crashes with a fatality occur on roadways with a posted speed limit higher than 50 mph (80 km/h). This reinforces the association between higher speeds and fatal crash outcome in these types of crashes. In contrast, non-fatal rear-end crashes tend to occur

most commonly on roads with lower speed limit, with a peak frequency at speed limits of 45 mph (72 km/h). These data help in understanding the conditions under which heavy vehicle rear-end crashes of different severities occur.

³⁰Data are from 2017–2019 FARS and CRSS crash databases, as discussed in the PRIA section on target population.

³¹These data naturally are clustered around 5 mph intervals normally assigned for posted speed limits on roadways.

Figure 2. Distribution of Fatal and Non-fatal Rear-End Crashes by Roadway Speed Limit for Heavy Vehicles³²



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Safety Problem That Can Be Addressed by AEB

NHTSA identified the set of crashes that might be prevented by AEB systems equipped on heavy vehicles. To determine these crashes for this NPRM, NHTSA analyzed 2017 through 2019 crash data for heavy vehicles. The 2017 through 2019 years were chosen because they provide the most recent available data, and thus reflect newer model year vehicles, safety technologies, and crash environments.³³ The crash-related statistics discussed in this section, often depicted as annual averages, are derived from these data.

To develop a target crash population relevant to AEB, the agency identified crashes that were classified as rear-end crashes as instructed by the FARS/CRSS

manual and in which the striking vehicle was a heavy vehicle. NHTSA analyzed rear-end crashes in which the vehicle ahead is categorized as being either stopped, travelling at a lower speed, or decelerating, and also examined a few other categories to account for rear-end crashes that did not fit into the three categories. Additionally, NHTSA included some other cases which, although not classified as rear-end, were multi-vehicle crashes that still involved the front end of a heavy vehicle colliding with the rear-end of another vehicle.

NHTSA believes that AEB will help reduce the severity of rear-end crashes occurring in a wide variety of real-world situations. However, the data analysis presented some rear-end crash cases where, due to a significant sequence of events or other conditions preceding the crash, the agency had less certainty of the extent to which AEB systems would be able to reduce the crash severity. For example, if the data indicated that the heavy vehicle had changed lanes just prior to colliding with a vehicle ahead, there would potentially not have been sufficient time and/or space for the AEB

system to properly identify and track that vehicle and brake in time to avoid the crash. As another example, if the road surface conditions were icy and slippery, the AEB system may have been less likely to prevent a crash due to the reduced friction and increased stopping distances. In another example, if the struck vehicle was a motorcycle, NHTSA is uncertain of the AEB system's capacity to perform optimally since motorcycles may be more difficult to detect.³⁴

NHTSA believes that, even in these situations where AEB performance may be partially degraded, having AEB will still be beneficial. It may not, for example, prevent a crash but it may reduce its severity by slowing the

³² Data are from 2017–2019 FARS and CRSS crash databases, as discussed in the PRIA section on target population.

³³ Crash data from 2020, although available, were excluded due to a significant reduction in weighted cases for CRSS. The 2020 data was greatly influenced by COVID-19 and might not reflect the long-term trend of crash outcomes, as described in the accompanying PRIA.

³⁴ NHTSA is currently conducting research tests to understand AEB performance in light vehicle rear-end crashes with motorcycles. Two types of AEB sensor types (e.g., camera and camera+radar) were investigated. See www.regulations.gov, Docket No. NHTSA–2022–0091. A study by the RDW, the vehicle authority in the Netherlands, indicated that adaptive cruise control systems (which detect a vehicle ahead, similar to AEB) had more difficulty detecting motorcycles. https://www.femamotorcycling.eu/wp-content/uploads/Final%20Report_motorcycle_ADAS_RDW.pdf (last accessed February 10, 2023).

striking vehicle down. However, the agency took a conservative approach and excluded cases such as those above from the target crash population, and included only those cases in which AEB systems would have the opportunity to perform optimally. This approach gives greater confidence that the crashes included in the target crash population would be prevented by having AEB-equipped vehicles.³⁵

The result is that out of the 550,000 annual police reported crashes involving heavy vehicles, approximately 60,000 annually are rear-end crashes in which the heavy vehicle was the striking vehicle. Thus, if heavy vehicles were equipped with AEB, a portion of these 60,000 crashes could be prevented. These 60,000 crashes, between 2017 and 2019, resulted in an annual average of approximately 388

fatalities, 30,000 injuries, and 84,000 PDOVs.

By requiring ESC for most class 3 through 6 vehicles, the proposed rule would affect approximately 17,000 rollover and loss of control crashes. These crashes resulted in 178 fatalities, 4,000 injuries, and 13,000 PDOVs, a portion of which could be prevented if class 3 through 6 heavy vehicles were equipped with ESC. These numbers are set forth in Table 7.

TABLE 7—TARGET CRASH POPULATION

	Crashes	Fatalities	Injuries	PDOVs
AEB	60,000	388	30,000	84,000
ESC	17,000	178	4,000	13,000

III. Efforts To Promote AEB Deployment in Heavy Vehicles

Unlike with light vehicles in the U.S., there is currently no voluntary commitment by heavy vehicle manufacturers to begin installing AEB on all new vehicles.³⁶ Nor is there a program similar to NHTSA’s New Car Assessment Program (NCAP) for heavy vehicles. However, NHTSA and FMCSA have researched heavy vehicle AEB. In addition, Congress, other governmental agencies, and a variety of stakeholders recognize that this technology has the potential to reduce the fatalities, injuries, and property damage associated with heavy vehicle rear-end crashes. The installation rate of AEB in the U.S. vehicle fleet has gradually increased, and the latest generations of the technology are higher performing than the original implementations.

A. NHTSA’s Foundational AEB Research

NHTSA has been studying emergency braking technologies since manufacturers first introduced these technologies over fifteen years ago. NHTSA has recognized the safety potential of heavy vehicle AEB for many years and continued to research this technology as it evolved from early generations to its current state. As part of NHTSA’s efforts to better understand these new crash avoidance technologies, NHTSA sponsored and conducted numerous research projects focused on AEB and FCW for heavy trucks. NHTSA conducted testing at its in-house testing facility, the Vehicle Research and Test

Center, to examine the performance of AEB in different combinations of crash scenarios and speeds.

NHTSA’s foundational knowledge of braking technology was built on a long history of work on FMVSS No. 105, “Hydraulic and electric brake systems,” No. 121, “Air brake systems,” and No. 136, “Electronic stability control systems for heavy vehicles.”

FMVSS No. 105 applies to multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 3,500 kg (7,716 lbs.) that are equipped with hydraulic or electric brake systems. This standard sets performance requirements for, among other things, maximum stopping distance, anti-lock braking systems, stability and control under braking (including a curved and wet road surface), and recovery from brake fade.³⁷

FMVSS No. 121 applies to trucks, buses, and trailers equipped with air (pneumatic) brake systems, with a few exceptions for special vehicle types. Although NHTSA sets no standards regarding the choice between using hydraulic, electric, or air brakes, vehicles with a larger size and load carrying capacity are more likely to have air brakes. Thus, air brakes are typically installed on some class 6 and most class 7–8 vehicles. Lower classes often use hydraulic brakes. A few examples of the requirements in FMVSS No. 121 are maximum stopping distance, having ABS, maintaining stability and control when braking to a stop on a curved and wet roadway test surface, recovering

from brake fade, and having an emergency (backup) brake system.

FMVSS No. 136 establishes performance and equipment requirements for electronic stability control systems on truck tractors and certain large buses, for the purpose of reducing crashes caused by rollover or by loss of directional control. This standard currently applies to truck tractors and certain large buses with a GVWR greater than 11,793 kilograms (26,000 lbs.). FMVSS No. 136 requires vehicles to be equipped with an ESC system, and to meet several minimum performance requirements. For example, when driven on a specified J-shaped test lane under a variety of specified conditions and parameters which induce ESC activation, the wheels of the heavy vehicle must remain within the lane.

B. NHTSA’s 2015 Grant of a Petition for Rulemaking

In October 2015, NHTSA granted a petition for rulemaking from the Truck Safety Coalition, the Center for Auto Safety, Advocates for Highway and Auto Safety, and Road Safe America. This petition requested “the commencement of a proceeding to establish a safety regulation to require the use of [FCW and AEB] on all vehicles (trucks and buses) with a gross vehicle weight rating (GVWR) of 10,000 pounds (lbs.) or more.” The petitioners maintained that AEB has important benefits and is a technology that has been improving in performance, but that a regulation is needed to optimize the benefits of the

³⁵ The PRIA discusses the rear-end crashes that were excluded from the target population.

³⁶ On March 17, 2016, NHTSA and the Insurance Institute for Highway Safety (IIHS) announced a commitment by 20 automakers representing more than 99 percent of the U.S. auto market to make lower speed AEB a standard feature on virtually all

new cars no later than Sept 1, 2022. <https://www.nhtsa.gov/press-releases/us-dot-and-iihs-announce-historic-commitment-20-automakers-make-automatic-emergency>.

³⁷ Brake fade events are associated with speed control on roads with steep or gradual but long downgrades. As brake temperature increases in a

drum, its diameter expands as the metal heats up; this means the brake shoe displacement must also increase to be effective. Eventually, the shoe reaches the displacement limit, and then brake effectiveness drops off.

technology and increase the frequency of installation in heavy vehicles. The agency granted this petition on October 16, 2015, noting that NHTSA's research and evaluation were ongoing, and initiated a rulemaking proceeding with respect to vehicles with a GVWR greater than 4,536 kg (10,000 lbs.).³⁸

C. Congressional Interest

1. MAP-21

In July 2012, the Moving Ahead for Progress in the 21st Century Act was enacted. MAP-21 included Subtitle G, the "Motorcoach Enhanced Safety Act of 2012."³⁹ Section 32705 of MAP-21 directed the Secretary (NHTSA, by delegation) to research and test forward and lateral crash warning systems for motorcoaches and decide whether a corresponding safety standard would accord with section 30111 of the Safety Act. Section 32703(b)(3) directed the Secretary to consider requiring motorcoaches to be equipped with stability enhancing technology, such as electronic stability control, to reduce the number and frequency of rollover crashes, and prescribe a standard if it would meet the requirements and considerations of sections 30111(a) and (b) of the Safety Act.⁴⁰ In response, NHTSA issued FMVSS No. 136, requiring ESC for certain truck tractors and buses (including motorcoaches) with a GVWR greater than 13,154 kg (26,000 lbs.).

2. Bipartisan Infrastructure Law

In November 2021, the Bipartisan Infrastructure Law (BIL) was signed into law. Section 23010 of BIL is dedicated to AEB. Section 23010(a) of BIL defines an AEB system as a system on a commercial motor vehicle that, based on a predefined distance and closing rate with respect to an obstacle in the path of the vehicle, alerts the driver of an obstacle and, if necessary, applies the brakes automatically to avoid or mitigate a collision with that obstacle.

Section 23010(b) requires the Secretary to prescribe an FMVSS to require all commercial motor vehicles⁴¹

subject to FMVSS No. 136 (or a successor regulation) to be equipped with an AEB system. The FMVSS is also required to establish performance standards for AEB systems. BIL directs the Secretary to prescribe the standard not later than two years after the date of enactment of the Act.

Under Section 23010(b)(2), prior to prescribing the FMVSS, the Secretary is required to conduct a review of AEB systems in use in applicable commercial motor vehicles and address any identified deficiencies in those systems in the rulemaking proceeding, if practicable. In addition, the Secretary is required to consult with representatives of commercial motor vehicle drivers to learn about their experience with AEB (including malfunctions and/or unwarranted activations).

This NPRM is issued to meet these provisions of the BIL. NHTSA conducted a review of AEB systems in use in commercial motor vehicles to identify limits in those systems. A memorandum summarizing this review has been placed in the docket for this NPRM and has informed the development of the proposal. NHTSA is also currently conducting research to study drivers' experiences with collision mitigation technologies, including AEB. Comments are requested on the feasibility of mandating AEB for commercial motor vehicles with GVWR greater than 10,000 pounds which are not currently subject to FMVSS No. 136. This NPRM requests comments from representatives of commercial motor vehicle drivers, and drivers themselves, regarding the experience with the use of AEB systems. This NPRM also includes a series of questions in section VII.E on which NHTSA seeks comment to obtain information about drivers' experiences with AEB (including malfunctions and/or unwarranted activations).

Section 23010(c) of the BIL relates to the regulations of FMCSA, which regulate the operation of commercial motor vehicles. BIL requires an FMCSR ensuring that the AEB systems required by the FMVSS for new commercial vehicles subject to FMVSS No. 136 be in use at any time during which the vehicle is in operation. This NPRM proposes this FMCSR.⁴²

Finally, section 23010(d) of BIL requires DOT to complete a study on equipping a variety of commercial

motor vehicles not currently required to comply with FMVSS No. 136 with AEB. This study is to include an assessment of the feasibility, benefits, and costs associated with installing AEB on these vehicles. As discussed in greater detail later, the analysis accompanying this NPRM fulfills this requirement.

D. IIHS Effectiveness Study

In a 2020 report, the Insurance Institute for Highway Safety studied the effectiveness of FCW and AEB technology on class 8 trucks and concluded that safety will improve if more trucks have these technologies installed.⁴³ IIHS used data extracted from video camera footage and crash rates of police-reportable crashes. While the study sample did not contain a large number of severe crashes, FCW and AEB were still associated with significant reductions in rear-end crashes involving trucks. On average, between the time of collision and moment of system intervention, the velocity of the striking vehicle was reduced by greater than 50 percent. The study concluded that safety would improve if more trucks had these technologies installed.⁴⁴ The IIHS study was limited to class 8 trucks and involved certain fleets and drivers which may not necessarily be representative of the U.S. fleet as a whole. Because of this limitation, NHTSA could not use the findings to calculate the potential benefits of this proposal.

E. DOT's National Roadway Safety Strategy (January 2022)

This NPRM takes a crucial step in implementing DOT's January 2022 National Roadway Safety Strategy to address the rising numbers of transportation deaths occurring on this country's streets, roads, and highways.⁴⁵ At the core of this strategy is the Department-wide adoption of the Safe System Approach, which focuses on five key objectives: safer people, safer roads, safer vehicles, safer speeds, and post-crash care. The Department will launch new programs, coordinate and improve existing programs, and adopt a

³⁸ Grant of petition for rulemaking, 80 FR 62487 (October 16, 2015).

³⁹ Public Law 112-141, Sec. 32705.

⁴⁰ Section 32703(b) required a regulation not later than two years after the date of enactment of the Act if DOT determined that such standard met the requirements of the Safety Act.

⁴¹ As defined in 49 U.S.C. 31101, "commercial motor vehicle" means a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo, if the vehicle has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater; is designed to transport more than 10 passengers including the driver; or is used in transporting material found by the Secretary of

Transportation to be hazardous and transported in a quantity requiring placarding under regulations.

⁴² FMCSA has also created an apprenticeship program for novice drivers of commercial motor vehicles pursuant to the BIL. The program requires novice drivers to operate vehicles that possess an active braking collision mitigation system, such as AEB. 87 FR 2477, January 14, 2022.

⁴³ Teoh, Eric R. (2020, September). *Effectiveness of front crash prevention systems in reducing large truck crash rates*. Arlington, VA: Insurance Institute for Highway Safety. Available at <https://www.iihs.org/topics/bibliography/ref/2211#:~:text=Results%3A%20FCW%20was%20associated%20with,%25%20for%20rear%2Dend%20crashes.> (last accessed August 30, 2022).

⁴⁴ *Id.*

⁴⁵ https://www.transportation.gov/sites/dot.gov/files/2022-01/USDOT_National_Roadway_Safety_Strategy_0.pdf (last accessed August 23, 2022).

foundational set of principles to guide this strategy.

The National Roadway Safety Strategy highlights new priority actions that target our most significant and urgent problems and are, therefore, expected to have the most substantial impact. One of the key Departmental actions to enable safer vehicles is initiating a rulemaking to require AEB on heavy trucks. This NPRM proposes a Federal Motor Vehicle Safety Standard to require AEB on heavy trucks and other heavy vehicles.

F. National Transportation Safety Board Recommendations

The National Transportation Safety Board (NTSB) included AEB for commercial vehicles in its 2021–2023 Most Wanted List.⁴⁶ Among other things, NTSB stated that NHTSA should complete standards for AEB in commercial vehicles and require this technology in all highway vehicles and all new school buses.

In 2015, NTSB issued a special investigation report,⁴⁷ which summarized previous, as well as new, findings related to AEB in a variety of vehicles. Regarding heavy vehicles, this report presented the following recommendation to NHTSA:

- H–15–05: Complete, as soon as possible, the development and application of performance standards and protocols for the assessment of forward collision avoidance systems in commercial vehicles.

In a 2018 special investigation report,⁴⁸ the NTSB discussed two severe accidents involving school buses. In the conclusion of the report, the NTSB stated that AEB could have helped mitigate the severity of one of the accidents, and that ESC could have helped mitigate the other. Accordingly, the following safety recommendations were made or restated to NHTSA:

- H–18–08: Require all new school buses to be equipped with collision avoidance systems and automatic emergency braking technologies.

- H–11–7: Develop stability control system performance standards for all commercial motor vehicles and buses with a gross vehicle weight rating greater than 10,000 pounds, regardless of whether the vehicles are equipped with a hydraulic or a pneumatic brake system.

- H–11–8: Once the performance standards from Safety Recommendation H–11–7 have been developed, require the installation of stability control systems on all newly manufactured commercial vehicles with a gross vehicle weight rating greater than 10,000 pounds.

G. FMCSA Initiatives

FMCSA has been engaged in activities to advance the voluntary adoption of AEB for heavy vehicles, primarily through the Tech-Celerate Now (TCN) program. This program focuses on accelerating the adoption of Advanced Driver Assistance Systems (ADAS), such as AEB, by the trucking industry to reduce fatalities and prevent injuries and crashes, in addition to realizing substantial return-on-investment through reducing costs associated with such crashes for the motor carrier. Initiated in September 2019 and completed in February 2022, the first phase of this program encompassed research into ADAS technology adoption barriers; a national outreach, educational, and awareness campaign; and data collection and analysis.

Outreach accomplishments included development of training materials for fleets, drivers, and maintenance personnel related to AEB technology and return-on-investment (ROI) guides; educational videos on ADAS braking, steering, warning, and monitoring technologies; a web-based TCN ADAS-specific ROI calculator; four articles on ADAS technologies; and a program website to host the training materials.

As part of the national outreach campaign, the program was promoted on social media including LinkedIn and Twitter, and FMCSA conducted presentations and booth exhibitions at conferences, webinars, and virtual meetings. Recent efforts have included discussion of a safety effective analysis project that is using two years of naturalistic data collected from AEB and other ADAS technologies at the American Trucking Associations Technology and Maintenance Council's 2022 Annual meeting, the 2022 Midwest Commercial Vehicle Safety Summit, and the 2022 Southeast Commercial Vehicle Safety Summit. The results of this project are expected to be published late in calendar year 2023.

Planning is underway for the second phase of the TCN program, which includes an expanded national outreach and education campaign, additional research into the barriers to ADAS adoption by motor carriers, and evaluation of the outreach campaign.

IV. NHTSA and FMCSA Research and Testing

A. NHTSA-Sponsored Research

The following are brief summaries of some of the research NHTSA sponsored relating to strategies to avoid heavy vehicle collisions with lead vehicles. The agency funded several research efforts to assess collision avoidance systems, including AEB.

1. 2012 Study on Effectiveness of FCW and AEB

On August 2012, the University of Michigan Transportation Research Institute (UMTRI) conducted a simulation study under a cooperative agreement between NHTSA and AEB supplier WABCO.⁴⁹ The objective of the study was to estimate the safety benefits FCW and AEB systems implemented on heavy trucks, including single-unit and tractor-semitrailers. The study characterized technology, estimated a target crash population, created a simulated reference crash database, and assessed the impact of the technologies in a simulated environment. These results were then applied to the target crash population. The study not only simulated benefits for equipping heavy trucks with then-available technology, but also simulated benefits for next and future systems that were expected to have enhanced capabilities.

The study simulated estimates based on next and future systems that would utilize radar as the main sensor, and provided haptic, auditory, and visual warnings to the driver (just as the current in-production system). The in-production system could decelerate the vehicle up to a maximum of 0.35g without any driver intervention. However, it could not react to fixed objects (*i.e.*, objects that were stationary before they were in the range of the radar). The primary improvements expected for the next system included the ability to react and brake at about 0.3g in response to fixed objects and increased braking control authority on stopped and moving vehicles to engage

⁴⁶ NTSB Most Wanted List, <https://www.nts.gov/Advocacy/mwl/Pages/mwl-21-22/mwl-hs-04.aspx> (last accessed August 23, 2022).

⁴⁷ National Transportation Safety Board. 2015. *The Use of Forward Collision Avoidance Systems to Prevent and Mitigate Rear-End Crashes*. Special Investigation Report NTSB/SIR–15–01. Washington, DC. Available at <https://www.nts.gov/safety/safety-studies/Documents/SIR1501.pdf> (last accessed August 22, 2022).

⁴⁸ National Transportation Safety Board. 2018. *Selective Issues in School Bus Transportation Safety: Crashes in Baltimore, Maryland, and Chattanooga, Tennessee*. NTSB/SIR–18/02 PB2018–100932. Washington, DC. Available at <https://www.nts.gov/investigations/AccidentReports/Reports/SIR1802.pdf> (last accessed August 22, 2022).

⁴⁹ Woodroffe, J., et al., “Performance Characterization and Safety Effectiveness Estimates of Forward Collision Avoidance and Mitigation Systems for Medium/Heavy Commercial Vehicles,” Report No. UMTRI–2011–36, UMTRI (August 2012). Docket No. NHTSA–2013–0067–0001, available at <https://www.regulations.gov/document/NHTSA-2013-0067-0001>.

the foundation brakes to produce as much as 0.6g of longitudinal deceleration. The study used the same increased control authority on stopped and moving vehicles as the next generation system, but required the system to more aggressively react to fixed objects with longitudinal deceleration of up to 0.6g.

Based on these capabilities, the study estimated that equipping all tractor-semitrailers with AEB and FCW would reduce fatalities relative to the base population for current, next, and future generation systems by 24, 44, and 57 percent, respectively. Additionally, the predicted reduction in injuries compared to the base population for current, next, and future generation systems was estimated at 25, 47, and 54 percent, respectively. The combined annual benefit for straight truck and tractor semitrailers, including property damage reduction for current, next, and future generation systems was estimated at \$1.4, \$2.6, and \$3.1 billion, respectively.

The study concluded with multiple observations. The enhancements depicted by the next generation system in comparison to the current generation system were substantially larger than when comparing the next generation to the future generation. These improvements were due mainly to the ability of the system to react to fixed vehicles and the increased braking. Overall, this evaluation depicted that the collision mitigation measures studied would achieve significant benefits.

2. 2016 Field Study

NHTSA sponsored a field study with the Virginia Tech Transportation Institute (VTTI) to assess the performance of heavy-vehicle crash avoidance systems using 150 Class 8 tractor-trailers.⁵⁰ The vehicles were each equipped with a collision avoidance system from one of two companies that included AEB and FCW. The purpose of the study was to evaluate system reliability, assess driver performance over time, assess overall driving behavior, provide data on real-world conflicts, and generate inputs to a safety benefits simulation model.

The vehicles were operated by drivers for one year with a total of over 3 million miles travelled. Each vehicle was equipped with a data acquisition system that collected roadway-facing video, driver-facing video, activations,

and vehicle network data. About 85,000 hours of driving and 885,000 activations were collected across all activation types. Of the sampled 6,000 activations, 264 were AEB activations and 1,965 were impact alerts.

According to the study, safety benefits of collision avoidance systems could be estimated based on data describing driver use of systems and their responses to the activations. Since the systems depict warnings through an audio and visual display, a precise model of the benefits would show how fast drivers react and if reactions vary based on warning type. For 84 percent of the AEB activations, the driver reacted prior to the alert, and 13 percent of the time, the driver responded to the alert. Drivers did not respond to 3 percent of the AEB activations. Over 50 percent of the false AEB activations received driver responses. Average driving speeds and headway distances at the initiation of AEB activations prior to safety-critical events were similar to values recorded for other activations. While at the initiation of many warranted AEB activations, drivers had already implemented braking, every warranted AEB activation did not receive a driver reaction.

The analysis included a driver frustration assessment for each AEB activation. This was a subjective assessment based on whether drivers appeared to show frustration during an activation. Advisory warnings resulted in lower percentages of general frustration. The highest instances of frustration were noted during false activations with frustration noted 11 percent of the time.

In summary, the study found that crash avoidance systems can be effective in collision avoidance. Driver performance and behavior exhibited almost no changes over time, and there was limited frustration with the AEB activations. There were some limitations in the study including varied calibration options between the systems, no control group, different geographical locations, and unequal driving time amongst participants.

3. 2017 Target Population Study

In 2017, NHTSA completed a study on a target population for AEB in vehicles with a GVWR over 4,536 kg (10,000 pounds).⁵¹ The objective of the study was to determine which forward collisions would theoretically benefit from AEB if all vehicles over 4,536 kg

(10,000 pounds) GVWR were equipped with the system. First, NHTSA reviewed literature for then-existing AEB systems manufactured by Bendix and Meritor. Although the systems varied in some ways, they shared a tiered functionality approach, including the sequential use of auditory and visible warnings, automatic torque reduction, application of the engine retarder, and finally automatic brake application as needed.⁵² The research efforts concentrated on the FCW and CIB elements.

Second, collisions were sampled from NHTSA and FMCSA's Large Truck Crash Causation Study⁵³ for an engineering review because this database provides comprehensive information on heavy vehicle collisions in the United States. The engineering review focused on 29 crashes from the Large Truck Crash Causation Study that involved injuries and fatalities to determine whether FCW and/or CIB would be effective in preventing the crash. Effectivity was defined as both reviewing engineers determining that there was a 50 percent chance or greater that the crash would be prevented. The analysis determined that FCW and CIB would both be effective in preventing 17 of the 29 crashes, much more often than cases in which only either was effective or neither was effective. Considering a summary of the weighted effectiveness, the combination of FCW and CIB were effective in 50 percent of the cases. While FCW alone was effective in 23 percent of cases, there was a significant 21 percent of cases where neither FCW nor CIB was effective.⁵⁴

Third, the outcomes from the first two phases allowed for the development of filters to identify the categories of collisions that AEB would improve. These filters were then implemented to collisions in NHTSA's crash databases to approximate how many collisions annually AEB could have prevented. A combination of data from the FARS and the GES was used for the calculations while ensuring that an overlap in fatal crashes was removed to prevent duplicate tallies. Vehicle collision information for the United States

⁵² See page 8 "A Target Population for Automatic Emergency Braking in Heavy Vehicles," available at <https://crashstats.nhtsa.dot.gov/Api/Public/Publication/812390> (last accessed June 7, 2022).

⁵³ See "Large Truck Crash Causation Study," available at <https://www.fmcsa.dot.gov/safety/research-and-analysis/large-truck-crash-causation-study-analysis-brief> (last accessed October 19, 2022).

⁵⁴ Additionally, there was at least one case that consensus was not reached regarding the effectiveness of CIB, and there was no investigation of crashes of lower severity where only property damage resulted.

⁵⁰ See "Field Study of Heavy-Vehicle Crash Avoidance Systems" (June 2016), available at https://www.nhtsa.gov/sites/nhtsa.gov/files/812280_fieldstudyheavy-vehiclecas.pdf (last accessed June 3, 2022).

⁵¹ See "A Target Population for Automatic Emergency Braking in Heavy Vehicles," available at <https://crashstats.nhtsa.dot.gov/Api/Public/Publication/812390> (last accessed June 7, 2022).

involving injuries and fatalities for years 2010 to 2012 was utilized from these databases.⁵⁵ Both injury-related and fatal collisions totaled 5,457,387, and this total was filtered to determine the target population. The filtering exclusions were made cautiously in order to yield a conservative benefit estimate. Crashes during which the subject vehicle departed from its original travel lane and the lead vehicle maintained the lane were not included. Similarly, collisions involving the lead vehicle changing from the original lane and the subject vehicle remaining in its lane were excluded. Additional exclusions included collisions on icy and snowy roads, situations where the lead vehicle turns from a perpendicular street in front of the subject vehicle, cases involving acceleration maneuvers to avoid collision, collisions where the lead vehicle was obscured by an object, collisions into motorcycles, and cases where the subject vehicle was traveling on a curved road toward an object such as a guardrail.

Fourth, the target population estimated in the third phase was modified to reflect recent and probable future regulations. This modification eliminated collisions that would be avoided based on the implementation of other required technologies that had not yet completely proliferated in heavy vehicles. Accounting for safety equipment including ESC, ABS, and speed limiters allowed for the overall target population to be modified to reflect the anticipated number of future collisions. Crashes that were included in the final future target population were those involving heavy vehicles in which the rear-end crash resulted in injuries and fatalities. Further, the crashes were refined to include only crashes where both vehicles remained in the original lane after the crash was deemed imminent and collisions where lane changes prior to crash imminency were allowed as long as only one of the vehicles changed lanes. Additionally, situations where the driver attempted to steer around the collision or used insufficient braking were included.

After all adjustments were completed, the study estimated a target population of 11,499 crashes annually involving

7,703 injured persons and 173 fatalities. It also discussed possible sampling error as well as three sources of uncertainty. However, the size of a target population provided only an estimated upper bound to the benefits at that time. The report added value in the detailed descriptions of affected crashes and subpopulation breakouts that have traditionally fed into benefits estimation.

4. 2018 Cost and Weight Analysis

In 2018, Ricardo Inc. completed a study sponsored by NHTSA that focused on the cost and weight implications of requiring AEB on heavy trucks. The study aimed to determine the product price, total system cost, incremental consumer price, and weight of FCW and AEB systems on heavy trucks to provide insight into the safety and efficiency benefits of using the systems.⁵⁶ The initial steps of the study were vehicle research, vehicle segregation, and vehicle selection. Model year 2015–2018 heavy vehicles manufactured by Ford, Cascadia, Volvo, Daimler, and International LT were chosen for teardown examination and ranged in mean annual sales from approximately 24,000 to 86,542. The associated FCW and AEB systems installed on these vehicles were manufactured by Delphi Technologies, Meritor, Bendix Commercial Vehicle Systems, and Detroit Assurance (Daimler).

Service technician consultations, manuals, and OEM parts descriptions were used to itemize components of the FCW and AEB systems. Specific assessments of the related displays, sensors, mounting hardware, and other elements of the FCW and AEB systems were provided to prevent extraneous parts from being included in the cost and weight evaluations. The cost and weight evaluations were executed by a group of automotive system and integration experts, cost modeling specialists, and procurement personnel. A bill of materials was compiled using a “teardown” process to inventory the parts, define manufacturing processes, and ascertain materials utilized. Specialized cost software allowed for calculation of cost and weight.

In general, components that were not distinct to the FCW and AEB systems were not included in the cost and weight evaluation. Therefore, shared parts such as electronic control units and wiring harnesses were not

considered as additions if they were already incorporated into the vehicle configuration without FCW/AEB. The manufacturing costs were estimated, factoring in research and development, labor, material costs, machinery, machine occupancy and tooling.

The five selected vehicles were the Ford F-Series Super Duty, Freightliner M2–106, Freightliner Cascadia, International LT, and Volvo VNL. While there was some overlap of similar components, the FCW and AEB systems in the five selected vehicles had substantial variation amongst the system mechanisms and functionality. Based on these differences the vehicles were separated into four groups, and the average manufacturing costs and weights were assessed for each category. Overall, the average incremental cost to manufacturers for these FCW/AEB systems ranged from \$44.23 to \$197.51; and associated end-user prices ranged from \$70.80 to \$316.18. Additionally, the average incremental weights ranged from approximately 0.46 to 3.10 kg.

B. VRTC Research Report Summaries and Test Track Data

1. Relevance of Research Efforts on AEB for Light Vehicles

AEB was first introduced on light vehicles. For this reason, NHTSA’s research and testing of AEB systems began with light vehicles and was subsequently used to inform NHTSA’s work on heavy vehicle AEB.

NHTSA conducted extensive research on AEB systems to support development of the technology and eventual deployment in vehicles. There were three main components to this work. Early research was conducted on FCW systems that warn drivers of potential rear-end crashes with other vehicles. This was followed by research into AEB systems designed to prevent or mitigate rear-end collisions through automatic braking.

NHTSA’s earliest research on FCW systems began in the 1990s, at a time when the systems were under development and evaluation had been conducted primarily by suppliers and vehicle manufacturers. NHTSA collaborated with industry stakeholders to identify the specific crash types that an FCW system could be designed to address, the resulting minimum functional requirements, and potential objective test procedures for evaluation.⁵⁷ In the late 1990s, NHTSA

⁵⁵ LTCCS was not selected due to the age of the crash data, for it is possible heavy vehicle collisions differ tremendously since 2001. The UMTRI Trucks Involved in Fatal Accidents study (https://deepblue.lib.umich.edu/bitstream/handle/2027.42/107389/48532_A56.pdf?isAllowed=y&sequence=1, last accessed June 3, 2022) was excluded because its detailed information regarding vehicle style and driving time is only provided for collisions involving fatalities, where data for collisions of less severity involving only injuries would not be available.

⁵⁶ Ricardo, Inc. (2018), “Cost and Weight Analysis of Heavy Vehicle Forward Collision Warning (FCW) and Automatic Emergency Braking (AEB) Systems for Heavy Trucks” Van Buren Township, MI.

⁵⁷ This research was documented in a report, “Development and Validation of Functional Definitions and Evaluation Procedures for Collision Warning/Avoidance Systems,” Kiefer, R., et al.,

worked with industry to conduct a field study, the Automotive Collision Avoidance System Program. NHTSA later contracted with the Volpe National Transportation Systems Center (Volpe) to conduct data analyses of data recorded during that field study.⁵⁸ From this work, NHTSA learned about the detection and alert timing and information about warning signal modality (auditory, visual, etc.) of FCW systems, and predominant vehicle crash avoidance scenarios where FCW systems could most effectively play a role in alerting a driver to brake and avoid a crash. In 2009, NHTSA synthesized this research in the development and conduct of controlled track test assessments on three vehicles equipped with FCW.⁵⁹

NHTSA’s research and test track performance evaluations of AEB began around 2010. The agency began a thorough examination of the state of forward-looking advanced braking technologies, analyzing their performance and identifying areas of concern or uncertainty, to better understand their safety potential. NHTSA issued a report⁶⁰ and a request for comments (RFC) seeking feedback on its CIB and DBS research in July 2012.⁶¹ Specifically, NHTSA wanted to enhance its knowledge further and help guide its continued efforts pertaining to AEB effectiveness, test operation (including how to ensure repeatability using a target or surrogate vehicle), refinement of performance criteria, and exploration of the need for “false positive” tests to minimize the unintended negative consequences of automatic braking in non-critical driving situations where a crash was not imminent.

NHTSA considered feedback it received on the RFC and conducted additional testing to support further development of the test procedures. The agency’s work was documented in two additional reports, “Automatic Emergency Braking System Research Report” (August 2014)⁶² and “NHTSA’s 2014 Automatic Emergency Braking (AEB) Test Track Evaluations” (May 2015),⁶³ and in accompanying draft CIB and DBS test procedures.⁶⁴

In 2016, NHTSA published a report identifying the most recurrent AEB-relevant pre-crash scenarios for heavy vehicles. NHTSA identified the three most recurrent situations as a heavy vehicle moving toward a stopped lead vehicle, a heavy vehicle moving toward a slower moving lead vehicle, and a heavy vehicle moving toward a lead vehicle that is decelerating.⁶⁵ These were the same three crash scenarios that had been identified as the most prevalent AEB-relevant crash scenarios for light vehicles.

2. Phase I Testing of Class 8 Truck-Tractors and Motorcoach

In 2016, NHTSA published its first report on track-testing of AEB for heavy vehicles. The previous studies describing the test procedures for light vehicles provided a framework for the establishment of heavy vehicle test procedures. Since test procedures were not yet developed for heavy vehicles, the goal of the research was to first adapt existing testing protocols for light vehicle AEB and then follow these adapted test procedures to quantify the performance of FCW and AEB systems on heavy vehicles. The research was conducted in two phases.

NHTSA’s Phase I work began with using a combination of the specific test situations established for NHTSA’s NCAP for assessment of FCW and AEB systems and a modified version of the light vehicle test procedures to create heavy vehicle draft research test procedures. NCAP tests involved use of a strikable surrogate vehicle; however, for early heavy vehicle Phase I work, NHTSA used a surrogate lead vehicle comprised of canvas-covered foam to exhibit geometric and reflective features of the rear of a passenger car. The testing for Phase I was performed with four heavy vehicles outfitted with FCW and AEB, including three Class 8 truck-tractors and one Class 8 motorcoach. Specifically, the four Class 8 vehicles were a 2006 Volvo VNL 64T630 6x4 tractor, a 2006 Freightliner Century Class 6x4 tractor, a 2012 Freightliner Cascadia 6x4 tractor, and a 2007 MCI 56-passenger motorcoach (bus). Each vehicle was equipped with ABS, ESC, FCW, and AEB systems. The 2006 and 2012 Freightliners and the MCI motorcoach employed a Meritor WABCO system, and the 2006 Volvo was equipped with a Bendix Wingman Advanced system. In general, the FCW and AEB systems utilized a front bumper mounted sensor to detect objects in front of the vehicle and a display to warn the driver with audio and visual alerts.

For each vehicle, NHTSA planned to run ten tests that are summarized in Table 8. These situations covered the three most common AEB-relevant pre-crash scenarios, as well as two false positive tests and two tests performed at different weighted conditions.

TABLE 8—PHASE I TEST SCENARIOS

Scenario	Lead vehicle speed (km/h)	Subject vehicle speed (km/h)	Lightly loaded (number of trials)	Loaded at GVWR (number of trials)
Lead vehicle Stopped	0	40	10	.....
Lead Vehicle Moving	16	40	10	10
Lead Vehicle Moving	32	72	10	10
Lead Vehicle Decelerating	40	40	10	10
Lead Vehicle Decelerating	48	48	.....	10
Lead Vehicle Decelerating	56	56	5	5
Steel Trench Plate False Positive	N/A	40	5	5

DOT HS 808 964, August 1999. Additional NHTSA FCW research is described in Zador, P.L., et al., “Final Report—Automotive Collision Avoidance System (ACAS) Program,” DOT HS 809 080, August 2000; and Ference, J.J., et al., “Objective Test Scenarios for Integrated Vehicle-Based Safety Systems,” Paper No. 07–0183, Proceedings of the 20th International Conference for the Enhanced Safety of Vehicles, 2007.

⁵⁸ Najm, W.G., Stearns, M.D., Howarth, H., Koopmann, J., and Hitz, J., “Evaluation of an Automotive Rear-End Collision Avoidance System,” DOT HS 810 569, April 2006 and Najm, W.G., Stearns, M.D., and Yanagisawa, M., “Pre-

Crash Scenario Typology for Crash Avoidance Research,” DOT HS 810 767, April 2007.

⁵⁹ Forkenbrock, G., O’Harra, B., “A Forward Collision Warning (FCW) Program Evaluation, Paper No. 09–0561, Proceedings of the 21st International Technical Conference for the Enhanced Safety of Vehicles, 2009.

⁶⁰ The agency’s initial research and analysis of CIB and DBS systems were documented in a report, “Forward-Looking Advanced Braking Technologies: An analysis of current system performance, effectiveness, and test protocols” (June 2012). <http://www.regulations.gov>, NHTSA 2012–0057–0001.

⁶¹ 77 FR 39561.

⁶² <https://www.regulations.gov>, NHTSA 2012–0057–0037.

⁶³ DOT HS 812 166.

⁶⁴ <https://www.regulations.gov>, NHTSA 2012–0057–0038.

⁶⁵ Boday, C., et al., “Class 8 Truck-Tractor and Motorcoach Forward Collision Warning and Automatic Emergency Braking Test Track Research—Phase I,” Washington, DC: National Highway Traffic Safety Administration (June 2016). Docket No. NHTSA-2015–0024–0004.

TABLE 8—PHASE I TEST SCENARIOS—Continued

Scenario	Lead vehicle speed (km/h)	Subject vehicle speed (km/h)	Lightly loaded (number of trials)	Loaded at GVWR (number of trials)
Steel Trench Plate False Positive	N/A	72	5	5

The test scenarios were defined by the initial speeds of the subject vehicle and lead vehicle, and the starting headway distance between the vehicle was monitored. For all the tested scenarios, the test driver was instructed to modulate the accelerator pedal to maintain the desired test speed until FCW initiated, upon which the accelerator pedal input was removed. Steering was applied to maintain lateral position test tolerances to the lead vehicle. Manual brake pedal applications were only applied in certain scenarios where AEB was not designed to activate, or an impact occurred with the leading surrogate vehicle. Additionally, the previously described test situations were conducted under both a lightly loaded condition and a fully loaded vehicle weight condition (*i.e.*, loaded up to the vehicle's GVWR). Based upon potential damage to the subject vehicle, the feasibility of completing each test scenario with the specific load, and the fact that there was no discernable difference between the performance under the lightly loaded and GVWR loaded conditions in the trials executed, some of the speed combinations were not investigated under both loads. The false positive tests were conducted by driving the selected vehicles toward and over a steel trench plate to determine if these commonly used road construction covers would trigger false alerts or unintentional automatic braking.

Stationary lead vehicle testing was limited to the 2006 Volvo, as it was equipped with the only system that would trigger an FCW on stationary vehicles. At the time these evaluations were performed, none of the systems tested were designed to activate AEB on stationary vehicles. During every slower moving lead vehicle test, FCW was activated. Additionally, every vehicle's AEB activated and avoided collision during each slower moving test performed with a subject vehicle speed of 40 km/h, and a lead vehicle speed of 16 km/h.

The lead vehicle decelerating test was used to evaluate all four heavy vehicles, but multiple test adjustments had to be applied. For the lead vehicle decelerating test performed with both the subject and lead vehicle speeds of 40 km/h, the lead vehicle was slowed to 8 km/h instead of a stop to account for

the failure of the subject vehicles to activate AEB for stopped vehicles. Once the change was implemented, both the FCW and the AEB systems were activated, and speeds were reduced. Collisions between the subject and lead vehicle did occur, but testing of this scenario mainly led to the observation that the test procedure's headway would also have to be adjusted since heavy vehicles have different braking capabilities than light vehicles.

The steel trench plate false positive test was performed using the 2006 Volvo, 2006 Freightliner, and 2007 MCI at 40 km/h and 72 km/h.⁶⁶ For both velocities examined, the 2006 Freightliner and 2007 MCI exhibited no false positives in all five trials. However, the 2006 Volvo triggered unnecessary auditory warnings in all five trials for both velocities. None of the false positive testing trials resulted in AEB system activation.

