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Presidential Documents

Title 3—

The President

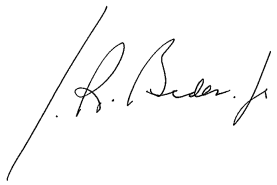
Memorandum of July 28, 2023

Delegation of Authority Under Section 506(a)(3) 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)(3) of the FAA to direct the drawdown of up to $345 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Taiwan.

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



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Washington, July 28, 2023

[FR Doc. 2023–17100
Filed 8–7–23; 8:45 am]
Billing code 4710–10–P

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POSTAL SERVICE

5 CFR Part 7001

Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The United States Postal Service (Postal Service), with the concurrence of the United States Office of Government Ethics (OGE), amends the Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service by updating and refining outside employment and activity provisions (including prior approval requirements and prohibitions), by adding new requirements applicable to Postal Service Office of Inspector General (OIG) employees, Postal Service Governors, the Postmaster General, and the Deputy Postmaster General, and by making limited technical and ministerial changes. In response to the proposed rule, the Postal Service received two sets of comments, which it addresses here.

DATES: This rule is effective as of September 7, 2023.

FOR FURTHER INFORMATION CONTACT: Jessica Brewster-Johnson, Senior Ethics Counsel, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1101, 202–268–6936.

SUPPLEMENTARY INFORMATION:

Background

In March 2022, the Postal Service proposed to amend the Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service (Supplemental Standards), which are codified in 5 CFR part 7001. 87 FR 12888 (March 8, 2022). The proposed rule provided a 60 day comment period, which ended on May 9, 2022. The Postal Service received two timely and responsive comments in reply, which were submitted by one trade association and one private organization. The Postal Service now responds.

Summary of Commenter A's Comments and Postal Service Responses

Commenter A, a private organization, contributed seven (7) suggested changes to the proposed rule. The Postal Service reviews and responds to each responsive comment in turn.

I. Expansion of § 7001.104—Competitors and Publicly-Traded Lessors

Commenter A ''strongly supports the Postal Service's efforts to establish firm prohibitions that bar the Board of Governors, their spouses, and their minor children from directly or indirectly acquiring or holding financial interests in postal competitors . . . [or] investments in publicly-traded companies that lease real estate to the Postal Service.'' However, Commenter A recommended that the Postal Service broaden the prohibitions proposed at 5 CFR 7001.104(a)(1)(i) and (ii) (on acquiring or holding, directly or indirectly, ''any financial interest in a person engaged in the delivery outside the mails of any type of mailable matter, except daily newspapers'' or ''any financial interest in a publicly-traded entity engaged primarily in the business of leasing real property to the Postal Service'') to apply also to the Postmaster General and the Deputy Postmaster General.

The Postal Service notes that the holdings of the Postmaster General and Deputy Postmaster General are carefully vetted, with recusals in place when necessary, for the purpose of ensuring that neither individual participates in any particular matter in a manner that violates any ethics statute or regulation or even in a manner that raises the mere appearance of a violation of these statutes and regulations. Nevertheless, for the reasons stated below, the Postal Service has determined that it is appropriate to extend the prohibitions proposed at 5 CFR 7001.104 to the Postmaster General and the Deputy Postmaster General, in addition to the Governors. Accordingly, the Postal Service has updated the language of § 7001.104 to require that the Postmaster General and the Deputy Postmaster General, in addition to the Governors, abstain from holding financial interests in Postal Service competitors or publicly-traded companies that lease real estate to the Postal Service.

The nine Governors, the Postmaster General, and the Deputy Postmaster General—who together constitute a complete Board of Governors—should all be subject to the same restrictions on holdings of postal competitors and publicly-traded lessors because they together constitute the highest echelons of the Postal Service. *See* 39 U.S.C. 202(a), (c), (d). Prohibiting all members of the Board from holding these assets will assuage any appearance concerns that any member of the Board has any divided loyalties when engaged in Board activities. The Governors alone vote on pricing decisions, which was why they alone were included in the proposed rule. The comments are well taken, however, that the Postmaster General and Deputy Postmaster General, with the Governors, constitute a full Board and that, therefore, if any Board member, regardless of their involvement with pricing decisions, were to hold stock in competitors or publicly-traded lessors, this still may lead to the appearance that a Board member has divided loyalties when he or she makes broadly applicable decisions with wide-ranging consequences, including consequences that may affect competitors or publicly-traded entities who purchase postal real estate and sell it back to the Postal Service at a profit. This expansion to include the Postmaster General and Deputy Postmaster General will support the public's ability to trust that the full Board will continue to make choices that are for the sole benefit of the Postal Service and that those decisions are made without even the appearance of divided loyalties. Therefore, the full Board—the Governors, Postmaster General, and Deputy Postmaster General—will henceforth be subject to the holding prohibitions of § 7001.104.

II. Expansion of § 7001.104—Contractors and Subcontractors

Commenter A recommends that the Postal Service broaden the proposed restrictions of 5 CFR 7001.104 to ''prohibit the Postmaster General, the Deputy Postmaster General and the . . . Governors from holding any financial interest, directly or indirectly, in a Postal Service contractor or subcontractor.'' The Postal Service has

considered this suggestion but concluded that such a restriction is both overly broad and unnecessary to address actual conflicts of interest or any significant appearance concerns.

First, all Postal Service employees—including the Postmaster General and the Deputy Postmaster General—must recuse themselves from ''participating personally and substantially in an official capacity in any particular matter in which, to [their] knowledge, [they] or any person whose interests are imputed to [them] . . . has a financial interest, if the particular matter will have a direct and predictable effect on that interest.'' 18 U.S.C. 208(a)(''section 208''). In other words, no Postal Service employee—including those in leadership—may work personally and substantially on any particular matter that could have a direct and predictable effect on his or her financial interests (or the financial interests of those whose interests are imputed to him or her—*i.e.,* the employee's spouse, minor child, and others as defined by the statute). All Postal Service employees must continue to comply with this criminal statute prohibiting conflicts of interest and with the impartiality and misuse provisions of the Standards of Ethics Conduct for Employees of the Executive Branch, when considering what actions they may take at work for the Postal Service. It is not necessary to prohibit financial interests in Postal Service contractors or subcontractors beyond those entities with whom the employee will actually work in his or her postal capacity. To do so would be overly broad and would not serve to prevent actual conflicts of interest.

Financial interests in postal contractors and subcontractors also do not raise appearance concerns in the same way as financial interests in competitors and publicly traded lessors, which are covered by § 7001.104. While there are only a handful of postal competitors and only one publicly traded lessor to the Postal Service, there are thousands of postal contractors and subcontractors. Therefore, the primary concern addressed by proposed § 7001.104—that there is an appearance concern for the Governors, the Postmaster General or the Deputy Postmaster General to hold a financial interest in one of a handful of Postal Service competitors or in the one publicly traded lessor of the Postal Service, because of the highly visible nature of these entities—is not present with regard to the over 11,000 contractors and the multitude of subcontractors, many of whom are not publicly traded entities, or with regard to those entities with whom the Postal Service enters into local buy contracts. For example, if a Governor were to hold a financial interest in a small private company that has one contract with the Postal Service, so long as that Governor does not work on postal matters affecting that company, there is no conflicts concern and the level of appearance concerns is greatly reduced as compared to if that Governor owned a financial holding in one of the Postal Service's competitors or the sole publicly-traded lessor, whose visibility is pronounced. In other words, holding a financial interest in one of thousands of postal contractors or subcontractor presents negligible, if any, appearance issues.

The Governors, Postmaster General, and Deputy Postmaster General already must track, for conflicts of interest purposes, whether they hold financial interests in any entity that they may affect as part of their postal duties, and it would be overly burdensome, impractical, and unnecessary for them to have to track the entire universe of postal contractors and subcontractors for the purposes of avoiding minimal appearance concerns. For these reasons, the Postal Service declines to broaden 5 CFR 7001.104(a)(1) to include a broad blanket prohibition on holding financial interests in any of the wide universe of contractors and subcontractors.

III. Expansion of § 7001.104(a)(1)(ii) to Privately Held Lessors

Third, Commenter A recommends that 5 CFR 7001.104(a)(1)(ii) ''should not only prohibit holdings in publicly-traded entities engaged primarily in the business of leasing real property to the Postal Service, but also prohibit holdings in privately-held entities engaged primarily in the business of leasing real property to the Postal Service.'' The Postal Service declines this expansion of the entities covered by § 7001.104(a)(1)(ii), as such a prohibition is not necessary to prevent either an actual or apparent conflict of interest.

The Postal Service contracts with numerous privately-owned lessors (including many sole proprietors). These private lessors change frequently, are often relatively small, and are too numerous for covered individuals to effectively track (though of course the individuals must continue to track those outside entities who could be financially impacted as they perform their postal duties for conflicts analyses). This is in contrast to publicly-traded lessors, of which there is only one. Commenter A's suggestion is overbroad because it would require covered individuals to abstain from holding a financial interest in a private entity even if there is no overlap with the financial interests of that entity and his or her official postal duties. If a covered employee holds a financial interest in a private entity, he or she would already be prohibited from working on a matter affecting that entity under applicable conflicts rules. That will continue to be the case—though the Postal Service notes that an actual conflict is unlikely because the Board of Governors rarely would be called to address leasing matters.

What the Postal Service intends to address with 5 CFR 7001.104(a)(1)(ii), by prohibiting the covered individuals from holding a financial interest in the Postal Service's sole publicly traded lessor, is even the appearance of a conflict. The appearance of holding a financial interest in that sole, massive lessor is far greater than the potential appearance of a conflict when holding a financial interest in an entity that few know exists, such as for example a small, private, lessor that may potentially be a sole proprietorship, or have operations in just one small town. By contrast, the public lessor's sole business is to buy postal properties and sell those properties back to the Postal Service at a profit. If a covered individual were to hold a financial interest in that publicly traded lessor, there could be the appearance that the covered individual has divided loyalties—in other words, there could be the appearance of a conflict, even if there was not an actual conflict because the conflicts rule served its purpose to prevent one. The appearance of a conflict is what § 7001.104(a)(1)(ii) is designed to prevent. Holding a financial interest in a private lessor simply does not raise the same level of appearance concerns or questions regarding divided loyalties, and thus the Postal Service declines to include such lessors in the coverage of § 7001.104.