During this early testing, the surrogate lead vehicle was towed onto the test track and fixed laterally in the test lane via a low-profile plastic monorail track. Initially, the test system employed a low-stretch rope to pull the surrogate lead vehicle by a tow vehicle. This configuration performed well in the slower moving lead vehicle situation because the lead vehicle moves at a constant velocity, allowing the tow rope to stay in tension. In contrast, when testing the lead vehicle decelerating scenario, the tension in the tow rope was not maintained once the tow vehicle decelerated, and subsequently the tow rope was prone to becoming stuck under the surrogate lead vehicle. This issue resulted in a loss of surrogate lead vehicle lateral stability and consequently decreased the test repeatability.

To address this shortcoming, the foam surrogate lead vehicle was replaced with a vertical cylinder wrapped with a layer of radar reflective material secured to the top of a movable platform with more consistent and stable deceleration properties. However, because the cylinder was not representative of a real vehicle, this was identified as needing further development and modification of the test protocols.

⁶⁶ The 2012 Freightliner was not evaluated with steel trench plate scenario due to the short window that the vehicle was available for testing.

A significant portion of this early AEB testing focused on developing draft research test procedures that could be used to safely and objectively assess AEB performance. The development history of test protocols is important for two reasons. First, it explains how NHTSA came to the conclusion to propose the performance parameters described in the notice and its basis that the performance requirements are objective and practicable. Second, it provides some context as to some of the limitations of early performance evaluations of AEB for heavy vehicles. In general, this initial phase of research demonstrated that the scenarios were generally repeatable and practical, and the tests showed additional development would potentially result in better controlled deceleration and stability of the lead vehicle.

3. Phase II Testing of Class 8 Truck-Tractors

NHTSA's primary objectives of the Phase II efforts were to continue to develop the FCW and AEB test procedures executed in Phase I such that they could be effectively utilized on a closed-course track test to assess performance of heavy vehicle FCW and AEB systems. For this testing, NHTSA used four Class 8, truck-tractors, three of which were from Phase I. The fourth vehicle from Phase I, the MCI motorcoach, was replaced with a 2016 Freightliner. Specifically, these subject vehicles were a 2016 Freightliner, a 2012 Freightliner, a 2006 Volvo, and a 2006 Freightliner. Like in Phase I, all vehicles were outfitted with ABS, ESC, FCW, and AEB systems. Both the 2006 and 2012 Freightliners employed the Meritor WABCO system, the 2016 Freightliner had the Detroit Assurance Safety System, and the 2006 Volvo utilized the Bendix Wingman Advance system. All AEB systems on the selected vehicles utilized radar installed on the front bumper and each AEB system provided auditory and visual alerts. For Phase II testing, NHTSA used the test scenarios from Phase I; however, a second false positive test scenario was added. Specifically, NHTSA investigated a pass-through test from

Europe’s AEB requirements⁶⁷ involving a subject vehicle being driven in a central lane between two parked vehicles.

While other standards⁶⁸ were considered for this research study, the use of United States collision data and different testing goals led to establishment of specific test

procedures. While vehicle test speeds were similar, with some overlap, NHTSA’s test procedures included higher velocity tests to be executed at 55 km/h with more specifications governing the test conditions and test completion. NHTSA’s Phase II test scenario matrix is summarized in Table 9.

Phase II also further enhanced the testing of Phase I by implementing a new strikable surrogate vehicle (SSV) system as the lead vehicle. The SSV system was created for NHTSA’s light vehicle AEB assessment and was engineered to enhance test repeatability and lateral stability in higher velocity tests.

TABLE 9—PHASE II TEST SCENARIOS

Scenario	Lead vehicle speed (km/h)	Subject vehicle speed (km/h)	Lightly loaded (number of trials)	Loaded at GVWR (number of trials)
Lead Vehicle Stopped	0	40	6	8
Lead Vehicle Moving	0	40	8	8
Lead Vehicle Moving	35	75	8	8
Lead Vehicle Decelerating	40	40	8	8
Lead Vehicle Decelerating	55	55	6 or 8	6 or 8
Steel Trench Plate False Positive	N/A	40	8	8
Steel Trench Plate False Positive	N/A	75	8	8
Stationary Vehicle False Positive	N/A	50	8	8

The SSV served as the lead vehicle or the vehicle test device (VTD) in the AEB tests. The rear of the SSV was designed to depict features of a typical passenger car. The carbon fiber surrogate exemplified these aspects, considering physical measurements, reflective properties, and visual characteristics. Its structure was not only developed to be detected as a real vehicle by the AEB systems, but it was also intended to endure wind gusts and recurrent impacts up to approximately 40 km/h. The required surrogate test velocities and deceleration of the VTD were achieved by a tow vehicle equipped with a brake controller in conjunction with a towed two-rail track used to move the SSV during the test.

NHTSA implemented changes in the test procedures from Phase I to Phase II. The Phase II test procedures contained more detail as input from within NHTSA and data collected during both phases of heavy vehicle research were used to develop and refine the procedures. For example, the test procedures contained structure for test scenario descriptions, minimum data channels to collect, and general testing requirements (e.g., ambient temperature range, wind, speed, brake burnish, etc.). Definitions were added for when the initial test conditions started, and more detail was added to the definition of when a test trial ended. The test conditions were established to be on dry, straight roadways in the daylight,

based on a previous analysis of crash data and observed safety critical events in field operation testing. FCW activation, AEB activation, collision detection, and accelerator pedal release time were measured in the tests. Similar to Phase I, the testing of each scenario occurred under two different load conditions.

After reviewing the Phase I test outcomes, NHTSA determined that the lead vehicle stopped scenario could only be assessed by the latest model year test vehicle outfitted with a capable AEB system. In Phase II, the subject vehicle traveled 40 km/h and approached a stationary lead vehicle in the same lane. Valid trials required the driver to remain centered in the traveling lane and continue driving at the target velocity until AEB was triggered. Once AEB was triggered, the test driver fully released the accelerator pedal, and the driver was not allowed to use the brake pedal of the test vehicle unless the vehicle collided with the lead vehicle or if the AEB system completely stopped the vehicle. The results showed that FCW was activated, followed by automatic braking by the AEB system in all 8 trials performed under the GVWR condition.

The lead vehicle moving test situation was evaluated at multiple velocity combinations for all four test vehicles. During this test, the subject test vehicle traveled at 40 km/h or 75 km/h and approached a slower-moving lead

vehicle traveling at 15 km/h or 35 km/h, respectively, in the same lane. Valid trials required the driver to remain centered in the traveling lane and continue driving at the target velocity until AEB was triggered. Once AEB was triggered, the test driver fully released the accelerator pedal. Testing for this scenario was conducted for both lightly loaded and GVWR conditions. All of the vehicles tested consistently issued FCW alerts and activated the AEB systems; however, impacts occurred.

The lead vehicle decelerating situation was executed with all the test vehicles except the 2006 Volvo due to its Phase I performance. Two initial velocity and initial headway combinations of the subject and lead vehicles were tested (i.e., 40 km/h and 80 m; 55 km/h and 23 m). After a short period of steady state driving using constant speeds and a constant headway, the lead vehicle was braked at approximately 0.3g while traveling in the same lane as the subject vehicle. The subject vehicle driver kept the subject vehicle centered in the traveling lane and continued driving until AEB was triggered. Under both the lightly loaded and GVWR load conditions testing was completed.

The lead vehicle decelerating test scenario with initial test speeds of 55 km/h and 23 m of headway presented the greatest challenges when compared to other tests. In Phase II, the initial headway was changed from 30.5 m to 23

⁶⁷ United Nations, “Uniform provisions concerning the approval of motor vehicles with regard to the Advanced Emergency Braking Systems (AEBS)” 2013. Available at <https://unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/2013/R131e.pdf> (last accessed February 10, 2023).

⁶⁸ The following were among the standards considered: International Organization for Standardization (ISO) 22839:2013, “Intelligent transport systems—Forward vehicle collision mitigation systems—Operation, performance, and verification requirements; ISO 15623:2013,

“Intelligent transport systems—Forward vehicle collision warning systems—Performance requirements and test procedures,” and SAE International recommended practice J3029, “Forward collision warning and mitigation vehicle test procedure—Truck and bus.”

m to keep the lead vehicle from transitioning to a stopped lead vehicle test scenario near the end of a test trial, as it did in Phase I testing with a headway of 30.5 m. Testing for this scenario was conducted for both lightly loaded and GVWR conditions and all four vehicles. All of the vehicles consistently issued FCW alerts and activated the AEB systems; however, most tests resulted in impact.

Two false positive test types were also conducted. The steel trench plate scenario was executed at 40 km/h and 75 km/h for all test vehicles. Each vehicle was evaluated in the GVWR load condition, but only the 2016 Freightliner was also assessed in the lightly loaded condition. Most of the vehicles did not exhibit any FCW or AEB activations in these tests. However, one vehicle’s FCW/AEB system perceived the steel trench plate as a

stationary object on the path of travel and the reaction to this false positive detection was not consistent in terms of warning time, brake initiation time, and deceleration level. The second test involved two stationary vehicles in lanes on either side of the test vehicle’s travel lane; and only the 2012 Freightliner and the 2016 Freightliner were evaluated under the GVWR load condition. Neither vehicle exhibited any false FCW or AEB activations in this test.

Overall, the Phase II test results demonstrated the ability of the vehicles and AEB systems tested to avoid contact in the lead vehicle stopped and lead vehicle moving test scenarios at the different velocities and achieve no collisions. These capabilities extended to the lead vehicle decelerating tests performed at 40 km/h and a headway of 80 m. In contrast, there was a much

lower likelihood of these vehicles avoiding contact with the lead vehicle using an initial speed of 55 km/h and a headway of 23 m.

4. NHTSA’s 2018 Heavy Vehicle AEB Testing

NHTSA conducted test track research in 2017 and 2018 on heavy vehicles equipped with FCW and AEB. This section describes the third phase of NHTSA’s heavy vehicle testing and the results from three single-unit trucks. These trucks included a class 3 2016 Freightliner 3500 Sprinter, a class 6 2017 International 4300 SBA 4x2, and a class 7 2018 Freightliner M2–106. The main goal of this third phase was to develop objective test procedures for evaluating the performance of heavy vehicles equipped with FCW and AEB systems on a closed course test track.

TABLE 10—PHASE III TEST SCENARIOS

Scenario	Lead vehicle speed (km/h)	Subject vehicle speed (km/h)	Initial headway (m)
Lead Vehicle Stopped	0	40	55
Lead Vehicle Moving	15	40	35
Lead Vehicle Moving	35	75	56
Lead Vehicle Decelerating	40	40	80
Lead Vehicle Decelerating	55	55	23
Steel Trench Plate False Positive	N/A	40	56
Steel Trench Plate False Positive	N/A	75	105
Stationary Vehicle Pass-Through False Positive	N/A	50	60

In this third phase of research, the newly developed heavy vehicle AEB test procedures included test conditions where the driver applies the subject vehicle brakes while approaching a lead vehicle, but with an input insufficient to prevent a rear-end crash, to complement the previously developed scenarios.

The 2017 International 4300 was outfitted with a Bendix system which includes FCW and AEB. This system was enhanced since Phase II of NHTSA’s research where, in Phase III, it used camera and radar to engage automatic emergency braking and demonstrated the ability to respond to traveling and stationary vehicles. The FCW provided alerts at velocities greater than 8 and 15 km/h for moving and stationary objects, respectively. For the AEB system to be engaged, the vehicle had to travel above 25 km/h.

The 2018 Freightliner M2–106 was outfitted with an OnGuardACTIVE Collision Mitigation system which features FCW and AEB. This system used radar to engage automatic emergency braking and displayed the ability to respond to traveling and stationary vehicles. The FCW provided

alerts with visual and auditory cues and a braking warning was issued when the AEB was activated. In order for the AEB system to be engaged, the vehicle had to travel above 25 km/h.

The study concluded that the test procedures were reproducible and appropriate for heavy vehicles outfitted with FCW and AEB systems. After Phase II, the test procedures and scenarios were updated and applied to heavy vehicles with different weight classifications. The inclusion of heavy vehicles with updated AEB systems in Phase III allowed for evaluation of more systems in the lead vehicle stopped scenario; during the lead vehicle stopped evaluations with no driver braking, at least one vehicle experienced no collisions for all trials tested. This showed improvement in comparison to the prior phase, which was only able to test lead vehicle stopped on one vehicle and resulted in multiple collisions. The lead vehicle moving scenario test results also displayed improvement where the percentage of collisions decreased in comparison to Phase II. Overall, the outcomes showed that the FCW/AEB systems have the capacity for being able

to decrease rear-end collisions by exhibiting velocity reductions before a collision or avoiding contact with a lead vehicle entirely. While some FCW false positives were observed, the overall results depicted that the systems have the ability to avoid collision on the test track.

The results of this research show that the test procedures are applicable to many heavy vehicles and indicate that performance improvements in heavy vehicles equipped with these safety systems can be objectively measured.⁶⁹ Further, this was the first phase of the series that was able to apply the test procedures to single-unit trucks across multiple weight classifications; and new test scenarios were added.

5. NHTSA’s Research Test Track Procedures

NHTSA’s most recently published heavy vehicle AEB research test track

⁶⁹ Salaani, M.K., Elsasser, D., Boday, C., “NHTSA’s 2018 Heavy Vehicle Automatic Emergency Braking Test Track Research Results,” SAE International. J Advances & Current Practices in Mobility 2(3):1685–1704, 2020, doi:10.4271/2020-01-1001.

procedures were published in March 2019 and evaluate AEB performance in crash-imminent scenarios both with and without manual brake pedal applications.⁷⁰ These procedures, with some modification, form the basis for the proposed test procedure in this NPRM.

The test procedures were based upon prior research and include the lead vehicle stopped, lead vehicle moving, and lead vehicle decelerating test scenarios, as well as the steel trench plate and stationary vehicles false positive scenarios. The testing was divided into three phases. First, the subject vehicle and the lead vehicle are situated on the test track to the proper location and test velocity. The second stage involves determining whether the vehicles have met the proper starting test conditions to achieve valid and reproducible test outcomes. The third and final stage serves to assess test validity and system performance as well as response to any FCW or AEB triggers. In the research test procedure, if an invalid test is detected, the test is repeated until at least seven valid test attempts are completed. Testing was executed during daylight, avoiding inclement weather and irrelevant obstructions such as overhead signs, bridges, overpasses, etc. For test procedures that include manual brake pedal applications, the pedal was displaced at a rate of 254 mm/s to achieve a target longitudinal acceleration of -3.0 m/s^2 , simulating a manual brake pedal application of a panicked driver. Test procedures for brake pedal input characterization and verification assessment are described for checking uniformity and to ensure the set braking magnitude and response can be achieved.

The lead vehicle stopped test scenario requires the test subject vehicle to be driven toward the stationary lead vehicle at 40 km/h. The subject vehicle is to maintain its velocity and relative lateral position to the straight testing path as it advances toward the lead vehicle. When the time to collision is equal to 5 seconds there is a nominal separation distance of 56 m between the front of the subject vehicle and the rear of the lead vehicle. Once braking is initiated, the accelerator pedal input of the subject vehicle is discontinued fully within 0.5 seconds after the start of

braking. For lead vehicle stopped tests performed with insufficient brake pedal applications, the brake pedal is applied at a time to collision of 1.51 seconds. The point at which the brake pedal rate exceeds 50 mm/s is used to define the beginning event of brake pedal input. The conclusion of testing is marked by a collision between the subject and lead vehicle or the subject vehicle stopping prior to colliding with the lead vehicle. The test procedures are repeated until seven valid test trials are obtained for each lead vehicle stopped test with and without brake pedal applications, to obtain a total of 14 valid tests.

The test procedure for the lead vehicle moving scenario is similar for its two vehicle speed combinations. The subject vehicle travels to reach the target speed of 40 or 75 km/h for a minimum of 1 second; and the lead vehicle travels at 15 or 35 km/h, respectively. Prior to approaching the lead vehicle there should be a separation distance of at least 100 m. Additionally, by a time to collision equal to 5 seconds, the separation range is 35 m for 40 km/h and 56 m for 75 km/h. Once the subject vehicle encounters the lead vehicle and braking is automatically initiated, the subject vehicle accelerator pedal was fully released within 0.5 seconds.

The lead vehicle decelerating test procedure starts with the subject vehicle traveling toward the lead vehicle while maintaining an 80 m separation distance. Both the subject vehicle and the lead vehicle are required to reach and maintain a velocity of 40 km/h for at least 1 second while keeping the headway distance. Once the subject vehicle encounters the lead vehicle and braking is initiated, the subject vehicle accelerator pedal was fully released within 0.5 seconds. This test procedure is repeated with similar steps for a 55 km/h velocity and a 23 m separation distance.

In order to evaluate false positives, the steel trench plate test scenario was executed at 40 and 75 km/h, and the stationary vehicles test was completed at 50 km/h. For the seven test trials performed at 40 and 75 km/h, a short edge of the rectangular steel trench plate was centered on the roadway about the x-axis. The subject vehicle was driven toward the steel trench plate such that an initial 110.0 m headway existed, and a nominal velocity of 40 or 75 km/h was maintained for at least 1.0 second. The test initial test condition began when the separation distance between the subject vehicle and steel trench plate was 56 m and 105 m for 40 and 75 km/h, respectively. Once the subject vehicle encountered the steel trench plate at a headway of 16.83 or 40.88 m for 40 and

75 km/h, respectively, the brakes of the subject vehicle were engaged. The test ends when either the subject vehicle drives over the steep trench plate or the subject vehicle stops before crossing over the steel trench plate.

The preliminary conditions of the stationary vehicles test involved two vehicles parked with a lateral separation of 4.5 m. These two vehicles were faced in the forward direction of the test track and were aligned. The subject vehicle was driven along the test track with a 100.0 m headway from the stationary vehicles. The subject vehicle was then driven to maintain a velocity of 50 km/h for at least 1.0 second. The starting test condition is a headway of 60 m where the steering wheel of the subject vehicle was controlled to center the vehicle along the test track. Once the subject vehicle encountered the stationary vehicles at a range of approximately 23.74 m the subject vehicle accelerator pedal was fully released within 0.5 seconds of the initiation of braking.

6. 2021 VRTC Testing

The test track data that follows represents vehicle performance with the latest generation AEB systems and the procedures and conditions proposed in this NPRM largely match the procedures and conditions used for this testing.

2021 Freightliner Cascadia

The 2021 Freightliner Cascadia was tested under the lead vehicle stopped, lead vehicle moving, and lead vehicle decelerating scenarios at the NHTSA VRTC in 2021. The GVT was used as the lead vehicle in these test scenarios. The lead vehicle stopped scenario was executed at multiple initial subject vehicle velocities from 20 km/h up to 95 km/h. While contact with the VTD occurred at 20, 25, 30, and 35 km/h, there were measurable speed reductions. At test velocities between 40 and 85 km/h, no collisions were observed. Collisions also occurred at 90 and 95 km/h, but the FCW at both speeds was issued earlier than 2 seconds before contact. Ten additional test trials were conducted at 40 km/h, and only one trial resulted in contact. Four additional test trials were executed at 50, 60, 70, 80, and 85 km/h; in all four trials, there were no collisions at three speeds and one collision at two speeds (*i.e.*, 80 and 85 km/h, respectively) which ultimately resulted in a speed reduction when compared to the other trials.

The lead vehicle moving scenario was performed at several combinations of subject vehicle and lead vehicle initial speeds. The first set of eight trials

⁷⁰ Elsasser, D., Salaani, M.K., & Boday, C., "Test track procedures for heavy-vehicle forward collision warning and automatic emergency braking systems," Report No. DOT HS 812 675, Washington, DC: National Highway Traffic Safety Administration (March 2019). Available at https://rosap.nhtl.bts.gov/view/dot/42186/dot_42186_DS1.pdf (last accessed June 28, 2022).

involved the subject vehicle at a range of velocities of 30 km/h to 90 km/h and the initial speed of the lead vehicle was 20 km/h for each. Contact occurred only at the 30 and 60 km/h test velocities. The initial speeds for the subject vehicle and lead vehicle for the second set of eight trials was 40 and 15 km/h, respectively. One of these trials ended in a collision and this run exhibited a

notably lower speed reduction when compared to the other trials. The third and fourth sets of trials included subject vehicle and lead vehicle initial velocity combinations of 75 and 35 km/h and 80 and 12 km/h, respectively, and contact was avoided in all trials. For the lead vehicle decelerating scenario collision was avoided for all trials during the 40 km/h test. Impact occurred during four

out of five runs in the 50 km/h test with an initial headway of 18 m. However, at the longer headway lengths of 21, 23, 25, and 40 m there were no collisions during the 50 km/h tests. Additionally, contact was avoided for the 80 km/h test with headway lengths of 23, 25, 28, 40, and 45 m.

TABLE 11—2021 FREIGHTLINER CASCADIA TEST TRACK SCENARIOS

Scenario	Lead vehicle speed (km/h)	Subject vehicle speed (km/h)
Lead Vehicle Stopped	0	20–95
Lead Vehicle Moving	20	30–90
Lead Vehicle Moving	15	40
Lead Vehicle Moving	35	75
Lead Vehicle Moving	12	80
Lead Vehicle Moving	32	80
Lead Vehicle Decelerating	40	40
Lead Vehicle Decelerating	50	50
Lead Vehicle Decelerating	55	55
Lead Vehicle Decelerating	80	80

2021 Ram 5500

The class 5 2021 Ram 5500 was tested under the lead vehicle stopped, lead vehicle moving, and lead vehicle decelerating scenarios at the NHTSA VRTC in 2022. The tests performed for these scenarios involved no manual brake application; and the GVT was used as the lead vehicle. For the lead vehicle stopped scenario, the Ram truck avoided collisions at 10, 20, 30, 40 km/h, while impact occurred during two of the five trials in the 50 km/h test, although there was an approximately 80 percent reduction in speed. In general, these results seemed to align with

limitations described in the vehicle owner’s manual that indicated that the system works up to 50 km/h. Testing up to 80 km/h was not completed to avoid damage to the subject vehicle and test equipment. During the lead vehicle moving scenario, the truck avoided contact at 30, 40, 50, 60, 70, and 80 km/h. Impact did occur at 90 km/h, though there was a speed reduction of 63 percent. At 50 km/h, the lead vehicle decelerating scenario resulted in consecutive impacts with some speed reduction. Due to the repeated collisions, testing was discontinued to prevent damage to the subject vehicle and the GVT.

NHTSA also tested The Ram 5500 under the three scenarios with manual brake application. The lead vehicle stopped scenario resulted in avoidance of contact for all trials at 30, 40, and 60 km/h. Collision did occur at 50 km/h, though there was a speed reduction of approximately 80 percent. The lead vehicle moving scenario resulted in impact avoidance for all 40 to 90 km/h trials, but impact did occur during the 100 km/h test. For the lead vehicle decelerating scenario, impact occurred during the 50 km/h test with an initial headway of 40, 32, and 23 m. Collision also occurred for the 80 km/h test with a headway of 40 m.

TABLE 12—2021 RAM 5500 TEST TRACK SCENARIOS

Scenario	Lead vehicle speed (km/h)	Subject vehicle speed (km/h)
Lead Vehicle Stopped	0	10–60
Lead Vehicle Moving	20	30–100
Lead Vehicle Decelerating	50	50
Lead Vehicle Decelerating	80	80

In general, no single vehicle avoided collisions at all speeds in the tested scenarios. While one vehicle may have performed better at lower speeds and the other better at higher speeds, the combination of results from the individual vehicles showed positive results over a range of speeds. Overall, the performance demonstrated that the AEB technology has improved over

time, as shown in Tables 13 and 14.^{71 72 73 74}

⁷¹ Phase I—Boday, C., et al., “Class 8 Truck-Tractor and Motorcoach Forward Collision Warning and Automatic Emergency Braking Test Track Research—Phase I,” Washington, DC: National Highway Traffic Safety Administration (June 2016). Docket No. NHTSA-2015–0024–0004.

⁷² Phase II- U.S. DOT/NHTSA- Class 8 Truck-Tractor and Motorcoach Forward Collision Warning and Automatic Emergency Braking System Test Track Research- Draft Report. Docket No. NHTSA–2015–0024–0006.

⁷³ Phase III—Salaani, M.K., Elsasser, D., Boday, C., “NHTSA’s 2018 Heavy Vehicle Automatic Emergency Braking Test Track Research Results,” SAE International. J Advances & Current Practices in Mobility 2(3):1685–1704, 2020, doi:10.4271/2020–01–1001.

⁷⁴ This information is available in the report titled “NHTSA Heavy Vehicle AEB Test Track Performance Data Summary Report—2022,” placed in the docket identified in the heading of this NPRM.

TABLE 13—TECHNOLOGY IMPROVEMENT OVER TIME
[Class 7–8]

Class 7–8 heavy vehicle capability	1st period— introduction	2nd period— 2nd generation (2015)	Current (2022)
FCW and AEB activate for moving vehicles	Yes	Yes	Yes.
AEB can avoid contact at test speeds up to 80 km/h in lead vehicle moving scenarios	No	Yes	Yes.
AEB can avoid contact at test speeds greater than 80 km/h in lead vehicle moving scenarios	No	N/A	Yes.
FCW alerts for stopped vehicles	Yes	Yes	Yes.
AEB activates for stopped vehicles	No	Yes	Yes.
AEB can avoid contact at test speeds up to 80 km/h in lead vehicle stopped scenarios	No	No	Yes.
AEB can avoid contact at test speeds greater than 80 km/h	No	No	Yes.

TABLE 14—TECHNOLOGY IMPROVEMENT OVER TIME
[Class 3–6]

Class 3–6 heavy vehicle AEB capability	Up to 2015	2016–2022
FCW and AEB activate for moving vehicles	Yes	Yes.
AEB can avoid contact at test speeds up to 80 km/h in lead vehicle moving scenarios	No	Yes.
AEB can avoid contact at test speeds greater than 80 km/h in lead vehicle moving scenarios	No	Yes.
FCW alerts for stopped vehicles	Yes	Yes.
AEB activates for stopped vehicles	No	Yes.
AEB can avoid contact at test speeds up to 80 km/h in lead vehicle stopped scenarios	No	No.
AEB can avoid contact at test speeds greater than 80 km/h	No	No.

C. NHTSA Field Study of a New Generation Heavy Vehicle AEB System

NHTSA has an ongoing field study with VTTI that aims to collect naturalistic driving data of at least 150 heavy vehicles over a one-year timeframe. The goal is to collect data from each driver participant for a three-month segment of the year. This research has very similar parameters and objectives as those described above for the “Field Study of Heavy-Vehicle Crash Avoidance Systems” study. However, several years have elapsed since the data were collected for the prior study; and the trucks included in this ongoing research project are equipped with newer generation AEB systems, including stationary object braking and system integration into instrument clusters.

The data acquisition systems installed on the heavy vehicles will allow VTTI to sample various system activations including AEB, stationary object alerts and FCWs. The focus of the study’s real-world data collection and analysis is to ascertain an understanding of vehicle performance, driver behavior, and driver adaptation. VTTI is evaluating Bendix Commercial Vehicle Systems and Detroit Assurance (Daimler) systems and the five objectives include evaluation of system reliability, assessment of driver performance over time, assessment of overall driving behavior, collection of data on real-world conflicts, and generation of

inputs to a safety benefits simulation model.

Preliminary results from the driver survey responses indicate that many drivers agree that collision mitigation technology makes drivers safer. Approximately 50 percent of drivers surveyed at least slightly agree that AEB is beneficial and helps drivers avoid a crash.⁷⁵

V. Need for This Proposed Rule and Guiding Principles

A. Estimating AEB System Effectiveness

In developing this NPRM, NHTSA has examined the effectiveness of AEB, proposing only those amendments that contribute to improved crash safety, and have considered the principles for regulatory decision-making set forth in Executive Order 12866 (as amended), Regulatory Planning and Review.

The effectiveness of AEB indicates the efficacy of the system in avoiding a rear-end crash. This NPRM proposes to require heavy vehicles to have AEB systems that enable the vehicle to completely avoid an imminent rear-end collision under a set of test scenarios. One method of estimating effectiveness would be to perform a statistical analysis of real-world crash data and observe the differences in statistics between heavy vehicles equipped with AEB and those not equipped with AEB.

⁷⁵ This information is available in a report titled “HV AEB Driver Exit Survey Summary as of August 31, 2022,” which has been placed in the docket for this rulemaking.

However, this approach is not feasible currently due to the low penetration rate of AEB in the on-road vehicle fleet. Consequently, NHTSA estimated effectiveness of AEB systems using performance data from the agency’s vehicle testing. The agency assessed effectiveness against all crash severity levels collectively, rather than for specific crash severity levels (i.e., *COM028* minor injury versus fatal).

The performance data derived from four different test vehicles was used to estimate AEB effectiveness,⁷⁶ and the agency is continuing its effort to test a larger variety of vehicles to further evaluate AEB system performance. These vehicles were subject to the same test scenarios (stopped lead vehicle, slower-moving lead vehicle, decelerating lead vehicle) that are proposed in this NPRM, and effectiveness estimates are based on each vehicle’s capacity to avoid a collision during a test scenario. For example, if a vehicle avoided colliding with a stopped lead vehicle in four out of five test runs, its effectiveness in that scenario would be 80 percent. The test results for each vehicle were combined

⁷⁶ This information is available in the report titled “NHTSA Heavy Vehicle AEB Test Track Performance Data Summary Report—2022,” placed in the docket identified in the heading of this NPRM.

into an aggregate effectiveness value by vehicle class range and crash scenario, as displayed in Table 15.

TABLE 15—AEB ESTIMATED EFFECTIVENESS (PERCENT)
[By vehicle class range and crash scenario]

Vehicle class range	Stopped lead vehicle	Slower-moving lead vehicle	Decelerating lead vehicle
7–8	38.5	49.2	49.2
3–6	43.0	47.8	47.8

As shown in Table 15, after aggregating class 7 and class 8 together, the agency has estimated AEB would avoid 38.5 percent of rear-end crashes for the stopped lead vehicle scenario, and 49.2 percent of slower-moving and decelerating lead vehicle crashes. For class 3–6, AEB is estimated to be 43.0 percent effective against stopped lead vehicle crashes and 47.8 percent against slower-moving and decelerating lead vehicle crashes. These effectiveness values are the values NHTSA used for assessing the benefits of this proposed rule.

B. AEB Performance Over a Range of Speeds Is Necessary and Practicable

The performance requirements proposed in this NPRM are designed around the goal of realizing as much of the safety potential of AEB systems, while remaining realistic and practicable both economically and technically. AEB performance guidelines created outside of the agency's rulemaking process appear not to have been created with these same goals, and thus may not represent the optimal balance of safety and practicability. Several AEB performance tests developed in the private sector are limited to a maximum test speed of around 40 km/h (25 mph), and do not test the capability of AEB system at highway speeds.^{77 78}

NHTSA considered two primary factors in selecting the proposed test speed ranges. The first factor is the practical ability of AEB technology to consistently operate and avoid contact with a lead vehicle at the widest reasonable range of speeds. A larger range of speeds would likely yield more safety benefits and would more

thoroughly test the capabilities of the AEB system. Furthermore, as observed in vehicle testing for NHTSA research, AEB performance during testing at higher speeds does not necessarily indicate what the same system's performance will be at lower speeds. For example, NHTSA's testing of the 2021 Freightliner Cascadia truck showed that the AEB system was able to avoid a collision with the lead vehicle at test speeds of 40 to 85 km/h, but not at speeds below 40 km/h. Thus, testing over a range of speeds is necessary to more fully assess AEB performance.⁷⁹

The second factor is the practical limit of safely conducting vehicle tests of AEB systems. Test data indicates that AEB performance is less consistent, becoming less likely to avoid a collision when test speeds approach or exceed the proposed upper limits, indicating that testing at higher speeds than proposed would be beyond technological feasibility.⁸⁰

NHTSA's testing must be safe and repeatable as permitted by track conditions and testing equipment. For example, if the AEB system does not intervene as required, or if test parameters inadvertently fall outside of the specified limits, it should be possible to safely abort the test. In the event the subject vehicle does collide with the lead vehicle, it should not injure the testing personnel nor cause excessive property damage. Additionally, test tracks may be constrained by available space and there may be insufficient space to accelerate a heavy vehicle up to a higher speed and still have sufficient space to perform a test. Many types of heavy vehicles are not capable of accelerating as quickly as lighter vehicles and reaching higher test speeds may require longer stretches that exceed available testing facilities. At approximately 100

km/h, the agency found that constraints with available test track length, in conjunction with the time required to accelerate the vehicle to the desired test speed, made performing these higher speed tests with heavy vehicles logistically challenging.⁸¹ The agency has tentatively concluded that at this time the maximum practicable test speed is 100 km/h.

The maximum speed of 100 km/h is included in the test speed range when manual braking is present; the manual braking will reduce impact speed if the FCW issues a warning and the AEB system does not activate before reaching the lead vehicle. This would limit potential damage to the test equipment and avoid injury to testing personnel. With no manual braking, the maximum test speed is 80 km/h so that in the event that the AEB system does not provide any braking at all, damage to the subject vehicle and test equipment is reduced and potential injuries avoided.

The stopped lead vehicle test scenario uses a no-manual-braking test speed range of 10–80 km/h and a manual-braking test speed range of 70–100 km/h. Similarly, the slower-moving lead vehicle test scenario uses subject vehicle speed ranges of 40–80 km/h for no manual-braking and 70–100 km/h for manual braking, while the lead vehicle travels ahead at a constant speed of 20 km/h. The lower end of the subject vehicle test speed range is 40 km/h so that the subject vehicle is traveling faster than the lead vehicle. The decelerating lead vehicle tests are run at either 80 or 50 km/h. This latter test is performed at two discreet speeds rather than at ranges of speeds because the main factors that test AEB performance are the variation of headway, or the distance between the subject vehicle

⁷⁷ IIHS Autonomous Emergency Braking Test Protocol (Version I). Available at https://www.iihs.org/media/a582abfb-7691-4805-81aa-16bbdf622992/REo1sA/Ratings/Protocols/current/test_protocol_aeb.pdf. (last accessed August 5, 2022).

⁷⁸ SAE International Forward Collision Warning and Mitigation Vehicle Test Procedure—Truck and Bus J3029_201510. (For more details, see https://www.sae.org/standards/content/j3029_201510) (last accessed August 5, 2022).

⁷⁹ This information is available in the report titled "NHTSA Heavy Vehicle AEB Test Track Performance Data Summary Report—2022," placed in the docket identified in the heading of this NPRM.

⁸⁰ More detail on test data is discussed in the NHTSA and FMCSA Research and Testing section.

⁸¹ During testing of a 2021 Freightliner Cascadia at speeds approaching 100 km/h, NHTSA experienced difficulty establishing valid test conditions due to test facility use restrictions. Facility use restrictions limited where emergency braking tests by heavy vehicles and automated lead vehicle robots could co-operate, thereby reducing the effective useable track length to less than 1100 meters.

and lead vehicle, and how hard the lead vehicle brakes. Also, because these tests contain a larger number of variables requiring more complex test choreography, limiting the test to two discreet test speeds reduces the number of potential test conditions and reduces potential test burden. Together, these test speed ranges provide good coverage of the travel speeds at which heavy vehicle rear-end crashes occur in the real world, while reducing the potential risk and damage to test equipment and vehicles and not exceeding the practical physical size limits of test tracks.

Additionally, the agency is proposing that these requirements would not apply at speeds below 10 km/h. NHTSA believes that there are real-world cases where heavy vehicles are being maneuvered intentionally in proximity of other objects at low-speed, and AEB intervention could be in conflict with the vehicle operator's intention. For example, if an operator intends to drive towards the rear of another vehicle in a parking lot in order to park the vehicle near the other, automatic braking during this parking maneuver would be unwanted. The agency tentatively concluded that excluding speeds below 10 km/h from the AEB requirement would allow these types of low-speed maneuvers. This proposal does not require AEB systems to be disabled below 10 km/h. However, publicly available literature from at least one manufacturer shows that some or all of the AEB system functions are not available below 15 mph (24 km/h), indicating that current manufacturers may have similar considerations about low-speed AEB functionality.⁸² A lower bound for FCW and AEB activation speed of 10 km/h is also consistent with the lower bound testing proposed for light vehicle AEB and the Euro NCAP rating program.⁸³

During each test run in any of the test scenarios, the vehicle test speed will be held constant until the test procedure specifies a change. NHTSA is proposing that vehicle speed would be maintained within a tolerance range of 1.6 km/h of the specified test value. In NHTSA's experience, both the subject vehicle and lead vehicle speeds can be reliably controlled within the 1.6 km/h tolerance range, and speed variation within that

range yields consistent test results. A tighter speed tolerance is unnecessary for repeatability and burdensome as it may result in a higher test-rejection rate, without any greater assurance of accuracy of the test track performance.

NHTSA's vehicle testing suggested that the selected speed ranges for the various scenarios are within the capabilities of at least some recent model year AEB-equipped production vehicles.⁸⁴ While these current AEB systems perform a bit differently depending on the vehicle, given that this notice proposes a lead time for manufacturers to come into compliance with the proposed performance requirement, the agency expects that future model year performance in accordance with a final rule schedule will be achievable.

C. Market Penetration Varies Significantly Among Classes of Heavy Vehicles

Though the presence of AEB in heavy vehicles has increased over the years, many new heavy vehicles sold in the U.S. are not equipped with AEB. Market data obtained by NHTSA indicates that although AEB is likely equipped on the majority of class 8 vehicles and is available on nearly all class 3 and class 4 vehicles, few of class 5 and 6 vehicles come equipped with any type of AEB system. In addition, though the capabilities of these AEB systems have also improved over time, there has been no set of standardized performance metrics in the U.S. that manufacturers could use as a benchmark to meet. This NPRM proposes standard performance metrics that would meet a motor vehicle safety need.

Among the variety of heavy vehicle types, class 7 and 8 truck tractors have been the earliest to voluntarily adopt AEB systems. These vehicles are (with some exceptions) already subject to the electronic stability control requirement in FMVSS No. 136 and contain fewer variations in vehicle type, configuration, and operational pattern. It was estimated that as of 2013 only 8 to 10 percent of class 8 trucks in the U.S. were equipped with this technology.⁸⁵ In 2017 a FMCSA report extrapolated available information to estimate that 12.8 percent of the entire on-road fleet of class 8 trucks in the United States

were equipped with an AEB system,⁸⁶ while the industry estimated that up to 15 percent of class 8 trucks were equipped with AEB.⁸⁷ More recently, a survey of public information on AEB availability for heavy vehicles reveals that this technology is becoming more prevalent on new trucks. In 2016, Peterbilt announced the option of AEB in its class 8 model 579 truck tractor, and then made the technology standard in 2019.^{88 89} As of 2017, Volvo Trucks made AEB standard equipment on all of its class 8 truck tractor models, as a part of its Volvo Active Driver Assist safety package.⁹⁰ While several fleets or manufacturers have made AEB standard, it remains an option for some class 8 vehicles, such as the Peterbilt single-unit truck models 337 and 348.⁹¹ Data from a recent study indicates that the large majority of class 8 vehicles sold from 2018 until mid-2022 had AEB as a standard feature, and that the top ten selling class 8 vehicles all include standard AEB.⁹²

AEB systems are also available on nearly all class 3 and 4 trucks that are relatively similar in size to light trucks, are manufactured by companies that also manufacture light vehicles, and likely have similar component and component suppliers as light vehicles. Although these vehicles are not required to have ESC systems, many of them are also available with ESC, likely because these vehicles are similar in size and use to light trucks. However, while NHTSA has information on ESC and AEB system availability, NHTSA has no

⁸⁶ Grove, K., et al., "Research and Testing to Accelerate Voluntary Adoption of Automatic Emergency Braking (AEB) on Commercial Vehicles," VTTI (May 2020). Available at <https://rosap.nhtlts.gov/view/dot/49335> (last accessed June 9, 2022).

⁸⁷ Cannon, J., "Automatic emergency braking is the next generation of driver assist technologies," Commercial Carrier Journal, December 14, 2017. <https://www.ccdigital.com/business/article/14936178/future-of-automatic-emergency-braking-driver-assist-tech>.

⁸⁸ <https://www.peterbilt.com/about/news-events/news-releases/peterbilt-introduces-bendix-wingman-fusion-advanced-safety-system> (last accessed August 23, 2022).

⁸⁹ <https://www.peterbilt.com/about/news-events/peterbilt-trucks-introduce-bendix-wingman-fusion-standard> (last accessed August 23, 2022).

⁹⁰ <https://www.volvotrucks.us/news-and-stories/press-releases/2017/july/volvo-active-driver-assist-now-standard/#:~:text=Volvo%20Active%20Driver%20Assist%20is%20now%20standard%20equipment,is%20fully%20integrated%20with%20Volvo%E2%80%99s%20Driver%20Information%20Display> (last accessed August 23, 2022).

⁹¹ <https://www.peterbilt.com/about/news-events/peterbilt-announces-bendix-wingman-fusion-medium-duty> (last accessed August 23, 2022).

⁹² This information is available in the S&P Global's presentation titled "MHCV Safety Technology Study," which has been placed in the docket identified in the heading of this NPRM.

⁸² Bendix Wingman Fusion Brochure, or SD-61-4963 Service Data manual for Bendix Wingman Fusion Driver Assistance System. Available at https://www.bendix.com/media/documents/technical_documents/product_literature/bulletins/SD-61-4963_US_005.pdf (last accessed August 23, 2022).

⁸³ Euro NCAP Test Protocol—AEB Car-to-Car systems v3.0.3 (April 2021). See <https://cdn.euroncap.com/media/62794/euro-ncap-aeb-c2c-test-protocol-v303.pdf>.

⁸⁴ This information is available in the report titled "NHTSA Heavy Vehicle AEB Test Track Performance Data Summary Report—2022," placed in the docket identified in the heading of this NPRM.

⁸⁵ National Transportation Safety Board. 2015. "Special Investigation Report: The Use of Forward Collision Avoidance Systems to Prevent and Mitigate Rear-End Crashes." Report No. NTSB/SIR-15/01 PB2015-104098. Washington, DC.

information on what percentage of class 3 and 4 vehicle purchases are equipped with ESC and AEB. For classes 5 and 6, there is substantially lower ESC and AEB system availability. However, NHTSA believes that this slower pace of voluntary adoption does not imply that these vehicles are not capable of being deployed with an AEB system. The system components are largely the same and have little to do with a vehicle's size. There are also vehicles within these classes that are available with ESC, and the availability of ESC has increased since NHTSA issued FMVSS No. 136. This market information indicates that AEB is practicable for all vehicles included in this proposal.

D. This NPRM Would Compel Improvements in AEB

This rulemaking is also needed to drive improvements in AEB systems. The performance requirements proposed in this NPRM are designed around the goal of realizing as much of the safety potential of AEB systems as possible, while remaining realistic and practicable. Some contemporary AEB systems are currently designed to detect and mitigate collision with a vehicle ahead when travelling at a wide range of speeds, including interstate speeds.⁹³ While the systems are also functional at lower speeds, the higher speed capabilities indicate that AEB will be capable of reducing the frequency of interstate rear-end crashes rather than just slower speed events.

NHTSA has tentatively concluded that the improvements to AEB systems by manufacturers in the absence of regulation have insufficiently addressed the safety problem associated with rear-end crashes. No individual vehicle's AEB system tested by NHTSA is currently capable of avoiding a collision over the range of test speeds that aligns with the majority of the safety problem. However, the range of speeds included in this proposal is practicable as at least some vehicles were able to achieve the desired results at each tested speed. While manufacturers may continue to improve AEB systems, only a regulation would ensure that all heavy vehicles are equipped with an AEB system that can avoid a collision at a range of speeds that targets the majority of the safety problem. Establishing performance criteria that meet the safety need of preventing fatalities and serious injuries will also ensure that the systems will be designed to address the serious safety

problem associated with these crashes. This NPRM proposes that all heavy vehicles be subject to the same performance requirements such that the entire heavy vehicle fleet benefits from improvements in AEB technology.

E. BIL Section 23010(b)(2)(B)

NHTSA is issuing this NPRM in accordance with a statutory mandate in BIL. Section 23010 of BIL requires the Secretary to prescribe a Federal motor vehicle safety standard to require all commercial vehicles subject to FMVSS No. 136 to be equipped with an AEB system. The FMVSS is required to establish performance standards for AEB systems. BIL directs the Secretary to prescribe the standard not later than two years after the date of enactment of the Act.

Section 23010(b)(2)(B) of BIL states that prior to prescribing the FMVSS for heavy vehicle AEB, the Secretary shall consult with representatives of commercial motor vehicle drivers regarding the experiences of drivers with AEB. Prior to this NPRM, NHTSA and FMCSA have engaged drivers and the industry more generally in various ways. NHTSA has published research previously that involved surveying the driving experiences of 18 drivers driving heavy trucks equipped with a prototype FCW system over a 10-month period in May 2011.⁹⁴ NHTSA has also been sponsoring studies seeking input of commercial motor vehicle drivers. The current ongoing field study with VTTI aims to collect and analyze performance and operational data on newer generation AEB crash avoidance technologies on new, class 8 tractors by heavy vehicle original equipment manufacturers and their suppliers. One year of naturalistic driving data will be collected by monitoring the production systems used in real-world conditions as deployed by multiple fleets across the United States. In addition to the performance and operational data retrieved from on-board data acquisition systems for evaluation, the study will also involve conducting subjective surveys with drivers and fleet managers regarding performance, satisfaction, and overall acceptance of the crash avoidance technologies.

FMCSA is also engaged consultation with representatives of drivers through the Tech-Celerate Now program.⁹⁵ This program intends to accelerate the adoption of advanced crash avoidance

technologies by the trucking industry. The first phase initiatives include national outreach and education. The outreach element allowed for the successful creation of training materials for fleets, drivers, and maintenance personnel related to AEB technology. Additionally, the program features other avenues to reach drivers including educational videos on braking, presentations, booth exhibitions, and webinars. As of January 2023, FMCSA has compiled the findings from drivers and/or representatives of drivers in a final report that is currently undergoing internal review. However, planning for the second phase has been initiated and includes expanding the national outreach and education campaign.

Building upon this and other research, NHTSA and FMCSA seek comment from representatives of commercial motor vehicle drivers, and from drivers themselves, about their experiences with AEB systems, including whether the AEB system prevented a crash, whether the FCW warnings were helpful, and whether any malfunctions or unwarranted activations occurred. Although members of the public should comment on all aspects of the NPRM they find relevant, NHTSA also request comments on the following specific issues:

- This proposal includes considerations that automatic braking is needed for safety and crash prevention. NHTSA seeks comment from driver experiences with AEB-equipped heavy vehicles on whether AEB improves heavy vehicle rear-end crash safety.
- This proposal includes warning requirements to the driver as part of the AEB system that braking is needed in a rear-end crash-imminent situation. NHTSA seeks comments from driver experiences on whether AEB is helpful in getting a driver's attention back to the task of driving.
- This proposal includes requirements that automatic braking will occur in the event of an imminent collision on a straight testing path. NHTSA seeks comment on driver experiences with the performance of AEB when it is applied on curved roads.
- This proposal includes requirements that automatic braking will be tested under certain weather and roadway pavement conditions. NHTSA seeks comment on driver experiences when AEB is applied at the last moment in all weather conditions.
- This proposal includes considerations that automatic braking is needed because of multiple elements, including driver misjudgments and distractions. NHTSA seeks comment on driver experiences on whether the

⁹³ See https://www.bendix.com/media/documents/technical_documents/product_literature/bulletins/SD-61-4963_US_005.pdf (last accessed March 1, 2023).

⁹⁴ "Integrated Vehicle-Based Safety Systems Heavy-Truck Field Operational Test Independent Evaluation," DOT HS 811 464.

⁹⁵ Tech-Celerate Now. FMCSA. Available at <https://www.fmcsa.dot.gov/Tech-CelerateNow> (last accessed August 8, 2022).

application of AEB causes drivers to pay less attention to the road; or whether the application of AEB distracts or annoys drivers.

F. Vehicles Excluded From Braking Requirements

The result of this proposal would require AEB and ESC on nearly all heavy vehicles. The only vehicles that would be excluded from AEB and ESC requirements would be vehicles that are already excluded from NHTSA's braking requirements for vehicles equipped with pneumatic brakes in FMVSS No. 121. This braking standard includes requirements for minimum stopping distance. For those vehicles, there is no assurance that their foundational brake systems would have the capability to meet the proposed AEB performance requirements, even if equipped with sensors capable of detecting another vehicle. These vehicles are also presently excluded from FMVSS No. 136 and would continue to be excluded under this proposal. The vehicles excluded from the proposed AEB and ESC requirements are:

- Any vehicle equipped with an air brake system and equipped with an axle that has a gross axle weight rating of 13,154 kilograms (29,000 pounds) or more;
- Any truck or bus that is equipped with an air brake system and that has a speed attainable in 3.2 km (2 miles) of not more than 53 km/h (33 mph);
- Any truck equipped with an air brake system that has a speed attainable in 3.2 km (2 miles) of not more than 72 km/h (45 mph), an unloaded vehicle weight that is not less than 95 percent of its gross vehicle weight rating, and no capacity to carry occupants other than the driver and operating crew.

FMCSA believes that an exemption from its ESC and AEB regulations is appropriate for vehicles involved in driveaway-towaway operations, for example, vehicles that are being transported to dealer locations or that are manufactured exclusively for use outside of the United States. Although these vehicles are operated on public roads in the United States when they are being transported from the point of manufacture to a domestic or foreign destination, these vehicles have not yet entered commercial service. The economic burden associated with requiring these vehicles to be equipped with AEB or ESC for the one-way trip out of the United States would certainly exceed the potential benefits.

The driveaway-towaway exemption would also be applicable to vehicles being delivered to the Armed Forces of the United States. Vehicles operated by

the military are exempt from the FMCSRs under § 390.3(f)(2).⁹⁶

FMCSA seeks comment on other types of operations for which an exemption from the AEB or ESC requirements may be appropriate. For example, what types of exemptions may be needed for CMVs with auxiliary equipment installed that would interfere with the operation of the AEB system?

VI. Heavy Vehicles Not Currently Subject to ESC Requirements

A. AEB and ESC Are Less Available on These Vehicles

NHTSA is proposing to include nearly all vehicles with a GVWR greater than 4,536 kg (10,000 lbs.). This includes vehicles that are currently exempted from FMVSS No. 136 such as trucks other than truck tractors, school buses, perimeter-seating buses, transit buses, passenger cars, and multipurpose passenger vehicles because about half of the fatalities and serious injuries brought about by heavy vehicles are caused by class 3 through 6 vehicles.

The FMVSSs do not currently require ESC on class 3 through 6 vehicles or on class 7 and 8 single unit trucks, school buses, and certain bus types such as transit buses. ESC has not been commercially available for as long on class 3 through 6 vehicles as it has been for class 7 and 8 vehicles. However, examples can be found of manufacturers who offer ESC as an option on their class 3 through 6 vehicles. Kenworth has made AEB optional for the T880 vocational truck as well as for their T270 and T370 conventional class 6 trucks. Ford made ESC standard on its F-650 model in the 2018 model year and has made AEB optional on model year 2022 F-650 and F-750 class 6 trucks. A number of school bus manufacturers have made ESC standard on certain models, including ones that fall into classes 3 through 6. For example, Thomas Built offers ESC as standard equipment on its type C school buses, which can be configured to be in class 6. In some cases, ESC technology originating in hydraulic-brake passenger cars has moved up into the lower classes of heavy vehicles. For example,

⁹⁶ FMCSA notes that the driveaway-towaway exemption provided in § 393.56 and § 393.57 is consistent with exceptions provided by NHTSA. Section 571.7(c) provides an exception for vehicles and items of equipment manufactured for, and sold directly to, the Armed Forces of the United States in conformity with contractual specifications. Section 571.7(d), through a cross-reference to the United States Code, indicates the FMVSSs do not apply to motor vehicles or motor vehicle equipment intended only for export, labeled for export on the vehicle or equipment and on the outside of any container of the vehicle or equipment, and exported (49 U.S.C. 30112(b)(2)).

the 2019 Mercedes Sprinter, a cargo van which can be configured as a class 3 heavy vehicle, has ESC as standard equipment. Other class 3 and 4 vehicles that resemble light vehicles, such as pickup trucks, are available with ESC.

The availability of ESC as an option across multiple brands and models within class 3 through 6 leads NHTSA tentatively to conclude that providing ESC is technically and economically feasible. NHTSA believes it is reasonable and practicable to require that ESC to be installed on class 3 through 6 vehicles.

B. This NPRM Proposes To Require ESC

NHTSA has tentatively determined that ESC is necessary for safety to include as a foundation for an AEB requirement. Historically, the two technologies have been thought of as supplement or complementary rather joined technologies. That is, while ESC and AEB share hardware fundamental to both technologies, such as brake actuators, ESC is generally not described or advertised as a component of AEB.

That said, despite this theoretical separation, in a survey NHTSA has conducted on the availability of ESC and AEB systems, NHTSA was unable to identify *any* heavy vehicle that could currently be purchased with an AEB system, other than an FCW-only system (*i.e.*, not capable of automatic brake application), that did not also have an ESC system.⁹⁷ In a 2017 white paper Bendix indicated that collision mitigation technology is built on a foundation of full stability. Bendix stated that as we look to more automated, autonomous functionality in the future, all of this is likely to be built on an ESC foundation as well.⁹⁸ In a 2018 news release, Bendix stated that ESC provides the necessary platform for more advanced driver assistance systems (ADAS), including collision mitigation technologies.⁹⁹ Manufacturers such as Ford have ESC as a must-have system for installing driver assist technology on the stripped commercial chassis, including AEB.¹⁰⁰

⁹⁷ This information is available in NHTSA's VRTC class 3 to 6 market scan for ESC-FCW-AEB spreadsheet, which has been placed in the docket identified in the heading of this NPRM.

⁹⁸ Full Stability and the Road Map to The Future-Are we still on the Right Road? https://www.bendix.com/media/documents/products_1/absstability/BW8055_US_000.pdf (last accessed March 3, 2023).

⁹⁹ October 16, 2018. Bendix News Release, "WORKING TOGETHER, BENDIX AND NORTH AMERICA'S SCHOOL BUS MANUFACTURERS ENHANCE STUDENT TRANSPORTATION SAFETY".

¹⁰⁰ 2022 Ford Commercial Vehicles, F-59 Commercial Stripped Chassis. ESC is required for

Also, Ford has ESC and AEB as standard equipment on other chassis models such as the E-series models, F-650, and F-750 truck series. Ram Trucks also offers ESC and AEB for Chassis Cab models like RAM 3500 trucks.¹⁰¹ ¹⁰² Based upon these factors and its own understanding of the capabilities of AEB and ESC systems, NHTSA has tentatively concluded that there may be safety risks associated with the installation of an AEB system without an ESC system. For example, a driver who responds to an imminent collision by steering to avoid a collision while an AEB system is simultaneously applying braking may induce a lateral instability event that is not addressed by ABS, but that may be prevented with an ESC system. Thus, this NPRM proposes to require both AEB and ESC for the class 3 through 8 vehicles not currently subject to FMVSS No. 136.

NHTSA requests comment on this tentative conclusion that ESC is necessary to ensure safe AEB operation or whether ESC systems are necessary prerequisites for AEB systems for any other reason. NHTSA further requests comments on specific safety scenarios where ESC systems would be necessary for safe operation of an AEB system.

Currently, pursuant to FMVSS No. 136, only class 7 and 8 truck tractors and certain large buses are required to have ESC systems. FMVSS No. 136 includes both vehicle equipment requirements and performance requirements. This proposal would require nearly all heavy vehicles to have an ESC system that meets the equipment requirements, general system operational capability requirements, and malfunction detection requirements of FMVSS No. 136. The general ESC system operational capability requirements are the nine capabilities that are specified in S4 of FMVSS No. 136, which include a means to augment directional stability and enhance rollover stability by having control over the brake systems individually at each wheel position and the means to control engine torque. However, NHTSA is not proposing test track performance requirements at this time because NHTSA is conscious of the potential

the stripped chassis Driver Assist Technology Package.

¹⁰¹ ESC equipped standard on E-Series models, and F-650/F-750 trucks, available at this link https://www.ford.com/cmslibs/content/dam/vdm_ford/live/en_us/ford/nameplate/f-650-750/2022/brochures/BRO_SUF_130E80EB-C9B2-936F-6F54-72CA6F5472CA.pdf (last viewed March 3, 2023).

¹⁰² <https://www.ramtrucks.com/gab.html>, ESC equipped standard on the RAM Chassis cab models and RAM 3500 trucks, available at this link (last accessed March 3, 2023).

testing burden on small businesses and the multi-stage vehicle manufacturers involved in class 3 through 6 vehicle production.

NHTSA's proposed approach would provide vehicle manufacturers the ability to ascertain the ESC system design most appropriate for their vehicles. The approach recognizes that ESC system design is dependent on vehicle dynamics characteristics, such as the total vehicle weight and location of that weight (center of gravity), which would differ depending on the final vehicle configuration. Vehicles not subject to FMVSS No. 136 include a large variety of vehicle configurations, which can result in numerous variations of ESC system design. The approach provides maximum flexibility to vehicle manufacturers to evaluate the characteristics of their vehicles and design an ESC system.

In Europe, ESC was predicted to prevent about 3,000 fatalities (14 percent), and about 50,000 injuries (6 percent) per year.¹⁰³ In Europe, ESC has been mandatory for new types of vehicles since 2011, and for all new vehicles is mandatory since 2014.¹⁰⁴ More information about international regulations can be found in Appendix B.

C. BIL Section 23010(d)

Section 23010 of BIL requires the Secretary to prescribe a Federal motor vehicle safety standard to require any commercial vehicle subject to FMVSS No. 136, that is manufactured after the effective date of an AEB standard, to be equipped with an AEB system that meets established performance standards. In addition, Section 23010(d) of BIL requires NHTSA to study equipping AEB on a variety of commercial motor vehicles not subject to FMVSS No. 136, including an assessment of the feasibility, benefits, and costs associated with installing AEB systems on a variety of newly manufactured commercial motor vehicles with a GVWR greater than 10,000 pounds. Section (d)(3) states that the Secretary shall issue a notice in the **Federal Register** containing the findings of the study and provide an opportunity for public comment. After completion of this study, the Secretary must determine whether a motor vehicle safety standard would meet the requirements and considerations described in paragraphs

¹⁰³ Iombiller, S.F., Prado, W.B., Silva M.A. (September 15, 2019). Comparative Analysis between American and European Requirements for Electronic Stability Control (ESC) Focusing on Commercial Vehicles. SAE International.

¹⁰⁴ July 31, 2009, Official Journal of the European Union, Regulation (EC) No. 661/2009, Articles 12 & 13, and Annex V.

(a) and (b) of section 30111 of the Safety Act, and if the Secretary finds that an FMVSS would meet such requirements, initiate a rulemaking to prescribe such an FMVSS.

This NPRM and the accompanying PRIA fulfils the mandate of section 23010(d)(1) concerning a study on equipping commercial vehicles not subject to FMVSS No. 136 with AEB. Pursuant to the mandate section 23010(d)(3) of BIL, NHTSA seeks comment on the tentative conclusions in this NPRM and the PRIA regarding the feasibility, benefits, and costs associated with installing AEB on all heavy vehicles, particularly class 3-6 vehicles and class 7 and 8 single-unit trucks. Further, as part of this rulemaking, the agency has considered whether proceeding with an AEB mandate for these vehicles meet the necessary provisions of the Safety Act, and will continue to do so in any final rule. Finally, although the agency notes that paragraph (d) concerns when the agency would be mandated to initiate a rulemaking to require AEB for these vehicles, that section does not affect the agency's discretionary ability to issue an FMVSS when it believes doing so is compelled by the Safety Act.

D. Multi-Stage Vehicle Manufacturers and Alterers

Heavy vehicles include many specialty or vocational vehicles such as work trucks, delivery box trucks, motorhomes, and school buses, and the complexities within this large variety of special purpose vehicles make installation of ESC and AEB more challenging. These specialized vehicles may be produced in lower volumes with customized features to suit the specific needs of individual customers and in multiple stages by several manufacturers. Concepts and terminology relating to the certification of vehicles built in two or more stages (multi-stage vehicles) and alters are described below.

In the typical situation, a vehicle built in two or more stages is one in which an incomplete vehicle, such as a chassis-cab or cut-away chassis built by one manufacturer, is completed by another manufacturer who adds work-performing or cargo-carrying components to the vehicle. For example, the incomplete vehicle may have a cab, but nothing built on the frame behind the cab. As completed, it may be a dry freight van (box truck), dump truck, tow truck, or plumber's truck. Like all vehicles that are manufactured for sale in the United States, a multi-stage vehicle must be certified as complying with all applicable Federal motor

vehicle safety standards (FMVSS) before the vehicle is introduced into interstate commerce.

Manufacturers involved in the production of multi-stage vehicles can include, in addition to the incomplete vehicle manufacturer, one or more intermediate manufacturers, who perform manufacturing operations on the incomplete vehicle after it has left the incomplete vehicle manufacturer's hands, and a final-stage manufacturer who completes the vehicle so that it is capable of performing its intended function.

In some circumstances, a manufacturer at an earlier stage in the chain of production for a multi-stage vehicle can certify that the vehicle will comply with one or more FMVSS when completed, provided specified conditions are met. This allows what is commonly referred to as "pass-through certification." As long as a subsequent manufacturer meets the conditions of the prior certification, that subsequent manufacturer may rely on this certification and pass it through when certifying the completed vehicle.

NHTSA requests comments on how this proposal may impact multi-stage manufacturers and alterers. The agency seeks comment on the specific challenges that would be faced by the manufacturers in certifying to the proposed AEB or ESC or in altering a vehicle certified to the proposed requirements, and on whether and how NHTSA could revise this proposal to minimize any disproportionate impact.

We believe that small-volume vehicle manufacturers are not likely to certify compliance with the proposed AEB and ESC requirements through their own testing but will use a combination of component testing by brake system suppliers and engineering judgment. Already much of the braking development work, including for ABS and ESC, for these small-volume vehicle manufacturers is done by brake suppliers. That is, small-volume manufacturers already must certify their vehicles to FMVSS Nos. 136, 105, and 121. NHTSA believes that small-volume manufacturers would certify to the proposed ESC and AEB requirements using the means they use now to certify to those braking requirements, which involves collaborating with their brake system suppliers, first and second stage manufacturers, etc. This NPRM would also provide one year after the last applicable date for manufacturer certification of compliance, in accordance with 49 CFR 571.8(b).

NHTSA's regulations governing vehicles manufactured in two or more stages at 49 CFR part 568 require

incomplete vehicle manufacturers to provide with each incomplete vehicle an incomplete vehicle document (IVD). This document details, with varying degrees of specificity, the types of future manufacturing contemplated by the incomplete vehicle manufacturer and must provide, for each applicable safety standard, one of the following three statements that a subsequent manufacturer can rely on when certifying compliance of the vehicle, as finally manufactured, to some or all of all applicable FMVSS.

First, the IVD may state, with respect to a particular safety standard, that the vehicle, when completed, will conform to the standard if no alterations are made in identified components of the incomplete vehicle. This representation, which is referred to as a "Type 1 statement," is most often made with respect to chassis-cabs, since a significant portion of the occupant compartment in incomplete vehicles of that type is already complete.

Second, the IVD may provide a statement of specific conditions of final manufacture under which the completed vehicle will conform to a particular standard or set of standards. This statement, which is referred to as a "Type 2 statement," is applicable in those instances in which the incomplete vehicle manufacturer has provided all or a portion of the equipment needed to comply with the standard, but subsequent manufacturing might be expected to change the vehicle such that it may not comply with the standard once finally manufactured. For example, the incomplete vehicle could be equipped with a brake system that would, in many instances, enable the vehicle to comply with the applicable brake standard once the vehicle was complete, but that would not enable it to comply if the completed vehicle's weight or center of gravity height were altered from those specified in the IVD.

Third, the IVD may identify those standards for which no representation of conformity is made because conformity with the standard is not substantially affected by the design of the incomplete vehicle. This is referred to as a "Type 3 statement." A statement of this kind could be made, for example, by a manufacturer of a stripped chassis who may be unable to make any representations about conformity to any crashworthiness standards if the incomplete vehicle does not contain an occupant compartment. When it issued the original set of regulations regarding certification of vehicles built in two or more stages, the agency indicated that it believed final-stage manufacturers would be able to rely on the

representations made in the IVDs when certifying the completed vehicle's compliance with all applicable FMVSS.

Although the final-stage manufacturer normally certifies the completed vehicle's compliance with all applicable FMVSS, this responsibility can be assumed by any other manufacturer in the production chain. To take on this responsibility, the other manufacturer must ensure that it is identified as the vehicle manufacturer on the certification label that is permanently affixed to the vehicle. The identified manufacturer also has legal responsibility to provide NHTSA and vehicle owners with notification of any defect related to motor vehicle safety or noncompliance with an FMVSS that is found to exist in the vehicle, and to remedy any such defect or noncompliance without charge to the vehicle's owner.

An altered vehicle is one that is completed and certified in accordance with the agency's regulations and then altered, other than by the addition, substitution, or removal of readily attachable components, such as mirrors or tire and rim assemblies, or by minor finishing operations such as painting, before the first retail sale of the vehicle, in such a manner as may affect the vehicle's compliance with one or more FMVSS or the validity of the vehicle's stated weight ratings or vehicle type classification. The person who performs such operations on a completed vehicle is referred to as a vehicle "alterer." An alterer must certify that the vehicle remains in compliance with all applicable FMVSS affected by the alteration.

NHTSA seeks comment on the impacts of this NPRM on multi-stage manufacturers and alterers and requests comments on the following questions.

- Are certain multi-stage or altered vehicles manufactured or altered in a manner that makes it impracticable to comply with this proposed rule? If so, please explain which vehicles and why it is impracticable.
- If an incomplete vehicle were equipped with sensors for AEB that could become obstructed by equipment added in later manufacturing steps, how should NHTSA apply an AEB requirement to that vehicle?
- Are there any changes needed to 49 CFR part 567 or part 568 to facilitate certification to the proposed requirements? If so, what would those changes be? Would a final-stage manufacturer be able to certify a vehicle based on the information provided by an intermediate or incomplete vehicle manufacturer, or is additional information needed in IVDs? If

additional information is needed, please describe the needed information.

- Are there any requirements in this proposal that ought not to apply to multi-stage vehicles or altered vehicles? Are there proposed requirements that should be lowered in stringency to better enable pass-through certification? Please provide details on those requirements and provide associated rationale.

- Would intermediate manufacturers, final-stage manufacturers, and alterers have sufficient information to identify when an impermissible change has been made? Please explain why or why not.

- Assuming there would be cases where it may not be practical to comply with the proposed requirements, are the existing exemption processes detailed in 49 CFR 555, “Temporary exemption from motor vehicle safety and bumper standards,” sufficient to accommodate unique vehicles, or should NHTSA explicitly consider applicability exclusions for certain multi-stage vehicles? If applicability exclusions are needed, please explain what they include and why the exclusion is needed. For example, should there be exclusions for vehicles with permanently installed work-performing equipment installed on the front of or extending past the front of the vehicle (e.g., auger trucks, bucket trucks, cable reel trucks, certain car carriers, etc.) or vehicles with a GVWR equal to or greater than 120,000 pounds (i.e., heavy haulers)?

VII. Proposed Performance Requirements

This NPRM proposes that all heavy vehicles, class 3–8, are subject to the same performance requirements such that the entire heavy vehicle fleet benefits from improvements in AEB technology. The proposed set of requirements would compel AEB technology to operate at its highest safety potential, while at the same time being objective and practicable. In order to establish these requirements, the agency considered the key aspects of the technology and how they would best be applied to address the safety problem. For example, requiring AEB systems to perform only at lower speeds may address a significant portion of the rear-end crash problem, but it would not address the rear-end crash fatalities that mostly occur at higher speeds. Thus, NHTSA is proposing that AEB systems must be capable of activating across a wide spectrum of speeds. Similarly, the agency is aware that some current AEB systems may occasionally cause unwarranted braking events, or “false activations,” which could lead to

unwanted consequences; we are thus proposing two test scenarios which vehicles must pass without false activation of the AEB system.

While creating the proposed performance requirements, NHTSA considered the capabilities and limitations of current AEB technologies. Using information from vehicle testing, this proposal includes test scenarios and parameters that the agency found to be within the potential of current production vehicles. This means that at least one vehicle model demonstrated the ability to avoid impacting a lead vehicle, represented by a vehicle test device, or that it so nearly avoided the impact that we expect that the additional development time allowed by this proposal would enable the required improvement in performance.

While certain requirements can be assessed without vehicle tests, a large portion of this proposal has performance requirements that are evaluated through vehicle tests. These tests, discussed in this section, simulate real-world scenarios and are run according to specified conditions and test parameters. NHTSA believes that these test scenarios will realistically evaluate how AEB systems perform while the vehicle is travelling at normal driving speeds.

Several of the vehicle test scenarios test involve multiple moving vehicles. In these test scenarios, the heavy vehicle being evaluated with AEB is referred to as the “subject vehicle.” Other vehicles involved in the test are represented by a vehicle test device. When a vehicle test device is used ahead of the subject vehicle in the same lane, in the path of the moving subject vehicle, it is referred to as a “lead vehicle.” When moving, a lead vehicle moves in the same direction as the subject vehicle. The speeds and relative motions of the subject vehicle and lead vehicle are choreographed in a variety of ways to represent the most common scenarios which lead to heavy vehicle rear-end crashes, and the test procedures measure whether the AEB system is able to avoid impacting the lead vehicle.

The other vehicle tests are two false activation scenarios. A false activation refers to an unwarranted brake activation by the AEB system when there is no object present in the path of the vehicle with which the vehicle would collide. These two test scenarios use objects, including VTDs and a steel trench plate, arranged in realistic ways in or near the travel path but without obstructing the path. In these scenarios, the subject vehicle and AEB system are required to move past these objects

without making a substantial automatic application of the service brakes.

This proposal also includes system requirements that are not accompanied by vehicle tests. Vehicles with AEB systems must mitigate collision at speeds beyond the those covered by the track testing, ensuring robustness of the system’s range of performance. The AEB system must include a forward collision warning (FCW) system that alerts the vehicle operator of an impending collision with a lead vehicle. Also, the system must indicate an AEB malfunction to the vehicle operator.

A. Proposed Requirements When Approaching a Lead Vehicle

1. Automatic Emergency Brake Application Requirements

The agency is proposing that vehicles be required to have a forward collision warning system and an automatic emergency braking system that are able to function continuously to apply the service brakes automatically when a collision with a vehicle or object is imminent. The system must operate when the vehicle is traveling at any forward speed greater than 10 km/h (6.2 mph). This is a general system equipment requirement with no associated performance test. No specific speed reduction or crash avoidance would be required. However, this requirement is included to ensure that AEB systems are able to function at all times, including at speeds above those NHTSA is proposing as part of the performance test requirements.

This requirement complements the performance requirements in several ways. While the track testing described below provides a representation of real-world crash events, no amount of track testing can fully duplicate the real world. This requirement ensures that the AEB’s perception system identifies and automatically detects a vehicle, warns the driver, and applies braking when a collision is imminent. This requirement also ensures that AEB systems continue to function in environments that are not as controlled as the test track environment. For example, unlike during track testing, other vehicles, road users, and buildings may be present within the view of the sensors. Finally, track test equipment limitations and safety considerations limit the ability to test at high speeds. However, crashes still occur at higher travel speeds. Although generally the number of rear-end crashes decreases at higher travel speeds, these high-speed crashes are the ones that more often result in fatalities, as shown in Figure 3. The automatic braking requirement

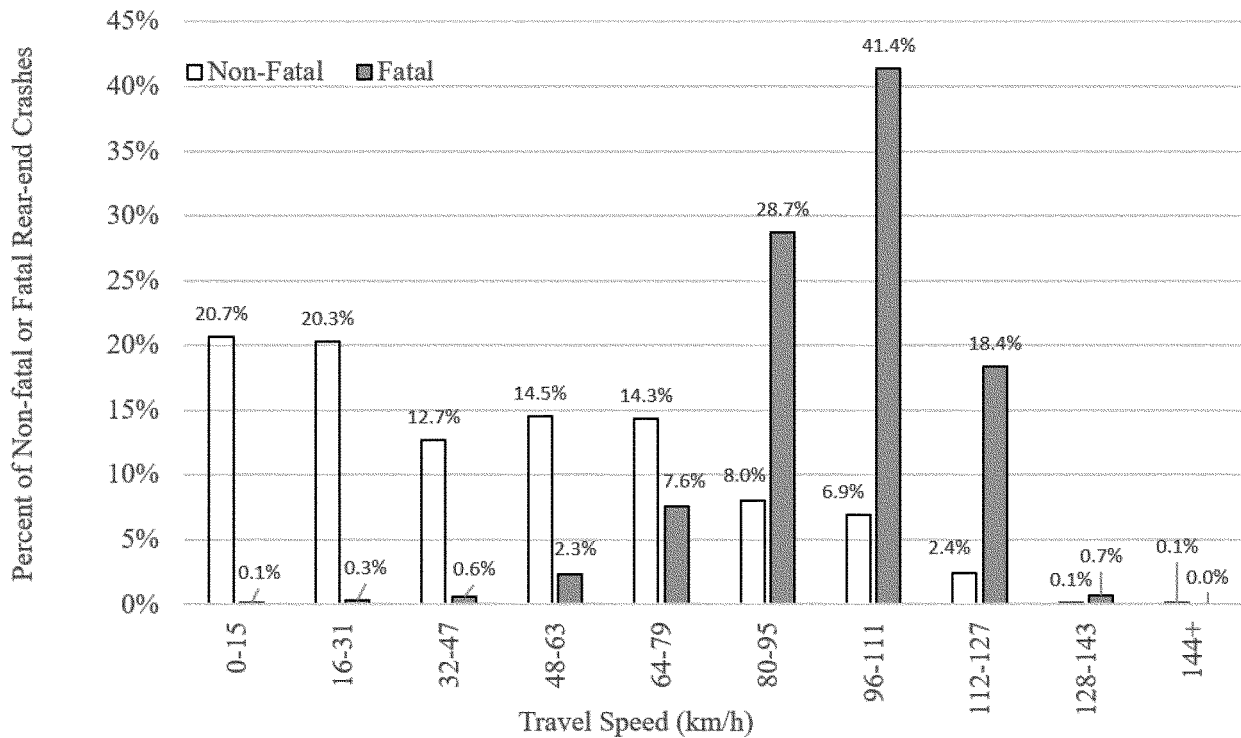
ensures that AEB systems continue to provide safety benefits at speeds above those for which a track-testing requirement is currently not practicable,

either because of performance capabilities or track test limitations. Where a performance standard is not practical or does not sufficiently meet

the need for safety, NHTSA may specify an equipment requirement as part of an FMVSS.¹⁰⁵

BILLING CODE 4910-59-P

Figure 3. Distribution of Fatal and Non-fatal Rear-end Crashes by Travel Speed of the Striking Heavy Vehicle



BILLING CODE 4910-59-C

These requirements would not apply at speeds below 10 km/h. NHTSA believes that there are real-world cases where heavy vehicles are being maneuvered at low-speed and intentionally in proximity of other objects, and AEB intervention could be in conflict with the vehicle operator's intention. For example, if an operator intends to drive towards the rear of another vehicle in a parking lot in order to park the vehicle near the other, automatic braking during this parking maneuver would be unwanted. Publicly available literature from at least one AEB manufacturer shows that some or all of the AEB system functions are not available below 15 mph (24 km/h), indicating that current manufacturers may have similar considerations about low-speed AEB functionality.¹⁰⁶ NHTSA tentatively concludes that a minimum operational speed of 10 km/

h would allow these types of low-speed maneuvers. This proposal would not require AEB systems to be disabled below 10 km/h.

Enforcement of such a performance requirement can be based on evidence obtained by engineering investigation that might include a post-crash investigation and/or system design investigation. For instance, if a crash occurs in which the vehicle under examination has collided with a lead vehicle, NHTSA could investigate the details surrounding the crash to determine if a warning was provided and the automatic emergency braking system applied the service brakes automatically. In appropriate cases in the context of an enforcement proceeding, NHTSA could also use its information-gathering authority to obtain information from a manufacturer on the basis for its certification that its

FCW and AEB systems meet this proposed requirement.

2. Forward Collision Warning Requirement

NHTSA is proposing that AEB-equipped vehicles must have forward collision warning functionality that provides a warning to the vehicle operator if a forward collision with a lead vehicle is imminent. The proposal defines FCW as an auditory and visual warning provided to the vehicle operator that is designed to elicit an immediate crash avoidance response by the vehicle operator. The system must operate when the vehicle is traveling at any forward speed greater than 10 km/h (6.2 mph).

While some vehicles are equipped with alerts that precede the FCW and research has examined their use, NHTSA's proposal is not specifying an advisory or preliminary alert that would

¹⁰⁵ See 72 FR 17235, 17299 (Apr. 6, 2007) (discussing the understeer requirement in FMVSS No. 126); *Chrysler Corp. v. DOT*, 515 F.2d 1053 (6th Cir. 1975) (holding that NHTSA's specification of dimensional requirements for rectangular

headlamps constitutes an objective performance standard under the Safety Act).

¹⁰⁶ SD-61-4963 Bendix Wingman Fusion Driver Assistance System Brochure, available at https://www.bendix.com/media/documents/technical_documents/product_literature/bulletins/SD-61-4963_US_005.pdf (last accessed June 21, 2023).

precede the FCW. Lerner, Kotwal, Lyons, and Gardner-Bonneau (1996b) differentiated between an imminent alert, which “requires an immediate corrective action” and a cautionary alert, which “alerts the operator to a situation which requires immediate attention and may require a corrective action.”¹⁰⁷ A 2004 NHTSA report titled “Safety Vehicles using adaptive Interface Technology (Task 9): A Literature Review of Safety Warning Countermeasures,” examined the question of whether to include a cautionary alert level in an FCW system. Although the two FCW algorithms in the Automotive Collision Avoidance System Field Operational Test algorithms included a cautionary phase, the Collision Avoidance Metrics Partnership (1999) program recommended that only single (imminent) stage warnings be used.

Unlike the FCW required as part of the track testing, NHTSA is not specifically requiring that FCW presentation occur prior to the onset of braking in instances that are not tested on the track. This is to provide manufacturers with the flexibility to design systems that are most appropriate for the complexities of various crash situations, some of which may provide very little time for a driver to take action to avoid a crash. A requirement that FCW occur prior to automatic braking could suppress the automatic braking function in some actual driving scenarios, such as a lead vehicle cutting immediately in front of an AEB-equipped vehicle, where immediate automatic braking should not wait for a driver warning.

i. FCW Modalities

Since approximately 1994, NHTSA has completed research and published related reports for more than 35 research efforts related to crash avoidance warnings or forward collision warnings. These research efforts, along with other published research and existing ISO standards (15623 and 22839) and SAE International (SAE) documents (J3029 and J2400) provide a basis for the proposed requirements.¹⁰⁸

¹⁰⁷ Lerner, Kotwal, Lyons, and Gardner-Bonneau (1996). Preliminary Human Factors Guidelines for Crash Avoidance Warning Devices. DOT HS 808 342. National Highway Traffic Safety Administration.

¹⁰⁸ ISO 15623—Forward vehicle collision warning systems—Performance requirements and test procedures; ISO 22839—Forward vehicle collision mitigation systems—Operation, performance, and verification requirements (applies to light and heavy vehicles); SAE J3029: Forward Collision Warning and Mitigation Vehicle Test Procedure and Minimum Performance Requirements—Truck and Bus (2015–10; WIP

NHTSA NCAP and Euro NCAP information relating to FCW was also considered. Since model year 2011, the agency has included FCW as a recommended technology in NCAP and identifies to consumers which light vehicles have FCW systems that meet NCAP’s performance tests. NHTSA’s March 2022 request for comments notice on proposed changes to NCAP sought comment on which FCW modalities or modality combinations should be necessary to receive NHTSA’s NCAP recommendation.¹⁰⁹ Commenters generally supported the use of a multimodal FCW strategy. The Alliance for Automotive Innovation and Intel both advocated allowing credit for any effective FCW signal type. Multiple commenters supported allowing NCAP credit for FCW having either auditory or haptic signals. BMW and Stellantis supported use of FCW auditory or haptic signals in addition to a visual signal. NTSB and Advocates for Highway and Auto Safety recommended that NHTSA conduct research examining the human-machine interface and examine the effectiveness of haptic warning signals presented in different locations (e.g., seat belt, seat pan, brake pulse). Dynamic Research, Inc. advocated allowing NCAP credit for implementation of a FCW haptic brake pulse, while ZF supported use of a haptic signal presented via the seat belt. Bosch warned that use of a haptic signal presented via the steering wheel for lane keeping or blind spot warning and FCW should be avoided as it may confuse the driver. The Alliance for Automotive Innovation raised the potential benefits of standardizing the warning characteristics to improve effectiveness as individuals move from vehicle to vehicle.

All current U.S. vehicle models with FCW systems appear to provide auditory and visual FCW signals, while only a few manufacturers also provide a haptic signal (e.g., seat pan vibration or a brake pulse). Visual FCW signals in current models consist of either a symbol or word (e.g., “BRAKE!”), presented on the instrument panel or head-up display, and most are red.

For this NPRM, NHTSA proposes that the FCW be presented to the vehicle operator via at least two sensory modalities, auditory and visual. Use of a multimodal warning ensures that most drivers will perceive the warning as soon as its presented, allowing the most

currently); SAE J2400 2003–08 (Information report). Human Factors in Forward Collision Warning Systems: Operating Characteristics and User Interface Requirements.

¹⁰⁹ 87 FR 13452 (Mar. 9, 2022).

time for the driver to take evasive action to avoid a crash. As a vehicle operator who is not looking toward the location of a visual warning at the time it is presented may not see it, NHTSA’s proposal views the auditory warning signal as the primary modality and the visual signal as a secondary, confirmatory indication that explains to the driver what the warning was intended to communicate (i.e., a forward crash-imminent situation). However, because hearing-impaired drivers may not perceive an FCW auditory signal, a visual signal is important for presenting the FCW to hearing-impaired individuals.

A multimodal FCW strategy is consistent with recommendations of multiple U.S. and international organizations including ISO, SAE International, and Euro NCAP. ISO recommends a multimodal approach in both ISO 15623, “Forward vehicle collision warning systems—Performance requirements and test procedures” and ISO 22839, “Forward vehicle collision mitigation systems—Operation, performance, and verification requirements” (which applies to light and heavy vehicles). SAE addresses the topic of a multimodal FCW strategy in both information report J2400 2003–08, “Human Factors in Forward Collision Warning Systems: Operating Characteristics and User Interface Requirements,” and J3029, “Forward Collision Warning and Mitigation Vehicle Test Procedure and Minimum Performance Requirements—Truck and Bus (2015–10; Work in Progress currently).” Most of these recommendations specify an FCW consisting of auditory and visual signals, while ISO 15623 specifies that an FCW include a visual warning, as well as an auditory or haptic signal.

ii. FCW Auditory Signal Characteristics

The proposed FCW auditory signal would be the primary means used to direct the vehicle operator’s attention to the forward roadway and should be designed to be conspicuous to quickly capture the driver’s attention, convey a high level of urgency, and be discriminable from other auditory signals presented within the vehicle.¹¹⁰ Some specifications from NHTSA’s “Human Factors Design Guidance For Driver—Vehicle Interfaces” are proposed as forward collision warning specifications to meet these criteria.¹¹¹

¹¹⁰ DOT HS 810 697, Crash Warning System Interfaces: Human Factors Insights and Lessons Learned—Final Report.

¹¹¹ Campbell, J.L., Brown, J.L., Graving, J.S., Richard, C.M., Lichty, M.G., Sanquist, T., . . . &

As the FCW auditory signal would be the primary warning mode, this signal would not be permitted to be disabled.

To be conspicuous and quickly capture the driver's attention, the FCW auditory signal must ensure that the driver will readily detect the warning under typical driving conditions (*e.g.*, ambient noise). The auditory signal must be clearly perceptible and quickly focus the driver's attention on the forward roadway. To ensure that the FCW auditory signal is conspicuous to the vehicle operator, any in-vehicle system or device that produces sound that may conflict with the FCW presentation would be required to be muted, or substantially reduced in volume, during the presentation of the FCW.¹¹² In order for the warning to be detectable, a minimum intensity of 15–30 dB above the masked threshold (MT) should be used.^{113 114 115 116} Because sound levels inside a vehicle can vary based on any number of different factors, such as vehicle speed and pavement condition, NHTSA is not proposing a specific sound level at this time, but requests comments on suitable and reasonable approaches for ensuring that the FCW auditory signal can be detected by drivers under typical driving conditions.

For communicating urgency and ensuring comprehension of auditory messages, fundamental frequency, the

Morgan, J.L. (2016, December). Human factors design guidance for driver-vehicle interfaces (Report No. DOT HS 812 360). Washington, DC: National Highway Traffic Safety Administration.

¹¹² DOT HS 810 697, Crash Warning System Interfaces: Human Factors Insights and Lessons Learned—Final Report.

¹¹³ Campbell, J.L., Brown, J.L., Graving, J.S., Richard, C.M., Lichty, M.G., Sanquist, T., . . . & Morgan, J.L. (2016, December). Human factors design guidance for driver-vehicle interfaces (Report No. DOT HS 812 360). Washington, DC: National Highway Traffic Safety Administration. "The amplitude of auditory signals is in the range of 10–30 dB above the masked threshold (MT), with a recommended minimum level of 15 dB above the MT (*e.g.*, [1, 2, 3]). Alternatively, the signal is at least 15 dB above the ambient noise [3]."

¹¹⁴ Campbell, J.L., Richman, J.B., Carney, C., and Lee, J.D. (2002). In-vehicle display icons and other information elements. Task F: Final in-vehicle symbol guidelines (FHWA-RD-03-065). Washington, DC: Federal Highway Administration.