IV. Waivers

Fourth, Commenter A is concerned that the Designated Agency Ethics Official (DAEO) will not be required to consult with the Office of Government Ethics (OGE) before issuing waivers of prohibited financial interests pursuant to § 7001.104(d), which provides that the Postal Service's DAEO may, for good cause shown, grant a waiver ''of any prohibited financial interest described in paragraph (a) or (c)(2) or (3) of this section.''

Although the Postal Service is required to—and does—consult with OGE when practicable prior to issuing waivers under section 208 (under 5 CFR 2640.303), the Postal Service need not

consult externally with OGE when it grants a waiver pursuant to its own Supplemental Standards, which are agency-specific rules that go above and beyond those rules already required by OGE. The Postal Service is best positioned to determine whether a waiver under its own Supplemental Standards is appropriate (unlike with section 208 waivers, for which OGE is the subject matter expert). That the Postal Service is empowered to approve waivers under its own Supplemental Standards is consistent with others agencies' abilities to make similar decisions under their own supplemental ethics regulations.

V. Section 7001.104(a)(2) Scope

Fifth, Commenter A makes recommendations regarding how the Postal Service should apply certain of the prohibited holding provisions in § 7001.104(a). As discussed above, § 7001.104(a)(1) sets forth the financial interests that are restricted for the Governors (and, as expanded in this final rule, to the Postmaster General and Deputy Postmaster General); § 7001.104(a)(2) builds upon that restriction by noting that such individuals similarly should not ''actively control the acquisition of or the holding of any financial interest described in paragraph (a)(1)(i) or (ii) of this section on behalf of any entity whose financial interests are imputed . . . under 18 U.S.C. 208.'' The provision goes on to explain that the Postal Service does not deem an individual to ''actively control'' the financial interests of an entity for purposes of this provision if he or she merely directs the investment strategy, hires the entity's financial manager who selects the investments, or designates another employee to select the investments. Commenter A seems to suggest that the Postmaster General and Deputy Postmaster General—to whom the final rule applies restrictions of § 7001.104(a)(1), as suggested by Commenter A—should have a different standard than the Governors for evaluating when they ''do[ ] not actively control the financial interests of an entity'' relating to the § 7001.104(a)(2) restriction. Specifically, Commenter A suggests that the standards for determining whether the Postmaster General and Deputy Postmaster General ''actively control'' the financial interests of an entity ''should be consistent with 5 CFR 2640.202(e).''

The Postal Service disagrees that the concept of ''active[ ] control'' in this restriction should be different for the Postmaster General and Deputy Postmaster General than for the Governors. As updated consistent with the discussions in this preamble, § 7001.104(a) will place requirements on Governors, the Postmaster General, and the Deputy Postmaster General to address appearance concerns. These requirements are above and beyond—and in addition to—the requirements that all Federal employees are subject to, under section 208 and the Standards of Ethical Conduct for Employees of the Executive Branch. Section 208 will continue to control when any real conflicts of interest are present. Therefore, the restrictions, which mirror the exemption to section 208 found in 5 CFR 2640.202(e), will apply to the Postmaster General and Deputy Postmaster General should an actual conflict arise.

Conversely, § 7001.104(a) is meant to address appearance concerns, as stated above. A reasonable person with the knowledge that a Governor, the Postmaster General or the Deputy Postmaster General actively controls the holdings of entity would have reason to question the loyalty of that individual when the entity invests in a competitor or the publicly held lessor. The same cannot be said when the entity invests in a competitor or the publicly held lessor, but the Governor, Postmaster General or Deputy Postmaster General does not actively control the acquisition of or holding of those financial interests, as described in § 7001.014(a)(2). As such, the standard that Commenter A suggests should be applied to PG and DPG is simply not necessary because we do not believe that there are any appearance concerns if the Postmaster General or the Deputy Postmaster is merely directing the investment strategy of the entity and hiring the entity's financial manager, who in turn selects the entity's investment, or designating another employee of the entity to select the entity's investments. Because the Postal Service is focused on the appearance of a conflict as opposed to an actual conflict, the Postal Service will apply § 7001.104(a)(2) in the same manner to the Postmaster General and the Deputy Postmaster General as it does to the Governors.

VI. Postmaster General Vetting Process

Sixth, Commenter A asks that the ethics review process for the position of Postmaster General be ''strengthened and enhanced''—specifically through an accelerated process similar to that used for Presidential appointees subject to Senate confirmation (''PAS'' nominees), which would require a new Postmaster General to enter into a written ethics agreement with the DAEO within 30 days of taking office and adhere to a 90-day time limit for divestiture.

The Postal Service notes that the vetting process for potential future Postmasters General is outside of the scope of this rulemaking. Regarding the substance of the commenter's suggestion, the Postal Service has every confidence in its current protocols for reviewing the financial interests of incoming Postmasters General, but does note that it is currently considering an enhanced framework under which prospective Postmasters General would be reviewed.

VII. Office of Government Ethics Website

Last, Commenter A asks that the Postmaster General's ethics agreements, and any amendments thereto, be subject to review and approval by the Director of OGE and made publicly available on OGE's website, along with the Postmaster General's public financial disclosure reports and any waivers issued pursuant to 18 U.S.C. 208(b)(1) or by supplemental regulation.

First, with regard generally to what materials are publicly available on OGE's website, the Postal Service notes that it is not empowered to make that determination. OGE solely determines what materials it includes or excludes on its own website, pursuant to applicable law.

Second, as to the Postmaster General's public financial disclosure reports, they are already publicly available on OGE's website. While PAS officials' ethics agreements are available on OGE's website, the Postmaster General is not a PAS government official. As such, the Postal Service is not required to have OGE involved in developing an ethics agreement for the Postmaster General, as OGE is involved for PAS officials. Moreover, even if the Postmaster General were a PAS official, the Postal Service is not in the position to choose or determine what is posted on OGE's website and the question of whether the Postmaster General should be a PAS official, with all the requirements those positions entail, is far afield and outside of the scope of the Postal Service's authority and this rulemaking. Finally, no other PAS government official's waivers issued pursuant to 18 U.S.C. 208(b)(1) are published on OGE website and the Postal Service declines to treat the Postmaster General differently by requesting that his or her waivers be posted to OGE website or, in the case of waivers issued pursuant to Supplemental Standards, posted on the Postal Service's website. Notwithstanding the foregoing, the Postal Service notes that any waiver

issued pursuant to section 208 to the Postmaster General is available upon request to the public under that statute and 5 CFR 2640.304(a).

Summary of Commenter B's Comments and Postal Service Responses

Commenter B is a trade association. Commenter B's correspondence overall expressed optimism. In particular, Commenter B articulated the hope that the Postal Service's proposed changes to 5 CFR 7001.102 would positively affect the labor shortage currently faced by highway contract route (''HCR'') suppliers. Commenter B described the HCR driver shortage as part of a larger problem faced by the greater surface transportation industry that uniquely challenges HCR suppliers. Commenter B identified multiple factors causing the available labor pool to shrink, including matters both outside of the scope of this rulemaking and factors within the scope of this rulemaking, addressed here.

As stated above, Commenter B broadly supported the proposed change to 5 CFR 7001.102, which would permit a Postal Service employee to seek concurrent supplemental employment with HCR contractors if the employee obtained permission from the Ethics Office. Commenter B acknowledged that removing the outright prohibition on concurrent employment with the Postal Service and HCR suppliers and instituting a ''case-by-case'' analysis would permit HCR suppliers to hire some Postal Service employees—those whom the Ethics Office clears for part-time positions—as opposed to the prior situation, in which HCR suppliers were prohibited outright from hiring Postal Service employees. Commenter B hopes that this change would result in a larger pool of applicants for open HCR driver positions. If finalized, this Commenter opined, ''the proposed rule would create a more flexible, dynamic workforce benefitting the transportation of mail throughout the nation.''

Nevertheless, Commenter B was apprehensive about whether the proposed approval process would result in delays. Specifically, it expressed concerns about potential delays caused by (1) the requirement that a Postal Service employee obtain a statement from the employee's supervisor for the Ethics Office to consider and (2) the requirement that the Ethics Office review the Postal Service employee's request and his or her manager's statement. Essentially, Commenter B opined that these two requirements would cause undue delay between when the employee decides to apply for an open supplier position and when he or she is able to obtain clearance from the Ethics Office to apply. Commenter B is concerned that these requirements, which would take time, could jeopardize the Postal Service employee's opportunity for employment with an HCR contractor because the HCR application process moves swiftly.

The Postal Service respectfully disagrees with Commenter B's characterization of the review requirements as delays, which connotes that the time taken to review is unnecessary. Rather, the Postal Service posits that the time needed to complete these requirements will be relatively short and that the perceived negatives of the approval process are outweighed by its benefits. Specifically, both requirements are essential for the Ethics Office to determine whether a Postal Service employee would run afoul of the criminal conflict of interest statute or other Federal ethics rules if he or she were hired by an HCR supplier. As to a timeframe for review, the Ethics Office will endeavor to review these requests within its already established practice of reviewing all ethics advice matters as quickly as possible and in a timely manner.

The Postal Service is cognizant of, and wishes to be attentive to, the needs of the supplier community and the time-sensitive nature of the application process, and understands that the requirement to obtain a statement from the employee's manager and approval from the Ethics Office will lengthen the time that it takes an employee to apply for a position with a supplier. However, the Ethics Office requires the information contained in the statement from the employee's manager, and time to review that information, in order to make a determination about whether the employee's application would be consistent with the ethics rules and statutes. And, as stated above, the Ethics Office will continue to respond as quickly as possible to all requests for review under this new provision.

In changing the rule from an outright prohibition on supplemental employment with an HCR to a case-by-case analysis via an approval process, the Postal Service will permit some Postal Service employees, as appropriate, to apply for concurrent employment with HCR suppliers—thus helping to alleviate the HCR driver shortage—while assisting Postal Service employees with remaining in compliance with the ethics rules and regulations.