¹¹⁵ International Organization for Standardization. (2005). Road vehicles—Ergonomic aspects of in-vehicle presentation for transport information and control systems—Warning systems (ISO/TR 16532). Geneva, Switzerland: International Organization of Standards.

¹¹⁶ MIL-STD-1472F. (1998). Human engineering. Washington, DC: Department of Defense.

lowest frequency in a periodic signal, is a key design parameter.¹¹⁷ Research has shown that auditory warning signals with a high fundamental frequency of at least 800 Hz more effectively communicate urgency.^{118 119} Greater perceived urgency of a warning is associated with faster reaction times, which would mean a quicker crash avoidance response by the driver.^{120 121 122} Therefore, NHTSA proposes that the FCW auditory signal's fundamental frequency must be at least 800 Hz.¹²³ Additional proposed FCW auditory signal requirements that support communication of the urgency of the situation include a duty cycle,¹²⁴ or percentage of time sound is present, of 0.25–0.95, and faster auditory signals with a tempo in the range of 6–12 pulses per second to be perceived as urgent and elicit rapid driver response.¹²⁵

¹¹⁷ Campbell, J.L., Brown, J.L., Graving, J.S., Richard, C.M., Lichty, M.G., Sanquist, T., . . . & Morgan, J.L. (2016, December). Human factors design guidance for driver-vehicle interfaces (Report No. DOT HS 812 360). Washington, DC: National Highway Traffic Safety Administration.

¹¹⁸ Campbell, J.L., Brown, J.L., Graving, J.S., Richard, C.M., Lichty, M.G., Sanquist, T., . . . & Morgan, J.L. (2016, December). Human factors design guidance for driver-vehicle interfaces (Report No. DOT HS 812 360). Washington, DC: National Highway Traffic Safety Administration.

¹¹⁹ Guillaume, A., Drake, C., Rivenez, M., Pellieux, L., & Chastres, V. (2002). Perception of urgency and alarm design. Proceedings of the 8th International Conference on Auditory Display.

¹²⁰ Campbell, J.L., Brown, J.L., Graving, J.S., Richard, C.M., Lichty, M.G., Sanquist, T., . . . & Morgan, J.L. (2016, December). Human factors design guidance for driver-vehicle interfaces (Report No. DOT HS 812 360). Washington, DC: National Highway Traffic Safety Administration.

¹²¹ Campbell, J.L., Richman, J.B., Carney, C., & Lee, J.D. (2004). In-vehicle display icons and other information elements, Volume I: Guidelines (Report No. FHWA-RD-03-065). Washington, DC: Federal Highway Administration. Available at www.fhwa.dot.gov/publications/research/safety/03065/index.cfm.

¹²² Sued, C., Susini, P., & McAdams, S. (2008). Evaluating warning sound urgency with reaction times. *Journal of Experimental Psychology: Applied*, 14(3), 201–212.

¹²³ Campbell, J.L., Brown, J.L., Graving, J.S., Richard, C.M., Lichty, M.G., Sanquist, T., . . . & Morgan, J.L. (2016, December). Human factors design guidance for driver-vehicle interfaces (Report No. DOT HS 812 360). Washington, DC: National Highway Traffic Safety Administration.

¹²⁴ Duty cycle, or percentage of time sound is present, is equal to the total pulse duration divided by the sum of the total pulse duration and the sum of the inter-pulse intervals.

¹²⁵ Gonzalez, C., Lewis, B.A., Roberts, D.M., Pratt, S.M., & Baldwin, C.L. (2012). Perceived urgency and annoyance of auditory alerts in a driving context. Proceedings of the Human Factors and

The FCW auditory signal needs to be easily discriminable from other auditory signals in the vehicle. Therefore, vehicles equipped with more than one crash warning type should use FCW auditory signals that are distinguishable from other warnings.¹²⁶ This proposed requirement is consistent with ISO 15623 5.5.2.6.¹²⁷ Standardization of FCW auditory signals would likely be beneficial in ensuring driver comprehension of the warning condition across vehicle makes and models. NHTSA invites comments on the feasibility of specifying a common FCW auditory signal. While this proposal contains no specific requirements ensuring that the FCW auditory signal is distinguishable from other auditory warnings in the vehicles, NHTSA believes that industry is likely to consider this in their vehicle designs as part of their due diligence and safety assurance.

iii. FCW Visual Signal Characteristics

Current FCWs in the U.S. vehicle fleet use a mix of symbols and words as a visual forward collision warning. Use of a common FCW symbol across makes and models would help to improve consumer understanding of the meaning of FCWs and encourage more appropriate driver responses in forward crash-imminent situations.

ISO 7000, "Graphical symbols for use on equipment—Registered symbols"¹²⁸ and the SAE J2400 (2003–08)¹²⁹ information report, "Human Factors in Forward Collision Warning Systems: Operating Characteristics and User Interface Requirements," contain recommended FCW symbols shown in Figure 4. These symbols are similar as they both communicate a forward impact, while the ISO symbol portrays the forward impact as being specifically with another vehicle.

Ergonomics Society Annual Meeting, 56(1), 1684–1687.



¹²⁶ DOT HS 810 697, Crash Warning System Interfaces: Human Factors Insights and Lessons Learned—Final Report.

¹²⁷ ISO 15623—Forward vehicle collision warning systems—Performance requirements and test procedures.

¹²⁸ ISO 7000—Graphical symbols for use on equipment—Registered symbols.

¹²⁹ SAE J2400 (info. report, not RP or standard), 2003–08. Human Factors in Forward Collision Warning Systems: Operating Characteristics and User Interface Requirements.

Figure 4: Industry Standard Visual Warning Symbols

Organization	Symbol
ISO 7000 – 2681: “Forward collision warning system (FCWS)”	
SAE J2400 (2003-08)	

Because the symbol in SAE J2400 relates the idea of a frontal crash without depicting a particular forward object, this symbol could visually represent and apply to scenarios when approaching a lead vehicle but also scenarios approaching pedestrians or other objects which may be relevant to AEB systems. To prevent different vehicle types from having different FCW alerts, NHTSA proposes the same FCW characteristics and reasoning in both the light vehicle NPRM and this NPRM. Therefore, NHTSA has taken account of considerations for pedestrian scenarios, because the light vehicle proposed rule contains a requirement that FCW and AEB systems function in the case of an imminent collision with a pedestrian. NHTSA finds the SAE J2400 symbol to be most applicable to the FCW requirements in this proposal. NHTSA proposes that FCW visual signals using a symbol must use the SAE J2400 (2003–08) symbol.

Some other vehicle models employ a word-based visual warning, such as “STOP!” or “BRAKE!” SAE J2400 also includes a word-based visual warning recommendation consisting of the word, “WARNING.” A well-designed warning should instruct people about what to do or what not to do to avoid a hazard. The potential benefit of a word-based warning for FCW is that it can communicate to the driver an instruction about what to do to avoid or mitigate the crash, thereby expediting the driver’s initiation of an appropriate crash avoidance response. However, Consumer Reports noted in its online “Guide to forward collision warning” that for some models, visual warning word use was found to be confusing to some drivers surveyed.¹³⁰ Respondents reported a common complaint that “their vehicle would issue a visual

“BRAKE” alert on the dash, but it wouldn’t bring the car to a stop . . .” This confusion as to whether the word is meant to communicate what the driver should do or what the vehicle is doing may stem from drivers assuming that any information presented within the instrument panel area is communicating something relating to the vehicle’s condition or state, as symbols presented in that location generally do. Presenting a word-based warning in a higher location away from the instrument panel, as recommended by SAE J2400, may be interpreted more accurately by drivers as well as increase the likelihood of FCW visual warning perception by drivers.¹³¹ NHTSA requests comments on this issue and any available objective research data that relates to the effectiveness of word-based FCW visual signals in instrument panel versus head-up display locations. NHTSA also requests comments regarding whether permitting word-based warnings that are customizable in terms of language settings is necessary to ensure warning comprehension by all drivers.

One plausible benefit of a word-based visual warning is that some word choices that instruct the driver to initiate a particular action, such as “STOP!,” would be fully applicable to lead vehicles and other obstacles or pedestrians, whereas a symbol containing an image of a lead vehicle would not be directly applicable to other crash-imminent scenarios. Although this NPRM does not propose requiring pedestrian AEB, NHTSA believes the warning should not be directed specifically at lead vehicle AEB. As the response desired from the driver, to apply the brakes, the content of the visual warning need not be specific to the type of forward obstacle, but needs simply to communicate the

idea of an impending forward crash. NHTSA requests comments and any available research data regarding the use and effectiveness of obstacle-specific symbols and word-based visual warnings and the relative effectiveness of word-based visual warnings compared to symbols.

While many current vehicle models present a visual FCW signal within the instrument panel, drawing a driver’s eyes downward away from the roadway to the instrument panel during a forward crash-imminent situation is likely to have a negative impact on the effectiveness of the driver’s response to the FCW. Research indicates that a visual FCW signal presented in the instrument panel can slow driver response.¹³² The research findings support the SAE J2400 recommendation advising against the use of instrument panel based visual FCWs.¹³³ SAE J2400 (2003–08) states:

Visual warnings shall be located within a 10-degree cone of the driver’s line of sight. Qualitatively, this generally implies a top-of-dashboard or head-up display location. A conventional dashboard location shall not be used for the visual warning. The rationale for this is based on the possibility that an instrument panel-based visual warning may distract the driver from the hazard ahead.

This FCW visual signal location guidance is also consistent with ISO 15623, which states that the FCW visual signal shall be presented in the “main glance direction.” Current vehicles equipped with head-up displays have the ability to present a FCW visual signal within the driver’s forward field of view. Furthermore, some GM vehicles not equipped with head-up displays currently have the ability to present a FCW visual signal reflected onto the

¹³⁰ “Guide to forward collision warning: How FCW helps drivers avoid accidents.” Consumer Reports. <https://www.consumerreports.org/car-safety/forward-collision-warning-guide/> (last accessed April 2022).

¹³¹ SAE J2400 2003–08 (Information report). Human Factors in Forward Collision Warning Systems: Operating Characteristics and User Interface Requirements.

¹³² “Evaluation of Forward Collision Warning System Visual Alert Candidates and SAE J2400,” SAE Paper No. 2009–01–0547, <https://trid.trb.org/view/1430473>.

¹³³ SAE J2400 2003–08 (Information report). Human Factors in Forward Collision Warning Systems: Operating Characteristics and User Interface Requirements.

windshield in the driver's forward line-of-sight. Despite the FCW visual signal being considered secondary to the auditory signal, NHTSA agrees that the effectiveness of a FCW visual signal would be maximized for both hearing and hearing-impaired drivers if the signal is presented at a location within the driver's forward field of view above the instrument panel. To ensure maximum conspicuity of the FCW visual signal (be it word-based or a symbol), NHTSA proposes that it be presented within a 10-degree cone of the driver's line of sight. The line of sight would be based on the forward-looking eye midpoint (M_f) as described in FMVSS No. 111, "Rear visibility," S14.1.5.

The FCW visual signal would be required to be red as is generally used to communicate a dangerous condition and as recommended by ISO 15623 and SAE J2400 (2003-08). Because the FCW visual signal is intended to be confirmatory for the majority of drivers, the symbol would be required to be steady burning.

iv. FCW Haptic Signal Discussion

NHTSA considered also specifying a complementary haptic FCW signal as part of the proposed FCW specifications. Currently, only a portion of U.S. vehicles equipped with forward collision warning include a haptic warning component. For example, General Motors vehicles equipped with the haptic warning feature can present either a haptic seat pulse (vibration) or auditory warning based on a driver-selectable setting. Some other vehicle manufacturers, such as Stellantis and Audi, use a brake pulse, or brief deceleration of the vehicle, as part of the FCW. Some Hyundai/Kia models incorporate a haptic steering wheel vibration into the FCW. As haptic steering wheel signals are used by many lane keeping features of current vehicles to encourage drivers to steer the vehicle back toward the center of the lane, providing a haptic FCW signal via the steering wheel may result in driver confusion and be less effective in eliciting a timely and beneficial driver response.

ISO 15623 allows a haptic signal as an alternative to an auditory signal.¹³⁴ It permits a haptic brake pulse warning with a duration of less than 1 second when the driver is not already applying the brakes. ISO 15623 also allows

actuation of a seat belt pretensioner as a haptic FCW signal.

Some research has shown that haptic FCW signals can improve crash avoidance response. NHTSA research on "Driver-Vehicle Interfaces for Advanced Crash Warning Systems" found that a haptic signal delivered via the seat belt pretensioner would be beneficial in eliciting an effective crash avoidance response from the vehicle operator. The research showed for FCWs issued at 2.1-s time to collision (TTC) that seat belt pretensioner-based FCW signals elicited the most effective crash avoidance performance.¹³⁵ Haptic FCW signals led to faster driver response times than did auditory tonal signals. FCW modality had a significant effect on participant reaction times and on the speed reductions resulting from participants' avoidance maneuvers (regardless of whether a collision ultimately occurred). Brake pulsing or seat belt tensioning were found to be effective for returning distracted drivers' attention to the forward roadway and eliciting desirable vehicle control responses; seat vibration similar to a virtual rumble strip (vibrating the front of the seat) was not found to rapidly and reliably return driver attention to the forward roadway within the research. Similarly, research by Aust (2014) found that "combining sound with seat belt jerks or a brake pulse leads to significantly faster response times than combining the sound with a visual warning" and stated, "these results suggest that future FCWs should include a haptic modality to improve driver performance."¹³⁶ Aust (2014) also found use of a haptic seat belt FCW signal to be slightly more effective (100 ms faster driver response) than a haptic brake pulse in one of two scenarios (response times were equal in a second scenario). Despite these promising research results associated with use of a seat belt based FCW haptic component, NHTSA was unable to identify any current U.S. vehicle models equipped with a haptic seat belt FCW component.

Other studies found FCW haptic brake pulses effective at getting a driver's attention and that drivers are more likely to detect a brake pulse if it produces a sensation of "jerk" or "self-

motion."¹³⁷ Kolke reported reaction times shortened by one-third (approximately 0.3 s, non-significant) when a brake pulse was added to an audio-visual warning.¹³⁹ One usability drawback is that drivers tend to report that vehicle brake pulses are too disruptive, which can lead to unfavorable annoyance.¹⁴⁰

Presentation of a FCW haptic signal via the driver's seat pan has also been investigated. NHTSA's "Human factors design guidance for driver-vehicle interfaces" contains best practice information for implementation of haptic displays, including "Generating a Detectable Signal in a Vibrotactile Seat."¹⁴¹ In a large-scale field test of FCW and LDW systems on model year 2013 Chevrolet and Cadillac vehicles, the University of Michigan Transportation Research Institute and GM found that GM's Safety Alert Seat, which provides haptic seat vibration pulses, increases driver acceptance of both FCW and LDW systems compared to auditory signals.¹⁴²

NHTSA's March 2022 request for comments notice on the NCAP sought comment on which FCW modalities or modality combinations should receive credit and asked specific questions regarding haptic signals and whether certain types should be excluded from consideration (*e.g.*, because they may be such a nuisance to drivers that they are more likely to disable the FCW or AEB system). A preliminary review of comments on that notice found multiple comments highlighting a need for more

¹³⁷ Lee, J.D., McGehee, D.V., Brown, T.L., & Nakamoto, J. (2012). Driver sensitivity to brake pulse duration and magnitude. *Ergonomics*, 50(6), 828-836.

¹³⁸ Brown, S.B., Lee, S.E., Perez, M.A., Doerzaph, Z.R., Neale, V.L., & Dingus, T.A. (2005). Effects of haptic brake pulse warnings on driver behavior during an intersection approach. *Proceedings of the Human Factors and Ergonomics Society 49th Annual Meeting*, 1892-1896.

¹³⁹ Kolke, Gauss, and Silvestro (2012). Accident reduction through emergency braking systems in passenger cars. Presentation at the 8th ADAC/BAST-Symposium "Driving Safely in Europe." October 5, 2012, Workshop B.

¹⁴⁰ Campbell, J.L., Brown, J.L., Graving, J.S., Richard, C.M., Lichty, M.G., Sanquist, T., . . . & Morgan, J.L. (2016, December). Human factors design guidance for driver-vehicle interfaces (Report No. DOT HS 812 360). Washington, DC: National Highway Traffic Safety Administration.

¹⁴¹ Campbell, J.L., Brown, J.L., Graving, J.S., Richard, C.M., Lichty, M.G., Sanquist, T., . . . & Morgan, J.L. (2016, December). Human factors design guidance for driver-vehicle interfaces (Report No. DOT HS 812 360). Washington, DC: National Highway Traffic Safety Administration.

¹⁴² Flannagan, C., LeBlanc, D., Bogard, S., Nobukawa, K., Narayanaswamy, P., Leslie, A., Kiefer, R., Marchione, M., Beck, C., and Lobes, K. (2016, February). Large-scale field test of forward collision alert and lane departure warning systems (Report No. DOT HS 812 247). Washington, DC: National Highway Traffic Safety Administration.

¹³⁴ ISO 15623—Forward vehicle collision warning systems—Performance requirements and test procedures.

¹³⁵ Lerner, N., Singer, J., Huey, R., Brown, T., Marshall, D., Chrysler, S., . . . & Chiang, D.P. (2015, November). Driver-vehicle interfaces for advanced crash warning systems: Research on evaluation methods and warning signals. (Report No. DOT HS 812 208). Washington, DC: National Highway Traffic Safety Administration.

¹³⁶ Aust, M. (2014) Effects of Haptic Versus Visual Modalities When Combined With Sound in Forward Collision Warnings. *Driving Simulation Conference 2014*, Paper number 36. Paris, France, September 4-5, 2014.

research relating to FCW signals. The National Transportation Safety Board highlighted a need for additional information regarding haptic signals presented in different locations stating “[w]ithout examining the efficacy of different means of providing haptic alerts and defining appropriate, research-supported implementations, a prudent approach would give credit only for audible unimodal alerts or for bi-modal alerts that include audible alerts.” Rivian stated “[t]he agency should award credit to systems that provide both audible and haptic alerts and provide the option to turn either of them OFF based on driver preference. These audible or haptic alerts should be in sync with providing a visual alert of an impending collision. The agency should recommend the decibel level and the haptic feedback location and type as a baseline and based on research on reducing nuisance to the driver.”

Given the lack of consensus within available research as to the best location for a FCW haptic signal (seat belt, seat pan, steering wheel, or brake pulse), and NHTSA’s ongoing review of comments submitted in response to the March 2022 request for comments, NHTSA is not at this time proposing to require a haptic FCW component, but invites comment on whether requiring FCW to contain a haptic component presented via any location may increase FCW effectiveness or whether a FCW haptic signal presented in only one specific, standardized location should be allowed.

While the FCW auditory signal is envisioned as being the primary means of warning the driver, providing a haptic FCW signal that would complement or supplant the auditory warning signal would likely improve FCW perception for hearing-impaired drivers. Some drivers also may prefer an alternative modality to auditory warnings (e.g., due to annoyance caused by the auditory warning). However, the degree of additional benefit that may be accrued by requiring a haptic FCW signal in addition to a well-designed auditory and visual FCW that meets the specifications proposed is not known.

A haptic FCW signal, to be effective, would necessarily require the driver to be in physical contact with the vehicle component through which the haptic signal is presented in order to perceive the warning. For example, if the driver is not wearing a seat belt, a haptic FCW signal presented via the seat belt would

not be effectively received. A seat pan based haptic FCW signal would be unlikely to have such a non-contact issue. NHTSA is interested in research data documenting the comparison of a compliant auditory-visual FCW to that same FCW with an added haptic component. NHTSA also welcomes any objective data documenting the relative effectiveness of different haptic signal presentation locations for FCW use.

3. Performance Test Requirements

This NPRM would require that, when approaching a lead vehicle during testing, the subject vehicle must provide a forward collision warning and subsequently apply the brakes to avoid a collision. This performance requirement is conducted under a defined set of conditions, parameters (e.g., relative vehicle speeds and distances), and test procedures.

For all vehicle tests where the subject vehicle approaches a lead vehicle, NHTSA is proposing that the minimum performance requirement is complete avoidance of the lead vehicle. NHTSA chose the performance criterion of collision avoidance because it maximizes the safety benefits of the rule as compared to a metric that might permit a reduced speed collision. NHTSA has tentatively concluded that a no-contact criterion for the performance test requirements is practicable to achieve, consistent with the need for safety, and may be necessary to ensure test repeatability.

NHTSA also seeks comment on the potential consequences if vehicle contact were allowed during testing. First, NHTSA seeks comment on how allowing contact during testing would affect the safety benefits of AEB systems. Second, NHTSA seeks comment on whether allowing contact during testing would create additional testing burdens. Specifically, NHTSA is concerned that any performance test requirement that allows for vehicle contact not resulting in immediate test failure could result in the non-repeatability of testing without expensive or time-consuming interruptions to testing, and seeks comment on this concern. For instance, if a test vehicle were to strike the lead vehicle test device, even at a low speed, sensors on the vehicle could become misaligned or the vehicle test device may be damaged, including in ways that are not immediately observable. For example, damage to the test device

might affect the radar cross section that requires a long verification procedure to discover.

4. Performance Test Scenarios

NHTSA is proposing three track test scenarios to evaluate AEB performance. The test scenarios have the subject vehicle travelling toward a lead vehicle which is ahead in the same lane.

However, the lead vehicle may be either stopped, moving at a constant but slower speed, or decelerating to a stop.

These three tests were chosen because they represent the three most common pre-crash scenarios involving a lead vehicle. A NHTSA research study of heavy vehicles comprising the striking vehicle in rear-end crashes in the United States determined that four pre-crash scenarios exist in data of both fatal and non-fatal crashes.¹⁴³ These four scenarios include the three listed above, and also a “cut-in” case in which a lead vehicle changed lanes or merged into the path of the heavy vehicle just prior to the crash. The cut-in scenario was excluded from the test scenarios for this proposal because the research study shows that it was much less likely to occur than the other three scenarios.¹⁴⁴

i. Stopped Lead Vehicle

This test recreates a roadway scenario where the subject vehicle encounters a lead vehicle which is stopped ahead in the same lane. Figure 5 shows the basic setup for the stopped lead vehicle scenario. The subject vehicle is driven toward the stationary lead vehicle at a constant speed, and the accelerator is only released if a forward collision warning is issued. The test ends when the subject vehicle either automatically stops without impact, or proceeds to strike the lead vehicle.

NHTSA proposes testing under two conditions for the subject vehicle: testing without any manual brake application (to test the CIB component) and testing with manual brake application (to ensure that the driver’s application of the brake pedal does not inhibit the functionality of the AEB system). Testing with no brake application simulates a driver who does not intervene in response to an FCW alert prior to a crash. Testing with brake application simulates a driver who applies the brakes, but the manual brake application is insufficient to prevent a collision.

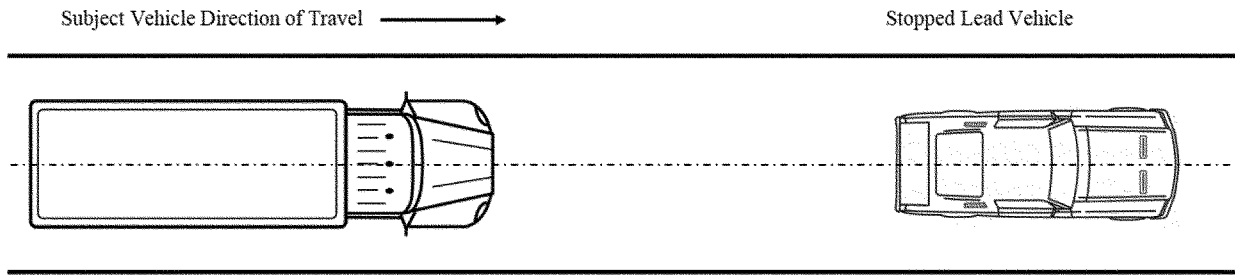
BILLING CODE 4910–59–P

¹⁴³ Woodrooffe, J., et al. “Performance Characterization and Safety Effectiveness Estimates of Forward Collision Avoidance and Mitigation Systems for Medium/Heavy Commercial Vehicles,”

Pg. 12. Report No. UMTRI–2011–36, UMTRI (August 2012). Available at <https://www.regulations.gov/document/NHTSA-2013-0067-0001> (last accessed June 9, 2022).

¹⁴⁴ The cut-in scenario represents less than 5% of the pre-crash scenarios.

Figure 5. Basic Setup for Stopped Lead Vehicle



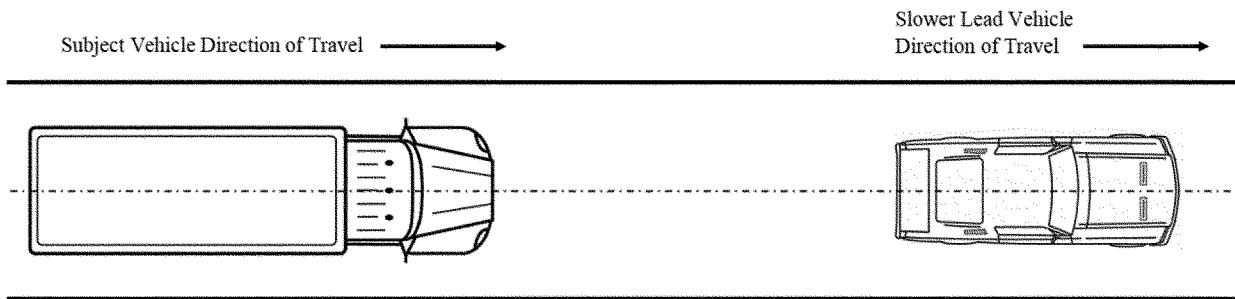
ii. Slower-Moving Lead Vehicle

This test recreates a roadway scenario where the subject vehicle encounters a lead vehicle that is moving at a constant but slower speed ahead in the same lane. Figure 6 shows the basic setup for the slower-moving lead vehicle

scenario. The subject vehicle is driven toward the lead vehicle at a constant speed, and its accelerator is then released after the AEB system in the subject vehicle issues a forward collision warning. The test ends when the subject vehicle either slows down to a speed less than or equal to the lead

vehicle's speed without impact or strikes the lead vehicle. As with the stopped lead vehicle test, NHTSA proposes testing under two conditions for the subject vehicle: without any manual brake application and with manual brake application.

Figure 6. Basic Setup for Slower-Moving Lead Vehicle



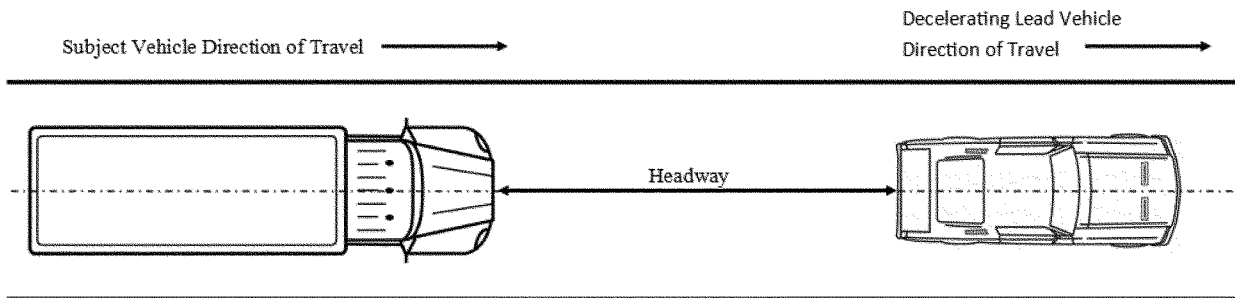
iii. Decelerating Lead Vehicle

This test recreates a roadway scenario where the subject vehicles encounter a lead vehicle that is slowing down ahead in the same lane. At the start of the test, both the subject vehicle and lead vehicle travel at the same constant speed, while maintaining a

predetermined relative distance, or headway. The lead vehicle then begins to decelerate, reducing the headway. Once the AEB system in the subject vehicle issues a forward collision warning, the subject vehicle's accelerator is released. The test ends when the subject vehicle either automatically stops without impact or

strikes the lead vehicle. As with the prior two tests, NHTSA proposes testing under two conditions for the subject vehicle: without any manual brake application and with manual brake application. Figure 7 shows the basic setup for the decelerating lead vehicle scenario.

Figure 7 – Basic Setup for Decelerating Lead Vehicle



5. Parameters for Vehicle Tests

The test procedures for each scenario reference a set of parameters. These parameters are presented in Table 16, where each row represents a potential combination of parameters to be used for a test run. The parameters define the speeds, decelerations, headways, and manual brake applications used for the

choreography of the vehicle test scenarios. Specifically, these include:

- Subject Vehicle Speed (V_{SV})—speed at which the subject vehicle travels toward the lead vehicle
- Lead Vehicle Travel Speed (V_{LV})—speed at which the lead vehicle travels in the same direction as the subject vehicle

- Headway—the distance between the subject vehicle and the lead vehicle
- Lead Vehicle Deceleration—the rate at which the lead vehicle reduces its speed
- Manual Brake Application—specifies whether or not the service brakes of the subject vehicle will be applied “manually,” or via a brake controller

TABLE 16—TEST PARAMETERS WHEN APPROACHING A LEAD VEHICLE

Test scenarios	Speed (km/h)		Headway (m)	Lead vehicle decel. (g)	Manual brake application
	V_{SV}	V_{LV}			
Stopped Lead Vehicle	Any 10–80	0	.....	.....	no.
	Any 70–100	0	.....	.....	yes.
Slower-Moving Lead Vehicle	Any 40–80	20	.....	.....	no.
	Any 70–100	20	.....	.....	yes.
Decelerating Lead Vehicle	50	50	Any 21–40	Any 0.3–0.4	no.
	50	50	Any 21–40	Any 0.3–0.4	yes.
	80	80	Any 28–40	Any 0.3–0.4	no.
	80	80	Any 28–40	Any 0.3–0.4	yes.

Some of these parameters are proposed as ranges.¹⁴⁵ The use of ranges allows NHTSA to ensure AEB system performance remains consistent under a variety of conditions and that no substantial degradation in performance occurs at any point within the range. NHTSA tentatively concludes that requiring a minimum performance only at discreet, predetermined values within these proposed ranges may not ensure that AEB system performance is sufficiently robust to meet the need for safety.

i. Vehicle Speed Parameters

The proposed test speed ranges were selected considering two primary factors. The first factor is the practical ability of AEB technology to consistently operate and avoid contact with a lead vehicle at the widest reasonable range of speeds. A larger range of speeds could yield more safety benefits. Also, a larger range of speeds will more thoroughly test the capabilities of the AEB system. NHTSA, through its understanding of vehicle braking systems described in established standards such as FMVSS Nos. 105 and 121, knows that testing stopping distance at 60 mph is indicative of the service brake performance over a range of speeds, and in those cases testing at a single speed is acceptable. However, as observed in vehicle testing for NHTSA research, AEB performance during testing at

interstate speeds does not necessarily indicate what the same system’s performance will be at lower speeds. Thus, NHTSA tentatively concludes that testing over a range of speeds is necessary to fully assess AEB performance.

The second factor is the practical limit of safely conducting vehicle tests of AEB systems. NHTSA’s testing must be safe and repeatable as permitted by track conditions and testing equipment. For example, if the AEB system does not intervene as required or if test parameters inadvertently fall outside of the specified limits, it should be possible to safely abort the test. In the event the subject vehicle does collide with the lead vehicle, the test should be designed so that it does so in a manner that will not injure the testing personnel nor cause excessive property damage. Additionally, test tracks may be constrained by available space and there may be insufficient space to accelerate a heavy vehicle up to a high speed and still have sufficient space to perform a test. Many types of heavy vehicles are not capable of accelerating as quickly as lighter vehicles and reaching high test speeds may require long distances that exceed what is available at many vehicle testing facilities. At approximately 100 km/h, the agency found that constraints with available test track length, in conjunction with the time required to accelerate the vehicle to the desired test speed, made performing these high speed tests with heavy vehicles logistically

challenging.¹⁴⁶ The agency has tentatively concluded that at this time the maximum practicable test speed is 100 km/h.

The maximum speed of 100 km/h is included in the test speed range when manual braking is present; the manual braking will guarantee a speed reduction even if the AEB system does not activate before reaching the lead vehicle, which would limit potential damage to the test equipment and reduce other potential risks. When no manual braking is allowed, the maximum test speed would be 80 km/h so that, in the event the AEB system does not provide any braking at all, risk to personnel and damage to test equipment are reduced. Over 82 percent of rear-end crashes where the heavy vehicle is the striking vehicle occur at speeds below 80 km/h.¹⁴⁷ However, the majority of fatal crashes occur at speeds above 80 km/h, and approximately 40 percent of these occur at travel speeds between 80 and 100 km/h. The stopped lead vehicle test scenario uses a no-manual-braking test speed range of 10 to 80 km/h and a manual-braking test speed range of 70 to 100 km/h. Together, these test speed ranges overlap with the travel speeds at which heavy vehicle rear-end crashes occur in the real world, while reducing the potential risk and damage to test equipment and vehicles and not

¹⁴⁵ In instances where an FMVSS includes a range of values for testing and/or performance requirements, the use of the word “any” is consistent with 49 CFR 571.4.

¹⁴⁶ During testing of a 2021 Freightliner Cascadia at speeds approaching 100 km/h, NHTSA experienced difficulty establishing valid test conditions due to insufficient track length.

¹⁴⁷ This is based on analysis of 2017–2019 crash data.

exceeding the practical physical size limits of test tracks.

Similarly, the slower-moving lead vehicle test scenario uses speed ranges of 40 to 80 km/h and 70 to 100 km/h for the subject vehicle, while the lead vehicle travels ahead at a constant speed of 20 km/h. The lower end of the subject vehicle test speed range is 40 km/h so that the subject vehicle is traveling faster than the lead vehicle. The decelerating lead vehicle tests are run at either 50 or 80 km/h. This test is performed at two discreet speeds rather than at ranges of speeds because the main factors that test AEB performance are the variation of headway, or the distance between the subject vehicle and lead vehicle, and how hard the lead vehicle brakes. Additionally, because these tests contain a larger number of variables requiring more complex test choreography, limiting the test to two discreet test speeds reduces the number of potential test conditions and reduces potential test burden.

During each test run in any of the test scenarios, the vehicle test speed will be held constant until the test procedure specifies a change. NHTSA is proposing that vehicle speed would be maintained within a tolerance range of 1.6 km/h of the chosen test value. This is important for test consistency. Vehicle speed determines the time to collision, which is a critical variable in AEB tests. In NHTSA's experience, both the subject vehicle and lead vehicle speeds can be reliably controlled within the 1.6 km/h tolerance range, and speed variation within that range yields consistent test results. A tighter speed tolerance is burdensome and unnecessary for repeatability as it may result in a higher test-rejection rate, without any greater assurance of accuracy of the test track performance.

NHTSA's vehicle testing suggested that the selected speed ranges for the various scenarios are within the capabilities of at least some recent model year AEB-equipped production vehicles. For example, the 2021 Freightliner Cascadia avoided collision in the stopped lead vehicle test at all speeds between 40 and 85 km/h, most speeds between 30 and 90 km/h (except 30 and 60 km/h) in the slower-moving lead vehicle test, and in all decelerating lead vehicle tests that were run at the proposed parameters. This vehicle's AEB system did not prevent a collision at lower speeds between 20 and 35 km/h for the stopped lead vehicle test. However, the 2021 Dodge Ram 550 avoided collision in all stopped lead vehicle tests from 10 to 40 km/h. In many test cases where current AEB systems did not prevent a collision, the

AEB significantly reduced the speed before the collision. While these current AEB systems perform a bit differently depending on the vehicle, given that this notice proposes a lead time for manufacturers to come into compliance with the proposed performance requirement, the agency expects that compliance with these requirements would be achievable.

ii. Headway

The decelerating lead vehicle test scenario includes a parameter defining how far ahead the lead vehicle is from the subject vehicle at the beginning of the test, which is referred to as headway. Headway and lead vehicle deceleration are the main factors for the dynamics of the decelerating lead vehicle test since both the lead and subject vehicles start the test at the same constant speed. At the start of the test, when the vehicles are both travelling at 50 km/h, the proposed headway specification is any distance between 21 m and 40 m.¹⁴⁸ When the vehicles are both travelling at 80 km/h, the proposed headway specification is any distance between 28 m and 40 m. Headways are proposed as a range in order to assure AEB functionality over a wider range of driving scenarios. A basic kinematic simulation of heavy vehicle AEB braking under the proposed test parameters, assuming factors such as AEB response time and foundation brake reaction time/deceleration similar to what was observed in testing, indicated that headways shorter than 21 and 28 m would not be realistic to achieve and would inevitably result in a collision.

The upper limit of 40 m was chosen because testing at longer headways does not provide additional insight into AEB performance with regard to decelerating lead vehicles. At headways greater than 40 m, the lead vehicle decelerating may come to a full stop prior to the subject vehicle actuating the brakes. This essentially becomes a stopped lead vehicle test. Allowing for a range of headways during testing also makes the choreography of the test possible by providing a tolerance for the headway. At the start of the test, the speed of both the subject vehicle and lead vehicle are the same and are maintained within the tolerance specified (plus or minus 1.6 km/h). As each vehicle's speed fluctuates a bit differently within these bounds, in turn the headway between the vehicles accordingly fluctuates as

¹⁴⁸ The bounds of the headway range are consistent with the headways in the April 2021 European New Car Assessment Programme (Euro NCAP), Test Protocol—AEB Car-to-Car systems, Version 3.0.3 for the same scenario.

well. As long as the headway fluctuation is within the proposed range, the test can still be considered valid, and no headway tolerance needs to be established.

iii. Lead Vehicle Deceleration Parameter

The decelerating lead vehicle test scenario includes a deceleration parameter that dictates how quickly the lead vehicle will slow down in front of the subject vehicle. The agency has tentatively concluded that this parameter range of 0.3g to 0.4g represents real-world, manual application of the service brake. Previous NHTSA research had identified 3.0 m/s² (.306g) as “reasonably comfortable for passenger car occupants” and that on average, drivers brake in such a manner that the vehicle decelerates at an average of 0.48g when presented with an unexpected obstacle.¹⁴⁹ The upper limit of the lead vehicle braking is proposed at 0.4g to avoid a test condition in which the lead vehicle would provide greater brake inputs than those necessary to meet the minimum stopping distance requirements. NHTSA took into consideration the stopping distance requirements for heavy vehicles under FMVSS Nos. 105 and 121 and the resulting average decelerations that those vehicles would be required to achieve. For example, an air-braked tractor trailer under FMVSS No. 121 would need to brake at 0.41g to meet the stopping distance of 310 ft from 60 mph.¹⁵⁰ Given the headway parameters and vehicle speeds in this proposal, the agency believes a lead vehicle deceleration above 0.4g would create a requirement that could effectively reduce the minimum stopping distance requirements for vehicles generally.

6. Manual Brake Application in the Subject Vehicle

Each of the three lead vehicle test scenarios includes tests that are conducted with manual brake application in the subject vehicle. The process for testing with manual brake application is identical to what is considered a test for dynamic brake support or DBS in NHTSA's NCAP for light vehicles. While the term DBS is

¹⁴⁹ Gregory M. Fitch, Myra Blanco, Justin F. Morgan, Jeanne C. Rice, Amy Wharton, Walter W. Wierwille, and Richard J. Hanowski (April 2010). Human Performance Evaluation of Light Vehicle Brake Assist Systems: Final Report (Report No. DOT HS 811 251) Washington, DC: National Highway Traffic Safety Administration, pgs. 13 and 101.

¹⁵⁰ This assumes an average deceleration that is achieved after an initial brake actuation time of 0.45 seconds, as this is the maximum actuation time allowed by FMVSS No. 121.

not usually associated with heavy vehicles, NHTSA is including this requirement in this proposal to ensure that the driver's application of the brake pedal does not inhibit the functionality of the AEB system if the driver's brake application is insufficient to avoid a crash. The manual brake application procedure specifies that the subject vehicle's service brakes are applied by using a robotic brake controller to ensure accurate and consistent test conduct.

A NHTSA study that examined light vehicle drivers' behavior in response to potential frontal crash situations found that they typically exhibit multi-stage braking behavior.¹⁵¹ This means that the drivers initially applied and held the brake moderately, and then continued to a full application if perceived to be necessary. A subsequent NHTSA study concluded that a significant portion of heavy vehicle operators display the same multi-stage braking behavior.¹⁵² The agency believes that in real world cases where the operator may apply insufficient brake force to avoid a rear-end collision, an AEB system should apply the necessary supplemental braking necessary to avoid a collision. Furthermore, by using manual brake application in the test scenarios, NHTSA is able to test AEB performance at higher test speeds.

In real world cases, the brake pedal can be applied by a heavy vehicle operator in an infinite number of ways (varying force, reaction time, duration, etc.). Since the manual brake application represents an operator's response to an unexpected obstacle and the forward collision warning, the agency is proposing a brake pedal application that results in a mean deceleration of 0.3g. A heavy vehicle field study by NHTSA indicated that when presented with an FCW triggered by a valid object and requiring a crash avoidance maneuver, the operators braked on average at a maximum of 0.3g.¹⁵³ Manually applying the brake at 0.3g also is a low enough value to improve the capability of observing an

AEB automatic braking intervention that is occurring simultaneously on top of that. The minimum stopping distance requirements for heavy vehicles in existing FMVSSs require braking at around 0.4g. Thus hypothetically, if a heavy vehicle's service brakes were manually applied at a higher deceleration of 0.4g for example, and the brakes were only capable of a maximum of 0.4g of deceleration, AEB intervention would be incapable of producing additional deceleration and would not be observable.

There are two methods to perform the manual brake application—using either displacement feedback or hybrid feedback. Both methods are intended to be carried out by a robotic brake pedal controller in closed loop operation, and the method that is most suitable to the subject vehicle is chosen. Regardless of the method, it is necessary initially to determine a pedal position which, in the absence of any automatic braking from the AEB system, results in an average vehicle deceleration of 0.3g. The displacement feedback method then simply requires moving the brake pedal to the 0.3g position quickly, at a rate of 254 mm/s,¹⁵⁴ and then maintaining that position. However, automatic braking in certain vehicles requires the pedal position to move further toward the floor, and can cause conflict with the displacement feedback method's control of pedal position, in turn adversely affecting test results.¹⁵⁵ The hybrid feedback pedal control method provides a solution to this conflict. The hybrid method initially requires the same pedal position control, but then almost immediately begins to control the force on the pedal (and not the position) to maintain the 0.3g deceleration. If the AEB system thereafter requires further movement of the pedal, the brake controller is able to "follow" the pedal while still applying the appropriate force.¹⁵⁶ NHTSA is proposing that the brake will be applied 1.0 second after the vehicle has provided a FCW; this is based on the average time it takes a driver to react when presented with an

obstacle.¹⁵⁷ Although these average decelerations and reaction times are based on behavior of light vehicle drivers, we feel that it is sufficient basis to simulate a scenario in which a heavy vehicle operator brakes partially and insufficiently to fully avoid a rear-end collision.

B. Conditions for Vehicle Tests

The test conditions are used to control the environmental, road surface, subject vehicle, and equipment conditions to ensure consistency both to define potential variabilities in conditions under which an AEB system would be expected to operate while also providing consistent conditions to reduce test variability due to extraneous factors. NHTSA recognizes that there are an unlimited number of non-ideal environmental conditions present in the real world, and it would be unreasonable to attempt to reproduce most of them within practical constraints in the testing environment. Thus, in many cases, the proposed test conditions were chosen to represent near-ideal conditions with the goal of reducing variability in the test results. For example, if testing were conducted at below-freezing temperatures with snowfall, it would be difficult to interpret whether poor test results were due to the AEB system or reduced road surface friction.

Many of the proposed conditions were selected based on research data and engineering practices, and reasonable deduction. In some cases, as appropriate, the agency considered that conditions should be the same or similar to what is specified in other heavy vehicle brake-related FMVSS. This usage of pre-established conditions may help reduce testing burden, since fewer testing conditions would need to be adjusted between different FMVSS brake-related compliance tests. It also ensures that the minimum stopping distance requirements in the braking standards would be achievable during an AEB test.

Each test procedure for the three scenarios specifies a point at which thereafter the test conditions described in this section apply and will be maintained. For the stopped lead vehicle and slower-moving lead vehicle

¹⁵¹ Mazzae, E., Barickman, F., Scott Baldwin, G., and Forkenbrock G., "Driver Crash Avoidance Behavior with ABS in an Intersection Incursion Scenario on Dry Versus Wet Pavement," SAE Technical Paper 1999-01-1288, 1999, doi:10.4271/1999-01-1288.

¹⁵² Every, J., Salaani, M., Barickman, F., Elsasser, D., et al., "Braking Behavior of Truck Drivers in Crash Imminent Scenarios," SAE International Journal of Commercial Vehicles, 7(2):2014, doi:10.4271/2014-01-2380.

¹⁵³ Grove, K., Atwood, J., Hill, P., Fitch, G., Blanco, M., Guo, F., . . . & Richards, T. (2016, June). Field study of heavy-vehicle crash avoidance systems. (Final report. Report No. DOT HS 812 280). Washington, DC: National Highway Traffic Safety Administration.

¹⁵⁴ Previous NHTSA research related to AEB examined pedal application rates by drivers in emergency and non-emergency situations, and determined that pedal application rate is important in AEB testing with manual braking, and that the appropriate application rate is 254 mm/s. NHTSA, August 2014. Automatic Emergency Braking System (AEB) Research Report, An Update of the June 2012 Research Report Titled, "Forward-Looking Advanced Braking Technologies Research Report." Docket NHTSA-2012-0057-0037.

¹⁵⁵ NHTSA, August 2014. Automatic Emergency Braking System (AEB) Research Report, An Update of the June 2012 Research Report Titled, "Forward-Looking Advanced Braking Technologies Research Report." Docket No. NHTSA-2012-0057-0037.

¹⁵⁶ *Id.*

¹⁵⁷ Previous NHTSA research has shown that on average, it takes drivers 1.04 s to begin pressing the brake when presented with an unexpected obstacle and 0.8 s when presented with an anticipated obstacle. Gregory M. Fitch, Myra Blanco, Justin F. Morgan, Jeanne C. Rice, Amy Wharton, Walter W. Wierwille, and Richard J. Hanowski (2010, April) "Human Performance Evaluation of Light Vehicle Brake Assist Systems: Final Report" (Report No. DOT HS 811 251), Washington, DC: National Highway Traffic Safety Administration, p. 101.

test scenarios, this point is at a 5 second time to collision. For the decelerating lead vehicle test scenario, this point is 1 second prior to the onset of lead vehicle deceleration.

1. Environmental Conditions

The ambient temperature range specified in this proposal is 2 to 40 degrees Celsius; this is the same range as specified in FMVSS No. 136, which avoided testing at 0 degrees Celsius because it could impact tire performance and in turn the variability of test results.

The maximum wind speed is 5 m/s, which is the same as what is specified in FMVSS No. 136. This value was chosen to reduce the potential lateral displacement of certain heavy vehicles.

NHTSA considered that certain environmental conditions should be near-ideal to prevent sensor performance degradation and maintain repeatability of vehicle testing. First, ambient illumination would be at or above 2,000 lux. This represents daytime illumination that is at a minimum equivalent to an overcast day.¹⁵⁸ A NHTSA study has shown that darkness can cause degradation of sensor performance.¹⁵⁹ NHTSA analysis shows that 87 percent of heavy vehicle rear-end crashes occur during daylight conditions.¹⁶⁰ Therefore, NHTSA tentatively concludes that daylight testing is necessary to ensure that AEB systems address the rear-end crash safety problem.

Second, during testing, the sun would not be below 15 degrees of elevation and within 25 degrees laterally from the center plane of the subject vehicle. This specification reduces the likelihood of glare or washout for camera-based sensors that could lead to degradation of sensor and AEB system performance.¹⁶¹

Visibility also would not be affected by fog, smoke, ash or other particulate, as recommended in previous agency research findings.¹⁶² This improves test

repeatability and also aligns with many real-world, rear-end crash conditions. A review of NHTSA's crash data indicates that 81 percent of those occur when the weather conditions are clear or cloudy and with no precipitation.¹⁶³

2. Road Surface Conditions

The road surface upon which vehicle tests will be conducted must also be in a defined condition to help achieve repeatable testing. The proposed conditions specify that the road surface is free of debris, irregularities, or undulations, such as loose pavement, large cracks, or dips. These could affect the vehicle's ability to brake properly or maintain its heading, and ultimately reduce the repeatability of a test. The test surface is also required to be level, with a slope between 0 and 1 degrees, because the slope of a road surface can affect the performance of an AEB-equipped vehicle.¹⁶⁴ A surface that slopes up and down could obstruct a sensor's view of an object ahead. It could also influence the dynamics and layout involved in the proposed AEB test scenarios, as travelling up or down a slope makes braking to a stop more or less difficult. In order to have predictable tire adherence under braking, the surface must also be dry and have a controlled coefficient of friction. NHTSA is proposing that the test track surface have a peak friction coefficient of 1.02 when measured in accordance with ASTM International (ASTM) E1337¹⁶⁵ using an ASTM F2493 standard reference test tire and without water delivery.¹⁶⁶ Surface friction is a critical factor in brake system performance testing, including AEB, since it correlates with tire grip and the achievable stopping distance. The presence of moisture will significantly change the measured performance of a braking system. A dry surface is more consistent and provides for greater test repeatability. Also, the proposed peak friction coefficient is the

same value that NHTSA uses for brake performance testing.

This proposal specifies up to two straight lines be marked on the test surface to simulate lane markings. In order to provide flexibility for different road configurations at a variety of test track facilities, lane markings may or may not be present during testing. If present, the lines would be of any color or configuration (*e.g.*, solid, dashed, double-line, etc.). If two lines are used, they would be parallel to each other and between 2.7 to 4.5 m apart, which is representative of typical lane widths.

Lastly, the environment would not contain obstructions that could interfere with detection of a lead vehicle or other test equipment ahead and have an unintentional effect on the field of view of the AEB system, in turn compromising test repeatability. Thus, the subject vehicle during testing would not travel beneath overhead structures such as signs, bridges, or gantries, and each compliance test would be conducted without any vehicles, obstructions, or stationary objects within one lane width of either side of the subject vehicle path unless called for in the test procedure.

3. Subject Vehicle Conditions

Many of the subject vehicle conditions exist to ensure that a vehicle chosen for testing is in a working condition that represents the vehicle as it is sold into the market, and capable of performing as intended by the manufacturer. Thus, the vehicle conditions specify that no AEB malfunction telltale is active, vehicle components ahead of AEB sensors are clean and do not obstruct the sensors, the original tires are installed and properly inflated, and non-consumable fluids (*e.g.*, brake fluid, engine coolant, etc.) are full.

Other conditions exist to ensure that vehicle performance is comparable to that found in the real world. Prior to testing, the vehicle's service brakes are burnished according to the burnishing procedures already used in FMVSS No. 121 or 105 testing, as appropriate for the vehicle prior to the beginning of testing. Burnishing helps to gradually seat and condition new brake components, particularly the brake pads and rotors/drums, which come into contact and provide friction under braking. Burnishing helps achieve optimal and repeatable brake performance. If burnishing was done previously, for example due to the running of compliance tests for other FMVSS, it would not be repeated.

The agency also proposes that the brake temperatures be between 66 and

¹⁵⁸ During an overcast day (no sun), when the solar altitude is around 6 degrees, the light intensity on a horizontal surface is around 2,000 lux. Illuminating Engineering Society of North America. 1979. "Recommended Practice of Daylighting."

¹⁵⁹ NHTSA, August 2014. "Automatic Emergency Braking System (AEB) Research Report—An Update of the June 2012 Research Report Titled, 'Forward-Looking Advanced Braking Technologies Research Report.'" Docket NHTSA-2012-0057-0037.

¹⁶⁰ Data are from 2017–2019 FARS and CRSS crash databases, as discussed in the PRIA section on initial AEB target population.

¹⁶¹ NHTSA, August 2014. "Automatic Emergency Braking System (AEB) Research Report—An Update of the June 2012 Research Report Titled, 'Forward-Looking Advanced Braking Technologies Research Report.'" Docket NHTSA-2012-0057-0037.

¹⁶² NHTSA, August 2014. "Automatic Emergency Braking System (AEB) Research Report—An Update

of the June 2012 Research Report Titled, 'Forward-Looking Advanced Braking Technologies Research Report.'" Docket NHTSA-2012-0057-0037.

¹⁶³ This is also supported by another study (Grove, Atwood, Fitch and Blanco, M, 2016, "Field Study of Heavy-Vehicle Crash Avoidance Systems") which concluded that over 88 percent of heavy vehicle crashes occurred when the conditions were, clear, partly cloudy, or overcast.

¹⁶⁴ Kim, H. et al., "Autonomous Emergency Braking Considering Road Slope and Friction Coefficient," International Journal of Automotive Technology, 19, 1013–1022 (2018).

¹⁶⁵ ASTM International, ASTM E1337, "Standard Test Method for Determining Longitudinal Peak Braking Coefficient (PBC) of Paved Surfaces Using Standard Reference Test Tire."

¹⁶⁶ See 87 FR 34800 (June 8, 2022), Final Rule, Federal Motor Vehicle Safety Standards, Consumer Information; Standard Reference Test Tire.

204 degrees Celsius prior to the beginning of a test, which is the same as specified in FMVSS No. 136. In the agency's experience, this initial temperature range allows the brakes to perform well without being under or over heated during testing, and the upper end of 204 degree Celsius does not require unreasonably long cool-down time between test runs.

The agency has also considered that vehicles may have adjustable characteristics or configurable systems that a vehicle operator may choose to adjust, and some of these are factors that could affect the outcome of an AEB test. Since each vehicle operator could potentially choose different settings for these systems, the testing would ensure that AEB systems are capable of meeting the test requirements regardless of which choices were made. Accordingly, this proposal specifies that these adjustable factors will be nearly in any configurable level during testing. Consumable fluids (e.g., fuel, diesel exhaust fluid, etc.) and propulsion battery charge will be between 5–100 percent of their capacity. Cruise control systems would be tested in any available setting, including adaptive cruise control modes. In the event that adaptive cruise control is engaged and remains engaged during the event, the FCW would not be required. This is because an adaptive cruise control system is intended to slow the vehicle to avoid a collision prior to a collision being imminent and without notification to the driver.¹⁶⁷

Forward collision warnings would be tested in any configurable setting. If the vehicle is equipped with an engine-braking system, tests would be conducted with the system either engaged or disengaged. The controls for the headlamps and regenerative braking would be tested in any available position.

Regarding the weight of the subject vehicle during testing, this proposal specifies that the vehicle is loaded to its gross vehicle weight rating. Truck tractors will be loaded to its GVWR by connecting a control trailer. The specifications for this control trailer, which is an unbraked, single-axle flatbed, are equivalent to those found in FMVSS No. 136. The agency believes it is important to test the performance of AEB systems when the vehicle is at its heaviest allowable condition, because heavy vehicles often travel in a fully loaded condition and it generally presents the most challenging scenario

¹⁶⁷ Adaptive cruise control is a driver assistance technology that automatically adjusts vehicle speed to maintain a certain distance from a vehicle ahead.

for braking (i.e., stopping a heavier vehicle is more difficult). This loading condition is identical to the loaded condition specified for FMVSS stopping distance assessment. This may improve testing efficiency for NHTSA by having fewer loading conditions specified among FMVSS.

Finally, because a vehicle will be tested at its GVWR, this proposal specifies that, if a vehicle is equipped with a liftable axle, it will be placed in the down position during testing.

C. Proposed Requirements for False Activation

1. No Automatic Braking Requirement

NHTSA proposes a requirement that the subject vehicle, when presented with two false activation test scenarios, must not automatically apply braking that results in a peak deceleration of more than 0.25g when manual braking is not applied, nor a peak deceleration of more than 0.45g when manual braking is applied. False activation refers to cases where the AEB systems automatically activates the service brakes although there is no object present in the path of the vehicle with which it would collide. The associated vehicle tests are run both with and without manual braking. During test runs without manual braking, the AEB system must not initiate braking that results in a peak deceleration of more than 0.25g. A 0.25g deceleration is below the 0.3g threshold described earlier as a comfortable deceleration which has a low probability of creating safety concerns such as rear-end crashes (if the subject vehicle would brake too hard).¹⁶⁸ Also, 0.25g is an easily measurable deceleration when testing.

During test runs when manual braking is being applied, the AEB system must not initiate braking that results in a peak deceleration of more than 0.45g. When testing using manual braking, the goal is to have a manual braking deceleration of 0.3g, and so the AEB system must not cause more than approximately 0.15g of additional deceleration. This 0.15g amount is less than the 0.25g of peak deceleration permitted in tests without manual braking—however, allowing the same 0.25g above manual braking would mean that up to a total peak deceleration of 0.55g would be permitted. Because 0.55g could exceed the maximum deceleration capacity of certain heavy vehicles, it would, in turn,

¹⁶⁸ Gregory M. Fitch, Myra Blanco, Justin F. Morgan, Jeanne C. Rice, Amy Wharton, Walter W. Wierwille, and Richard J. Hanowski (2010, April) *Human Performance Evaluation of Light Vehicle Brake Assist Systems: Final Report* (Report No. DOT HS 811 251) Washington, DC: National Highway Traffic Safety Administration, p. 13.

render the test impossible to fail for those vehicles. Therefore, the lower threshold of additional deceleration is proposed for false activation tests with manual braking.

2. Vehicle Test Scenarios

Under this proposal, the false activation requirement would be evaluated by executing two vehicle test scenarios—a steel trench plate test and a pass-through test. The steel trench plate test was chosen because in previous agency testing that included eight different false activation test scenarios, the steel trench plate scenario was the only one that produced false activation of the AEB system.¹⁶⁹ The pass-through test is similar to the United Nations Economic Commission for Europe (UNECE) Regulation 131 pass-through test.¹⁷⁰

The proposed false activation tests establish only a baseline for system functionality. For practical reasons they are not comprehensive, nor sufficient to eliminate susceptibility to false activations in the myriad of circumstances in the real world. However, the proposed tests are a practicable means to establish a minimum threshold of performance. The agency expects that vehicle manufacturers will design AEB systems to thoroughly address the potential for false activations.¹⁷¹ Manufacturers have a strong market incentive to mitigate false positives and have been successful even in the absence of specific requirements.

i. Steel Trench Plate

This test recreates a roadway scenario where the subject vehicles encounter a steel trench plate which is placed on the road surface ahead in the same lane. The subject vehicle is driven at 80 km/h toward the steel trench plate at a constant speed.

¹⁶⁹ Snyder, A., Martin, J., & Forkenbrock, G. (2013, July). "Evaluation of CIB system susceptibility to non-threatening driving scenarios on the test track." (Report No. DOT HS 811 795). Washington, DC: National Highway Traffic Safety Administration.

¹⁷⁰ UNECE Regulation 131, "Uniform provisions concerning the approval of motor vehicles with regard to the Advanced Emergency Braking Systems (AEBS)," see 6.8 False reaction test, U.N. Regulation No. 131 (Feb. 27, 2020), available at <https://unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/2015/R131r1e.pdf>.

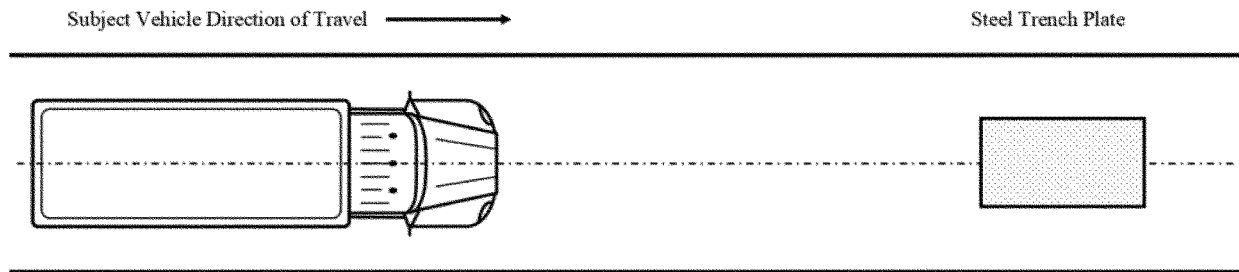
¹⁷¹ From NHTSA's NCAP Request for Comments notice regarding AEB: "Specifically, the Alliance stated that vehicle manufacturers will optimize their systems to minimize false positive activations for consumer acceptance purposes, and thus such tests will not be necessary. Similarly, Honda stated that vehicle manufacturers must already account for false positives when considering marketability and HMI." 87 FR 13452 at 13460.

The tests would be conducted either with or without manual brake application. Manual braking is included in these scenarios to ensure that even when a vehicle's service brake is actuated, false activation would not occur. For tests without manual braking, the accelerator is only released if a

forward collision warning is issued. For test with manual braking, the accelerator is released at either the forward collision warning or 1 second prior to the manual braking, whichever occurs first. Manual braking begins when the subject vehicle is 1.1 seconds away from the steel trench plate. The

test ends when the subject vehicle either comes to a stop prior to crossing over the leading edge of the steel trench plate, or it proceeds to drive over the steel trench plate. Figure 8 shows the basic setup for the steel trench plate scenario.

Figure 8. Basic Setup for Steel Trench Plate False Activation Test



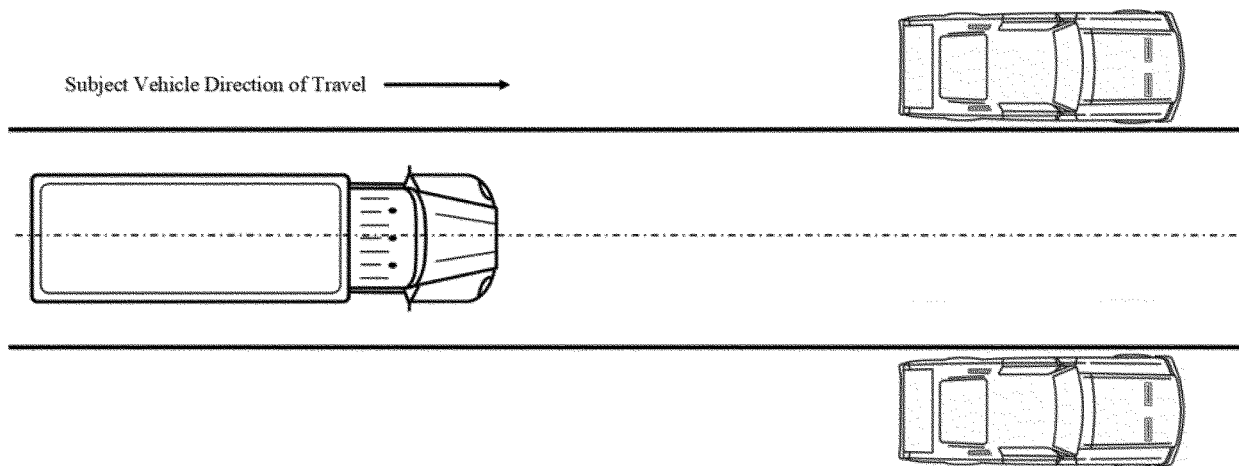
Unlike the test scenarios in which the subject vehicle approaches a lead vehicle, the agency proposes that the false activation tests be run at a single speed rather than over a range of speeds. False activations occurring at interstate speeds would create the most severe unintended consequences of AEB braking. Therefore, the proposal includes only a test at a single speed of 80 km/h.

ii. Pass-Through

This test recreates a roadway scenario where the subject vehicle must travel between two parked cars that are adjacent to the left and right sides of the subject vehicle's travel lane. The parked cars are represented by two vehicle test devices. The lateral distance between the parked cars is 4.5 m, which is sufficient to give the subject vehicle enough space to pass between them and yet be close enough to be in the field of view of AEB sensors. The subject

vehicle is driven along the center of the travel lane and toward the gap between the parked cars at a speed of 80 km/h. For tests without manual braking, the accelerator is only released if a forward collision warning is issued. For tests with manual braking, the accelerator is released at either the forward collision warning or 1 second prior to the manual braking, whichever occurs first; manual braking begins when the front plane of the subject vehicle is 1.1 seconds away from the rear plane of the two parked cars).

Figure 9. Basic Setup for Pass-Through False Activation Test



D. Conditions for False Activation Tests

The false activation requirement is conducted under a set test conditions identical to those used for AEB tests. However, there are equipment

conditions which apply specifically to these false activation tests.

The equipment conditions that apply to the two false positive scenarios in this proposal relate to the steel trench plate and the vehicles used for the pass-

through test. The steel trench plate is a piece of equipment that represents a steel plate typically used to cover excavation holes or irregularities in the road surface during construction work, and which is meant to be driven over by

vehicles. The steel trench plate specified in this proposal is made of ASTM A36 steel, a common structural steel alloy, and has the dimensions 2.4 m x 3.7 m x 25 mm. Any metallic fasteners used to secure the steel trench plate are flush with the top surface of the plate, to avoid effectively increasing the profile height and radar cross-section of the plate. The two vehicles used for the pass-through test are vehicle test devices identical to those that would be used in the lead vehicle testing.

E. Potential Alternatives to False Activation Tests

As alternatives to these two false activation tests, NHTSA is considering requiring a robust documentation process, or specifying a data storage requirement. NHTSA is considering requiring this documentation and data in addition to or in place of the proposed false activation tests. First, NHTSA seeks comment on the anticipated impacts on safety and the certification burden if the agency were to finalize a rule that did not contain one or both of the proposed false positive tests.

The agency is considering requiring that manufacturers maintain documentation demonstrating that process standards were followed specific to the consideration of false application of automatic braking. Other industries where safety-critical software-controlled equipment failures may be life threatening (e.g., aviation,¹⁷² medical devices¹⁷³) are regulated in some respects via process controls ensuring that software development engineering best practices are followed. This approach recognizes that system tests are limited in their ability to evaluate complex, and constantly changing software driven control systems.

Software development lifecycle practices that include risk management, configuration management, and quality systems are used in various safety-critical industries. ISO 26262 Road vehicles—Functional safety and related standards are examples of methods for

overseeing software development practices. The agency is considering that a process standards approach could be a viable and practical way of regulating the risk of false positives, as false activation of braking is a complex engineering problem with multiple factors and conditions that must be considered in the real world. The agency seeks public comment on all aspects of requiring that manufacturers document that they have followed process standards in the consideration of the real-world false activation performance of the AEB system.

Finally, the agency considered requiring targeted data recording and storage of significant AEB activations. These data could then be used by manufacturers to improve system performance, or by the agency to review if a particular alleged false activation is part of a safety defect investigation. The agency is considering requiring that an AEB event that results in a speed reduction of greater than 20 km/h should activate the recording and storage of the following key information: date, time, engine hours (the time as measured in hours and minutes during which an engine is operated), AEB activation speed, AEB exit speed (vehicle speed at which the automatic braking is completely released), AEB exit reason (e.g. driver override with throttle, or brake, or system decision), location, and camera image data. This information could be used by investigators to analyze the source of the activation and determine if an activation was falsely applied. Such data would need to be accessible by the agency and potentially the vehicle operator for a full and transparent analysis. The agency seeks comment on all aspects of this data collection approach as an alternative to false positive testing, including whether this list of potential elements is incomplete, overinclusive, or impractical.

F. Proposed Requirements for Malfunction Indication

NHTSA is proposing that AEB systems must continuously detect system malfunctions. If an AEB system detects a malfunction that prevents it from performing its required safety function, the vehicle would be required to provide the vehicle operator with a warning. The warning would be required to remain active as long as the malfunction exists while the vehicle's starting system is on. NHTSA would consider a malfunction to include any condition in which the AEB system fails to meet the proposed performance requirements. NHTSA is proposing that the driver must be warned in all

instances of component or system failures, sensor obstructions, environmental limitations (like heavy precipitation), or other situations that would prevent a vehicle from meeting the proposed AEB performance requirements. While NHTSA is not proposing the specifics of the telltale, NHTSA anticipates that the characteristics of the alert will be documented in the vehicle owner's manual and provide sufficient information to the vehicle operator to identify it as an AEB malfunction.

NHTSA considered proposing requirements pertaining to specific failures and including an accompanying test procedure. For instance, the agency could develop or use available tests that specify disconnecting sensor wires, removing fuses, or covering sensors to simulate field malfunctions. Such requirements are not included in the proposed regulatory text, but NHTSA is interested in comments on this issue.

NHTSA also considered proposing minimum requirements for the malfunction telltale, to standardize ways of communicating to the vehicle operator. NHTSA understands that some malfunctions of the AEB system require repair (loose wires, broken sensors, etc.) while other malfunctions are temporary and will correct themselves over time (ice buildup on a camera). The agency considered requiring that the malfunction telltale convey the actions that a driver should take when a malfunction is detected. Such requirements are not included in the proposed regulatory text, but NHTSA is interested in comments on this issue. NHTSA seeks comment, including cost and benefit data, on the potential advantages of specifying test procedures that would describe how the agency would test a malfunction telltale and on the level of detail that this regulation should require of a malfunction telltale. Additionally, the agency considered requiring more details for the telltale itself, such as a standardized appearance (color, size, shape, illuminance). The agency seeks comment on the need and potential safety benefits of requiring a standardized appearance of the malfunction telltale and what standardized characteristics would achieve the best safety outcomes.

G. Deactivation Switch

The proposed regulatory text does not permit vehicle manufacturers to install a manual deactivation switch that would enable the vehicle operator to switch off the AEB. The text is silent regarding the permissibility of a switch but, under the framework of the FMVSS

¹⁷² 14 CFR 33.201(a) The engine must be designed using a design quality process acceptable to the Federal Aviation Administration, that ensures the design features of the engine minimize the occurrence of failures, malfunctions, defects, and maintenance errors that could result in an in-flight shutdown, loss of thrust control, or other power loss.

¹⁷³ 21 CFR 920.30(a)(1) Each manufacturer of any class III or class II device, and the class I devices listed in paragraph (a)(2) of this section, shall establish and maintain procedures to control the design of the device in order to ensure that specified design requirements are met.

and NHTSA's interpretations of the standards, a deactivation switch would be prohibited if it would allow an AEB system to be deactivated in any circumstance in which the standard requires an AEB system to function. This is consistent with other FMVSS, such as FMVSS No. 108, "Lamps, reflective devices, and associated equipment," which is silent about a switch deactivating the stop lamps but where NHTSA has interpreted the standard as prohibiting such a switch.¹⁷⁴ Standards in which a deactivation switch is permitted expressly permit the switch in the regulatory text, for example, FMVSS No. 126, "Electronic stability control systems for light vehicles," where the standard specifically permits and regulates the performance of a deactivation switch,¹⁷⁵ and FMVSS No. 208, "Occupant crash protection," where the standard permitted an on-off switch for the air bag for the front passenger seat on particular vehicles.¹⁷⁶

NHTSA and FMCSA realize a switch or other method that could deactivate a vehicle's AEB system could be useful in some circumstances. There might be some heavy vehicle design or aftermarket equipment installations where the configuration of the vehicle could potentially interfere with the AEB sensing system. For example, a snowplow might be attached in a manner that obstructs an AEB sensor. Some vehicles may have uses where an AEB system may be incompatible with its operating environment, for example, logging operations or other on/off road environments.

Special conditions could be addressed by drafting the standard to allow manual deactivation under limited circumstances when the system is compromised. However, an FMVSS in which deactivation of the system is easily accomplished would likely reduce the safety benefit of the proposed rule. NHTSA seeks comments on the merits of and need for manual deactivations of AEB systems. If the standard were to permit a deactivation mechanism of some sort, how could

¹⁷⁴ <https://isearch.nhtsa.gov/files/23833.ztv.html> (last accessed August 31, 2022).

¹⁷⁵ FMVSS No. 126, "ESC systems for light vehicles," S5.4: The manufacturer may include an "ESC Off" control whose only purpose is to place the ESC system in a mode or modes in which it will no longer satisfy the performance requirements of S5.2.1, S5.2.2, and S5.2.3.

¹⁷⁶ FMVSS No. 208, "Occupant crash protection." FMVSS No. 208 was written such that it permitted such switches only on vehicles configured with no back seat or a back seat too small to accommodate a rear-facing child restraint system. This was an interim step to allow advanced air bag technology to mature and be fully implemented.

NHTSA allow for deactivations while ensuring the mechanism would not be abused or misused by users? Alternatively, NHTSA is interested in comments on the approach of the standard's restricting the automatic deactivation of the AEB system generally but providing for special conditions in which the vehicle is permitted to automatically deactivate or otherwise restrict braking authority given to the AEB system.

NHTSA seeks comment on the merits of various performance requirements related to manual deactivation switches for AEB systems. The agency seeks comment on the appropriate performance requirements if the agency were to permit the installation of a manually operated deactivation switch. Such requirements might include limitations such that the default position of the switch be "AEB ON" with each cycle of the starting system or that the deactivation functionality be limited to specific speeds.

H. System Documentation

NHTSA seeks comment on alternate regulatory approaches that might be appropriate for regulating complex systems that depend heavily on software performance. FMVSS have historically included requirements that can be inspected or tested by the agency to verify compliance. In some cases, such as in FMVSS No. 126, the agency has required manufacturers to maintain technical documentation available for agency review upon request to ensure that electronic stability control systems were designed to mitigate vehicle understeer (49 CFR 571.126 S5.6). The agency established this requirement in the absence of suitable test procedures for evaluating understeer.

In the case of AEB, there are similar limits to testing systems in controlled environments. AEB systems operating on roadways will be subject to many scenes and stimuli that are not present on a test track—*e.g.*, precipitation, lighting, roadway curvature and elevation changes, signage, other road users, animals, debris, etc.—and these scenes and stimuli could potentially influence real world effectiveness of AEB systems. The agency seeks comment on documentation requirements that may be effective in encouraging real world effectiveness (*e.g.*, maximizing true positive rate and minimizing false positive rate) and in ensuring that AEB systems are developed and maintained in a manner that minimizes performance risks.

The agency is considering requirements for manufacturers to document a risk-based design approach

identifying and mitigating reasonably foreseeable risks alongside configuration management records of all software/hardware updates performed by the manufacturer. Manufacturers would also need to disclose certain servicing and system limitation requirements and make AEB-related data stored in vehicles available. Examples of requirements under consideration include:

- Manufacturers must establish and maintain procedures that provide a risk-based approach in designing, implementing, and (if applicable) updating each system required under this standard. Manufacturers must maintain documentation over the system lifetime detailing the outcome of the risk-based approach taken to ensure the safety of such systems.

- Where servicing is required to maintain system performance, each manufacturer must establish and maintain instructions and procedures for performing and verifying that the servicing meets the specified requirements.

- Certain information must be disclosed to consumers at the time of first sale in a single document such as an owner's manual:

- If servicing requirements include periodic maintenance, the maintenance schedule must be identified.

- Manufacturers must include a statement describing the limitations of AEB and explaining that AEB is an emergency system that does not replace the need for normal actuation of the service brakes.

- Each manufacturer must maintain documentation that captures the full system configuration, including all hardware, software, and firmware, for each vehicle at the time of first sale and at the time of any update to the system configuration by the manufacturer.

- Each AEB system or a system that communicates with the AEB system must store information logging at least the last three AEB activation events or all AEB activation events occurring within the past three drive cycles.

- The vehicle must store the status of the AEB system (active, inactive, disabled, warning, engaged, disengaged, malfunctioning, etc.).

NHTSA believes that manufacturers that have installed AEB systems in their fleet may already be meeting many of the documentation requirements above. The agency seeks comment on the suitability of these requirements and on any changes that manufacturers would have to introduce in their internal processes and consumer-facing documentation (*e.g.*, owner's manuals). NHTSA is interested in learning

whether manufacturers find discrepancies between real-world performance and data collected on test tracks with surrogate vehicles.

I. ESC Performance Test

This proposal would require nearly all heavy vehicles to have an ESC system that meets the equipment requirements, general system operational capability requirements, and malfunction detection requirements of FMVSS No. 136. However, this proposal would not require vehicles not currently required to have ESC systems to meet any test track performance requirements for ESC systems because NHTSA is conscious of the potential testing burden on small businesses and the multi-stage vehicle manufacturers involved in class 3 through 6 vehicle production. NHTSA requests comments on whether the agency should establish performance requirements for ESC for all vehicles covered by this proposal. If ESC performance requirements would be appropriate, NHTSA seeks comment on which regulatory tests and requirements would be appropriate for the class 3–8 vehicles which this notice proposes to make applicable to FMVSS No. 136. NHTSA also seeks comment on whether manufacturers of these vehicles should have the option to certify to FMVSS No. 126 or FMVSS No. 136, whether a new ESC test procedure should be developed for some or all of these vehicles, or whether NHTSA should give the manufacturer the option to choose the ESC standard to which to certify.

NHTSA conducted some limited ESC testing for class 3–6 vehicles, as part of research efforts during the development of FMVSS No. 136, which was established in 2015, and as part of its recent AEB testing.¹⁷⁷ The ESC testing performed has however been sufficient to indicate that the test procedures currently established in FMVSS Nos. 126 and 136 would require modification in order to better suit class 3 through 6 vehicles. For example, the vehicle test speeds specified in FMVSS No. 136, which are designed to induce ESC activation in class 7 and 8 trucks and buses at speeds under 48 km/h (30 mph), did not induce ESC activation in the vehicles that were tested. This testing indicates that the maximum test speeds and speed reduction requirements would likely need to be modified.

¹⁷⁷ This information is available in “ESC Track Test Data for Class 3–6 Vehicles,” which has been placed in the docket identified in the heading of this NPRM.

J. Severability

The issue of severability of FMVSSs is addressed in 49 CFR 571.9. It provides that if any FMVSS or its application to any person or circumstance is held invalid, the remainder of the part and the application of that standard to other persons or circumstances is unaffected. NHTSA seeks comment on the issue of severability.

VIII. Vehicle Test Device

NHTSA has proposed the same vehicle test device described below for use in the proposed requirements for AEB for light vehicles. An identical discussion of the vehicle test device appears in the NPRM proposing the FMVSS for light vehicles.

A. Description and Development

To ensure repeatable and reproducible testing that reflects how a subject vehicle would be expected to respond to an actual vehicle in the real world, this proposal includes broad specifications for a vehicle test device to be used as a lead vehicle or pass through vehicle during testing. NHTSA is proposing that the vehicle test device be based on certain specifications defined in ISO 19206–3:2021, “Road vehicles—Test devices for target vehicles, vulnerable road users and other objects, for assessment of active safety functions—Part 3: Requirements for passenger vehicle 3D targets.”¹⁷⁸ The vehicle test device is a tool that NHTSA proposes to use to facilitate the agency’s compliance tests to measure the performance of AEB systems required by the proposed FMVSS. This NPRM describes the vehicle test device that NHTSA would use.

The surrogate vehicle NHTSA currently uses in its research testing is the Global Vehicle Target (GVT). The GVT is a full-sized, harmonized surrogate vehicle developed to test crash avoidance systems while addressing the limitations of earlier generation surrogate vehicles. To obtain input from the public and from industry stakeholders, NHTSA participated in a series of five public workshops and three radar tuning meetings between August 2015 and December 2016. These workshops and meetings provided representatives from the automotive industry with an opportunity to inspect, measure, and assess the realism of prototype surrogates during the various stages of development. Workshop and meeting participants were permitted to take measurements and collect data with their own test equipment, which

¹⁷⁸ <https://www.iso.org/standard/70133.html>. May 2021.

they could then use to provide specific recommendations about how the surrogate vehicle’s appearance, to any sensor, could be improved to increase realism.

After feedback from automotive vehicle manufacturers and suppliers was incorporated into an earlier design of the GVT, a series of high-resolution radar scans were performed by the Michigan Tech Research Institute (MTRI) under NHTSA contract. These measurements provided an independent assessment of how the radar characteristics of the GVT compared to those from four real passenger cars.¹⁷⁹ This study found that the GVT has generally less radar scatter than the real vehicles to which it was compared. However, MTRI found that “even though the [GVT] may more often reflect a greater amount of energy than the [real] vehicles, it is not exceeding the maximum energy of the returns from the vehicles. Thus, a sensor intended for the purpose of detecting vehicles should perform well with the [GVT].”¹⁸⁰

NHTSA also performed tests to determine the practicality of using the GVT for test-track performance evaluations by examining how difficult it was to reassemble the GVT after it was struck in a test. Using a randomized matrix designed to minimize the effect of learning, these tests were performed with teams of three or five members familiar with the GVT reassembly process. NHTSA found that reassembly of the GVT on the robotic platform takes approximately 10 minutes to complete; however, additional time is often required to re-initialize the robotic platform GPS afterwards.¹⁸¹

Finally, NHTSA conducted its own crash imminent braking tests to compare the speed reduction achieved by three passenger cars as they approached the GVT, compared to the Strikable Surrogate Vehicle (SSV), the surrogate vehicle NHTSA currently uses for its NCAP AEB tests. These tests found that any differences that might exist between the GVT and the SSV were small enough to not appreciably influence the outcome of vehicle testing.¹⁸²

When used during AEB testing, the GVT is secured to the top of a low-

¹⁷⁹ The comparison passenger cars used were a 2008 Hyundai Accent, a 2004 Toyota Camry, a 2016 Ford Fiesta hatchback, and a 2013 Subaru Impreza.

¹⁸⁰ Buller, W., Hart, B., Aden, S., and Wilson, B. (2017, May) “Comparison of RADAR Returns from Vehicles and Guided Soft Target (GST),” Michigan Technological University, Michigan Tech Research Institute. Docket NHTSA–2015–0002–0007.

¹⁸¹ Snyder, Andrew C. et al., “A Test Track Comparison of the Global Vehicle Target (GVT) and NHTSA’s Strikeable Surrogate Vehicle (SSV),” July 2019. <https://rosap.nhtsa.gov/view/dot/41936>.

¹⁸² *Id.*

profile robotic platform. The robotic platform is essentially flat and is movable and programmable. The vehicle test device's movement can be accurately and repeatably defined and choreographed with the subject vehicle and testing lane through the use of data from the robotic platform's on-board inertial measurement unit, GPS, and closed-loop control facilitated by communication with the subject vehicle's instrumentation. The shallow design of the robotic platform allows the test vehicle to drive over it. The GVT is secured to the top of the robotic platform using hook-and-loop fastener attachment points, which allow the pieces of the GVT to easily and safely break away without significant harm to the vehicle being tested if struck.

The internal frame of the GVT is constructed primarily of vinyl-covered foam segments held together with hook-and-loop fasteners. The GVT's exterior is comprised of multiple vinyl "skin" sections designed to provide the dimensional, optical, and radar characteristics of a real vehicle that can be recognized as such by camera and radar sensors.¹⁸³ If the subject vehicle impacts the GVT at low speed, the GVT is typically pushed off and away from the robotic platform without breaking apart. At higher impact speeds, the GVT breaks apart as the subject vehicle essentially drives through it.

B. Specifications

The most recent, widely-accepted iteration of vehicle test device specifications is contained in ISO 19206-3:2021.¹⁸⁴ Using data collected by measuring the fixed-angle/variable-range radar cross section for several real vehicles, ISO developed generic "acceptability corridors," which are essentially boundaries that the vehicle test device's radar cross section must fit within to be deemed representative of a real vehicle.¹⁸⁵ All vehicles that ISO tested have radar cross section measurements that fit within the boundaries set forth in the ISO standard.

This proposal would incorporate by reference ISO 19206-3:2021 into NHTSA's regulations and specify that the vehicle test device meets several specifications in ISO 19206-3:2021, in addition to other specifications

identified by NHTSA. Because the GVT was considered during the development of ISO 19206-3:2021, the GVT would meet the standard's specifications. However, should the design of the GVT change or a new vehicle test device be developed, reference to the more general specifications of ISO 19206-3:2021 should ensure that NHTSA is able to test with such other vehicle test devices and should also ensure that such vehicle test devices have properties needed by an AEB system to identify it as a motor vehicle.

The vehicle test device's physical dimensions are proposed to be consistent with those of the subcompact and compact car vehicle class. The specific range of dimensions in this proposal for individual surfaces of the vehicle test device are incorporated from ISO 19206-3:2021, Annex A, Table A.4. These include specifications for the test device's width and the placement of the license plate, lights, and reflectors relative to the rear end of the vehicle test device.

The vehicle test device is proposed to have features printed on its surface to represent features that are identifiable on the rear of a typical passenger vehicle, such as tail lamps, reflex reflectors, windows, and the rear license plate. The proposed color ranges for the various surface features, including tires, windows, and reflex reflectors are incorporated from ISO 19206-3:2021, Annex B, Tables B.2 and B.3. Table B.2 specifies the colors of the tires, windows, and reflectors, which reflect the colors observed in the real world. The color of the exterior of the vehicle is specified to be a range representing the color white, which provides a high color contrast to the other identifiable features. White is also a common color for motor vehicles.¹⁸⁶ The proposed reflectivity ranges for the various features on the vehicle test device are incorporated from ISO 19206-3:2021, Annex B, Table B.1. Table B.3 specifies the recommended minimum, mean, and maximum color range for the white body, specifically the outer cover.

Because many AEB systems rely on radar sensors in some capacity to identify the presence of other vehicles, the vehicle test device must have a radar cross section that would be recognized as a real vehicle by an AEB system. In particular, the vehicle test device must have a radar cross section consistent

with a real vehicle when approached from the rear over a range of distances.