As a final point, Commenter B raised a question regarding 5 CFR 7001.102, about which the Postal Service would like to offer clarification. Commenter B expressed concern that an employee who is a prospective applicant with an HCR may have to submit unnecessarily duplicative applications to the Ethics Office if he or she wished to work for more than one HCR supplier. In other words, it appears that Commenter B saw the proposed rule as requiring a Postal Service employee to submit one request per supplier. However, this is not the intention of the proposed rule. Postal Service employees seeking clearance to work for more than one HCR supplier may submit a single request to the Ethics Office and may obtain a single statement from their managers in support of that request.

Conclusion

The Postal Service did not receive any other comments other than those discussed above. For the reasons detailed in the preamble of the previously-issued Notice of Proposed Rulemaking, the Postal Service is, with the concurrence of the Office of Government Ethics, issuing the rule in final with only one change, to expand the coverage of 5 CFR 7001.104(a) to apply to the Postmaster General and the Deputy Postmaster General.

List of Subjects in 5 CFR Part 7001

Conflict of interests, Ethical standards, Executive branch standards of conduct, Government employees.

For the reasons set forth in the preamble, the United States Postal Service, with the concurrence of the United States Office of Government Ethics, amends 5 CFR part 7001 as follows:

PART 7001—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE UNITED STATES POSTAL SERVICE

■ 1. The authority citation for part 7001 continues to read as follows:

Authority: 5 U.S.C. 7301; 5 U.S.C. Chapter 131; 39 U.S.C. 401; E.O. 12674, 54 FR 15159; 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547; 3 CFR 1990 Comp., p. 306; 5 CFR 2635.105, 2635.802, and 2635.803.

■ 2. Revise § 7001.102 to read as follows:

§ 7001.102 Restrictions on outside employment and business activities.

(a) *Prohibited outside employment and business activities.* No Postal Service employee shall:

(1) Engage in outside employment or business activities that involve providing consultation, advice, or any subcontracting service, with respect to the operations, programs, or procedures of the Postal Service, to any person who

has a contract with the Postal Service or who the employee has reason to believe will compete for such a contract;

(2) Except as permitted by paragraph (b)(2) of this section, engage in outside employment or business activities with, for, or as a person engaged in:

(i) The operation of a commercial mail receiving agency registered with the Postal Service; or

(ii) The delivery outside the mails of any type of mailable matter, except daily newspapers.

Example 1 to paragraph (a)(2)(ii): United Parcel Service (UPS), Federal Express (FedEx), Amazon, or DHL offers a part-time job to a Postal Service employee. Because UPS, FedEx, Amazon and DHL are persons engaged in the delivery outside the mails of mailable matter (as defined in paragraph (c)(2) of this section) that is not daily newspapers, the employee may not engage in employment with UPS, FedEx, Amazon, or DHL in any location in any capacity while continuing employment with the Postal Service in any location in any capacity. If the employee chooses to work for UPS, FedEx, Amazon, or DHL, the employee must end his or her postal employment before commencing work for that company.

(3) Engage in any fundraising (as defined in 5 CFR 2635.808(a)(1)), for-profit business activity, or sales activity, including the solicitation of business or the receipt of orders, for oneself or any other person, while on duty or in uniform, at any postal facility, or using any postal equipment. This paragraph does not prohibit an employee from engaging in fundraising at a postal facility as permitted in connection with the Combined Federal Campaign (CFC) under 5 CFR part 950.

Example 2 to paragraph (a)(3): An employee volunteers at a local animal shelter (a non-profit organization) which is having its annual fundraising drive. The employee may not solicit funds or sell items to raise funds for the animal shelter while on duty, in uniform, at any postal facility, or using any postal equipment.

Example 3 to paragraph (a)(3): Outside of his postal employment, an employee operates a for-profit dog-walking business. The employee may not engage in activities relating to the operation of his business while on duty, in uniform, at any postal facility, or using any postal equipment.

Example 4 to paragraph (a)(3): Outside of her postal employment, an employee has a job as a sales associate for a cosmetics company. The employee may not solicit sales or receive orders for the cosmetic company from any person while on duty, in uniform, at any postal facility, or using any postal equipment.

(b) *Prior approval for outside employment and business activities*—(1) *When prior approval required.* A Postal Service employee shall obtain approval from the Postal Service's Ethics Office in accordance with paragraph (b)(3) of this section prior to:

(i) Engaging in outside employment or business activities with or for any person with whom the employee has official dealings on behalf of the Postal Service;

(ii) Engaging in outside employment or business activities with, for, or as a person who has interests that are:

(A) Substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications; or

(B) Substantially dependent upon providing goods or services to, or for use in connection with, the Postal Service; or

(iii) Engaging in outside employment or business activities with or for any Highway Contract Route (HCR) contractor.

(2) *When prior approval may be requested for prohibited outside employment and activities.* If an entity with which an employee wishes to engage in outside employment or business activities is a subsidiary of an entity that is engaged in one the activities described in paragraph (a)(2) of this section, but does not itself engage in any those activities, the employee may request approval from the Postal Service's Ethics Office to engage in such activity. The employee's request should follow the procedures of paragraph (b)(3) of this section, and will be evaluated under the standard set forth in paragraph (b)(4) of this section.

Example 5 to paragraph (b)(2): A Postal Service employee who wishes to engage in outside employment with Whole Foods Market may submit a request to engage in that activity to the Postal Service's Ethics Office. Although Whole Foods Market is a subsidiary of Amazon, it is engaged in the supermarket business, not in the delivery outside the mails of mailable matter.

(3) *Submission and contents of request for approval.* An employee who wishes to engage in outside employment or business activities for which approval is required by paragraph (b)(1) of this section shall submit a written request for approval to the Postal Service's Ethics Office. The request shall be accompanied by a statement from the employee's supervisor briefly summarizing the employee's duties and stating any workplace concerns raised by the employee's request for approval. The request for approval shall include:

(i) A brief description of the employee's official duties;

(ii) The name of the outside employer, or a statement that the employee will be engaging in employment or business activities on his or her own behalf;

(iii) The type of employment or business activities in which the outside employer, if any, is engaged;

(iv) The type of services to be performed by the employee in connection with the outside employment or business activities;

(v) A description of the employee's official dealings, if any, with the outside employer on behalf of the Postal Service; and

(vi) Any additional information requested by the Postal Service's Ethics Office that is needed to determine whether approval should be granted.

(4) *Standard for approval.* The approval required by paragraph (b)(1) of this section shall be granted only upon a determination that the outside employment or business activities will not involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635, which includes, among other provisions, the principle stated at 5 CFR 2635.101(b)(14) that employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in part 2635.

(c) *Special rules for outside employment or business activities of OIG employees*—(1) *When reporting required.* A Postal Service Office of Inspector General (OIG) employee shall report compensated and uncompensated outside employment or business activities to the OIG's Office of General Counsel, including:

(i) Any knowing sale or lease of real estate to the Postal Service or to a Postal Service employee or contractor, regardless of the frequency of such sales or leases or whether the sale or lease is at fair market value;

(ii) Any ownership or control of a publicly-accessible online or physical storefront; and

(iii) Volunteer activities, if they regularly exceed 20 hours per week or when the employee holds an officer position in the organization.

Example 6 to paragraph (c)(1)(iii): An OIG employee occasionally volunteers with a domestic violence non-profit. The employee's volunteer duties are generally limited to 5 hours per week. The employee is not an officer of the organization. One weekend the employee helps to build a new home for a family, which takes a combined 22

hours. The employee is not required to report those volunteer activities because the employee is not an officer and the employee's volunteer activities do not *regularly* exceed 20 hours per week.

Example 7 to paragraph (c)(1)(iii): An OIG employee is a Scoutmaster for his child's local scouting group. The children meet for an hour each week and go on 4-hour hikes one weekend per month. Though ''Scoutmaster'' may involve leadership, it is not an officer position within the non-profit entity and need not be reported.

(2) *When prior approval required.* A Special Agent or Criminal Investigator shall also request and obtain written approval prior to engaging in outside employment or business activities which he or she is required to report under paragraph (c)(1) of this section. A request for approval shall be submitted to the OIG's Office of General Counsel, which will be reviewed under the same standard stated in paragraph (b)(3) of this section.

(3) *Implementation guidance.* The OIG's Office of General Counsel may issue internal instructions governing the submission of requests for approval of outside employment, business activities, and volunteer activities. The instructions may exempt categories of employment, business activities, or volunteer activities from the reporting and prior approval requirements of this section based on a determination that those activities would generally be approved and are not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635. The OIG's Office of General Counsel may include in these instructions examples of outside activities that are permissible or impermissible consistent with this part and 5 CFR part 2635.

(d) *Definitions.* For purposes of this section:

(1) *Outside employment or business activity* means any form of employment or business, whether or not for compensation. It includes, but is not limited to, the provision of personal services as officer, employee, agent, attorney, consultant, contractor, trustee, teacher, or speaker. It also includes, but is not limited to, engagement as principal, proprietor, general partner, holder of a franchise, operator, manager, or director. It does not include equitable ownership through the holding of publicly-traded shares of a corporation.

(2) *Commercial mail receiving agency* means a private business that acts as the mail receiving agent for specific clients. The business must be registered with the post office responsible for delivery to the commercial mail receiving agency.

(3) A *person engaged in the delivery outside the mails of any type of mailable matter* means a person who is engaged in the delivery outside the mails of any letter, card, flat, or parcel eligible to be accepted for delivery by the Postal Service.

(4) A *person having interests substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications* includes a person:

(i) Primarily engaged in the business of publishing or distributing a publication mailed at Periodicals rates of postage;

(ii) Primarily engaged in the business of sending advertising, promotional, or other material on behalf of other persons through the mails;

(iii) Engaged in a commercial business that:

(A) Primarily utilizes the mails for the solicitation or receipt of orders for, or the delivery of, goods or services; and

(B) Can be expected to earn gross revenue exceeding $10,000 from utilizing the mails during the business's current fiscal year; or

(iv) Who is, or within the past 4 years has been, a party to a proceeding before the Postal Regulatory Commission.

Example 8 to paragraph (d)(4)(iii): An employee operates a business which sells handmade wooden bowls on its website and other e-commerce websites and uses the Postal Service as its primary shipper. The employee's business can be expected to earn gross revenue of more than $10,000 from utilizing the mails during the business's current fiscal year. The employee's business is ''a person having interests substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications'' because it is a commercial business that primarily utilizes the mails for the delivery of its goods and the business can be expected to earn gross revenue exceeding $10,000 from utilizing the mails during its current fiscal year.

Example 9 to paragraph (d)(4)(iii): An employee knits scarves as a hobby, most of which she gives to family and friends, but she occasionally sells extra scarves on an e-commerce website and uses the Postal Service as her primary shipper. The employee does not expect to receive more than $10,000 from utilizing the mails during the current calendar year in which she sells the scarves. The employee is not ''a person having interests substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications'' because she is not engaged in a commercial business that can be expected to earn gross revenue from utilizing the mails exceeding $10,000 during its current fiscal year.

(5) *A person having interests substantially dependent upon providing goods or services to, or for use in connection with, the Postal Service* includes a person:

(i) Providing goods or services under contract(s) with the Postal Service that in total can be expected to provide revenue exceeding $100,000 over the term(s) of the contract(s); or

(ii) Substantially engaged in the business of preparing items for others for mailing through the Postal Service.

Example 10 to paragraph (d)(5)(ii): A mailing house that sorts and otherwise prepares for its clients large volumes of advertising, fundraising, or political mail for mailing to prospective customers, donors, or voters through the Postal Service is ''a person having interests substantially dependent upon providing goods or services to, or for use in connection with, the Postal Service'' because it is substantially engaged in the business of preparing items for others for mailing through the Postal Service.

■ 3. Add § 7001.104 to read as follows:

§ 7001.104 Prohibited financial interests of the members of the Board of Governors

(a) *General prohibitions.* (1) No member of the Board of Governors, which includes the Postmaster General, the Deputy Postmaster General, and the nine appointed Governors of the United States Postal Service, or any spouse or minor child of any member of the Board of Governors, shall acquire or hold, directly or indirectly:

(i) Any financial interest in a person engaged in the delivery outside the mails of any type of mailable matter, except daily newspapers; or

(ii) Any financial interest in a publicly-traded entity engaged primarily in the business of leasing real property to the Postal Service.

(2) No member of the Board of Governors shall actively control the acquisition of, or the holding of, any financial interest described in paragraph (a)(1)(i) or (ii) of this section, on behalf of any entity whose financial interests are imputed to them under 18 U.S.C. 208. A member of the Board of Governors actively controls the financial interests of an entity if he or she selects or dictates the entity's investments, such as stocks, bonds, commodities, or funds. A member of the Board of Governors does not actively control the financial interests of an entity if he or she merely directs the investment strategy of the entity, hires the entity's financial manager(s) who selects the

entity's investments, or designates another employee of the entity to select the entity's investments. A member of the Board of Governors may have such investment authority when serving as an officer, director, trustee, general partner, or employee of an entity.

Example 1 to paragraph (a)(2): A Governor is also the chief executive officer (CEO) of a life insurance company. The company's policy is for: the board of directors to determine the overall investment strategy for the company's excess cash, an internal team to recommend to the CEO specific financial instruments in which to invest the company's excess cash to implement the board's overall investment strategy, and the CEO to approve or disapprove of the internal team's specific investment recommendations. The Governor actively controls the financial interests of the life insurance company in her position as CEO of the company.

Example 2 to paragraph (a)(2): A Deputy Postmaster General is also on the board of directors of an investment company. The company's policy is for: the board of directors to determine the overall investment strategy for the company's excess cash, the board of directors to choose an external investment manager to select and manage day-to-day the specific financial instruments in which the company's excess cash is invested to implement the board's overall investment strategy, and the CEO and other company management official to oversee the investment management process, including periodic review of the company's investment portfolio. This Deputy Postmaster General does not actively control the financial interests of the investment company in his position on the board of directors.

(b) *Exception.* Paragraph (a) of this section does not prohibit any member of the Board of Governors or spouse or minor child of any member of the Board of Governors from directly or indirectly acquiring or holding, or a member of the Board of Governors from actively controlling on behalf of any entity, any financial interest in any publicly-traded or publicly-available mutual fund (as defined in 5 CFR 2640.102(k)) or other collective investment fund, including a widely-held pension or other retirement fund, that includes any financial interest described in paragraph (a)(1)(i) or (ii) of this section, provided that:

(1) Neither the member of the Board of Governors nor his or her spouse exercises active control over the financial interests held by the fund; and

(2) The fund does not have a stated policy of concentrating its investments in, as applicable, persons engaged in the delivery outside the mails of mailable matter, except daily newspapers, or persons engaged primarily in the business of leasing real property to the Postal Service.

(c) *Reporting of prohibited financial interest and divestiture*—(1) *General.* Any financial interest prohibited by paragraph (a) of this section shall be divested, in the case of a Governor, within 90 calendar days of confirmation by the Senate of the Governor's nomination, and, in the case of a Postmaster General or Deputy Postmaster General, within 90 calendar days of his or her appointment, or as soon as possible thereafter if there are restrictions on divestiture.

(2) *Newly-prohibited financial interests following confirmation or appointment.* If a financial interest described in paragraph (a) of this section becomes prohibited subsequent to the Governor's confirmation or a Postmaster General or Deputy Postmaster General's appointment:

(i) The member of the Board of Governors shall report the prohibited financial interest to the Postal Service's Designated Agency Ethics Official (DAEO) within 30 calendar days of the DAEO informing the member of the Board of Governors that such financial interests have become prohibited; and

(ii) The prohibited financial interest shall be divested within 90 calendar days of the DAEO informing the member of the Board of Governors that such financial interests have become prohibited, or as soon as possible thereafter if there are restrictions on divestiture.

(3) *Prohibited financial interests acquired without specific intent following confirmation or appointment.* (i) If a member of the Board of Governors, or spouse or minor child of any member of the Board of Governors acquires a financial interest prohibited by paragraph (a)(1) of this section without specific intent to acquire it (such as through marriage, inheritance, or gift) subsequent to the Governor's confirmation or the appointment of a Postmaster General or Deputy Postmaster General:

(A) The member of the Board of Governors shall report the prohibited financial interest to the Postal Service's DAEO within 30 calendar days of its acquisition; and

(B) The prohibited financial interest shall be divested within 90 calendar days of its acquisition, or as soon as possible thereafter if there are restrictions on divestiture.

(ii) If an entity whose financial interests are actively controlled by a member of the Board of Governors acquires a financial interest described in paragraph (a)(1)(i) or (ii) of this section without specific intent to acquire it (such as through a gift) subsequent to a Governor's confirmation or the appointment of a Postmaster General or Deputy Postmaster General:

(A) The member of the Board of Governors shall report the prohibited financial interest to the Postal Service's DAEO within 30 calendar days of its acquisition; and

(B) The prohibited financial interest shall be divested within 90 calendar days of its acquisition, or as soon as possible thereafter if there are restrictions on divestiture.

(4) *Disqualification from participating in particular matters pending divestiture.* Pending any required divestiture of a prohibited financial interest provided for in this paragraph (c), a member of the Board of Governors shall disqualify himself or herself from participating in particular matters involving or affecting the prohibited financial interest. Disqualification is accomplished by not participating in the particular matter.

(d) *Waiver of prohibited financial interests.* For good cause shown by a member of the Board of Governors, the Postal Service's DAEO may grant a written waiver to the member of the Board of Governors of any prohibited financial interest described in paragraph (a) or (c)(2) or (3) of this section; provided that the DAEO finds that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law, and that under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of the member of the Board of Governors' misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality or objectivity with which the Postal Service's programs are administered. The DAEO may impose appropriate conditions for granting of the waiver, such as requiring the member of the Board of Governors to execute a written statement of disqualification.

(e) *Definition.* For purposes of this section, a *person engaged in the delivery outside the mails of any type of mailable matter* is as defined in § 7001.102(d)(3).

Ruth Stevenson,

Chief Counsel, Ethics and Legal Compliance, United States Postal Service.

Shelley K. Finlayson,

Acting Director, U.S. Office of Government Ethics.

[FR Doc. 2023–16811 Filed 8–7–23; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 103

[DHS Docket No. ICEB–2021–0015]

RIN 1653–AA85

Immigration Bond Notifications

AGENCY: U.S. Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS).

ACTION: Interim final rule (IFR); request for comment.

SUMMARY: DHS is revising its regulations governing service of bond notifications. Current regulations authorize ICE to serve documents in-person, or by certified, registered, or first-class (regular) mail. This IFR authorizes ICE to electronically serve bond-related notifications to obligors for immigration bonds. The ICE transition to electronic notifications for bond-related documents is part of an electronic bonds system ICE developed to simplify the posting of bonds.

DATES: This rule is effective as of September 7, 2023; comments must be received by September 7, 2023.

ADDRESSES: You may submit comments on this IFR, identified by DHS Docket No. ICEB–2021–0015, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the website instructions to submit comments.

Comments submitted in a manner other than the one listed here, including emails or letters sent to DHS officials, will not be considered comments on the IFR and may not receive a response from DHS. Please note that DHS cannot accept any comments that are mailed, hand delivered, or couriered. In addition, DHS cannot accept mailed comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. If you cannot submit your material using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Sharon Hageman, Deputy Assistant Director, Office of Regulatory Affairs and Policy, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 500 12th Street SW, Mail Stop 5006, Washington, DC 20536. Telephone 202–732–6960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Public Participation

DHS encourages all interested parties to participate in this rulemaking by submitting written data, views, comments and arguments on all aspects of this IFR. Comments providing the most assistance to DHS will reference a specific portion of the IFR, explain the reason for any recommended change, and include the data, information, or authority that supports the recommended change. Under the guidelines of the Office of the Federal Register, all comments received will be posted to *https://www.regulations.gov* as part of the public record and will include any personal information you have provided. See the **ADDRESSES** section for information on how to submit comments.