NHTSA is proposing that the radar cross section of the vehicle test device fall within an "acceptability corridor" when measured using an automotive-grade radar sensor. This acceptability corridor would be defined by the upper and lower boundaries specified by ISO 19206-3:2021, Annex C, Equations C.1 and C.2, using the radar cross section boundary parameters defined in ISO 19206-3:2021, Annex C, Table C.3 for a fixed viewing angle of 180 degrees. NHTSA is aware that, unlike some predecessor specification documents such as Euro NCAP Technical Bulletin 025 from May 2018, ISO 19206-3:2021 does not specify that the radar cross section measurements be verified using a specific model of radar. Rather, the ISO standard specifies that the radar sensor used have certain specifications and operational characteristics. NHTSA's proposal similarly does not specify that the vehicle test device's initial radar cross section be measured with a specific model or brand of radar. NHTSA only proposes that the radar sensor used to validate the radar cross section operate within the 76-81 GHz bandwidth, have a horizontal field of view of at least 10 degrees, a vertical field of view of at least 5 degrees, and a range greater than 100 m. Additionally, NHTSA's proposal does not specify that the VTD's radar cross section during in-the-field verifications be performed to objectively assess whether the radar cross section still falls within the acceptability corridor. NHTSA seeks comment about whether use of the optional field verification procedure provided in ISO 19206-3:2021, Annex E, section E.3 should be used.

Because the test procedures proposed in this rule only involve rear-end approaches by the subject vehicle, NHTSA is at this time only proposing to establish specifications applicable for the rear end of the vehicle test device. NHTSA seeks comment on whether the specifications for the vehicle test device should include all sides of the vehicle. If NHTSA were to include, in a final rule, specifications for all sides of a vehicle test device, NHTSA anticipates that those specifications would also be incorporated from ISO 19206-3:2021.

C. Alternatives Considered

One alternative test device that NHTSA considered for use in this proposal was the agency's self-developed Strikable Surrogate Vehicle (SSV) device, which NHTSA currently uses in its NCAP testing of AEB performance. NHTSA adopted the use of

¹⁸³ "A Test Track Comparison of the Global Vehicle Target (GVT) and NHTSA's Strikeable Surrogate Vehicle," DOT HS 812-698.

¹⁸⁴ Road vehicles—Test devices for target vehicles, vulnerable road users and other objects, for assessment of active safety functions—Part 3: Requirements for passenger vehicle 3D targets.

¹⁸⁵ The vehicles tested to develop the ISO standard are: 2016 BMW M235i, 2006 Acura RL, 2019 Tesla Model 3, 2017 Nissan Versa, 2018 Toyota Corolla, 2019 Ford Fiesta.

¹⁸⁶ Globally, white was the most popular color for light vehicles in 2021. <https://gmauthority.com/blog/2022/02/white-was-the-most-popular-car-color-again-in-2021/#:~:text=According%20to%20PPG%2C%2035%20percent,by%20silver%20at%2011%20percent.>

the SSV as part of its 2015 NCAP upgrade, under which the agency began testing AEB performance.¹⁸⁷ The SSV resembles the rear section of a 2011 Ford Fiesta hatchback. The SSV is constructed primarily from a rigid carbon fiber mesh, which allows it to maintain a consistent shape over time (unless damaged during testing). To maximize visual realism, the SSV shell is wrapped with a vinyl material that simulates paint on the body panels and rear bumper, and a tinted glass rear window. The SSV is also equipped with a simulated United States specification rear license plate. The taillights, rear bumper reflectors, and third brake light installed on the SSV are actual original equipment from a production vehicle. NHTSA testing shows that AEB systems will recognize the SSV and will respond in a way that is comparable to how they would respond to an actual vehicle.¹⁸⁸

While the SSV and GVT are both recognized as real vehicles by AEB systems from the rear approach aspect, the SSV has several disadvantages. The foremost disadvantage of the SSV is how easily it can be irreparably damaged when struck by a subject vehicle during testing, particularly at high relative velocities. While NHTSA has tried to address this issue by attaching a foam bumper to the rear of the SSV to reduce the peak forces resulting from an impact by the subject vehicle, the SSV can still easily be damaged to a point where it can no longer be used if the relative impact speed is sufficiently high (greater than 40 km/h (25 mph)); this speed is much lower than the maximum relative impact speed of 80 km/h (50 mph) potentially encountered during the AEB tests performed at the maximum relative speeds proposed in this notice). Also, unlike the GVT, which has its movement controlled by precise programming and closed loop control, the SSV moves along a monorail secured to the test surface, which may be visible to a camera-based AEB system.

In addition to the vehicle test device specifications, NHTSA seeks comment on specifying a set of real vehicles to be used as vehicle test devices in AEB testing. UN ECE Regulation No. 152 specifies that the lead vehicle be either a regular high-volume passenger sedan or a “soft target” meeting the specifications of ISO 19206–1:2018.¹⁸⁹ UN ECE regulation does not require the

use of real vehicles as targets, but rather offers them as an alternative to manufacturers to homologate their systems, at their choice. Although NHTSA has tentatively concluded that the specification in UN ECE Regulation No. 152 of any high-volume passenger sedan is not sufficiently specific for an FMVSS, NHTSA seeks comment on whether it should create a list of vehicles from which NHTSA could choose a lead vehicle for testing. Unlike the UN ECE regulation, which provides flexibility to manufacturers, inclusion of a list of vehicles would provide flexibility to the agency in the assessment of the performance of AEB systems. Such a list would be in addition to the vehicle test device proposed in this document, to provide assurance of vehicle performance with a wider array of lead vehicles. For example, the list could include the highest selling vehicle models in 2020.

Using actual vehicles has various challenges, including the potential for risk to individuals conducting the tests and damage to the vehicles involved, and assuring a safe testing environment that could encounter high energy collisions between real vehicles in cases of poor AEB system performance or AEB or test equipment malfunctions. NHTSA seeks comment on the utility and feasibility of test laboratories safely conducting AEB tests with real vehicles, such as through removing humans from test vehicles and automating scenario execution, and how laboratories would adjust testing costs to factor in the risk of damaged vehicles.

Beyond the practical safety limits and cost of testing described above, managing a list of relevant lead vehicles would require the standard to be updated periodically to keep pace with the vehicle fleet and to ensure that lead vehicles are available years after a final rule. NHTSA seeks comments on the merits and potential need for testing using real vehicles, in addition to using a vehicle test device, as well as challenges, limitations, and incremental costs of such.

IX. Proposed Compliance Date Schedule

NHTSA proposes a two-tiered phase-in schedule for meeting the new standard. For heavy vehicles currently subject to FMVSS No. 136, any vehicle manufactured on or after the first September 1 that is three years after the date of publication of the final rule must meet the proposed heavy vehicle AEB standard. To illustrate, if the final rule were published on October 1, 2023, the compliance date would be September 1, 2027. For heavy vehicles not currently

subject to FMVSS No. 136, with some exclusions, those manufactured on or after the first September 1 that is four years after the date of publication of the final rule must meet the amendments to FMVSS No. 136 that would require ESC systems and the proposed AEB requirements. In the provided example of a final rule published on October 1, 2023, that date would be September 1, 2028. Small-volume manufacturers, final-stage manufacturers, and alterers would be provided an additional year, added to the dates above, to meet the requirements of this proposal.

Consistent with 49 U.S.C. 30111(d), NHTSA has tentatively concluded that good cause exists for this proposal to take effect more than one year after publication of a final rule because it would not be feasible for all heavy vehicles to be equipped with AEB systems that meet the proposed performance requirements within one year. Furthermore, NHTSA seeks comments on whether this proposed phase-in schedule appropriately addresses challenges to the implementation of AEB for specific categories of heavy vehicles. The agency is particularly interested in information about single-unit trucks with permanently installed work-performing equipment installed on the front of or extending past the front of the vehicle (e.g., auger trucks, bucket trucks, cable reel trucks, certain car carriers, etc.), where AEB sensors may be located. NHTSA seeks comments to discern the best way to implement the applicability of AEB on class 3–6 single-unit trucks, considering all scenarios such as vehicle configuration, vehicle service applicability, and cargo type, which, among other factors, can affect vehicle dynamics and drivability. The manufacture of single-unit trucks is more complex than that of truck tractors due to wider variations in vehicle weight, wheelbase, number of axles, center of gravity height, and cargo type. These factors, and others, bear on the calibration and performance of ESC. For example, ESC system design depends on vehicle dynamics characteristics, such as the total vehicle weight and location of that weight (center of gravity), which will differ depending on the final vehicle configuration. Because ESC has been a prerequisite for voluntary adoption of AEB, single-unit trucks not having had ESC requirements suggests that AEB implementation has been slower and that there is a need for effective date flexibility.

NHTSA is also aware that many, if not most, manufacturers of single-unit trucks are final-stage manufacturers, which are typically small businesses. To

¹⁸⁷ 80 FR 68604.

¹⁸⁸ 80 FR 68607.

¹⁸⁹ U.N. Regulation No. 152, E/ECE/TRANS/505/Rev.3/Add.151/Amend.1 (Nov. 4, 2020), available at <https://unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/2020/R152am1e.pdf>.

provide more flexibility to small businesses to meet the proposed rule, this NPRM proposes to permit small-volume manufacturers, final-stage manufacturers, and alters an additional year to meet the requirements of the final rule. The additional time would provide flexibility to the manufacturers to install ESC and collaborate with AEB suppliers to meet the proposed requirements.

FMCSA proposes that vehicles currently subject to FMVSS No. 136 (*i.e.*, those manufactured on or after August 1, 2019, the initial compliance date for FMVSS No. 136) would be required to comply with FMCSA's proposed ESC regulation on the final rule's effective date. Vehicles with a GVWR greater than 4,536 kilograms (10,000 pounds) not currently subject to FMVSS No. 136 would be required to meet the proposed ESC regulation on or after the first September 1 that is five years after the date of publication of the final rule.

FMCSA proposes that, for vehicles currently subject to FMVSS No. 136, any vehicle manufactured on or after the first September 1 that is three years after the date of publication of the final rule would be required to meet the proposed heavy vehicle AEB standard. FMCSA proposes that vehicles with a gross vehicle weight rating greater than 4,536 kilograms (10,000 pounds) not currently subject to FMVSS No. 136 and vehicles supplied to motor carriers by small-volume manufacturers, final-stage manufacturers, and alters would be required to meet the proposed heavy vehicle AEB standard on or after the first September 1 that is five years after the date of publication of the final rule.

This proposed implementation timeframe simplifies FMCSR training and enforcement because the Agency expects a large number of final stage manufacturers supplying vehicles to motor carriers in the category of vehicles with a gross vehicle weight rating greater than 4,536 kilograms (10,000 pounds).

FMCSA will require the ESC and AEB systems to be inspected and maintained in accordance with § 396.3.

X. Retrofitting

The Secretary has the statutory authority to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture. The Secretary has delegated authority to NHTSA, in coordination with FMCSA, to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial

manufacture when the standards are based upon and similar to an FMVSS.¹⁹⁰

NHTSA considered, but decided against, proposing to require retrofitting of in-service vehicles with GVWR greater than 4,536 kg (10,000 lbs.) with AEB systems. NHTSA believes that retrofitting in-service vehicles with AEB systems could be very complex and costly because of the integration between an AEB system and the vehicles' chassis, engine, and braking systems. There may be changes that would have to be made to an originally manufactured vehicle's systems that interface with an AEB system, such as plumbing for new air brake valves and lines and a new electronic control unit for a revised antilock braking system and a new electronic stability control system. NHTSA might also have to develop and establish additional requirements to ensure that AEB control components on in-service (used) vehicles are at an acceptable level of performance for a compliance test of AEB. This would be likely given the uniqueness of each vehicle's maintenance condition, particularly for items such as tires and brake components, which are foundational for AEB performance (and which are subject to high demands of wear-and-tear).

Nonetheless, although this NPRM does not propose requiring heavy vehicles to be equipped with AEB subsequent to initial manufacture, NHTSA requests comment on the following issues related to retrofitting to learn more about the technical and economic feasibility of a retrofit requirement going forward.

- The complexity, cost, and burdens of a requirement to retrofit in-service vehicles with AEB.
- The changes that would be needed to an originally manufactured vehicle's systems that interface with an AEB system, such as plumbing for new air brake valves and lines and a new electronic control unit for a revised ABS and a new ESC system.

- Approaches NHTSA could take to identify portions of the on-road fleet to which a retrofit requirement could apply. For a retrofitting requirement, should the requirement distinguish among in-service vehicles based on the vehicles' date of manufacture? Is it reasonable to assume that older in-service vehicles would have greater challenges to meet a retrofit requirement? What should, for example, the original manufacture date be of

vehicles that should be subject to a retrofit requirement?

- Should there be provisions to ensure that the various components related to AEB performance (*e.g.*, brakes and tires) are at an acceptable level of performance for a compliance test, given the uniqueness of the maintenance condition for vehicles in service, especially for items particularly subject to wear-and-tear (*e.g.*, brake components and tires)?

- Relatedly, would it be warranted to vary the performance requirements for retrofitted vehicles, so that the requirements would be less stringent for used vehicles? If yes, what would be appropriate level of stringency? If not, how can the requirements be adjusted for in-service vehicles?

- NHTSA requests comment on other options the agency could take to identify portions of the on-road fleet to which a retrofit requirement should apply. Are there other voluntary improvements that heavy vehicle operators would consider in attaining the benefits provided by AEB for their in-service vehicles?

XI. Summary of Estimated Effectiveness, Cost, Benefits, and Comparison of Regulatory Alternatives

A. Crash Problem

NHTSA's assessment of available safety data indicates that between 2017 and 2019, an average of approximately 60,000 crashes occurred annually in which a heavy vehicle rear-ended another vehicle. These crashes resulted in an annual average of 388 fatalities, approximately 30,000 non-fatal injuries, and 84,000 property-damage-only vehicles. Additionally, class 3–6 heavy vehicles were involved in approximately 17,000 rollover and loss of control crashes annually. These crashes resulted in 178 fatalities, approximately 4,000 non-fatal injuries, and 13,000 property-damage-only vehicles annually. In total, these rear-end, rollover, and loss of control crashes add up to 77,000 annually, which represent 1.2 percent of all police-reported crashes and over 14 percent of all crashes involving heavy vehicles. In total, these crashes resulted in 566 fatalities and 34,000 non-fatal injuries. These crashes also damaged 97,000 vehicles in property-damage-only crashes.

B. AEB System Effectiveness

NHTSA evaluated the effectiveness of AEB indicates based on the efficacy of the system in avoiding a rear-end crash. This relates to the proposed requirement that a vehicle avoid an imminent rear-

¹⁹⁰ Sec. 101(f) of Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159; Dec. 9, 1999). 49 CFR 1.95(c).

end collision under a set of test scenarios. One method of estimating effectiveness would be to perform a statistical analysis of real-world crash data and observe the differences in statistics between heavy vehicles equipped with AEB and those not equipped with AEB. However, this approach is not feasible currently due to the low penetration rate of AEB in the on-road vehicle fleet. Consequently, NHTSA estimated the effectiveness of AEB systems using performance data

from the agency's vehicle testing. Effectiveness was assessed against all crash severity levels collectively, rather than for specific crash severity levels (i.e., minor injury versus fatal).

The AEB effectiveness estimates were derived from performance data from four vehicles tested by NHTSA, and the agency is continuing its effort to test a larger variety of vehicles to further evaluate AEB system performance. These vehicles were subject to the same test scenarios (stopped lead vehicle, slower-moving lead vehicle, and

decelerating lead vehicle) that are proposed in this notice, and effectiveness estimates are based on each vehicle's capacity to avoid a collision during a test scenario. For example, if a vehicle avoided colliding with a stopped lead vehicle in four out of five test runs, its effectiveness in that scenario would be 80 percent. The test results for each vehicle were combined into an aggregate effectiveness value by vehicle class range and crash scenario, as displayed in Table 17.

TABLE 17—AEB EFFECTIVENESS (%) BY VEHICLE CLASS RANGE AND CRASH SCENARIO

Vehicle class range	Stopped lead vehicle	Slower-moving lead vehicle	Decelerating lead vehicle
7–8	38.5	49.2	49.2
3–6	43.0	47.8	47.8

As shown in Table 17, after aggregating class 7 and class 8 together, AEB would avoid 38.5 percent of rear-end crashes for the stopped lead vehicle scenario, and 49.2 percent of slower-moving and decelerating lead vehicle target crashes. For class 3–6, AEB is 43.0 percent effective against stopped lead vehicle crashes and 47.8 percent against slower-moving and decelerating lead vehicle target crashes. These effectiveness values are the values used for assessing the benefits of this proposed rule. Further detail on the derivation of AEB effectiveness can be found in the PRIA accompanying this proposal.

C. ESC System Effectiveness

ESC effectiveness rates were adopted from those estimated in the final regulatory impact analysis for the final rule implementing heavy vehicle ESC requirements in FMVSS No. 136.¹⁹¹ In that final rule, a range of ESC crash avoidance effectiveness was established for the first-event rollover crashes but only a single-point estimate was established for loss of control crashes. ESC was estimated to be 40 to 56 percent effective at preventing rollover crashes and 14 percent effective at preventing loss-of-control crashes. For simplicity, and to correspond with the single-point estimate for loss of control crashes, the PRIA used the mid-point between the lower and upper bounds of

the estimated range as the effectiveness for rollovers.

The propensity for vehicles to experience rollover and loss-of-control crashes is influenced by their body type and center of gravity, and the implementation of ESC varies. ESC was estimated to be less effective on class 7 and 8 vehicles than it was on light vehicles, especially for rollover crashes.¹⁹² Vehicle characteristics for class 3 through 6 vehicles range between that of light trucks and vans and class 7 and 8 vehicles, it would be plausible to assume that ESC effectiveness would be between the effectiveness estimated in the FMVSS No. 126 and FMVSS No. 136 final rules. Nevertheless, this NPRM uses the effectiveness estimates from the FMVSS No. 136 final rule.

TABLE 18—ESC EFFECTIVENESS (%) BY CRASH SCENARIO

Vehicle class range	Rollover	Loss of control
3–6	48.0	14.0

D. Avoided Crashes and Related Benefits

Considering the annual heavy vehicle rear-end, rollover, and loss of control crashes, as well as the effectiveness of AEB and ESC at avoiding these crashes, the proposed rule would prevent an estimated 19,118 crashes, 155 fatalities,

and 8,814 non-fatal injuries annually. In addition, the proposed rule would eliminate an estimated 24,828 PDOVs annually. The benefit estimates include assumptions that likely result in the underestimation of the benefits of this proposal because it only reflects the benefits from crash avoidance. That is, the benefits only reflect those resulting from crashes that are avoided as a result of the AEB and ESC performance proposed. It is likely that AEB will also reduce the severity of crashes that are not prevented. Some of these crashes may include fatalities and significant injuries that will be prevented or mitigated by AEB.

Table 19 tabulates these benefits in two ways, one by vehicle class and one by technology. These benefits are measured for the portion of the vehicle fleet that has not voluntarily adopted AEB prior to the NPRM. These benefits also assume reduced performance under dark or hazardous weather conditions. The estimated annual benefits would be the undiscounted lifetime benefits once the proposal is fully implemented (four years after publication of a final rule). The undiscounted lifetime benefits for each new model year of vehicles would equal the annual benefits of the on-road fleet when that fleet has been fully equipped with this technology. The actual annual benefits will increase each year as the on-road vehicle fleet is replaced with vehicles that would be subject to the proposed requirements.

¹⁹¹ Final Regulatory Impact Analysis, FMVSS No. 136 Electronic Stability Control on Heavy Vehicles, June 2014, Docket No. NHTSA–2015–0056.

¹⁹² Dang, J. (July 2007) Statistical Analyzing of the Effectiveness of Electronic Stability Control (ESC) Systems—Final Report, DOT HS 810 794,

Washington, DC, <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/810794>.

TABLE 19—UNDISCOUNTED ESTIMATED ANNUAL BENEFITS OF THE PROPOSED RULE

	Crashes	Fatalities	Non-fatal injuries	PDOVs
By Vehicle Class:				
Class 7–8	5,691	40	2,822	7,958
Class 3–6	13,427	115	5,992	16,870
Total	19,118	155	8,814	24,828
By Technology:				
AEB	16,224	106	8,058	22,713
ESC	2,894	49	756	2,115
Total	19,118	155	8,814	24,828

E. Technology Costs

The AEB system is estimated to cost \$396 per vehicle. The unit cost includes all the components, labor cost for training customers, tuning the system to ensure the performance of AEB, and the AEB malfunction telltale. The component unit costs were based on the agency’s 2018 weight and teardown study, which accounted for scale efficiencies in production and labor.¹⁹³ The cost for an ESC system would range from \$320 to \$687, which was calculated by adjusting the assumed unit cost for ESC in the FMVSS No. 136 final rule for inflation.¹⁹⁴ Therefore, for vehicles that need both AEB and ESC, the total unit cost would range from \$716 to \$1,083 per affected vehicle.¹⁹⁵ The total number of affected vehicles including trucks and buses are estimated to be 569,792 units annually: 164,405 units for class 7–8 and 405,387 units for class 3–6 vehicles. The total

cost corresponding to the estimated annual benefits is estimated to be \$353 million (\$288 million for class 7–8 and \$65 million for class 3–6). The affected vehicle units were based on the 10 year average of units sold between 2011 and 2020.¹⁹⁶

F. Monetized Benefits

Table 20 summarizes the primary benefit cost estimates, which include the annual total cost, total monetized savings, cost per equivalent life saved, and net benefits of the proposed rule under three and seven percent discount rates. Monetized savings are measured by comprehensive costs, which include the tangible costs of reducing fatalities and injuries such as savings from medical care, emergency services, insurance administration, workplace costs, legal costs, congestion and property damage, lost productivity as well as nontangible cost of quality life

lost. The nontangible cost components were based on the value of statistical life of \$11.8 million.¹⁹⁷

The proposed rule would generate a net benefit of \$1.81 billion to \$2.58 billion, annually under 3 and 7 percent discount rates. The proposed rule would be cost-effective given that the highest estimated net cost per fatal equivalent would be \$0.50 million, a value less than \$12.2 million (the comprehensive cost of a fatality). The negative net cost per fatal equivalent for the 3 percent discount rate indicates that the savings from reducing traffic congestion and property damage is greater than the total cost of the proposed rule. Net benefits are likely to be even higher given that the estimates only include benefits from crashes prevented by AEB, but do not include benefits from crashes for which AEB mitigates the severity of, but does not prevent.

TABLE 20—ESTIMATED ANNUAL COST, MONETIZED BENEFITS, COST-EFFECTIVENESS, AND NET BENEFITS OF THE PROPOSED RULE [2021 dollars in millions]

Discount rates	Annual cost *	Monetized savings	Net cost per fatal equivalent	Net benefits
3 Percent	\$353.3	\$2,937.0	** – \$0.12	\$2,583.7
7 Percent	353.3	2,160.4	0.50	1,807.1

* Annual cost is not discounted because it is paid at vehicle purchase.

** At a three percent discount rate, savings from reduced traffic congestions and property damages outweigh the cost, resulting in negative net cost per equivalent life. The negative value indicates cost-effectiveness.

G. Alternatives

NHTSA has identified and assessed alternatives to the preferred alternative set forth in the proposed regulatory text.

The agency considered two primary alternatives to the proposed rule.

The first alternative would not require AEB or ESC on vehicles not currently subject to FMVSS No. 136. Eliminating

the requirement would reduce the burden on heavy vehicle manufacturers associated with installing AEB and ESC on vehicles with different body types, but would result in significantly fewer

¹⁹³ “Cost and Weight Analysis of Heavy Vehicle Forward Collision Warning (FCW) and Automatic Emergency Braking (AEB) Systems for Heavy Trucks,” September 27, 2018, Contract number: DTNH2216D00037, Task Order: DTNH2217F00147.

¹⁹⁴ Final Regulatory Impact Analysis, FMVSS No. 136 Electronic Stability Control on Heavy Vehicles, June 2014, Docket No. NHTSA–2015–0056.

¹⁹⁵ AEB and ESC unit cost estimates are the additional component costs for the vehicles without the systems. Specifically, AEB cost is the additional hardware to those vehicles that already had ESC.

¹⁹⁶ Due to data constraints, the average is only available for trucks and school buses. The annual sales volume for motorcoaches and transit buses was based on the agency’s estimate for earlier final

rules and other sources. Please consult Appendix B of the PRIA for details.

¹⁹⁷ Departmental Guidance on Valuation of a Statistical Life in Economic Analysis, Effective Date: Friday, March 4, 2022, <https://www.transportation.gov/office-policy/transportation-policy/valued-a-statistical-life-in-economic-analysis>.

safety benefits and lives saved. A summary of the costs, benefits, and cost-effectiveness associated with Alternative 1 is in Table 21.

TABLE 21—DISCOUNTED BENEFITS OF ALTERNATIVE 1
[Millions of 2021\$]

	Annual cost *	Monetized savings	Net cost per fatal equivalent	Net benefits
3 Percent Discount	\$65.10	\$874.59	** –\$1.00	\$809.50
7 Percent Discount	65.10	662.23	–0.66	597.10

* Annual cost is not discounted because it is paid at vehicle purchase.

** At a three percent discount rate, savings from reduced traffic congestions and property damages outweigh the cost, resulting in negative net cost per equivalent life. The negative value indicates cost-effectiveness.

The second alternative would require all class 3–6 heavy vehicles to have AEB and ESC within four years, as with the primary agency proposal. However, this alternative would include a one-year phase-in period beginning three years after publication of the final rule in which 50 percent of class 3–6 vehicles would be required to install AEB and ESC. This alternative was considered because it has the potential to save more lives sooner. This alternative would have the same annual cost, savings, net cost per fatal equivalent, and net benefits as the primary proposal. However, this alternative would result in added benefits from vehicles manufactured in the phase-in period. The estimated total additional benefits associated with alternative 2 above the primary estimate are summarized in Table 22.

TABLE 22—DISCOUNTED ADDITIONAL BENEFITS OF ALTERNATIVE 2 ABOVE THE PRIMARY PROPOSAL
[Millions of 2021\$]

Percent discount	3	7
Net Additional Benefit	\$830.5	\$566.4

Detailed benefit-cost calculations of these alternatives are discussed in the PRIA. The agency seeks comment on the feasibility of the second alternative.

Because of the significant safety benefits that accrue by including Class 3–6 vehicles, and to allow time for the Class 3–6 vehicle manufactures to optimize implementations of both ESC and AEB into their vehicles, the agency decided not to select either alternative.

XII. Regulatory Notices and Analyses

Executive Orders 12866, 13563, and 14094 and DOT Regulatory Policies and Procedures

NHTSA and FMCSA have considered the impact of this rulemaking action under Executive Order 12866, as amended by Executive Order 14094, Executive Order 13563, and the Department of Transportation’s regulatory procedures. This rulemaking is considered significant under section 3(f)(1) of Executive Order 12866, as amended, and was reviewed by the Office of Management and Budget under that Executive Order. NHTSA and FMCSA have prepared a preliminary regulatory impact analysis (PRIA) that assesses the cost and benefits of this

proposed rule. The benefits, costs and other impacts of this NPRM are discussed in the prior section.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*, as amended), whenever an agency is required to publish an NPRM or a final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small not-for-profit organizations, and small governmental jurisdictions). I certify that this NPRM would not have a significant economic impact on a substantial number of small entities.

NHTSA’s proposal would directly affect manufacturers of class 3- through 8 trucks, buses, and multipurpose passenger vehicles. Of the more than 20 companies who are sole manufacturers or first-stage manufacturers of class 3 through 8 vehicles in the United States, NHTSA found two companies (Proterra and Workhorse Group, Inc.) that qualify as a small entities.¹⁹⁸ Table 23. Below show the list of heavy duty truck manufacturers.

TABLE 23—HEAVY DUTY TRUCK MANUFACTURERS

Type	Company	# Employees	Annual revenue (millions)	Notes
Trucks	Autocar company	487	\$126	Parent Company: GVW Group. Parent Company: GM.
	Brightdrop	252	138	
	Ford	186,000	158,060	
	GM	167,000	156,700	
	International	2,760	721	Parent Company: Navistar. Parent Company: Daimler.
	Freightliner	15,000	450	
	Hendrickson International	6,000	1,600	
	Mack	2,000	671	Parent Company: Volvo.
	Navistar	14,500	3,900	
	Oshkosh Corp	15,000	8,300	
	PACCAR	31,100	28,800	Subsidiaries: Kenworth, Peterbilt. Parent Company: Stellantis.
	Ram	200,000	180,000	

¹⁹⁸ NHTSA researched MD and HD vehicle manufacturing companies and found their

estimated number of employees and annual revenue (as of Dec 2022) from the following sources:

zoominfo.com, macrotrrends.net, zippia.com, statista.com, and linkedin.com.

TABLE 23—HEAVY DUTY TRUCK MANUFACTURERS—Continued

Type	Company	# Employees	Annual revenue (millions)	Notes
Buses	Shyft Group	4,200	1,000	
	Western Star	3,221	680	Parent Company: Daimler.
	Workhorse	331	5	Small Business.
	Bluebird	1,702	726	
	Forest River	11,000	3,300	Parent Company: Berkshire Hathaway.
	Gillig	900	267	Parent Company: Henry Crown & Co.
	IC Bus	219	44	Parent Company: Navistar.
	Nikola	1,500	51	
	Proterra	938	247	Small Business.
	REV group	6,800	2,300	Subsidiary: El Dorado.
Thomas Built Buses	1,276	288	Parent Company: Daimler.	

Workhorse Group, Inc. currently has about 330 employees. Its vehicles are already equipped with ESC and AEB and are unlikely to be affected by this proposal. Proterra is a manufacturer of large electric transit buses and falls into the small business threshold with about 9,400 employees. Although its vehicles are not currently equipped with AEB, its vehicles sell for approximately \$750,000. With such a high sale price, NHTSA considers the effect of this rule on the price of the vehicle to be de minimis. Accordingly, NHTSA has concluded that this proposal would not have a significant economic impact upon these small entities. However, NHTSA seeks comment on this conclusion.

Final stage manufacturers are also affected by this proposal, and final stage manufacturers would be considered small entities. According to the U.S. Census, there are 570 small businesses in body manufacturing for light,

medium, and heavy-duty classes.¹⁹⁹ This proposal likely would affect a substantial number of final stage manufacturers that are small businesses. It is NHTSA's understanding that these small entities rarely make modifications to a vehicle's braking system and instead rely upon the pass-through certification provided by the first-stage manufacturer, which is not typically a small business.. More information about multi-stage vehicle manufacturing can be found in section V.I.E of this proposal. Additionally, this proposal would further accommodate final-stage manufacturers by providing them an additional year before compliance is required. Therefore, NHTSA does not believe at this time that the impacts of this proposal on small entities would be significant.

This rule may also affect purchasers of class 3 through 8 vehicles. It is assumed that the incremental costs of this proposal would be passed on to

these purchasers. Class 7 through 8 vehicles are primarily purchased by motor carriers, an industry composed of approximately 757,652 interstate, intrastate, and hazardous materials motor carriers, in which over ninety percent of its companies (687,139) are considered small.²⁰⁰ Class 3–6 vehicles consisting of work pickup trucks, small buses, and moving/cargo vans are purchased and utilized in industries where small businesses are not uncommon as well. It is not known precisely how frequently small businesses purchase new vehicles (instead of used vehicles) affected by the proposed rule, however, small entities usually have the option to finance or lease these vehicles to mitigate financial burden by spreading out cost over time. Table 24 below shows a list of industries, where small businesses may be affected by the proposed rule.

TABLE 24—SBA SIZE STANDARDS OF INDIRECTLY AFFECTED INDUSTRIES

NAICS Code	NAICS Industry description	Size standards in millions of dollars
484110	General Freight Trucking, Local	30
484122	General Freight Trucking, Long-Distance, Truckload	30
484122	General Freight Trucking, Long-Distance, Less Than Truckload	38
484210	Used Household and Office Goods Moving	30
484220	Specialized Freight (except Used Goods) Trucking, Local	30
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance	30
485113	Bus and Other Motor Vehicle Transit Systems	28.5
485210	Interurban and Rural Bus Transportation	28
485410	School & Employee Bus Transportation	26.5
485510	Charter Bus Industry	17
485991	Special Needs Transportation	16.5
488410	Motor Vehicle Towing	8

¹⁹⁹ 2020 SUBS Annual Data Tables by Establishment Industry, "U.S. and states, NAICS, detailed employment sizes." <https://www.census.gov/data/tables/2020/econ/subs/2020-susb-annual.html>.

²⁰⁰ Assume a motor carrier of 10 or less power units is considered a small entity, which is very conservative given an SBA size standard of \$30 million in annual revenue. 2022 Pocket Guide to Large Truck and Bus Statistics (December 2022), Federal Motor Carrier Safety Administration, p.13.

FMCSA's proposed requirement would ensure that the benefits resulting from CMVs equipped with AEBs are sustained through proper maintenance and operation. The cost of maintaining AEB systems is minimal and may be covered by regular annual maintenance. Therefore, FMCSA does not expect this requirement to have a significant economic impact on a substantial number of small entities.

Additional information concerning the potential impacts of this proposal on small businesses is presented in the PRIA accompanying this proposal. The agencies seek comment on the effects this NPRM would have on small businesses.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA)²⁰¹ requires Federal agencies to analyze the environmental impacts of proposed major Federal actions significantly affecting the quality of the human environment, as well as the impacts of alternatives to the proposed action.²⁰² The Council on Environmental Quality (CEQ)'s NEPA implementing regulations direct federal agencies to determine the appropriate level of NEPA review for a proposed action; an agency can determine that a proposed action normally does not have significant effects and is categorically excluded,²⁰³ or can prepare an environmental assessment for a proposed action "that is not likely to have significant effects or when the significance of the effects is unknown."²⁰⁴ When a Federal agency prepares an environmental assessment, CEQ's NEPA implementing regulations require it to (1) "[b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact;" and (2) "[b]riefly discuss the purpose and need for the proposed action, alternatives . . . , and the environmental impacts of the proposed action and alternatives, and include a listing of agencies and persons consulted."²⁰⁵

As discussed further below, FMCSA has determined that its proposed action is categorically excluded from further analysis and documentation in accordance with FMCSA Order 5610.1.²⁰⁶ NHTSA determined that there is no similarly applicable

categorical exclusion for its proposed action and has therefore determined that it is appropriate to prepare a Draft Environmental Assessment (EA). The preamble provides additional information about the distinction between NHTSA and FMCSA's proposed requirements based on each agency's statutory authority.

This section serves as NHTSA's Draft EA. In this Draft EA, NHTSA outlines the purpose and need for the proposed rulemaking, a reasonable range of alternative actions the agency could adopt through rulemaking, and the projected environmental impacts of these alternatives.

Purpose and Need

This NPRM preamble and the accompanying PRIA set forth the purpose of and need for this action. The preamble and PRIA outline the safety need for this proposal, in particular to address safety problems associated with heavy vehicles, *i.e.*, vehicles with a GVWR greater than 4,536 kilograms (10,000 pounds). These heavy vehicles, also referred to as Class 3–8 vehicles,²⁰⁷ include single unit straight trucks, combination trucks, truck tractors, motorcoaches, transit buses, school buses, and certain pickup trucks. An annualized average of 2017 to 2019 data from NHTSA's FARS and CRSS shows heavy vehicles were involved in around 60,000 rear-end crashes in which the heavy vehicle was the striking vehicle annually, which represents 11 percent of all crashes involving heavy vehicles.²⁰⁸ These rear-end crashes resulted in 388 fatalities annually, which comprises 7.4 percent of all fatalities in heavy vehicle crashes. These crashes resulted in approximately 30,000 injuries annually, or 14.4 percent of all injuries in heavy vehicle crashes, and 84,000 damaged vehicles with no injuries or fatalities. Considering vehicle size, approximately half of the rear-end crashes, injuries, and fatalities resulting from rear-end crashes where the heavy vehicle was the striking vehicle

involved vehicles with a GVWR above 4,536 kilograms (10,000 pounds) up to 11,793 kilograms (26,000 pounds). Similarly, half of all rear-end crashes and the fatalities and injuries resulting from those crashes where the heavy vehicle was the striking vehicle involved vehicles with a GVWR of greater than 11,793 kilograms (26,000 pounds).

To address this safety need, NHTSA proposes to adopt a new FMVSS to require AEB systems on certain heavy vehicles.²⁰⁹ Current AEB systems use radar and camera-based sensors or combinations thereof and build upon older FCW-only systems. An FCW-only system provides an alert to a driver of an impending rear-end collision with a lead vehicle to induce the driver to take action to avoid the crash but does not automatically apply the brakes. This proposal would require both FCW and AEB systems. For simplicity, when referring to AEB systems in general, this proposal is referring to both FCW and AEB unless the context suggests otherwise. NHTSA also proposes to amend FMVSS No. 136 to require nearly all heavy vehicles to have an ESC system that meets the equipment requirements, general system operational capability requirements, and malfunction detection requirements of FMVSS No. 136. In addition to requiring certain heavy vehicles be equipped with AEB/ESC, the proposed rule requires the heavy vehicles to be able to avoid a collision in various rear-end crash scenarios at different speeds.

As explained earlier in this preamble, the AEB system improves safety by using various sensor technologies and sub-systems that work together to detect when the vehicle is in a crash imminent situation, to automatically apply the vehicle brakes if the driver has not done so, or to apply more braking force to supplement the driver's braking, thereby detecting and reacting to an imminent crash. This proposed rule is anticipated to address the safety need by mitigating the amount of fatalities, non-fatal injuries, and property damage that would result from crashes that could potentially be prevented or mitigated because of AEB and ESC. This proposed rule is expected to substantially decrease risks associated with rear-end, rollover, and loss of control crashes.

This NPRM follows NHTSA's 2015 grant of a petition for rulemaking from the Truck Safety Coalition, the Center for Auto Safety, Advocates for Highway

²⁰⁷ Class is a vehicle classification system used by the Federal Highway Administration of Department of Transportation to categorize vehicles into 8 Classes based on vehicle size, weight, and number of wheels. The following lists the GVWR for Class 3–8 heavy vehicles. A complete vehicle class categorization table is included in 49 CFR part 565.

Class GVWR
Class 3: 4,536–6,350 kg (10,001–14,000 pounds)
Class 4: 6,351–7,257 kg (14,001–16,000 pounds)
Class 5: 7,258–8,845 kg (16,001–19,500 pounds)
Class 6: 8,846–11,793 kg (19,501–26,000 pounds)
Class 7: 11,794–14,969 kg (26,001–33,000 pounds)

Class 8: 14,969 kg (33,001 pounds) and above

²⁰⁸ These rear-end crashes are cases where the heavy vehicle was the striking vehicle.

²⁰⁹ Some heavy vehicles are excluded from the proposed rule. These include those vehicles that are excluded from FMVSS No. 121 and FMVSS No. 136.

²⁰¹ 42 U.S.C. 4321–4347.

²⁰² 42 U.S.C. 4332(2)(C).

²⁰³ 40 CFR 1501.4.

²⁰⁴ 40 CFR 1501.5(a).

²⁰⁵ 40 CFR 1501.5(c).

²⁰⁶ 69 FR 9680 (Mar. 1, 2004).

and Auto Safety and Road Safe America, requesting that NHTSA establish a safety standard to require AEB on certain heavy vehicles. This NPRM also responds to a mandate under the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act, directing the Department to prescribe an FMVSS that requires heavy commercial vehicles with FMVSS-required ESC systems to be equipped with an AEB system, and also promotes DOT's January 2022 National Roadway Safety Strategy to initiate a rulemaking to require AEB on heavy trucks. This NPRM also proposes Federal Motor Carrier Safety Regulations requiring the ESC and AEB systems to be on during vehicle operation.

Alternatives

NHTSA has considered three regulatory alternatives for the proposed action and a "no action alternative." Under the no action alternative, NHTSA would not issue a final rule requiring that vehicles be equipped (installation standards) with systems that meet minimum specified performance standards, and manufacturers would continue to add these systems voluntarily. However, since the BIL directs NHTSA to promulgate a rule that would require heavy vehicles subject to FMVSS No. 136 to be equipped with an AEB system, the no action alternative is not a permissible option. The proposed standard (the preferred alternative) requires specific AEB/ESC installation and performance standards for certain Class 3–8 heavy vehicles with a two-tiered phase-in schedule based on whether the heavy vehicle is currently subject to FMVSS No. 136. Alternative 1, which is considered less stringent than the preferred alternative, would set AEB/ESC installation and performance standards only for vehicles currently subject to FMVSS No. 136. Alternative 2, which is considered more stringent than the preferred alternative, would require a more aggressive phase-in schedule for the AEB/ESC installation requirements for Class 3–6 heavy vehicles.

Although these regulatory alternatives differ in phase-in schedule and heavy vehicle Class applicability, the functional AEB/ESC installation and performance requirements would be the same. Please see the preamble and PRIA Chapter 11, Regulatory Alternatives, for more information about the preferred alternative and other regulatory alternatives, and the proposed standards' requirements.

Environmental Impacts of the Proposed Action and Alternatives

Based on the purpose and need for the proposed action and the regulatory alternatives described above, the primary environmental impacts that could potentially result from this rulemaking are associated with greenhouse gas (GHG) emissions and air quality, socioeconomics, public health and safety, solid waste/property damage/congestion, and hazardous materials.²¹⁰ Consistent with CEQ regulations and guidance, this EA discusses impacts in proportion to their potential significance. The effects of the proposed rulemaking that were analyzed further are summarized below.

Greenhouse Gas Emissions and Air Quality

NHTSA has previously recognized that additional weight required by FMVSS could potentially negatively impact the amount of fuel consumed by a vehicle, and accordingly result in GHG emissions or air quality impacts from criteria pollutant emissions.²¹¹ Atmospheric GHGs affect Earth's surface temperature by absorbing solar radiation that would otherwise be reflected back into space. Carbon dioxide (CO₂) is the most significant GHG resulting from human activity. Motor vehicles emit CO₂ as well as other GHGs, including methane and nitrous oxides, in addition to criteria pollutant emissions that negatively affect public health and welfare.

Additional weight added to a vehicle, like added hardware from safety systems, can potentially cause an increase in vehicle fuel consumption and emissions. NHTSA analyzed in PRIA Chapter 9.1, Technology Unit Costs and Added Weights, the cost associated with meeting the performance requirements in the proposed rule, including the potential weight added to the vehicle. An AEB system for heavy vehicles requires the following hardware: sensors (radar

²¹⁰ NHTSA anticipates that the proposed action and alternatives would have negligible or no impact on the following resources and impact categories, and therefore has not analyzed them further: topography, geology, soils, water resources (including wetlands and floodplains), biological resources, resources protected under the Endangered Species Act, historical and archeological resources, farmland resources, environmental justice, and Section 4(f) properties.