A. Submitting Comments

To submit your comments online, go to *https://www.regulations.gov* and insert ''ICEB–2021–0015'' in the ''Search'' box. Click on the ''Comment'' box and type your comments in the text box provided. When you are satisfied with your comments, follow the prompts, and then click ''Submit Comment.''

DHS will post comments to the Federal eRulemaking Portal at *https://www.regulations.gov* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines is offensive. For additional information, please read the ''Privacy & Security Notice,'' via the link in the footer of *https://www.regulations.gov.* DHS will consider all comments and materials received during the comment period and may change this rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov* and insert ''ICEB–2021–0015'' in the ''Search'' box. Next, click on ''Dockets,'' then on the name of the rule, and finally on ''Browse All Comments.'' Individuals without internet access can make alternate arrangements for viewing comments and documents related to this rulemaking by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above. You may also sign up for email alerts on the online docket to be notified when comments are posted, or a final rule is published.

C. Privacy Act

You may consider limiting the amount of personal information that you provide in your voluntary public comment submission because anyone can electronically search comments received in any of DHS's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For additional information, please read the Privacy and Security Notice posted on *https://www.regulations.gov.*

II. Abbreviations

BIA Board of Immigration Appeals
CBP U.S. Customs and Border Protection
CeBONDS Cash Electronic Bonds Online System
CFR Code of Federal Regulations
COVID–19 Coronavirus Disease 2019
DHS Department of Homeland Security
eBONDS Electronic Bonds Online System
e-signature Electronic Signature
ERO Enforcement and Removal Operations
FY Fiscal Year
GPEA Government Paperwork Elimination Act
ICE U.S. Immigration and Customs Enforcement
INA Immigration and Nationality Act
NARA National Archives and Records Administration
OMB Office of Management and Budget
USCIS U.S. Citizenship and Immigration Services

III. Background and Purpose

A. Legal Authority

The Homeland Security Act of 2002, Public Law 107–296, section 102, 116 Stat. 2135 (Nov. 25, 2002), 6 U.S.C. 112, and the Immigration and Nationality Act of 1952 (INA), as amended, section 103(a)(1), 8 U.S.C. 1103(a)(1), charge the Secretary of the Department of Homeland Security (DHS) (the Secretary) with administration and enforcement of the immigration and naturalization laws. The Secretary promulgates this interim final rule (IFR) under the broad authority to administer DHS, and the authorities provided under the Homeland Security Act of 2002, the immigration and nationality laws, and other delegated authority.

Over the past twenty years, Congress and the Executive Branch have promoted the use of electronic transactions and electronic records when feasible instead of relying solely upon in-person or paper transactions. Under the Government Paperwork Elimination Act (GPEA), Public Law 105–277, tit. XVII, section 1703, 112 Stat. 2681, 2681–749 (Oct. 21, 1998), 44

U.S.C. 3504 note, Federal agencies are required, when practicable, to provide the option of electronic maintenance, submission, or disclosure of information as a substitute for paper transactions. More recently, on June 28, 2019, the Office of Management and Budget (OMB) and the National Archives and Records Administration (NARA) jointly issued a memorandum that encouraged agencies to consider cost-effective opportunities to transition related business processes to an electronic environment.[1] Offering electronic processes in place of paper or in-person transactions has the benefits of making it ''easier for the public to connect with the Federal Government, and apply for and receive services, improving customer satisfaction. Electronic records . . . reduce processing times and decrease the probability of lost or missing information . . . [and] . . . greatly improve agencies' ability to provide public access to Federal records, promoting transparency and accountability.'' Executive Office of the President, *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations,* at 100 (June 2018). The GPEA establishes the means for the use and acceptance of electronic signatures (e-signatures). This rule will significantly enhance the ability of U.S. Immigration and Customs Enforcement (ICE) to fully implement the GPEA.

The Electronic Signatures in Global and National Commerce Act (E–SIGN Act), 15 U.S.C. 7001–7031, effective for most purposes on October 1, 2000, allows electronic records and signatures to be given the same effect as paper and ink documents. *See* 15 U.S.C. 7001(a). The E–SIGN Act provides ''legal parity'' for electronic records with paper records, when the procedures an agency adopts for the creation, maintenance, and retention of electronic records comply with the Federal Records Act and NARA guidelines governing digitization of records.[2] Except for records maintained by government agencies (other than contracts to which it is a party), the E–SIGN Act does not require any person to agree to use or accept electronic records. *Id.* sec. 7001(b)(2); *see also* 12 CFR 609.910(a) (noting that under the E–SIGN Act, ''E-commerce is optional; all parties to a legally valid transaction must agree to the electronic use before it can be used''). ICE intends to comply with this requirement by obtaining consent from immigration bond sureties and obligors to send electronic notifications.

The Secretary is charged with the administration and enforcement of laws relating to the immigration and naturalization of noncitizens and ''shall [. . .] prescribe such forms of bond'' as deemed necessary for carrying out the authority under the INA. *See* INA 103(a)(1), (3), 8 U.S.C. 1103(a)(1), (3). Additionally, where a noncitizen is arrested and detained pending a decision on removal from the United States, the Secretary is authorized to ''release [a noncitizen] on . . . (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by [the Secretary of Homeland Security]. *See* INA 236(a)(2), 8 U.S.C. 1226(a)(2). Further, the Secretary ''at any time may revoke a bond'' authorized under INA 236(a)(2), re-arrest the noncitizen, and detain them. *See* INA 236(b), 8 U.S.C. 1226(b). Under the terms and conditions of DHS's Immigration Bond, Form I–352, ''Federal law shall apply to the interpretation of the bond.'' Immigration Bond, ICE Form I–352, at 1 (rev. 11/20). ICE approves several types of immigration bonds such as delivery bonds, 8 CFR 236.1(c)(10), voluntary departure bonds, 8 CFR 240.25(b), 8 CFR 1240.26(b)(3)(i), (c)(3)(i), and order of supervision bonds, 8 CFR 241.5(b).

With respect to cash bonds, the Secretary delegated to the ICE Director the authority to ''issue and execute detainers and warrants of arrest or removal, detain aliens, release aliens on bond and other appropriate conditions as provided by law . . .'' [3] With respect to surety bonds, the Secretary delegated to the ICE Director the ''[a]uthority to approve surety bonds [4] issued pursuant to the immigration laws, to determine whether such surety bonds have been breached, and to take appropriate action to protect the interests of the United States with respect to such surety bonds.'' [5]

B. Background

ICE's mission is to protect America from cross-border crime and illegal immigration that threaten national security and public safety.[6] ICE secures the Nation's borders by enforcing more than 400 Federal statutes and issuing a wide range of notices, decisions, and other documents to entities such as, but not limited to, universities, businesses, courts, and noncitizens.[7] Generally, DHS regulations authorize ICE to serve notices, decisions, and other documents in person or through the U.S. Postal Service. DHS regulations distinguish between ''personal'' and ''routine'' service of notices, decisions, and other documents. *See* 8 CFR 103.8.

Personal service is required in any proceeding initiated by DHS that has a proposed adverse effect on the recipient, if the recipient is confined to a penal or mental institution, or if the recipient is a minor under the age of 14 or mentally incompetent. *See* 8 CFR 103.8(c)(1) and (2). Current regulations define personal service [8] as personal delivery; delivery at a person's home or usual residence by leaving a copy with a person of suitable age and discretion; delivery at an attorney's or corporate office by leaving a copy with a person in charge; mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his or her last known address; or notifying the party by electronic mail and posting the decision to the party's account with U.S. Citizenship and Immigration Services (USCIS) if so requested by the party. *See* 8 CFR 103.8(a)(2).

Routine service is not required by regulations but may be used when personal service is not required. Routine service includes mailing a notice by 'ordinary' mail (first-class mail) addressed to the affected party or the party's attorney/representative at his or her last known address or notifying the party by electronic mail and posting the decision to the party's USCIS account if so requested by the party. *See* 8 CFR 103.8(a)(1); *See also* 8 CFR part 292 (Representation and Appearances) and 8 CFR part 1292 (Representation and Appearances).[9]

[1] Transition to Electronic Records (OMB/NARA M–19–21), available at *https://www.archives.gov/files/records-mgmt/policy/m-19-21-transition-to-federal-records.pdf.*

[2] Robert A. Wittie & Jane K. Winn, *Electronic Records and Signatures under the Federal E-Sign Legislation and the UETA,* 56 Bus. Law. 293, 314 (2000).

[3] DHS Delegation No. 7030.2, *Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement,* ¶ 2(T) (Nov. 13, 2004) (effective Mar.1, 2003). *See https://dhsconnect.dhs.gov/org/comp/mgmt/policies/Delegations/07030.2.pdf.*

[4] In this context, ''surety bonds'' is used in the same manner as it is used in 8 CFR 103.6(b)(1) to include immigration bonds underwritten by a surety company or posted by an entity or individual who deposits cash equal to the face amount of the bond as security for performance.

[5] DHS Delegation No. 7030.2, ¶ 2(U).

[6] *See https://www.ice.gov/mission* (last visited Jun 30, 2022).

[7] The preamble of this IFR uses ''noncitizen'' as equivalent to the statutory term ''alien.'' *See Barton* v. *Barr,* 140 S. Ct. 1442, 1446 n.2 (2020) (quoting 8 U.S.C. 1101(a)(3)).

[8] *Cf.* 8 CFR 103.8(a)(3) (providing additional methods for ''personal service involving notices of intention to fine.'').

[9] Subject to the limitations in 8 CFR 103.2(a)(3).