²¹¹ Criteria pollutants is a term used to describe the six common air pollutants for which the Clean Air Act (CAA) requires the Environmental Protection Agency (EPA) to set National Ambient Air Quality Standards (NAAQS). EPA calls these pollutants criteria air pollutants because it regulates them by developing human health-based or environmentally based criteria (*i.e.*, science-based guidelines) for setting permissible levels.

mounted at front bumper and, in some cases, camera located at top, inside portion of windshield), control units (electronic control unit), display (in some cases integrated with existing dash cluster, in other cases, a separate display), associated wiring harnesses, mounting hardware specific to FCW/AEB system, and other materials and scrap (for electronic parts, this category includes labels, soldering materials, flux, and fasteners).²¹² Although AEB and ESC have some shared system components, NHTSA also estimated that a limited amount of additional hardware would be required for ESC systems depending on the vehicle class, including accelerometers, yaw rate sensors, and steer angle sensors.²¹³ Based on a study conducted for NHTSA on the cost and weight of heavy vehicle FCW and AEB systems,²¹⁴ NHTSA concluded that the added weight for the installation of AEB is estimated to be up to 3.10 kg (~ 7 lbs) and AEB and ESC combined is up to 6.70 kg (~ 15 lbs). These weights are considered negligible compared to the 4,536 kg (10,000 lbs) or greater curb weight of Class 3–8 vehicles. NHTSA tentatively concluded in the PRIA that the proposed rule is not expected to impact the fuel consumption of Class 3–8 vehicles, and therefore none of the regulatory alternatives would be presumed to result in GHG or criteria pollutant impacts.

NHTSA also analyzed this action for purposes of the Clean Air Act (CAA)'s General Conformity Rule.²¹⁵ The

²¹² PRIA, at 141.

²¹³ Final Regulatory Impact Analysis, FMVSS No. 136, Electronic Stability Control Systems on Heavy Vehicles; Docket No. NHTSA–2015–0056–0002, at VI–5.

²¹⁴ Department of Transportation National Highway Traffic Safety Administration Office of Acquisition Management (NPO–320) West Building 51–117 1200 New Jersey Avenue SE Washington, DC 20590 Contract Number: DTNH2216D00037 Task Order: DTNH2217F00147 Cost and Weight Analysis of Heavy Vehicle Forward Collision Warning (FCW) and Automatic Emergency Braking (AEB) Systems for Heavy Trucks Ricardo Inc. Detroit Technical Center Van Buren Twp., MI 48111 USA September 27, 2018.

²¹⁵ Section 176(c) of the CAA, codified at 42 U.S.C. 7506(c); To implement CAA Section 176(c), EPA issued the General Conformity Rule (40 CFR part 51, subpart W and part 93, subpart B). Pursuant to the CAA, the U.S. Environmental Protection Agency (EPA) has established a set of National Ambient Air Quality Standards (NAAQS) for the following criteria pollutants: carbon monoxide (CO), nitrogen dioxide (NO₂), ozone, particulate matter (PM) less than 10 micrometers in diameter (PM₁₀), PM less than 2.5 micrometers in diameter (PM_{2.5}), sulfur dioxide (SO₂), and lead (Pb). EPA requires a "conformity determination" when a Federal action would result in total direct and indirect emissions of a criteria pollutant or precursor originating in nonattainment or maintenance areas equaling or exceeding the

General Conformity Rule does not require a conformity determination for Federal actions that are “rulemaking and policy development and issuance,” such as this action.²¹⁶ Therefore, NHTSA has determined it is not required to perform a conformity analysis for this action.

Socioeconomics

The socioeconomic impacts of the proposed rule would be primarily felt by heavy vehicle and equipment manufacturers, heavy vehicle drivers,

and other road users that would otherwise be killed or injured as a result of heavy vehicle crashes. NHTSA conducted a detailed assessment of the economic costs and benefits of establishing the new rule in its PRIA. The main economic benefits come primarily from the reduction in fatalities and non-fatal injuries (safety benefits). Reductions in the severity of heavy vehicle crashes would be anticipated to have corresponding reductions in costs for medical care, emergency services,

insurance administrative costs, workplace costs, and legal costs due to the fatalities and injuries avoided. Other socioeconomic factors discussed in the PRIA that would affect these parties include quantified property damage savings, and additional quantified and unquantified impacts like less disruptions to commodity flow and improved traffic conditions. Most of these socioeconomic benefits are related to public health and safety and are discussed in more detail below.

TABLE 25—COMPARISON OF REGULATORY ALTERNATIVES
[2021 dollars]

Regulatory option	Relative to the proposed rule	Net cost per equivalent live saved		Net benefits	
		3%	7%	3%	7%
Proposed Rule .....	.....	– \$118,922	\$496,746	\$2,583,652,432	\$1,807,064,498
Alternative 1: AEB Requirements only for Class 7–8.	Less Stringent	– 1,003,884	– 662,217	809,485,467	597,125,719
Alternative 2: More Aggressive Phase in Schedule for Class 3–6.	More Stringent	– 118,922	496,746	2,583,652,432	1,807,064,498

The total annual cost, considering the implementation of both AEB and ESC technologies proposed in this rule, is estimated to be \$353 million. The proposed rule would generate a net benefit of \$2.58 to \$1.81 billion, annually under 3 and 7 percent discount rates. The proposed rule would be cost-effective given that the highest estimated net cost per fatal equivalent would be \$0.50 million. Maintenance costs are considered de minimis and therefore not included in the cost estimate. Please see PRIA for additional information about the annual cost, monetized benefits, cost-effectiveness, and net benefits of this proposal.

Public Health and Safety

The affected environment for public health and safety includes roads, highways and other driving locations used by heavy vehicle drivers, drivers and passengers in light vehicles and other motor vehicles, and pedestrians or other individuals who could be injured or killed in crashes involving the vehicles regulated by the proposed action. In the PRIA, the agency determined the impacts on public health and safety by estimating the reduction in fatalities and injuries resulting from the decreased crash severity due to the use of AEB systems

under the regulatory alternatives. Under the proposed standard (the preferred alternative), it is expected that the addition of a requirement for specific AEB/ESC installation and performance standards for certain Class 3–8 heavy vehicles with a two-tiered phase-in schedule, would result each year in 151 to 206 equivalent lives saved. Under Alternative 1, it is expected that the addition of a less stringent requirement that would set AEB/ESC installation and performance standards only for Class 7–8 heavy vehicles, with the same phase-in schedule as the preferred alternative, would result each year in 45 to 60 equivalent lives saved. Under Alternative 2, it is expected that the addition of a more stringent requirement that would require a more aggressive phase-in schedule for the AEB/ESC installation requirements for Class 3–6 heavy vehicles, would result in 94 to 128 equivalent lives saved in 2024 and 151 to 206 equivalent lives saved in 2025 onwards. The PRIA discusses this information in further detail.

**Solid Waste/Property Damage/
Congestion**

Vehicle crashes can generate solid wastes and release hazardous materials into the environment. The chassis and engines, as well as associated fluids and

components of automobiles and the contents of the vehicles, can all be deemed waste and/or hazardous materials. Solid waste can also include damage to the roadway infrastructure, including road surface, barriers, bridges, and signage. Hazardous materials are substances that may pose a threat to public safety or the environment because of their physical, chemical, or radioactive properties when they are released into the environment, in this case as a result of a crash. Vehicle crashes also generate socioeconomic and environmental effects from congestion as engines idle while drivers are caught in traffic jams and slowdowns, in particular from wasted fuel and the resulting increased greenhouse gas emissions.²¹⁷

The proposal is projected to reduce the amount and severity of heavy vehicle crashes, and therefore is expected to reduce the quantity of solid waste, hazardous materials, and other property damage generated by vehicle crashes in the United States, in addition to reducing the traffic congestion that occurs as a consequence of a crash. Less solid waste translates into cost and environmental savings from reductions in the following areas: (1) transport of waste material, (2) energy required for recycling efforts, and (3) landfill or

emissions thresholds specified in 40 CFR 93.153(b)(1) and (2).

²¹⁶ 40 CFR 93.153(c)(2)(iii).

²¹⁷ Blincoc, L.J., Miller, T.R., Zaloshnja, E., & Lawrence, B.A. (2015, May). The economic and societal impact of motor vehicle crashes, 2010.

(Revised) (Report No. DOT HS 812 013). Washington, DC: National Highway Traffic Safety Administration.

incinerator fees. Less waste will result in beneficial environmental effects through less GHG emissions used in the transport of it to a landfill, less energy used to recycle the waste, less emissions through the incineration of waste, and less point source pollution at the scene of the crash that would result in increased emissions levels or increased toxins leaking from the crashed vehicles into the surrounding environment. Similarly, as mentioned above, less congestion translates into economic and environmental benefits from fuel

savings and reduced GHG emissions, in addition to benefits from the time that drivers are not caught in additional traffic congestion.

As discussed in the PRIA, NHTSA’s monetized benefits are calculated by multiplying the number of non-fatal injuries and fatalities mitigated by their corresponding “comprehensive costs.” The comprehensive costs include economic costs that are external to the value of a statistical life (VSL) costs, such as emergency management services or legal costs, and congestion costs. NHTSA calculated the monetized

benefits attributable to reduced traffic congestion and property damage in the PRIA accompanying this proposed rule for the proposed action and the regulatory alternatives. As shown in Table 26, the monetized benefits from reduced traffic congestion and property damage increase as the regulatory alternatives increase the heavy vehicle classes covered by the proposal and the proposal’s phase-in year. Please see PRIA for additional information about the comprehensive cost values used in this proposal.

TABLE 26—CONGESTION AND PROPERTY DAMAGE SAVINGS

Alternative 1		Preferred alternative		Alternative 2	
3% Discount	7% Discount	3% Discount	7% Discount	3% Discount	7% Discount
\$125,337,423	\$94,904,159	\$377,815,690	\$278,309,156	2024: \$243,518,740 2025 Onwards: \$377,815,690	2024: \$180,753,307. 2025 Onwards: \$278,309,156.

While NHTSA did not quantify impacts aside from the monetized benefits from congestion and property damage savings, like the specific quantity of solid waste avoided from reduced crashes, NHTSA believes the benefits would increase relative to the crashes avoided and would be relative across the different alternatives. This is based in part on NHTSA and FMCSA’s previously conducted Draft EA on heavy vehicle speed limiting devices.²¹⁸ While that Draft EA analyzed the effects of reduced crash severity, there would be similar, if not increasing benefits to avoided crashes as a result of the addition of AEB to heavy vehicles.²¹⁹ The PRIA discusses information related to quantified costs and benefits of crashes, and in particular property damage due to crashes, for each regulatory alternative in further detail.

Cumulative Impacts

In addition to direct and indirect effects, CEQ regulations require agencies to consider cumulative impacts of major Federal actions. CEQ regulations define cumulative impacts as the impact “on the environment that result from the incremental [impact] of the action when added to . . . other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.”²²⁰ NHTSA notes that the public health and safety, solid waste/

property damage/congestion, air quality and GHG emissions, socioeconomic, and hazardous material benefits identified in this EA were based on calculations described in the PRIA, in addition to other NHTSA actions and studies on motor vehicle safety. That methodology required the agency to adjust historical figures to reflect vehicle safety rulemakings that have recently become effective. As a result, many of the calculations in this EA already reflect the incremental impact of this action when added to other past actions.

NHTSA’s and other parties’ past actions that improve the safety of heavy vehicles, as well as future actions taken by the agency or other parties that improve the safety of heavy vehicles, could further reduce the severity or number of crashes involving these vehicles. Any such cumulative improvement in the safety of heavy vehicles would have an additional effect in reducing injuries and fatalities and could reduce the quantity of solid and hazardous materials generated by crashes. Additional federal actions like NHTSA’s fuel efficiency standards for heavy vehicles, and EPA’s GHG and criteria pollutant emissions standards for heavy vehicles, could also result in additional decreased fuel use and emissions reductions in the future.

Agencies and Persons Consulted

This preamble describes the various materials, persons, and agencies consulted in the development of the proposal.

Finding of No Significant Impact

Although this rule is anticipated to result in increased FMVSS requirements for heavy vehicle manufacturers, NHTSA’s analysis indicates that it would likely result in environmental and other socioeconomic benefits. The addition of regulatory requirements to standardize heavy vehicle AEB is anticipated to result in no additional fuel consumption (and accordingly, no additional GHG or criteria pollutant emissions impacts), increasing socioeconomic and public safety benefits depending on the regulatory alternative phase-in year and vehicle class applicability requirements from the no-action alternative, and an increase in benefits from the reduction in solid waste, property damage, and congestion (including associated traffic-level impacts like a reduction in energy consumption and tailpipe pollutant emissions from congestion) from fewer crashes.

Based on the information in this Draft EA and assuming no additional information or changed circumstances, NHTSA expects to issue a Finding of No Significant Impact (FONSI).²²¹ NHTSA has tentatively concluded that none of the impacts anticipated to result from the proposed action and alternatives under consideration will have a significant effect on the human environment. Such a finding will be made only after careful review of all public comments received. A Final EA and a FONSI, if appropriate, will be issued as part of the final rule.

²¹⁸ Speed Limiting Devices Draft Environmental Assessment, DOT HS 812 324 (August 2016).

²¹⁹ Id. at 33 (“Using this procedure, the results in this section are expected to be more conservative than if presented in terms of crash avoidance.”)

²²⁰ 40 CFR 1508.1(g)(3).

²²¹ 40 CFR 1501.6(a).

FMCSA

FMCSA analyzed this rule pursuant to the National Environmental Policy Act and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, Mar. 1, 2004), Appendix 2, paragraph 6(aa). The Categorical Exclusion in paragraph 6(aa) covers regulations requiring motor carriers, their officers, drivers, agents, representatives, and employees directly in control of CMVs to inspect, repair, and provide maintenance for every CMV used on a public road. In addition, this rule does not have any effect on the quality of environment.

Executive Order 13132 (Federalism)

NHTSA has examined this NPRM pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concludes that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The NPRM would not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which “[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.” 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action

against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved.

However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA’s rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer’s compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this proposed rule could or should preempt State common law causes of action. The agency’s ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation. To this end, the agency has examined the nature (e.g., the language and structure of the regulatory text) and objectives of this final rule and finds that this rule, like many NHTSA rules, would prescribe only a minimum safety standard. As such, NHTSA does not intend this NPRM to preempt State tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by a final rule. Establishment of a higher standard by means of State tort law will not conflict with the minimum standard adopted here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

FMCSA has determined that this proposed rule would not have substantial direct costs on or for States concerning the adoption and enforcement of compatible motor carrier safety rules for intrastate motor carriers, nor would it limit the policymaking discretion of States. Nothing in this document would preempt any State

motor carrier safety law or regulation. Therefore, this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement related to the delivery of FMCSA’s programs.

Civil Justice Reform

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this rulemaking is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Paperwork Reduction Act (PRA)

Under the PRA of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There are no “collections of information” (as defined at 5 CFR 1320.3(c)) in this proposed rule.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law 104–113), all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the International Organization for Standardization (ISO) and SAE International. The NTTAA

directs Federal agencies to provide Congress, through OMB, explanations when a Federal agency decides not to use available and applicable voluntary consensus standards.

NHTSA is proposing to incorporate by reference ISO and ASTM standards into this proposed rule. NHTSA considered several ISO standards and has proposed to use ISO 19206–3:2021 to specify the vehicle test device. NHTSA is incorporating by reference ASTM E1337–19, which is already incorporated by reference into many FMVSSs, to measure the peak braking coefficient of the testing surface.

NHTSA considered SAE J3029, Forward Collision Warning and Mitigation Vehicle Test Procedure—Truck and Bus, which defines the conditions for testing AEB and FCW systems. This document outlines a basic test procedure to be performed under specified operating and environmental conditions. It does not define tests for all possible operating and environmental conditions. The procedures in this SAE recommended practice are substantially similar to this proposal. Minimum performance requirements are not addressed in SAE J3029.

In Appendix B of this preamble, NHTSA describes several international test procedures and regulations the agency considered for use in this NPRM. This proposed rule also has substantial technical overlap with the UNECE No. 131 described in the appendix. First, this proposed rule and UNECE No. 131 specify a warning and automatic emergency braking in lead vehicle crash situations. Several lead vehicle scenarios are nearly identical, including the stopped lead vehicle and lead vehicle moving scenarios. Finally, NHTSA has based its test target for the lead vehicle test device on the “soft target option” condition contained in UNECE No. 152. As discussed in the appendix, this proposed rule differs from the UNECE standards in the areas of maximum test speed and the basic performance criteria. This proposed rule uses higher test speeds to better match the safety problem in the United States. This proposed rule includes a requirement that the test vehicle avoid contact. This approach would increase the repeatability of the test and maximize the realized safety benefits of the rule.

Incorporation by Reference

Under regulations issued by the Office of the Federal Register (1 CFR 51.5(a)), an agency, as part of a proposed rule that includes material incorporated by reference, must summarize material that

is proposed to be incorporated by reference and discuss the ways the material is reasonably available to interested parties or how the agency worked to make materials available to interested parties.

In this NPRM, NHTSA proposes to incorporate by reference three documents into the Code of Federal Regulations, one of which is already incorporated by reference. The document already incorporated by reference into 49 CFR part 571 is ASTM E1337, “Standard Test Method for Determining Longitudinal Peak Braking Coefficient (PBC) of Paved Surfaces Using Standard Reference Test Tire.” ASTM E1337 is a standard test method for evaluating peak braking coefficient of a test surface using a standard reference test tire using a trailer towed by a vehicle. NHTSA uses this method in all of its braking and electronic stability control standards to evaluate the test surfaces for conducting compliance test procedures.

NHTSA is also proposing to incorporate by reference into part 571 SAE J2400, “Human Factors in Forward Collision Warning System: Operating Characteristics and User Interface Requirements.” SAE J2400 is an information report that is intended as a starting point of reference for designers of forward collision warning systems. NHTSA would incorporate this document by reference solely to specify the location specification and symbol for a visual forward collision warning.

NHTSA is proposing to incorporate by reference ISO 19206–3:2021(E), “Test devices for target vehicles, vulnerable road users and other objects, for assessment of active safety functions—Part 3: Requirements for passenger vehicle 3D targets.” This document provides specification of three-dimensional test devices that resemble real vehicles. It is designed to ensure the safety of the test operators and to prevent damage to subject vehicles in the event of a collision during testing. NHTSA is referencing many, but not all, of the specifications of ISO 19206–3:2021(E), as discussed in section VIII.B of this NPRM.

All standards proposed to be incorporated by reference in this NPRM are available for review at NHTSA’s headquarters in Washington, DC, and for purchase from the organizations promulgating the standards. The ASTM standard presently incorporated by reference into other NHTSA regulations is also available for review at ASTM’s online reading room.²²²

²²² <https://www.astm.org/READINGLIBRARY/>.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by States, local or tribal governments, in the aggregate, or by the private sector, \$100 million or more (adjusted annually for inflation with base year of 1995) in any one year. Adjusting this amount by the Consumer Price Index for All-Urban Consumers (CPI-U) for the year 2021 and 1995 results in an estimated current value of \$178 million (= 2021 index value of 270.970/1995 index value of 152.400). This proposed rule is not likely to result in expenditures by State, local, or tribal governments of more than \$178 million in any one year. However, it is estimated to result in the expenditures by motor vehicle manufacturers of more than \$178 million. The prior section of this NPRM contains a summary of the costs and benefits of this proposed rule, and the PRIA discusses the costs and benefits of this proposed rule in detail.

Executive Order 13609 (Promoting International Regulatory Cooperation)

The policy statement in section 1 of E.O. 13609 states, in part, that the regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues and that, in some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. The E.O. states that, in meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation and that international regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. NHTSA requests public comment on the “regulatory approaches taken by foreign governments” concerning the subject matter of this rulemaking.

Regulation Identifier Number

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified

Agenda in April and October of each year. You may use the RINs contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please write to us with your views.

XV. Public Participation

How long do I have to submit comments?

Please see the **DATES** section at the beginning of this document.

How do I prepare and submit comments?

- Your comments must be written in English.
- To ensure that your comments are correctly filed in the Docket, please include the Docket Number shown at the beginning of this document in your comments.
- Your comments must not be more than 15 pages long. (49 CFR 553.21). NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. FMCSA does not impose a page limit on docket comments, but like NHTSA, it appreciates a concise statement of the issues addressed by commenters.
- If you are submitting comments electronically as a PDF (Adobe) File, NHTSA asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions. Comments may be submitted to the

docket electronically by logging onto the Docket Management System website at <https://www.regulations.gov>. Follow the online instructions for submitting comments.

- You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <https://www.whitehouse.gov/omb/fedreg/reproducible.html>. DOT's guidelines may be accessed at https://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

NHTSA

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information (CBI), to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512). To facilitate social distancing during COVID-19, NHTSA is temporarily accepting confidential business information electronically. Please see <https://www.nhtsa.gov/coronavirus/submission-confidential-business-information> for details.

FMCSA

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as "PROPIN" to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the NPRM. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

Will the agency consider late comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing the final rule, we will consider that comment as an informal suggestion for future rulemaking action. FMCSA will consider all comments and material received during the comment period and through the closing date up to 11:59:59 p.m. ET.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the internet. To read the comments on the internet, go to <https://www.regulations.gov>. Follow the online instructions for accessing the dockets.

Please note that, even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments.

Accordingly, we recommend that you periodically check the Docket for new material.

XIV. Appendices to the Preamble

Appendix A: Description of Technologies

For the convenience of readers, this section describes various technologies of an AEB system. An AEB system employs multiple sensor technologies and sub-systems that work together to sense a crash imminent scenario and, where applicable, automatically apply the vehicle brakes to avoid or mitigate a crash. Current systems utilize radar- and camera-based sensors. AEB has been implemented in vehicles having electronic stability control technology, which itself leverages antilock braking system technologies. It also builds upon older forward collision warning-only systems.

Radar-Based Sensors

At its simplest form, radar is a time-of-flight sensor that measures the time between when a radio wave is transmitted and its reflection is recorded. This time-of-flight is then used to calculate the distance to the object that caused the reflection. More information about the reflecting object, such as speed, can be determined by comparing the output signal to the input signal. Typical automotive applications use a type of radar called Frequency Modulated Continuous Wave radar. This radar system sends out a radio pulse where the pulse frequency rises through the duration of the pulse. This pulse is reflected off the object and the radar sensor compares the reflected signal to the original pulse to determine the range and relative speed.

Radar sensors are widely used in AEB application, for many reasons. These sensors can have a wide range of applicability, with automotive grade radars sensing ranges on the order of 1 meter (3 ft) up to over 200 meters (656 ft). Radar sensors are also relatively unaffected by time of day, precipitation, fog, and many other adverse weather conditions. Automotive radar systems typically operate on millimeter wave lengths, easily reflecting off even the smallest metallic surfaces found on vehicles. Radio waves tend to penetrate soft materials, such as rubber and plastic, allowing these sensors to be mounted in the front ends of vehicles behind protective, and visually appealing, grilles and bumper fascia.

Radar-based sensors have limitations that impact their effectiveness. Radar is a line-of-sight sensor, in that they only operate in the direction the receiving antenna is pointed and therefore have a limited angular view. Also, while radar is excellent at identifying radar-reflective objects, the nature of the radar reflection makes classification of that object difficult. In addition, objects that do not reflect radio waves easily, such as rubber, plastic, humans, and other soft objects, are difficult for radar-based sensors to detect. Lastly, because forward facing radar sensors are usually mounted inside the front end of equipped vehicles, damage caused from front-end collisions can lead to alignment issues and reduced effectiveness.

Camera Sensors

Cameras are passive sensors in which optical data are recorded by digital imaging chips, which are then processed to allow for object detection and classification. They are an important part of most automotive AEB systems and one or more cameras are typically mounted behind the front windshield, often high up near the rearview mirror. This provides a good view of the road, plus the windshield wipers provide protection from debris and grease, dirt and the like that can cover the sensor.

Camera-based imaging systems are one of the few sensor types that can determine both color and contrast information. This makes them able to recognize and classify objects such as road signs, other vehicles, and pedestrians, much in the same way the human eye does. In addition, systems that utilize two or more cameras can see stereoscopically, allowing the processing system to determine range information along with detection and classification.

Like all sensor systems, camera-based sensors have their benefits and limitations. Monocular camera systems lack depth perception and are poor at determining range, and even stereoscopic camera systems are not ideal for determining speed. Because cameras rely on the visible spectrum of light, conditions that make it difficult to see such as rain, snow, sleet, fog, and even dark unlit areas, decrease the effectiveness of perception checks of these systems. It is also possible for the imaging sensor to saturate when exposed to excessive light, such as driving towards the sun. For these reasons, camera sensors are often used in conjunction with other sensors like radar.

Electronically Modulated Braking Systems

Automatic actuation of the vehicle brakes requires more than just systems to sense when a collision is imminent. Regardless of how good a sensing system is, hardware is needed to physically apply the brakes without relying on the driver to modulate the brake pedal. The automatic braking system leverages two foundational braking technologies, antilock braking systems and electronic safety control.

Antilock brakes are a foundational technology that automatically controls the degree of wheel slip during braking to prevent wheel lock and minimize skidding, by sensing the rate of angular rotation of the wheels and modulating the braking force at the wheels to keep the wheels from slipping. Modern ABS systems have wheel speed sensors and independent brake modulation at each wheel and can increase and decrease braking pressures as needed.

ESC builds upon the antilock brakes and increases their capability with the addition of at least two sensors, a steering wheel angle sensor and an inertial measurement unit. These sensors allow the ESC controller to determine intended steering direction (from the steering wheel angle sensor), compare it to the actual vehicle direction, and then apply appropriate braking forces at each wheel to induce a counter yaw when the vehicle starts to lose lateral stability. AEB uses the hardware needed for ESC and automatically applies the brakes to avoid

certain scenarios where a crash with a vehicle is imminent.

Forward Collision Warning

Using the sensors described above, coupled with an alert mechanism and perception calculations, a FCW system is able to monitor a vehicle's speed, the speed of the vehicle in front of it, and the distance between the two vehicles. If the FCW system determines that the distance from the driver's vehicle to the vehicle in front of it is too short, and the closing velocity between the two vehicles is too high, the system warns the driver of an impending rear-end collision.

Typically, FCW systems are comprised of two components: a sensing system, which can detect a vehicle in front of the driver's vehicle, and a warning system, which alerts the driver to a potential crash threat. The sensing portion of the system may consist of forward-looking radar, camera systems, lidar or a combination of these. Warning systems in use today provide drivers with a visual display, such as an illuminated telltale on the instrument panel, an auditory signal (*e.g.*, beeping tone or chime), and/or a haptic signal that provides tactile feedback to the driver (*e.g.*, rapid vibrations of the seat pan or steering wheel or a momentary brake pulse) to alert the driver of an impending crash so that they may manually intervene (*e.g.*, apply the vehicle's brakes or make an evasive steering maneuver) to avoid or mitigate the crash.

FCW systems alone are designed to warn the driver, but do not provide automatic braking of the vehicle (some FCW systems use haptic brake pulses to alert the driver of a crash-imminent driving situation, but they are not intended to effectively slow the vehicle). Since the first introduction of FCW systems, the technology has advanced such that it is now possible to couple those sensors, software, and alerts with the vehicles service brake system to provide additional functionality covering a broader portion of the safety problem.

From a functional perspective, research suggests that active braking systems, such as AEB, provide greater safety benefits than warning systems, such as FCW systems. However, NHTSA has found that current AEB systems often integrate the functionalities of FCW and AEB into one frontal crash prevention system to deliver improved real-world safety performance and high consumer acceptance. FCW can now be considered a component of AEB. As such, this NPRM integrates FCW directly into the performance requirements for AEB. This integration would also enable the agency to assess vehicles' compliance with the proposed FCW and AEB requirements at the same time in a single test.

Automatic Emergency Braking

Unlike systems that only alert, AEB systems (systems that automatically apply the brakes), are designed to actively help drivers avoid or mitigate the severity of rear-end crashes. AEB has been previously broken into two primary functions, crash imminent braking and dynamic brake support. CIB systems provide automatic braking when forward-looking sensors indicate that a crash is imminent and the driver has not applied

the brakes, whereas DBS systems use the same forward-looking sensors, but provides supplemental braking after the driver applies the brakes when sensors determine that driver-applied braking is insufficient to avoid an imminent rear-end crash. This NPRM does not split the terminology of these functionalities and instead discusses them together as “AEB.” In some crash situations, AEB functions independently of the driver’s use of the brake pedal (CIB), while in other situations, the vehicle uses the driver’s pedal input to better evaluate the situation and avoid the crash (in the light vehicle context, this is called DBS). This proposal considers each function necessary to address the safety need and presents a performance-based regulatory approach that can permit the detailed application of each function to be based on the specific vehicle application and the manufacturer’s approach to meeting the standard.

In response to an FCW alert or a driver noticing an imminent crash scenario, a driver may initiate braking to avoid a rear-end crash. In situations where the driver’s braking is insufficient to prevent a collision, the AEB system can automatically supplement the driver’s braking action to prevent or mitigate the crash. Similar to FCW systems, AEB systems employ forward-looking sensors such as radar and vision-based sensors to detect vehicles in the path directly ahead and monitor a vehicle’s operating conditions such as speed or brake application. However, AEB systems can also actively supplement braking to assist the driver whereas FCW systems serve only to warn the driver of a potential crash threat.

If a driver does not take any action to brake when a rear-end crash is imminent, AEB systems utilize the same types of forward-looking sensors to apply the vehicle’s brakes automatically to slow or stop the vehicle. The amount of braking applied varies by manufacturer, and several systems are designed to achieve maximum vehicle deceleration just prior to impact. This NPRM would not directly require a particular deceleration capability but specifies situations in which crash avoidance must be achieved. Avoidance may be produced by a combination of warnings, vehicle deceleration, and AEB application timing.

Appendix B: International Regulatory Requirements and Other Standards

European Union (EU)

UNECE 131: Uniform provisions concerning the approval of motor vehicles regarding the Advanced Emergency Braking Systems (AEBS).

Europe mandated AEBS for nearly all heavy vehicles starting in November 2013. The mandate requires warning and automatic braking on Lead Vehicle Moving (LVM) and Stopped lead vehicle (LVS), but it does not require Dynamic Braking Support (DBS). It also requires Forward Collision Warning (FCW) in 2 of 3 modes (audio, visual, haptic). This mandate was implemented into two phases. Phase 1, which is for new types (*i.e.*, an all-new vehicle configuration) was mandated in November 2013, and new vehicles in November 2015. Phase 2 which covers more stringent implementations, was

put in place for the new types in November 2016 and all new heavy vehicles in November 2018. The requirements apply to buses and trucks over 3,500 kg (7,716 lbs.). EU regulations include an electronic stability control (ESC) requirement for all heavy-duty vehicle segments.

The United Nations Economic Commission for Europe (UNECE) is the main entity that regulates vehicle safety in the European Union. UNECE has developed regulations for the implementation of AEBS (using a type approval process) in motor vehicles, as described below (UNECE Regulation 131). Regarding AEBS test procedures, the lead-vehicle-moving scenario in UNECE regulations has a subject vehicle speed of 80 km/h (50 mph). For the lead-vehicle-stopped scenario, the subject vehicle speed is also 80 km/h (50 mph).

In addition, it also has false positive test requirements for vehicle speeds of 50 km/h (31 mph). However, these false positive test requirements are different from the ones in NHTSA’s proposal, because NHTSA uses a steel trench plate and pass-through vehicles, as opposed to UNECE, which only uses pass-through vehicles.

There are similarities between the performance requirements of the UNECE regulation and proposed FMVSS No. 128 as the speeds of the subject vehicle in the scenarios of stopped lead vehicle as well as slow moving lead vehicle are the same. However, the UNECE regulation does not have performance requirements for decelerating lead vehicle scenarios, which NHTSA does have. Because NHTSA has tentatively determined it is important to have a decelerating lead vehicle test scenario, NHTSA decided not to completely base its requirements on the UNECE regulation parameters.

We note that UNECE 131 is considering the implementation of Automatic Emergency Braking-Pedestrian (PAEB) into its existing regulation. NHTSA is not proposing PAEB for heavy vehicles in this NPRM. NHTSA believes there are unknowns at this time about the performance of PAEB on heavy vehicles in the U.S., as well as cost and other technical and practicability considerations to support a proposed implementation of PAEB for heavy vehicles. Rather than delay this NPRM to obtain this information, we have decided to proceed with the rulemaking as set forth in this NPRM.

Japan

In January 2017, the Japanese government, under the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) presented a proposal for UN Regulation on AEBS for M1/N1 vehicles.²²³ As part of the harmonization efforts under consideration by the UNECE working group (WP.29), MLIT proposed a new United Nations regulation on AEBS in September 2008, initially including M2, N2, M3 and N3 vehicles, and having as a future target M1 and N1 vehicles. NHTSA’s consideration of UNECE Regulation 131 is discussed above.

²²³ <https://unece.org/DAM/trans/doc/2017/wp29grf/GRRF-83-17e.pdf>.

South Korea

The Republic of Korea (ROK), under the Ministry of Land, Infrastructure and Transport (MOLIT), in January 2019 required all passenger vehicles to have AEBS and lane departure warning systems. Those requirements were applied to trucks and other vehicles in July 2021. Article 90–3 (Advanced Emergency Braking System (AEBS)) from the Korean standard applies to buses and trucks/special purpose vehicle with a gross vehicle weight more than 3.5 tons (over 3,500 kg) (7,716 lbs.).²²⁴ The majority of the performance requirements from the Korean standard is derived from UNECE Regulation 131. NHTSA’s consideration of ECE Regulation 131 is discussed above.

SAE International (SAE)

SAE J3029: Forward Collision Warning and Mitigation Vehicle Test Procedure—Truck and Bus.

This SAE Recommended Practice (RP) establishes uniform powered vehicle level test procedures for Forward Collision Avoidance and Mitigation (FCAM) systems (also identified as AEB systems) used in highway commercial vehicles and coaches greater than 4,535 kg (10,000 lbs.) GVWR. This document outlines a basic test procedure to be performed under specified operating and environmental conditions. It does not define tests for all possible operating and environmental conditions. Minimum performance requirements are not addressed in this document.

When comparing the SAE test procedure with proposed FMVSS No. 128, the SAE procedure specifies lower test conditions than NHTSA’s proposal. The SAE subject vehicle speed for the stopped lead vehicle scenario is 40.2 km/h (25 mph), compared to 80 km/h (50 mph) in this NPRM. For the case of false activation test parameters, SAE uses 50.7 km/h (32 mph), compared to 80 km/h (50 mph) used in the NHTSA proposed performance requirements. NHTSA is not proposing to use the performance requirements from the SAE tests because the agency believes they are not stringent enough to provide the level of safety benefit the agency seeks for this NPRM.

International Organization for Standardization (ISO)

ISO 19377: Heavy commercial vehicles and buses—Emergency braking on a defined path—Test method for trajectory measurement.

This standard describes test methods for determining the deviation of the path travelled by a vehicle during a braking maneuver induced by an emergency braking system from a pre-defined desired path. The standard evaluates the vehicle path during and following the system intervention. The corrective steering actions for keeping the vehicle on the desired path can be applied either by the driver or by a steering machine or by a driver assistance system.

This document applies to heavy vehicles equipped with an advanced emergency

²²⁴ Regulations for Performance and Safety Standards of Motor Vehicle and Vehicle Parts: Article 90–3 and Table 7–8.

braking system, including commercial vehicles, commercial vehicle combinations, buses and articulated buses as defined in ISO 3833²²⁵ (trucks and trailers with maximum weight above 3,5 tonnes (3,500 kg or 7,716 lbs.) and buses and articulated buses with maximum weight above 5 tonnes (5,000 kg or 11,023 lbs.), according to ECE and European Commission on vehicle classification, categories M3, N2, N3, O3 and O4).

NHTSA considered the ISO test procedure but decided it is limited because the ISO standard tests braking on a defined path on a straight line as well as braking in a constant radius curve, which NHTSA does not. Therefore, NHTSA is not proposing performance requirements based on the ISO standard.

Proposed Regulatory Text

List of Subjects

49 CFR Part 393

Highways and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 596

Motor vehicle safety, Automatic emergency braking, Incorporation by reference, Motor vehicle safety, Test devices.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR parts 393 and 396, and NHTSA proposes to amend part 571 and add part 596 as follows:

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

■ 1. The authority citation for 49 CFR part 393 is amended to read as follows:

Authority: 49 U.S.C. 31136, 31151, and 31502; sec. 1041(b) of Pub. L. 102-240, 105 Stat. 1914, 1993 (1991); sec. 5301 and 5524 of Pub. L. 114-94, 129 Stat. 1312, 1543, 1560; sec. 23010, Pub. L. 117-58, 135 Stat. 429, 766-767, and 49 CFR 1.87.

■ 2. Amend § 393.5 by adding, in alphabetical order, the definition for “Automatic emergency braking (AEB) system” and “Electronic stability control system or ESC system” to read as follows:

²²⁵ ISO 3833, “Road vehicles—Types—Terms and Definitions,” ISO 3833 defines terms relating to some types of road vehicles designated according to certain design and technical characteristics. ISO 3833—European Standards (en-standard.eu).

§ 393.5 Definitions.

* * * * *

Automatic emergency braking (AEB) system is a system that detects an imminent collision with vehicles, objects, and road users in or near the path of a vehicle and automatically controls the vehicle’s service brakes to avoid or mitigate the collision.

Electronic stability control system or ESC system means a system that has all of the following attributes:

(1) It augments vehicle directional stability by having the means to apply and adjust the vehicle brake torques individually at each wheel position on at least one front and at least one rear axle of the vehicle to induce correcting yaw moment to limit vehicle oversteer and to limit vehicle understeer;

(2) It enhances rollover stability by having the means to apply and adjust the vehicle brake torques individually at each wheel position on at least one front and at least one rear axle of the vehicle to reduce lateral acceleration of a vehicle;

(3) It is computer-controlled with the computer using a closed-loop algorithm to induce correcting yaw moment and enhance rollover stability;

(4) It has a means to determine the vehicle’s lateral acceleration;

(5) It has a means to determine the vehicle’s yaw rate and to estimate its side slip or side slip derivative with respect to time;

(6) It has a means to estimate vehicle mass or, if applicable, combination vehicle mass;

(7) It has a means to monitor driver steering inputs;

(8) It has a means to modify engine torque, as necessary, to assist the driver in maintaining control of the vehicle and/or combination vehicle; and

(9) When installed on a truck tractor, it has the means to provide brake pressure to automatically apply and modulate the brake torques of a towed trailer.

* * * * *

■ 3. Add § 393.56 to read as follows:

§ 393.56 Electronic Stability Control Systems.

(a) *Truck tractors manufactured between August 1, 2019 and [the first September 1 that is 5 years after the date of publication of a final rule]*. Each truck tractor (except as provided by 49 CFR 571.136, paragraph S3.1 or truck tractors engaged in driveaway-towaway operations) with a gross vehicle weight rating of greater than 11,793 kilograms (26,000 pounds) manufactured on or after August 1, 2019, but before [the first September 1 that is 5 years after the date of publication of a final rule], must

be equipped with an electronic stability control (ESC) system that meets the requirements of Federal Motor Vehicle Safety Standard No. 136 (49 CFR 571.136).

(b) *Buses manufactured between August 1, 2019 and [the first September 1 that is 5 years after the date of publication of a final rule]*. Each bus (except as provided by 49 CFR 571.136, paragraph S3.1 or buses engaged in driveaway-towaway operations) with a gross vehicle weight rating of greater than 11,793 kilograms (26,000 pounds) manufactured on or after August 1, 2019, but before [the first September 1 that is 5 years after the date of publication of a final rule], must be equipped with an ESC system that meets the requirements of FMVSS No. 136.

(c) *Commercial motor vehicles manufactured on and after [the first September 1 that is 5 years after the date of publication of a final rule]*. Trucks and buses, with a GVWR greater than 4,536 kilograms (10,000 pounds) and truck tractors manufactured on or after [the first September 1 that is 5 years after the date of publication of a final rule] (except trucks, buses, and truck tractors engaged in driveaway-towaway operations), must be equipped with an electronic stability control (ESC) system that meets the requirements of Federal Motor Vehicle Safety Standard No. 136 (49 CFR 571.136).

(d) *ESC Malfunction Detection*. Each truck, truck tractor and bus must be equipped with an indicator lamp, mounted in front of and in clear view of the driver, which is activated whenever there is a malfunction that affects the generation or transmission of control or response signals in the vehicle’s electronic stability control system.

■ 4. Add § 393.57 to read as follows:

§ 393.57 Automatic Emergency Braking Systems.

(a) *Truck tractors manufactured on or after [the first September 1 that is 3 years after the date of publication of a final rule]*. Each truck tractor (except as provided by 49 CFR 571.136, paragraph S3.1 or truck tractors engaged in driveaway-towaway operations) with a gross vehicle weight rating of greater than 11,793 kilograms (26,000 pounds) manufactured on or after the first September 1 that is 3 years after the date of publication of a final rule], must be equipped with an automatic emergency brake (AEB) system that meets the requirements of Federal Motor Vehicle Safety Standard No. 128 (49 CFR 571.128).

(b) *Buses manufactured on or after [the first September 1 that is 3 years after the date of publication of a final rule]*. Each bus (except as provided by 49 CFR 571.136, paragraph S3.1 or buses engaged in driveaway-towaway operations) with a gross vehicle weight rating of greater than 11,793 kilograms (26,000 pounds) manufactured on or after *the first September 1 that is 3 years after the date of publication of a final rule*, must be equipped with an AEB system that meets the requirements of FMVSS No. 128.

(c) *Commercial motor vehicles manufactured on and after [the first September 1 that is 5 years after the date of publication of a final rule]*. Trucks and buses, with a GVWR greater than 4,536 kilograms (10,000 pounds) and truck tractors manufactured on or after *[the first September 1 that is 5 years after the date of publication of a final rule]* (except trucks, buses, and truck tractors engaged in driveaway-towaway), must be equipped with an AEB system that meets the requirements of Federal Motor Vehicle Safety Standard No. 128 (49 CFR 571.128).

(d) *AEB Malfunction Detection*. Each commercial motor vehicle subject to FMVSS No. 128 must be equipped with a telltale that meets the requirements of S5.3 of FMVSS No. 128 (49 CFR 571.128), mounted in front of and in clear view of the driver, which is activated whenever there is a malfunction that affects the generation or transmission of control or response signals in the vehicle's AEB system.

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

■ 5. The authority citation for 49 CFR part 396 is amended to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31151, 31502; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524, Pub. L. 114–94, 129 Stat. 1312, 1560; sec. 23010, Pub. L. 117–58, 135 Stat. 429, 766–767 and 49 CFR 1.87.

■ 6. Amend Appendix A to Part 396 by adding paragraphs 1.n. and o to read as follows:

Appendix A to Part 396—Minimum Periodic Inspection Standards

* * * * *

1. Brake System

n. Electronic Stability Control (ESC) System.

(1) Missing ESC malfunction detection components.

(2) The ESC malfunction telltale must be identified by the symbol shown for “Electronic Stability Control System Malfunction” or the specified words or abbreviations listed in Table 1 of Standard No. 101 (§ 571.101).

(3) The ESC malfunction telltale must be activated as a check-of-lamp function either when the ignition locking system is turned to the “On” (“Run”) position when the engine is not running, or when the ignition locking system is in a position between the “On” (“Run”) and “Start” that is designated by the manufacturer as a check-light position.

(4) Other missing or inoperative ESC system components.

o. Automatic Emergency Braking (AEB).

(1) Missing AEB malfunction telltale components (e.g., bulb/LED, wiring, etc.).

(2) AEB malfunction telltale that does not illuminate while power is continuously applied during initial powerup.

(3) AEB malfunction telltale that stays illuminated while power is continuously applied during normal vehicle operation.

(4) Other missing or inoperative AEB components.

* * * * *

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 7. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.95.

■ 7. Amend § 571.5 by:

■ a. Revising paragraph (d)(34);

■ b. Redesignating paragraphs (l)(49) and (50) as paragraphs (l)(50) and (51), respectively; and

■ c. Adding new paragraph (l)(49).

The revision and addition read as follows:

§ 571.5 Matter incorporated by reference

* * * * *

(d) * * *

(34) ASTM E1337–19, “Standard Test Method for Determining Longitudinal Peak Braking Coefficient (PBC) of Paved Surfaces Using Standard Reference Test Tire,” approved December 1, 2019, into §§ 571.105; 571.121; 571.122; 571.126; 571.128; 571.135; 571.136; 571.500.

* * * * *

(l) * * *

(49) SAE J2400, “Human Factors in Forward Collision Warning System: Operating Characteristics and User Interface Requirements,” August 2003 into § 571.128.

* * * * *

■ 9. Add § 571.128 to read as follows:

§ 571.128 Standard No. 128; Automatic emergency braking systems for heavy vehicles.

S1. *Scope*. This standard establishes performance requirements for automatic emergency braking (AEB) systems for heavy vehicles.

S2. *Purpose*. The purpose of this standard is to reduce the number of deaths and injuries that result from crashes in which drivers do not apply

the brakes or fail to apply sufficient braking power to avoid or mitigate a crash.

S3. *Application*. This standard applies to multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating greater than 4,536 kilograms (10,000 pounds) that are subject to §§ 571.105 or 571.121 of this part.

S4. Definitions.

Adaptive cruise control system is an automatic speed control system that allows the equipped vehicle to follow a lead vehicle at a pre-selected gap by controlling the engine, power train, and service brakes.

Ambient illumination is the illumination as measured at the test surface, not including any illumination provided by the subject vehicle.

Automatic emergency braking (AEB) system is a system that detects an imminent collision with vehicles, objects, and road users in or near the path of a vehicle and automatically controls the vehicle's service brakes to avoid or mitigate the collision.

Brake pedal application onset is when the brake controller begins to displace the brake pedal.

Forward collision warning is an auditory and visual warning provided to the vehicle operator by the AEB system that is designed to induce an immediate forward crash avoidance response by the vehicle operator.

Forward collision warning onset is the first moment in time when a forward collision warning is provided.

Headway is the distance between the lead vehicle's rearmost plane normal to its centerline and the subject vehicle's frontmost plane normal to its centerline.

Lead vehicle is a vehicle test device facing the same direction and preceding a subject vehicle within the same travel lane.

Lead vehicle braking onset is the point at which the lead vehicle achieves a deceleration of 0.05g due to brake application.

Over-the-road bus means a bus characterized by an elevated passenger deck located over a baggage compartment, except a school bus.

Perimeter-seating bus means a bus with 7 or fewer designated seating positions rearward of the driver's seating position that are forward-facing or can convert to forward-facing without the use of tools and is not an over-the-road bus.

Small-volume manufacturer means an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sales in the United States.

Steel trench plate is a rectangular steel plate often used in road construction to temporarily cover sections of pavement unsafe to drive over directly.

Subject vehicle is the vehicle under examination for compliance with this standard.

Transit bus means a bus that is equipped with a stop-request system sold for public transportation provided by, or on behalf of, a State or local government and that is not an over-the-road bus.

Travel path is the path projected onto the road surface of a point located at the intersection of the subject vehicle's frontmost vertical plane and longitudinal vertical center plane, as the subject vehicle travels forward.

Vehicle test device is a device meeting the specifications set forth in subpart C of 49 CFR part 596.

S5. Requirements.

(a) Truck tractors and buses with a GVWR greater than 11,793 kilograms (26,000 pounds), other than school buses, perimeter-seating buses, and transit buses and which are manufactured on or after [the first September 1 that is three years after the date of publication of a final rule] must meet the requirements of this standard.

(b) Vehicles with a GVWR greater than 4,536 kilograms (10,000 pounds) which are manufactured on or after [the first September 1 that is four years after the date of publication of a final rule] must meet the requirements of this standard.

(c) The requirements of paragraphs (a) and (b) of this section S5 do not apply to small-volume manufacturers, final-stage manufacturers and alterers until one year after the dates specified in those paragraphs.

S5.1. Requirements when approaching a lead vehicle.

S5.1.1. *Forward Collision Warning.* A vehicle is required to have a forward collision warning system, as defined in S4 of this section, that provides an auditory and visual signal to the driver of an impending collision with a lead vehicle when traveling at any forward speed greater than 10 km/h (6.2 mph). The auditory signal must have a high fundamental frequency of at least 800 Hz, a duty cycle of 0.25–0.95, and tempo in the range of 6–12 pulses per second. The visual signal must be located according to SAE J2400 (incorporated by reference, see § 571.5), paragraph 4.1.14, and must include the symbol in the bottom right of paragraph 4.1.16. Line of sight is based on the forward-looking eye midpoint (M_f) as described in S14.1.5 of § 571.111. The

symbol must be red in color and steady-burning.

S5.1.2. *Automatic Emergency Braking.* A vehicle is required to have an automatic emergency braking system, as defined in S4 of this section, that applies the service brakes automatically when a collision with a lead vehicle is imminent. The system must operate when the vehicle is traveling at any forward speed greater than 10 km/h (6.2 mph).

S5.1.3. *Performance Test Requirements.* The vehicle must provide a forward collision warning and subsequently apply the service brakes automatically when a collision with a lead vehicle is imminent such that the subject vehicle does not collide with the lead vehicle when tested using the procedures in S7. The forward collision warning is not required if adaptive cruise control is engaged.

S5.2. *False Activation.* The vehicle must not automatically apply braking that results in peak deceleration of 0.25g or greater when manual braking is not applied, nor a peak deceleration of 0.45g or greater when manual braking is applied, when tested using the procedures in S8.

S5.3. *Malfunction Detection.* The system must continuously detect system malfunctions, including malfunctions caused solely by sensor obstructions. If the system detects a malfunction that prevents the system from meeting the requirements specified in S5.1 or S5.2, the system must provide the vehicle operator with a telltale that the malfunction exists.

S6. Test Conditions.

S6.1. Environmental conditions.

S6.1.1. *Temperature.* The ambient temperature is any temperature between 2 °C and 40 °C.

S6.1.2. *Wind.* The maximum wind speed is no greater than 5 m/s (11 mph) during tests approaching a lead vehicle.

S6.1.3. Ambient Lighting.

(a) The ambient illumination on the test surface is any level at or above 2,000 lux.

(b) Testing is not performed while driving toward or away from the sun such that the horizontal angle between the sun and a vertical plane containing the centerline of the subject vehicle is less than 25 degrees and the solar elevation angle is less than 15 degrees.

S6.1.4. *Precipitation.* Testing is not conducted during periods of precipitation or when visibility is affected by fog, smoke, ash, or other particulate.

S6.2. Road conditions.

S6.2.1. *Test Track Surface and Construction.* The tests are conducted on a dry, uniform, solid-paved surface.

Surfaces with debris, irregularities, or undulations, such as loose pavement, large cracks, or dips are not used.

S6.2.2. *Surface Friction.* The road test surface produces a peak friction coefficient (PFC) of 1.02 when measured using an ASTM International (ASTM) F2493 standard reference test tire, in accordance with ASTM E1337–19 (incorporated by reference, see § 571.5), at a speed of 64 km/h (40 mph), without water delivery.

S6.2.3. *Slope.* The test surface has any consistent slope between 0 percent and 1 percent.

S6.2.4. *Markings.* The road surface within 2.3 m of the intended travel path is marked with zero, one, or two lines of any configuration or color. If one line is used, it is straight. If two lines are used, they are straight, parallel to each other, and at any distance from 2.7 m to 4.5 m apart.

S6.2.5. *Obstructions.* Testing is conducted such that the vehicle does not travel beneath any overhead structures, including but not limited to overhead signs, bridges, or gantries. No vehicles, obstructions, or stationary objects are within 7.4 m of either side of the intended travel path except as specified.

S6.3. Subject vehicle conditions.

S6.3.1. Malfunction notification.

Testing is not conducted while the AEB malfunction telltale specified in S5.3 is illuminated.

S6.3.2. *Sensor obstruction.* All sensors used by the system and any part of the vehicle immediately ahead of the sensors, such as plastic trim, the windshield, etc., are free of debris or obstructions.

S6.3.3. *Tires.* The vehicle is equipped with the original tires present at the time of initial sale. The tires are inflated to the vehicle manufacturer's recommended cold tire inflation pressure(s) specified on the vehicle's placard or the tire inflation pressure label.

S6.3.4. Brake burnish.

(a) Vehicles subject to § 571.105 are burnished in accordance with S7.4 of that section.

(b) Vehicles subject to § 571.121 are burnished in accordance with S6.1.8 of that section.

S6.3.5. *Brake temperature.* The average temperature of the service brakes on the hottest axle of the vehicle during testing, measured according to S6.1.16 of § 571.121, is between 66°C and 204°C prior to braking.

S6.3.6. *Fluids.* All non-consumable fluids for the vehicle are at 100 percent capacity. All consumable fluids are at any level from 5 to 100 percent capacity.

S6.3.7. *Propulsion battery charge.* The propulsion batteries are charged at any level from 5 to 100 percent capacity.

S6.3.8. *Cruise control.* Cruise control, including adaptive cruise control, is configured under any available setting.

S6.3.9. *Adjustable forward collision warning.* Forward collision warning is configured in any operator-configurable setting.

S6.3.10. *Engine braking.* A vehicle equipped with an engine braking system that is engaged and disengaged by the operator is tested with the system in any selectable configuration.

S6.3.11. *Regenerative braking.* Regenerative braking is configured under any available setting.

S6.3.12. *Liftable Axles.* A vehicle with one or more liftable axles is tested with the liftable axles down.

S6.3.13. *Headlamps.* Testing is conducted with the headlamp control in any selectable position.

S6.3.14. *Subject vehicle loading.*

(a) Except as provided in S6.3.14(b), the vehicle is loaded to its GVWR so that the load on each axle, measured at the tire-ground interface, is most nearly proportional to the axles' respective GAWRs, without exceeding the GAWR of any axle.

(b) Truck tractors.

(1) A truck tractor is loaded to its GVWR with the operator and test instrumentation, and by coupling it to a control trailer as provided in S6.3.14(b)(2) of this section and placing ballast (weight) on the control trailer which loads the tractor's non-steer axles. The control trailer is loaded with ballast without exceeding the GAWR of the trailer axle. The location of the center of gravity of the ballast on the control trailer is directly above the

kingpin. The height of the center of gravity of the ballast on the control trailer is less than 610 mm (24 inches) above the top of the tractor's fifth-wheel hitch (the area where the truck tractor attaches to the trailer). If the tractor's fifth-wheel hitch position is adjustable, the fifth-wheel hitch is adjusted to proportionally distribute the load on each of the tractor's axle(s), according to the GAWR of any axle(s). If the fifth-wheel hitch position cannot be adjusted to prevent the load from exceeding the GAWR of the tractor's axle(s), the ballast is reduced until the axle load is equal to or less than the GAWR of the tractor's rear axle(s), maintaining load proportioning as close as possible to specified proportioning.

(2) The control trailer is an unbraked, flatbed semi-trailer that has a single axle with a GAWR of 8,165 kilograms (18,000 pounds). The control trailer has a length of at least 6,400 mm (252 inches), but no more than 7,010 mm (276 inches), when measured from the transverse centerline of the axle to the centerline of the kingpin (the point where the trailer attaches to the truck tractor). At the manufacturer's option, truck tractors with four or more axles may use a control trailer with a length of more than 7,010 mm (276 inches), but no more than 13,208 mm (520 inches) when measured from the transverse centerline of the axle to the centerline of the kingpin.

S6.3.15. *AEB system initialization.* The vehicle is driven at a speed of 10 km/h or higher for at least one minute prior to testing, and subsequently the starting system is not cycled off prior to testing.

S6.4. *Equipment and test Devices.*

S6.4.1. The vehicle test device is specified in 49 CFR part 596 subpart C. Local fluttering of the lead vehicle's external surfaces does not exceed 10 mm perpendicularly from the reference surface, and distortion of the lead vehicle's overall shape does not exceed 25 mm in any direction.

S6.4.2. The steel trench plate used for the false activation test has the dimensions 2.4 m x 3.7 m x 25 mm and is made of ASTM A36 steel. Any metallic fasteners used to secure the steel trench plate are flush with the top surface of the steel trench plate.

S7. *Testing when approaching a lead vehicle.*

S7.1. *Setup.*

(a) The testing area is set up in accordance with Figure 1 to this section.

(b) Testing is conducted during daylight.

(c) For reference, Table 1 to S7.1 specifies the subject vehicle speed (V_{SV}), lead vehicle speed (V_{LV}), headway, and lead vehicle deceleration for each test that may be conducted.

(d) The intended travel path of the vehicle is a straight line toward the lead vehicle from the location corresponding to a headway of L_0 .

(e) If the road surface is marked with a single or double lane line, the intended travel path is parallel to and 1.8 m from the inside of the closest line. If the road surface is marked with two lane lines bordering the lane, the intended travel path is centered between the two lines.

(f) For each test run conducted, the subject vehicle speed (V_{SV}), lead vehicle speed (V_{LV}), headway, and lead vehicle deceleration will be selected from the ranges specified.

TABLE 1 TO S7.1—TEST PARAMETERS WHEN APPROACHING A LEAD VEHICLE

Test scenarios	Speed (km/h)		Headway (m)	Lead vehicle decel (g)	Manual brake application
	V_{SV}	V_{LV}			
Stopped Lead Vehicle	Any 10–80	0	.....	.....	no.
	Any 70–100 ..	0	.....	.....	yes.
Slower-Moving Lead Vehicle	Any 40–80	20	.....	.....	no.
	Any 70–100 ..	20	.....	.....	yes.
Decelerating Lead Vehicle	50	50	Any 21–40	Any 0.3–0.4 ..	no.
	50	50	Any 21–40	Any 0.3–0.4 ..	yes.
	80	80	Any 28–40	Any 0.3–0.4 ..	no.
	80	80	Any 28–40	Any 0.3–0.4 ..	yes.

S7.2. *Headway calculation.* For each test run conducted under S7.3 and S7.4, the headway (L_0), in meters, providing 5 seconds time to collision (TTC) is calculated. L_0 is determined with the following equation where V_{SV} is the speed of the subject vehicle in m/s and

V_{LV} is the speed of the lead vehicle in m/s:

$$L_0 = TTC_0 \times (V_{SV} - V_{LV})$$

$$TTC_0 = 5$$

S7.3. *Stopped lead vehicle.*

S7.3.1. *Test parameters.*

(a) For testing with no subject vehicle manual brake application, the subject vehicle test speed is any speed between 10 km/h and 80 km/h, and the lead vehicle speed is 0 km/h.

(b) For testing with manual brake application of the subject vehicle, the

subject vehicle test speed is any speed between 70 km/h and 100 km/h, and the lead vehicle speed is 0 km/h.

S7.3.2. Test conduct prior to forward collision warning onset.

(a) The lead vehicle is placed stationary with its longitudinal centerline coincident to the intended travel path.

(b) Before the headway corresponds to L_0 , the subject vehicle is driven at any speed, in any direction, on any road surface, for any amount of time.

(c) The subject vehicle approaches the rear of the lead vehicle.

(d) Beginning when the headway corresponds to L_0 , the subject vehicle speed is maintained within 1.6 km/h of the test speed with minimal and smooth accelerator pedal inputs.

(e) Beginning when the headway corresponds to L_0 , the subject vehicle heading is maintained with minimal steering input such that the travel path does not deviate more than 0.3 m laterally from the intended travel path and the subject vehicle's yaw rate does not exceed ± 1.0 deg/s.

S7.3.3. Test conduct after forward collision warning onset.

(a) The accelerator pedal is released at any rate such that it is fully released within 500 ms. This action is omitted for vehicles tested with cruise control active.

(b) For testing conducted with manual brake application, the service brakes are applied as specified in S9. The onset of brake pedal application occurs 1.0 ± 0.1 second after forward collision warning onset.

(c) For testing conducted without manual brake application, no manual brake application is made until the test completion criteria of S7.3.4 are satisfied.

S7.3.4. Test completion criteria. The test run is complete when the subject vehicle comes to a complete stop without making contact with the lead vehicle or when the subject vehicle makes contact with the lead vehicle.

S7.4. Slower-moving lead vehicle.

S7.4.1. Test parameters.

(a) For testing with no subject vehicle manual brake application, the subject vehicle test speed is any speed between 40 km/h and 80 km/h, and the lead vehicle speed is 20 km/h.

(b) For testing with manual brake application of the subject vehicle, the subject vehicle test speed is any speed between 70 km/h and 100 km/h, and the lead vehicle speed is 20 km/h.

S7.4.2. Test conduct prior to forward collision warning onset.

(a) The lead vehicle is propelled forward in a manner such that the longitudinal center plane of the lead

vehicle does not deviate laterally more than 0.3m from the intended travel path.

(b) The subject vehicle approaches the lead vehicle.

(c) Beginning when the headway corresponds to L_0 , the subject vehicle and lead vehicle speed is maintained within 1.6 km/h of the test speed with minimal and smooth accelerator pedal inputs.

(d) Beginning when the headway corresponds to L_0 , the subject vehicle and lead vehicle headings are maintained with minimal steering input such that the subject vehicle's travel path does not deviate more than 0.3 m laterally from the centerline of the lead vehicle, and the yaw rate of the subject vehicle does not exceed ± 1.0 deg/s prior to forward collision warning onset.

S7.4.3. Test conduct after forward collision warning onset.

(a) The subject vehicle's accelerator pedal is released at any rate such that it is fully released within 500 ms. This action is omitted for vehicles tested with cruise control active.

(b) For testing conducted with manual braking application, the service brakes are applied as specified in S9. The onset of brake pedal application is 1.0 ± 0.1 second after the forward collision warning onset.

(c) For testing conducted without manual braking application, no manual brake application is made until the test completion criteria of S7.4.4 are satisfied.

S7.4.4. Test completion criteria. The test run is complete when the subject vehicle speed is less than or equal to the lead vehicle speed without making contact with the lead vehicle or when the subject vehicle makes contact with the lead vehicle.

S7.5. Decelerating lead vehicle.

S7.5.1. Test parameters.

(a) The subject vehicle test speed is 50 km/h or 80 km/h, and the lead vehicle speed is identical to the subject vehicle test speed.

(b) [Reserved]

S7.5.2. Test conduct prior to lead vehicle braking onset.

(a) Before the 1 second prior to lead vehicle braking onset, the subject vehicle is driven at any speed, in any direction, on any road surface, for any amount of time.

(b) Between 1 second prior to lead vehicle braking onset and lead vehicle braking onset:

(1) The lead vehicle is propelled forward in a manner such that the longitudinal center plane of the vehicle does not deviate laterally more than 0.3 m from the intended travel path.

(2) The subject vehicle follows the lead vehicle at a headway of any

distance between 21 m and 40 m if the subject vehicle test speed is 50 km/h, or any distance between 28 m and 40 m if the subject vehicle test speed is 80 km/h.

(3) The subject vehicle's speed is maintained within 1.6 km/h of the test speed with minimal and smooth accelerator pedal inputs prior to forward collision warning onset.

(4) The lead vehicle's speed is maintained within 1.6 km/h.

(5) The subject vehicle and lead vehicle headings are maintained with minimal steering input such that their travel paths do not deviate more than 0.3 m laterally from the centerline of the lead vehicle, and the yaw rate of the subject vehicle does not exceed ± 1.0 deg/s until forward collision warning onset.

S7.5.3. Test conduct following lead vehicle braking onset.

(a) The lead vehicle is decelerated to a stop with a targeted average deceleration of any value between 0.3g and 0.4g. The targeted deceleration magnitude is achieved within 1.5 seconds of lead vehicle braking onset and is maintained until 250 ms prior to coming to a stop.

(b) After forward collision warning onset, the subject vehicle's accelerator pedal is released at any rate such that it is fully released within 500 ms. This action is omitted for vehicles with cruise control active.

(c) For testing conducted with manual braking application, the service brakes are applied as specified in S9. The brake pedal application onset occurs 1.0 ± 0.1 second after the forward collision warning onset.

(d) For testing conducted without manual braking application, no manual brake application is made until the test completion criteria of S7.5.4 are satisfied.

S7.5.4. Test completion criteria. The test run is complete when the subject vehicle comes to a complete stop without making contact with the lead vehicle or when the subject vehicle makes contact with the lead vehicle.

S8. False AEB activation.

S8.1. Headway calculation. For each test run to be conducted under S8.2 and S8.3, the headway (L_0 , $L_{2.1}$, $L_{1.1}$), in meters, between the front plane of the subject vehicle and either the steel trench plate's leading edge or the rearmost plane normal to the centerline of the vehicle test devices providing 5.0 seconds, 2.1 seconds, and 1.1 seconds time to collision (TTC) is calculated. L_0 , $L_{2.1}$, and $L_{1.1}$ are determined with the following equation where V_{SV} is the speed of the subject vehicle in m/s:

$$L_x = TTC_x \times (V_{SV})$$

$TTC_0 = 5.0$
 $TTC_{2,1} = 2.1$
 $TTC_{1,1} = 1.1$

S8.2. Steel trench plate.

S8.2.1. Test parameters and setup.

(a) The testing area is set up in accordance with Figure 2 to this section.

(b) The steel trench plate is secured flat on the test surface so that its longest side is parallel to the subject vehicle's intended travel path and horizontally centered on the subject vehicle's intended travel path.

(c) The subject vehicle test speed is 80 km/h.

S8.2.2. Test conduct.

(a) The subject vehicle approaches the steel trench plate.

(b) Beginning when the headway corresponds to L_0 , the subject vehicle speed is maintained within 1.6 km/h of the test speed with minimal and smooth accelerator pedal inputs.

(c) Beginning when the headway corresponds to L_0 , the subject vehicle heading is maintained with minimal steering input such that the travel path does not deviate more than 0.3 m laterally from the intended travel path, and the yaw rate of the subject vehicle does not exceed ± 1.0 deg/s.

(d) If forward collision warning occurs, the subject vehicle's accelerator pedal is released at any rate such that it is fully released within 500 ms. This action is omitted for vehicles with cruise control active.

(e) For tests where no manual brake application occurs, manual braking is not applied until the test completion criteria of S8.2.3 are satisfied.

(f) For tests where manual brake application occurs, the subject vehicle's accelerator pedal, if not already released, is released when the headway corresponds to $L_{2,1}$ at any rate such that it is fully released within 500 ms.

(g) For tests where manual brake application occurs, the service brakes are applied as specified in S9. The brake application pedal onset occurs at headway $L_{1,1}$.

S8.2.3. Test completion criteria. The test run is complete when the subject vehicle comes to a stop prior to crossing over the leading edge of the steel trench plate or when the subject vehicle crosses over the leading edge of the steel trench plate.

S8.3. Pass-through.

S8.3.1. Test parameters and setup.

(a) The testing area is set up in accordance with Figure 3 to this section.

(b) Two vehicle test devices are secured in a stationary position parallel

to one another with a lateral distance of 4.5 m \pm 0.1 m between the vehicles' closest front wheels. The centerline between the two vehicles is parallel to the intended travel path.

(c) The subject vehicle test speed is 80 km/h.

(d) Testing may be conducted with manual subject vehicle pedal application.

S8.3.2. Test conduct.

(a) The subject vehicle approaches the gap between the two vehicle test devices.

(b) Beginning when the headway corresponds to L_0 , the subject vehicle speed is maintained within 1.6 km/h with minimal and smooth accelerator pedal inputs.

(c) Beginning when the headway corresponds to L_0 , the subject vehicle heading is maintained with minimal steering input such that the travel path does not deviate more than 0.3 m laterally from the intended travel path, and the yaw rate of the subject vehicle does not exceed ± 1.0 deg/s.

(d) If forward collision warning occurs, the subject vehicle's accelerator pedal is released at any rate such that it is fully released within 500 ms.

(e) For tests where no manual brake application occurs, manual braking is not applied until the test completion criteria of S8.3.3 are satisfied.

(f) For tests where manual brake application occurs, the subject vehicle's accelerator pedal, if not already released, is released when the headway corresponds to $L_{2,1}$ at any rate such that it is fully released within 500 ms.

(g) For tests where manual brake application occurs, the service brakes are applied as specified in S9. The brake application onset occurs when the headway corresponds to $L_{1,1}$.

S8.3.3. Test completion criteria. The test run is complete when the subject vehicle comes to a stop prior to its rearmost point passing the vertical plane connecting the forwardmost point of the vehicle test devices or when the rearmost point of the subject vehicle passes the vertical plane connecting the forwardmost point of the vehicle test devices.

S9. Subject Vehicle Brake Application Procedure.

S9.1. The procedure begins with the subject vehicle brake pedal in its natural resting position with no preload or position offset.

S9.2. At the option of the manufacturer, either displacement

feedback or hybrid feedback control is used.

S9.3. Displacement feedback procedure. For displacement feedback, the commanded brake pedal position is the brake pedal position that results in a mean deceleration of 0.3g in the absence of AEB system activation.

(a) The mean deceleration is the deceleration over the time from the pedal achieving the commanded position to 250 ms before the vehicle comes to a stop.

(b) The pedal displacement controller depresses the pedal at a rate of 254 mm/s \pm 25.4 mm/s to the commanded brake pedal position.

(c) The pedal displacement controller may overshoot the commanded position by any amount up to 20 percent. If such an overshoot occurs, it is corrected within 100 ms.

(d) The achieved brake pedal position is any position within 10 percent of the commanded position from 100 ms after pedal displacement occurs and any overshoot is corrected.

S9.4. Hybrid brake pedal feedback procedure. For hybrid brake pedal feedback, the commanded brake pedal application is the brake pedal position and a subsequent commanded brake pedal force that results in a mean deceleration of 0.3g in the absence of AEB system activation.

(a) The mean deceleration is the deceleration over the time from the pedal achieving the commanded position to 250 ms before the vehicle comes to a stop.

(b) The hybrid controller displaces the pedal at a rate of 254 mm/s \pm 25.4 mm/s to the commanded pedal position.

(c) The hybrid controller may overshoot the commanded position by any amount up to 20 percent. If such an overshoot occurs, it is corrected within 100 ms.

(d) The hybrid controller begins to control the force applied to the pedal and stops controlling pedal displacement 100 ms after pedal displacement occurs and any overshoot is corrected.

(e) The hybrid controller applies a pedal force of at least 11.1 N.

(f) The applied pedal force is maintained within 10 percent of the commanded brake pedal force from 350 ms after commanded pedal displacement occurs and any overshoot is corrected until test completion.

Figure 1 to § 571.128—Setup for Tests Approaching a Lead Vehicle

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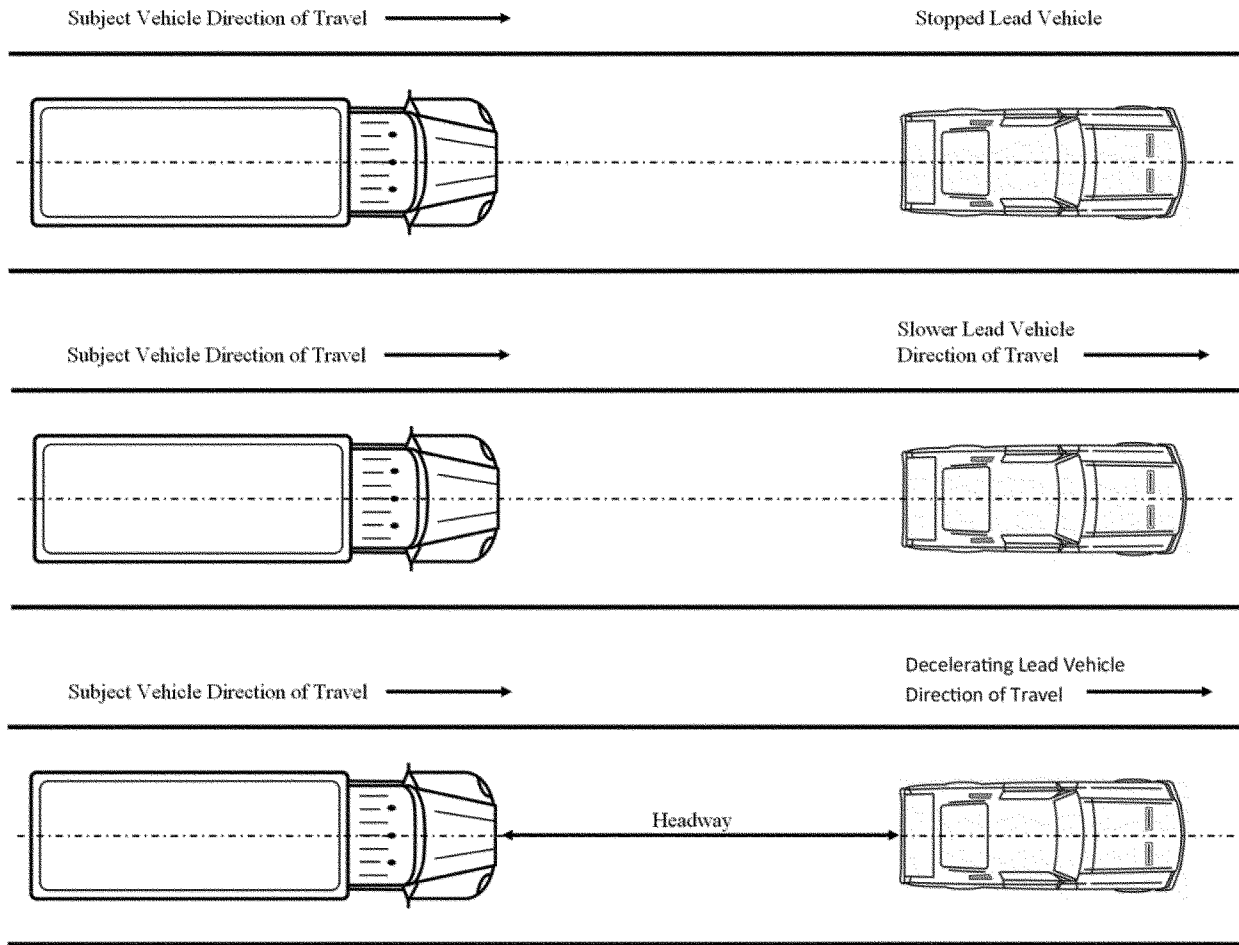


Figure 2 to § 571.128—Setup for Steel Trench Plate False Activation Tests

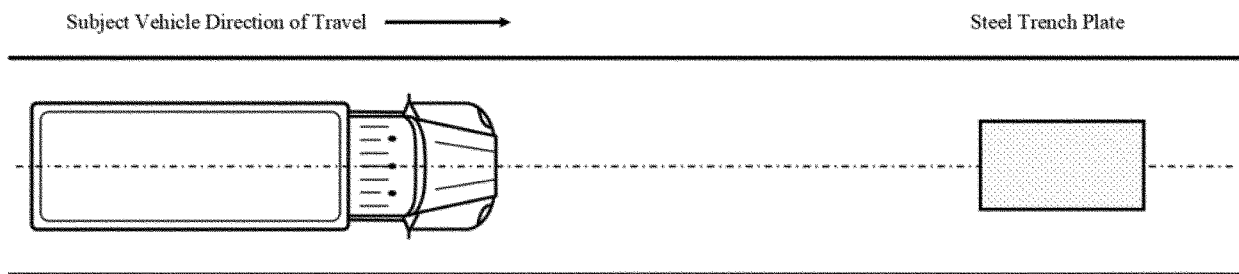
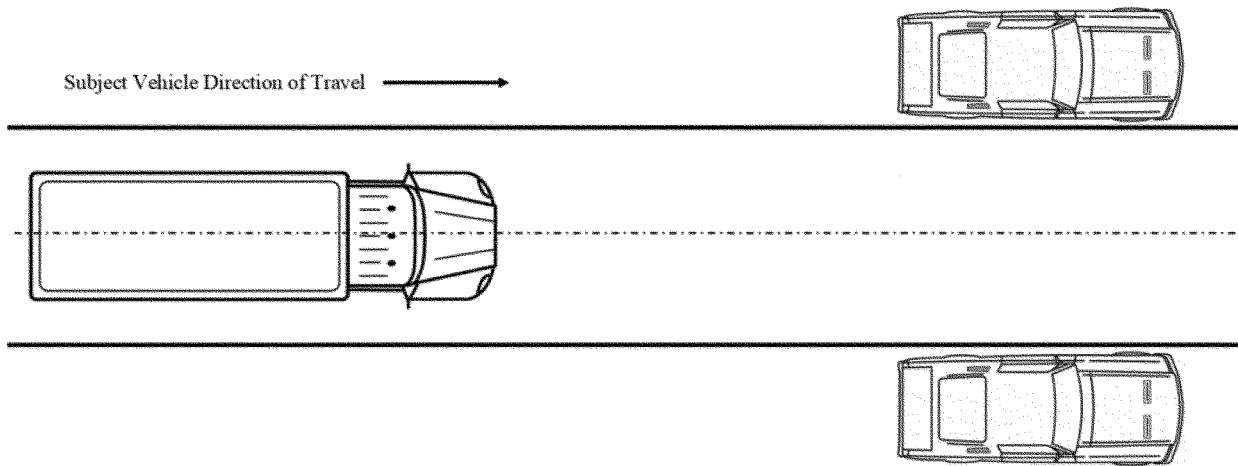


Figure 3 to § 571.128—Setup for Pass-Through False Activation Tests



BILLING CODE 4910-59-C

■ 9. Amend § 571.136 by revising paragraphs S3, S3.1, S3.2, and paragraphs (1) and (2) of the definition of “Electronic stability control system or ESC system” in S4, and adding S8.3 to read as follows:

§ 571.136 Standard No. 136; Electronic stability control systems for heavy vehicles.

* * * * *

S3 Application.

S3.1 This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses, with a GVWR greater than 4,536 kilograms (10,000 pounds) except:

(a) Any vehicle equipped with an axle that has a gross axle weight rating of 13,154 kilograms (29,000 pounds) or more;

(b) Any truck or bus that has a speed attainable in 3.2 kilometers (2 miles) of not more than 53 km/h (33 mph); and

(c) Any truck that has a speed attainable in 3.2 kilometers (2 miles) of not more than 72 km/h (45 mph), an unloaded vehicle weight that is not less than 95 percent of its gross vehicle weight rating, and no capacity to carry occupants other than the driver and operating crew.

S3.2 The following vehicles are subject only to the requirements in S5.1, S5.2, and S5.4 of this standard:

- (a) Vehicles with a gross vehicle weight rating of 11,793 kilograms (26,000 pounds) or less;
- (b) Trucks other than truck tractors;
- (c) School buses;
- (d) Perimeter-seating buses;
- (e) Transit buses;
- (f) Passenger cars; and
- (g) Multipurpose passenger vehicles.

* * * * *

S4 Definitions

* * * * *

Electronic stability control system or ESC system means a system that has all of the following attributes:

(1) It augments vehicle directional stability by having the means to apply and adjust the vehicle brake torques individually at each wheel position on at least one front and at least one rear axle of the vehicle to induce correcting yaw moment to limit vehicle oversteer and to limit vehicle understeer;

(2) It enhances rollover stability by having the means to apply and adjust the vehicle brake torques individually at each wheel position on at least one front and at least one rear axle of the vehicle to reduce lateral acceleration of a vehicle;

* * * * *

S8.3 Vehicles with a gross vehicle weight rating of 11,793 kilograms (26,000 pounds) or less, trucks other than truck tractors, school buses, perimeter-seating buses, transit buses, passenger cars, and multipurpose passenger vehicles are not required to comply this standard before [the first September 1 that is four years after the date of publication of a final rule].

* * * * *

■ 11. Add part 596 to read as follows.

PART 596—AUTOMATIC EMERGENCY BRAKING TEST DEVICES

Subpart A—General

Sec.

- 596.1 Scope.
- 596.2 Purpose.
- 596.3 Application
- 596.4 Definitions.
- 596.5 Matter incorporated by reference.

Subpart B—[Reserved]

Subpart C—Vehicle Test Device

- 596.9 General Description
- 596.10 Specifications for the Vehicle Test Device

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.95.

Subpart A—General

§ 596.1 Scope.

This part describes the test devices that are to be used for compliance testing of motor vehicles with motor vehicle safety standards for automatic emergency braking.

§ 596.2 Purpose.

The design and performance criteria specified in this part are intended to describe devices with sufficient precision such that testing performed with these test devices will produce repetitive and correlative results under similar test conditions to reflect adequately the automatic emergency braking performance of a motor vehicle.

§ 596.3 Application.

This part does not in itself impose duties or liabilities on any person. It is a description of tools that are used in compliance tests to measure the performance of automatic emergency braking systems required by the safety standards that refer to these tools. This part is designed to be referenced by, and become part of, the test procedures specified in motor vehicle safety standards.

§ 596.4 Definitions.

All terms defined in section 30102 of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. chapter 301, *et seq.*) are used in their statutory meaning.

Vehicle Test Device means a test device that simulates a passenger vehicle for the purpose of testing automatic emergency brake system performance.

Vehicle Test Device Carrier means a movable platform on which a Lead Vehicle Test Device may be attached during compliance testing.

§ 596.5 Matter incorporated by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the National Highway Traffic Safety Administration (NHTSA) must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at NHTSA at the National Archives and Records Administration (NARA). Contact NHTSA at: NHTSA Office of Technical Information Services, 1200 New Jersey Avenue SE, Washington, DC 20590; (202) 366-2588. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations.html or email fr.inspection@nara.gov. The material may be obtained from the source(s) in the following paragraph of this section.

(b) International Organization for Standardization (ISO), 1, ch. de la Voie-Creuse, CP 56, CH-1211 Geneva 20, Switzerland; phone: + 41 22 749 01 11; fax: + 41 22 733 34 30; website: www.iso.org/.

(1) [Reserved].

(2) [Reserved].

(3) ISO 19206-3:2021(E), “Test devices for target vehicles, vulnerable road users and other objects, for assessment of active safety functions—Part 3: Requirements for passenger vehicle 3D targets,” First edition, 2021-05; into § 596.10.

(4) [Reserved]

Subpart B—[Reserved]**Subpart C—Vehicle Test Device****§ 596.9 General Description.**

(a) The Vehicle Test Device provides a sensor representation of a passenger motor vehicle.

(b) The rear view of the Vehicle Test Device contains representations of the vehicle silhouette, a rear window, a high-mounted stop lamp, two taillamps, a rear license plate, two rear reflex reflectors, and two tires.

§ 596.10 Specifications for the Vehicle Test Device.

(a) *Word Usage—Recommendations.* The words “recommended,” “should,” “can be,” or “should be” appearing in sections of ISO 19206-3:2021(E) (incorporated by reference, see § 596.5),

referenced in this section, are read as setting forth specifications that are used.

(b) *Word Usage—Options.* The words “may be,” or “either,” used in connection with a set of items appearing in sections of ISO 19206-3:2021(E) (incorporated by reference, see § 596.5), referenced in this section, are read as setting forth the totality of items, any one of which may be selected by NHTSA for testing.

(c) *Dimensional specifications.* (1) The rear silhouette and the rear window are symmetrical about a shared vertical centerline.

(2) Representations of the taillamps, rear reflex reflectors, and tires are symmetrical about the surrogate’s centerline.

(3) The license plate representation has a width of 300 ± 15 mm and a height of 150 ± 15 mm and mounted with a license plate holder angle within the range described in 49 CFR 571.108 S6.6.3.1.

(4) The Vehicle Test Device representations are located within the minimum and maximum measurement values specified in columns 3 and 4 of Tables A.4 of ISO 19206-3:2021(E) Annex A (incorporated by reference, see § 596.5). The tire representations are located within the minimum and maximum measurement values specified in columns 3 and 4 of Tables A.3 of ISO 19206-3:2021(E) Annex A (incorporated by reference, see § 596.5). The terms “rear light” means “taillamp,” “retroreflector” means “reflex reflector,” and “high centre taillight” means “high-mounted stop lamp.”

(d) *Visual and near infrared specification.* (1) The Vehicle Test Device rear representation colors are within the ranges specified in Tables B.2 and B.3 of ISO 19206-3:2021(E) Annex B (incorporated by reference, see § 596.5).

(2) The rear representation infrared properties of the Vehicle Test Device are within the ranges specified in Table B.1 of ISO 19206-3:2021(E) Annex B (incorporated by reference, see § 596.5) for wavelengths of 850 to 950 nm when measured according to the calibration and measurement setup specified in paragraph B.3 of ISO 19206-3:2021(E) Annex B (incorporated by reference, see § 596.5).

(3) The Vehicle Test Device rear reflex reflectors, and at least 50 cm² of the taillamp representations are grade DOT-C2 reflective sheeting as specified in 49 CFR 571.108 S8.2.

(e) *Radar reflectivity specifications.*

(1) The radar cross section of the Vehicle Test Device is measured with it attached to the carrier (robotic platform). The radar reflectivity of the carrier platform is less than 0 dBm² for a viewing angle of 180 degrees and over a range of 5 to 100 m when measured according to the radar measurement procedure specified in C.3 of ISO 19206-3:2021(E) Annex C (incorporated by reference, see § 596.5) for fixed-angle scans.

(2) The rear bumper area as shown in Table C.1 of ISO 19206-3:2021(E) Annex C (incorporated by reference, see § 596.5) contributes to the target radar cross section.

(3) The radar cross section is assessed using radar sensor that operates at 76 to 81 GHz and has a range of at least 5 to 100 m, a range gate length smaller than 0.6m, a horizontal field of view of 10 degrees or more (–3dB amplitude limit), and an elevation field of view of 5 degrees or more (–3dB amplitude).

(4) At least 92 percent of the filtered data points of the surrogate radar cross section for the fixed vehicle angle, variable range measurements are within the RCS boundaries defined in Sections C.2.2.4 of ISO 19206-3:2021(E) Annex C (incorporated by reference, see § 596.5) for a viewing angle of 180 degrees when measured according to the radar measurement procedure specified in C.3 of ISO 19206-3:2021(E) Annex C (incorporated by reference, see § 596.5) for fixed-angle scans.

(5) Between 86 to 95 percent of the Vehicle Test Device spatial radar cross section reflective power is with the primary reflection region defined in Section C.2.2.5 of ISO 19206-3:2021(E) Annex C (incorporated by reference, see § 596.5) when measured according to the radar measurement procedure specified in C.3 of ISO 19206-3:2021(E) Annex C (incorporated by reference, see § 596.5) using the angle-penetration method.

Issued under the authority delegated in 49 CFR 1.87.

Robin Hutcherson,
Administrator.

Issued under authority delegated in 49 CFR part 1.95 and 49 CFR 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2023-13622 Filed 7-5-23; 8:45 am]

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