C. Immigration Bonds

An immigration bond is a formal written guarantee by an obligor (an individual, entity, or surety company) posted as security for the amount noted on the face of the immigration bond. The bond assures ICE that the obligor will perform the obligations for the type of bond indicated on the Immigration Bond, Form I–352. The posting of immigration bonds can occur with the deposit of cash in the full principal amount of the bond, known as ''cash bonds;'' [10] or where a surety company and its agent agree to pay the amount of the bond if there is a substantial violation of the bond's terms and conditions, known as a ''surety bond.'' Out of a total 33,237 approved immigration bonds that ICE issued in 2020,[11] 25,751 (78 percent) were cash bonds and 7,486 (22 percent) were surety bonds. If the obligor performs the conditions set forth in the bond, the bond will be cancelled. If the obligor substantially violates the conditions of the bond, the bond will be considered breached (a breached bond). *See* 8 CFR 103.6(e).

An immigration bond may be posted by a surety company or a cash bond obligor (provided that the bond is approved by ICE). Surety bonds are bonds underwritten by a surety company certified to issue bonds on behalf of the Federal Government. *See generally* 8 CFR 103.6(b) (identifying the parties that may serve as sureties on immigration bonds). Under the terms of the bond contract, the surety is the obligor, the co-obligor is the agent that posts a bond on behalf of a surety, the noncitizen (on whose behalf the bond is issued) is the principal, and ICE is the beneficiary of all bonds it authorizes. An acceptable surety is either a company that appears on the current Department of the Treasury (Treasury) Circular 570 as a company holding a certificate of authority to underwrite Federal bonds pursuant to 31 U.S.C. 9304–9308 or is an entity or individual who deposits the amount of the bond with ICE. *See* 8 CFR 103.6(b)(1). The surety (obligor) and its agent (co-obligor) guarantee the performance and fulfillment of the noncitizen's duties as set forth in the bond form. *See* Form I–352, at 1 (rev. 11/20).

ICE approves and issues three different types of bonds.

- *Delivery Bonds:* To release a noncitizen from DHS custody while removal proceedings are pending.
- *Voluntary Departure Bonds:* To ensure a noncitizen who is granted voluntary departure leaves the United States on or before the voluntary departure date set by an Immigration Judge or the Board of Immigration Appeals (BIA).
- *Order of Supervision Bonds:* To ensure noncitizens released on an order of supervision comply with the material terms of the supervised release.

Out of the 33,237 immigration bonds that ICE issued in 2020,[12] 93 percent were delivery bonds, six percent were voluntary departure bonds, and fewer than one percent were order of supervision bonds.[13]

To trigger an obligor's performance, ICE issues a demand notice on Form I–340, *Notice To Obligor To Deliver Alien.* DHS regulations authorize ICE to use personal service as defined by 8 CFR 103.8 to deliver demand notices issued on delivery bonds so ICE can confirm receipt (the date the obligor receives the demand notice). ICE confirms receipt of demand notices (proof of service) issued on delivery bonds to confirm that timely notice was provided to an obligor of their duty to surrender a noncitizen at an ICE office on the designated date. For breach notices,[14] cancellation notices, and notices of bond breach reconsideration decisions, DHS regulations authorize ICE to use routine mail service using first-class mail to the obligor's last known address. *See* 8 CFR 103.8(a)(1). ICE uses routine mail service as well to issue invoices and demand letters to surety companies and their agents, either by regular mail or a mail method that allows ICE to track and confirm delivery, or by email (electronically) with the co-obligors' consent.

After an immigration bond is issued, depending on the type of, and action needed on the, bond, ICE may issue the following notification(s) to the bond obligor.

1. *Delivery Demand.* Form I–340, *Notice to Obligor to Deliver Alien,* instructs the bond obligor to surrender the noncitizen to an ICE Office or to an immigration court on a designated date.

2. *Breach Notice.* Form I–323, *Notice—Immigration Bond Breached,* informs the obligor that a condition of the bond was substantially violated, notating the date the bond was breached, and apprises the obligor of the right to file an administrative appeal of the breach determination.[15]

3. *Cancellation Notice.* Form I–391, *Notice—Immigration Bond Cancelled,* informs the obligor that substantial compliance with the conditions of the bond was performed and that, for cash bonds, the deposit will be refunded.[16]

4. *Bond Breach Reconsideration.* Form 71–042, *Notice of Bond Breach Reconsideration Decision,* rescinds a bond breach issued in error and informs the obligor either that the bond has been reinstated or cancelled.[17]

For surety bonds that have been breached, ICE issues an invoice with information about the government's collection processes to satisfy the requirement to notify the co-obligors of the demand for payment under 31 CFR 901.2. ICE may issue a demand letter to the co-obligors summarizing the facts supporting the breach determination and attaching documents that support the determination that a debt is owed.

D. Need for Changes

DHS is amending its regulations to permit ICE to transition to a more modern, secure, and electronic environment. Initially, ICE's Enforcement and Removal Operations (ERO) Bond Management Unit will utilize electronic service in the immigration bonds context. Specifically, this IFR permits ICE to issue bond-related notifications to obligors electronically when enrolling in ICE's electronic bond systems: (1) Electronic Bonds Online System (eBONDS) and (2) Cash Electronic Bonds Online System (CeBONDS). This capability will improve security and transparency in the bond process and facilitate quicker information and communication to both the public and the government with minimal burden. ICE ERO is currently developing CeBONDS, a system that allows obligors to conveniently post ICE immigration cash bonds online without visiting an ICE office in-person.

ICE's CeBONDS system will permit the general public to post and pay bonds online. However, due to current regulations, ICE only permits

[10] An immigration bond secured by a cash deposit posted by an individual, law firm, non-profit organization, or other entity.

[11] Immigration Bond Statistics maintained by ICE's Bonds Branch, Financial Service Center-Burlington. Accessed 7/19/2022.

[12] *Id.*

[13] *Ibid.*

[14] Immigration bonds are contracts subject to a regulatory scheme with the result that ICE bond breach determinations are reviewed by a court under the arbitrary and capricious standard of review set forth in the Administrative Procedure Act (APA), 5 U.S.C. 706(2)(A). *United States* v. *Gonzales & Gonzales Bonds & Ins. Agency, Inc.,* 728 F. Supp. 2d 1077, 1087–92 (N.D. Cal. 2010); *Safety Nat'l Cas. Corp.* v. *DHS,* 711 F. Supp. 2d 697, 701 & 708–09 (S.D. Tex. 2008), *rev'd in part on other grounds, AAA Bonding Agency Inc.* v. *DHS,* 447 F. App'x 603 (5th Cir. 2011); *United States* v. *Minnesota Trust Co.,* 59 F.3d 87, 90 (8th Cir. 1995).

[15] 8 CFR 103.6(e); ICE Form I–323 (rev. Oct. 2020).

[16] ICE Form I–391 (rev. Oct. 2020).

[17] ICE Form 71–042 (rev. Jan. 2013).

individuals to post bonds online, but ICE is not permitted to serve notices, decisions, or other documents electronically. *See* 8 CFR 103.8(a)(1) and (2). ICE is seeking this regulatory change to create efficiencies and avoid lags in bond processing that may occur when allowing the general public to post and pay bonds electronically but where ICE then must serve a paper notice, decision, or other document through paper-based service. *See* current 8 CFR 103.8(a)(1) and (2). Regulatory changes in this rule will permit ICE to conduct an entirely electronic transaction with obligors posting bonds online, instead of permitting obligors to post bonds online but serving bond-related notices via regular or certified mail. Without this rule, eBONDS and CeBONDS notifications cannot be served electronically once that system development is completed because the rule is needed to authorize electronic notifications.

In 2010, ICE deployed the Electronic Bonds Online System (eBONDS), a web-based system designed to automate the issuance of ICE immigration bonds underwritten by surety companies and their agents.[18] Prior to the deployment of eBONDS, a surety agent was required to visit an ERO field office in person. First, a surety agent would request that an ERO field officer verify a noncitizen was eligible for bond, and then complete and submit the hard copy Form I–352 bond documentation package in order to post bond. Once the ERO officer reviewed and approved the package, ERO would create a financial record of the bond in the appropriate ICE system and ICE would release the noncitizen. If the noncitizen did not satisfy the terms of the bond (*e.g.,* failed to appear at an ICE office in response to a demand notice), the bond was considered breached, and the surety company was required to pay the bond amount to the U.S. Government.

The eBONDS system streamlined the processing and issuing of surety bonds and allowed a surety company and its agent to initiate and process an immigration bond online rather than appearing in person at an ICE office to request a bond be issued and approved. The eBONDS system enabled ICE offices to prepare and issue demand, breach, and cancellation notices directly to surety companies and their agents electronically. However, due to current regulations, eBONDS could not be fully implemented, in that ICE cannot electronically serve the bond-related notifications it generates unless the surety company agrees otherwise. *See* 8 CFR 103.6 and 8 CFR 103.8(a)(1) and (2). Instead, eBONDS automatically generates bond-related notifications that ICE personnel must print on paper and serve via certified or regular mail.[19]

ICE is currently developing the CeBONDS system to allow cash bonds to be posted online. CeBONDS will incorporate the functionality of eBONDS to allow ICE to issue and serve all bond notices electronically to any cash bond obligor who registers with the CeBONDS system. This alternative method for issuing and serving cash bond notices will increase security, efficiency, and accessibility for both obligors and ICE. As stated above, no regulatory changes are needed to allow cash bond obligors to post bonds online. However, current regulations do not permit ICE to serve notifications electronically as they limit the available methods of service to those listed in 8 CFR 103.8(a)(1) and (2) (routine service and personal service). Without this rule, ICE cannot send electronic bond notifications using CeBONDS and eBONDS.

ICE currently prepares and serves paper bond notices for sureties and their agents who post bonds electronically in eBONDS but ICE prefers to shift to an entirely electronic process with the release of CeBONDS. Of the 33,237 approved immigration bonds that ICE issued in 2020, 25,751 were cash bonds.[20] Expanding the hybrid electronic-paper process from eBONDS to a larger number of cash bonds posted by individuals, would be unduly burdensome to ICE as well as unnecessarily delay receipt of bond-related notices to individuals posting cash bonds. ICE does not believe it is reasonable to have an electronic transaction delayed or disrupted by requiring a paper document to be served via regular or certified mail when more efficient and cost-effective methods are available.

IV. Discussion of Changes

The definition of means of ''service'' in 8 CFR part 103 will be amended to provide flexibility and promote the Federal Government's goal of building better digital service transformation.[21] The regulations in chapter I of title 8 of the CFR contain provisions that, to varying degrees, govern facets of the immigration-related components of DHS, including but not limited to U.S. Customs and Border Protection (CBP), ICE, and USCIS. Because ''the Service'' in 8 CFR may refer to any immigration-related component of DHS, including CBP, ICE, and/or USCIS, DHS is adding provisions to 8 CFR 103.6 to serve bond-related notices electronically when consenting, enrolling, and using an ICE electronic bonds systems.

DHS is adding two paragraphs to § 103.6, Immigration bonds, to specifically authorize ICE to send all bond-related notifications electronically to cash bond obligors and surety companies and their agents who post an immigration bond using the eBONDS or CeBONDS. Because an obligor must login to eBONDS or CeBONDS with a unique password, an electronic record from the ICE bonds system indicating that the obligor opened a particular notification will serve as valid proof of receipt service of the notice.

Proof of service functions as a receipt confirming the delivery of documents from one party to another. ICE will verify that the email provided by the noncitizen or the person authorized to accept service on behalf of the noncitizen is valid users cannot create an online account if their email is not validated. ICE will generally perform a validity check as part of the sign-up process for receiving electronic bond-related notices which is common practice with establishing online accounts and notifications.[22] ICE will retain that confirmation of consent in order to document the noncitizen's consent. For bond-related notifications,[23] when the obligor receives an email that a bond-related notification has been issued, the obligor must login with a unique password to CeBONDS or eBONDS to view the notice. In amended § 103.6, ICE will

[18] eBONDS may only be used for surety bonds. However, of the 33,237 approved immigration bonds that ICE issued in 2020, only 7,486 were surety bonds. *See* Immigration Bond Statistics maintained by ICE's Bonds Branch, Financial Service Center-Burlington.

[19] eBONDS was built to provide bond-related notices electronically, but current regulation does not recognize that form of service. As such, that functionality was never enabled. eBONDS has a secure process set up for electronic service. Because bond-related notices contain sensitive information, a notice is transmitted to the surety companies and their agents in a two-step process. First, the eBONDS system generates an email to the surety and/or agent informing them that a notice was issued. Second, to actually view the notice, the surety or agent must log in to eBONDS and review the notice. eBONDS tracks and records when the notice is opened, thereby permitting ICE to verify receipt of the notice.

[20] *See* Immigration Bond Statistics maintained by ICE's Bonds Branch, Financial Service Center-Burlington.

[21] U.S. General Services Administration, *Guidance on building better digital services in government, https://digital.gov/* (last visited July 5, 2022).

[22] ICE will use another method of notification in the event that the validity checks fails.

[23] Currently, bond-related notices are automatically generated from an electronic transaction.

consider proof of service to be sufficient when ICE is able to verify that the document was opened in eBONDS or CeBONDS. Electronic bond-related notifications will serve as a valid form of notice that are reasonably calculated to inform an individual, surety company, or agent of the requirement to take some action.[24]

V. Implementation of Electronic Notices

A. eBONDS and CeBONDS

ICE's eBONDS system allows surety companies or their agents to initiate and process immigration bonds online rather than appear in person at an ICE office to request a bond be issued and approved. eBONDS also enables ICE to generate electronic bond-related notifications to surety companies and their agents, although those notifications cannot be served electronically under current regulations. *See* 8 CFR 103.8(a)(1) and (2). The surety companies and their agents can open an online account in eBONDS to view, print, or save any documents or notifications associated with a bond at any time. Surety companies and their agents who post bonds electronically enter into a contract with ICE called an ''eBONDS Access Application and Agreement.'' This contract grants the co-obligors access to eBONDS if the surety company and their agents agree to the terms and conditions of use. Once an obligor chooses to post a bond electronically with ICE, the obligor agrees to accept and receive bond notifications and notices electronically and agrees that opening a notice in eBONDS will constitute as proof of service that that notice was received.

ICE's CeBONDS system will use the same processes and procedures for cash bonds. Within CeBONDS the cash bond obligor is responsible for ensuring that the email address provided is current and that email settings (such as spam and other filters) will allow ICE electronic bond-related notifications to be received. It is the responsibility of the cash bond obligor to ensure that electronic bond-related notifications can be received.

When developed and fully implemented, CeBONDS will notify the cash bond obligor by generating an email notification that a document is in their account so the obligor can log into the system to view the ''queue'' organized by a unique identifier for each bond (coinciding with each notification issued). To view the bond-related notification, the cash bond obligor clicks on an attachment. Obligors will be able to view, download, and print the bond form and any bond-related notification issued by ICE. Similar to eBONDS, CeBONDS will electronically record the date and time the obligor opened the document, so ICE has proof of receipt of the electronic bond-related notification.

B. Electronic Immigration Bonds System Safeguards

ICE built safeguards into eBONDS and CeBONDS to ensure both surety companies and individuals posting bonds actually receive their electronic bond-related notifications. The systems will confirm that obligors and surety companies (or their agents) that post bonds electronically have the ability to send and receive emails and are aware that bond-related notifications will be sent by email.

For surety companies, their agents, and cash bond obligors posting multiple bonds, ICE will allow the obligors to post a new bond when all notifications are opened within seven calendar days of being sent. eBONDS tracks, and when fully developed in the future CeBONDS will track, ''unopened'' notifications. Obligors who are not in compliance with this requirement will be placed in a ''deficient electronic recipient'' category and be prevented from posting new bonds in the electronic systems. This safeguard ensures that bond obligors open electronically served bond-related notifications in a timely fashion and are aware of any significant actions taken on the bond. For obligors in the ''deficient electronic recipient'' category, ICE will reissue bond-related demand notifications by mailing them using a tracking method, such as certified or registered mail with a return receipt requested and will reissue all other bond-related notifications by first-class mail to the obligor's last known address. ICE's eBONDS and CeBONDS systems default to electronic service of bond-related notifications, but if there is a problem with that electronic service ICE reverts to another permitted form of paper-based service. Once the system shows that the obligor complies with opening all electronic bond-related notifications within seven calendar days of being sent, the obligor may once again post new bonds electronically in eBONDS and CeBONDS.

An important goal of this IFR is to reduce situations where surety and cash bond notifications are sent by certified, registered, or regular mail but are not delivered to obligors who have moved after posting the bond. By authorizing electronic service, bond-related notifications are received quicker, electronic service can be verified in moments, and the number of bond-related notifications that are returned as undeliverable will be reduced. While these are all efficiencies gained for ICE, they are also benefits for surety companies, agents, and for individuals posting cash bonds for noncitizens or family members.

C. In Person Option

ICE does not intend to refuse surety companies or individuals from posting a bond in-person at the appropriate ICE office. Cash bond obligors and surety companies and their agents (on behalf of a noncitizen) still have the option to appear in person at an ICE office to request a bond be issued and approved. However, ICE intends to largely transition to an electronic environment for the posting of immigration bonds. ICE has developed eBONDS and CeBONDS, building in numerous safeguards and conveniences for the obligors. ICE anticipates high adoption of CeBONDS because it will be more convenient posting an immigration bond online rather than physically traveling to the appropriate ICE office. However, ICE recognizes that there will be instances where non-electronic bond-related notifications will have to be served by another authorized form of paper-based service (*e.g.,* deficient electronic recipients, obligors who choose to post a bond in-person). In such cases, obligors would receive non-electronic bond-related notifications under the current system using certified, registered, or regular mail.

D. E–SIGN Act

A bond is a contract with obligations on both ICE and the obligor. When ICE approves an immigration bond, ICE engages in a governmental function pursuant to its statutory and regulatory authority.[25] Unlike a ''service'' such as banking or lending where consumer disclosures are mandated by law, such as the Truth in Lending Act [26] or the Truth in Savings Act,[27] bond-related notifications are issued pursuant to the bond contract and the regulatory scheme governing immigration bonds.[28] Electronic bond-related notifications will serve as a valid form of notice that

[24] Rule 4(f)(3) of the Federal Rules of Civil Procedure allows service of process by email under certain circumstances.

[25] *See* INA 103(a)(1), (3), 8 U.S.C. 1103(a)(1), (3); 8 CFR 236.1(c)(10); 8 CFR 240.25(b), 8 CFR 1240.26(b)(3)(i), (c)(3)(i); and 8 CFR 241.5(b).

[26] 15 U.S.C. 1601–1667f (requiring creditors who loan to consumers to make certain written disclosures concerning finance charges).

[27] 12 U.S.C. 4301 *et seq.* (applicable to all insured depository institutions and credit unions and imposing standardized disclosures about interest rates and fees on deposit accounts).

[28] *See* 8 CFR 236.1(c)(10); 8 CFR 240.25(b), 8 CFR 1240.26(b)(3)(i), (c)(3)(i); and 8 CFR 241.5(b).

are reasonably calculated to inform an individual of the requirement to take some action. For example, Rule 4(f)(3) of the Federal Rules of Civil Procedure allows service of process by email under certain circumstances.

Requiring obligors using eBONDS and CeBONDS to accept electronic notifications is permissible under the E–SIGN Act.[29] If an electronic notification is returned as undeliverable or is received but not opened by the obligor within seven days (resulting in the obligator being deficient), ICE will reissue the electronic bond-related notification in another authorized form of paper-based service to the obligor's most recent address on record. However, ICE recognizes that mailing bond-related notifications to the obligor's address of record may result in a delay and one bond-related notification being served multiple times (*e.g.,* the electronic notification in the immigration bonds system followed by paper-based service to the address of record).

Further, because participation in eBONDS currently requires consent to receive electronic bond-related notifications, and participation in CeBONDS will require the same consent when that system is developed and fully implemented, ICE is not required to obtain separate or additional consent before issuing electronic bond-related notifications to obligors using CeBONDS or eBONDS for the changes made by this rule. All obligors posting bonds in eBONDS or CeBONDS must consent to receive electronic bond-related notifications as a pre-condition of enrolling in and using the systems. As such, any consent requirements of the E–SIGN Act will be satisfied.

VI. Statutory and Regulatory Requirements

DHS developed this rule after considering numerous statutes and Executive orders related to rulemaking. The sections below summarize the analyses based on a number of these statutes or Executive orders.

A. Administrative Procedure Act

The APA requires agencies to provide public notice and seek public comment on substantive regulations. *See* 5 U.S.C. 553. The APA, however, provides limited exceptions to this requirement for notice and public comment, including for ''rules of agency organization, procedure, or practice.'' *See* 5 U.S.C. 553(b)(A). In the D.C. Circuit's ''oft-cited formulation,'' this procedural-rule exception '' 'covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.'' *JEM Broad. Co., Inc.* v. *FCC,* 22 F.3d 320, 326 (D.C. Cir. 1994) (quoting *Batterton* v. *Marshall,* 648 F.2d 694, 707 (D.C. Cir. 1980)); *see also Mendoza* v. *Perez,* 754 F.3d 1002, 1023–24 (D.C. Cir. 2014). This rule adds another method (*e.g.,* electronic service) for ICE to serve bond-related notifications for anyone enrolling in or using an ICE electronic bonds systems. This rule expressly permits ICE to serve electronic bond-related notifications for all immigration bonds through the eBONDS and CeBONDS systems. Neither DHS nor ICE are removing or limiting any of the current methods of service found in 8 CFR 103.8(a)(1) or (2). For these reasons, DHS believes that these changes are procedural in nature, improve the effectiveness and efficiency of agency operations, and do not alter substantive rights. Therefore, because this IFR is procedural, notice and opportunity for public comment are not required. *See* 5 U.S.C. 553(b)(A). DHS nevertheless invites comments on this IFR and will consider all timely comments submitted during the public comment period as described in the **ADDRESSES** section.

B. Executive Orders 12866 and 13563: Regulatory Review

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This IFR has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, the rule has not been reviewed by the Office of Management and Budget. The analysis period of this rule covers 10 years to ensure it captures impacts that accrue over time. DHS expresses quantified impacts in 2021 dollars and uses discount rates of 3 and 7 percent, pursuant to Circular A–4.

Summary of the Analysis

DHS estimates that the IFR will have public costs and unquantified benefits, and result in cost-savings and unquantified benefits to the Government. The overall quantified impact of this rule is a net savings of $1,062,712 discounted at 3 percent and $655,278 discounted at 7 percent, with unquantified benefits expected to outweigh the unquantified costs. The rule is expected to expedite delivery and improve the reliability of service of bond-related notifications. In accounting for the costs and cost-savings of this IFR, ICE has assumed that all current obligors will transition to electronic notification within the first year of the publishing of this IFR. New bond obligors enrolling in CeBONDS or eBONDS will de facto agree to the use of electronic notifications as a feature of using these systems, though they will have the option to utilize physical notification under certain circumstances, such as an obligor lacking the means to access the internet. Lastly, while the analysis assumes that bond obligors will enroll in these services sooner rather than later, full adoption may ultimately depend on several factors, such as obligors being made aware of these changes, understanding the benefits of these provisions, and possessing the means to access the internet. Table 1 summarizes the findings of this regulatory impact analysis (RIA).

[29] Under the definition of a ''consumer'' by the E–SIGN Act, bond obligors are not ''consumers'' because a ''product or service'' is not obtained through the transaction of posting a bond. An obligor does not meet the definition of ''consumer'' for any of the three types of bonds (delivery bonds, voluntary departure bonds, and order of supervision bonds) issued by ICE. *See* 15 U.S.C. 7006(1).

TABLE 1—OMB CIRCULAR A–4 ACCOUNTING STATEMENT 2021

[Millions]

Category	Impact	Source
Benefits		
Annualized Monetized Benefits ($ Mil)		
(3%)		RIA.
(7%)		RIA.
Annualized Quantified, but Unmonetized, Benefits.		
Unquantified Benefits	Improved program delivery. Reduced paper waste.	RIA.
Costs		
Annualized Monetized Costs ($ Mil)		
(3%)	−0.124	RIA.
(7%)	−0.093	RIA.
Annualized Quantified, but Unmonetized, Costs.		
Unquantified Costs	Cost to public to access electronic system.	RIA.
Transfers		
Annualized Monetized Transfers. From Whom to Whom.		
Other Analyses		
Effects on State, Local, and/or Tribal Governments	No Impact	IFR.
Effects on Small Business	Undetermined	IFR.
Effects on Wages.		
Effects on Growth.		

Background and Purpose of Interim Final Rule

As part of its mission to enforce U.S. immigration laws, ICE currently issues a wide range of notices, decisions, and other documents to entities such as, but not limited to, universities, businesses, noncitizens, courts, and employees. Current regulations authorize ICE to serve documents in-person or by certified, registered, or regular mail. However, serving documents in this manner can take time and be more costly, compared to electronic methods of service. The IFR authorizes ICE to serve electronic bond-related notifications to obligors who enroll in CeBONDS and eBONDS.

Currently, ICE uses certified mail for the service of demand notices issued on delivery bonds so that ICE can confirm the date upon which an obligor receives the demand notice. Since 2010, ICE has employed eBONDS, which is a web-based system used primarily by surety agents and ICE to facilitate the ICE immigration bond management process. This system was implemented to allow surety agents the option to post surety bonds electronically for noncitizens determined by ICE to be eligible for release on bond. Additionally, eBONDS was built with functionality that included the ability to serve electronic bond-related notifications to surety companies and their agents within eBONDS for those companies who opted-in to electronic service, but due to current regulatory requirements for personal and routine service, that capability has not been implemented in eBONDS.[30] *See* 8 CFR 103.8(a)(1) and (2). Similarly, ICE is currently developing CeBONDS to allow cash bond obligors to post cash immigration bonds online without obligors having to appear in person at an ICE office. CeBONDS will offer to individuals posting cash bonds all the conveniences that eBONDS provides to surety companies. This IFR will allow ICE to fully implement eBONDS and CeBONDS by authorizing ICE to serve bond-related notifications electronically for those who-consent, setup an account, and utilize the eBONDS and CeBONDS systems.

Time Horizon for the Analysis

ICE estimates the economic effects of this IFR will be sustained indefinitely. ICE assumes a 10-year timeframe to outline, quantify, and monetize the costs and benefits of the rule, and to demonstrate its net effects.

Analysis Considerations

With regard to bond-related notifications, ICE derived quantitative estimates of the costs that will be saved in ICE's operations, attributable to ICE serving the notifications electronically rather than through a non-electronic method. In order to calculate these estimates, this analysis assumes that full use of eBONDS and CeBONDS will require that current obligors transition from physical notifications to that of electronic notifications as they become familiar with the changes presented in this IFR. Based on input from ICE subject matter experts, this analysis also assumes that the majority of current bond obligors will adopt these services within the first year of publishing this rule to realize the benefits of electronic bond-related notifications, and will elect to use these services sooner rather than later. However, while the analysis assumes that the majority of bond obligors will utilize these systems, full adoption may ultimately depend on several factors, such as obligors being made aware of these changes, understanding the benefits of these provisions, and possessing the means to access the internet. Lastly, this estimate does not account for any change in the total number of notices that will occur in the future, or under circumstances when ICE needs to send paper notices

[30] Mead, Gary. ''Privacy Impact Assessment Update for the Bonds Online System (eBONDS) Phase Two.'' January 23, 2013, Available at: *https://www.dhs.gov/sites/default/files/publications/ice-pia-008-a-ebonds-2013.pdf,* accessed Mar. 16, 2021.

by mail if emails fail, or the possibility of less than full adoption by the public. With this IFR, new bond obligors utilizing CeBONDS and eBONDS will automatically enroll in electronic notifications upon consent, though they will have the option to utilize physical notification under certain circumstances—such as an obligor lacking the means to access the internet.

Affected Population

The IFR will affect ICE officers and all bond obligors who post immigration bonds online using CeBONDS or eBONDS. Once ICE has the ability to serve electronic notifications to bond obligors, ICE will begin to serve all bond-related notifications electronically to any obligor who chooses to post a bond electronically.

To account for these populations, ICE utilized its Bond Management Information System to collect and analyze data on surety companies and their agents that post bonds and data on individual obligors who post cash bonds. Using this information, ICE found that an average of 41,820 cash bonds were posted annually by obligors between fiscal years 2018 and 2020. Additionally, ICE found that between fiscal years 2018 and 2020, a total of 15 agents and 11 surety companies posted ICE immigration bonds on behalf of surety bond obligors. Combined, these representatives posted bonds for an average 8,190 obligors. Table 2 displays this information below by fiscal year and category of bonds.

TABLE 2—TOTAL BONDS POSTED BY CASH AND SURETY OBLIGORS

Category	2018	2019	2020	Average
Surety Bonds	8,081	9,098	7,391	8,190
Cash Bonds	49,793	50,135	25,531	41,820
Total	57,874	59,233	32,922	50,010

Source: DHS/ICE Bond Management Information System (BMIS).

Baseline

This section details the regulatory baseline for this IFR. The table below provides a summary of the anticipated changes to baseline conditions due to this IFR.

TABLE 3—SUMMARY OF EXPECTED IMPACTS

Provision	Description of change	Affected population	Cost impact to affected population	Benefit impact
Serve Bond-Related Notices Electronically.	Serve all immigration (ICE) bond-related notifications electronically to bond obligors who have posted a bond using the eBONDS and CeBONDS systems.	All bond obligors who post immigration bonds online using the CeBONDS or eBONDS system.	• Familiarization costs ..... • Potential technology costs. • Opportunity costs.	• Improved program delivery.
		Federal Government	• Program cost savings ...	• Expedited Notifications.

Current Regulatory Baseline

Currently, ICE uses routine service as defined by 8 CFR 103.8(a)(1) to serve breach notices, cancellation notices, and notices of bond breach reconsideration decisions. ICE performs the routine service by sending first-class mail to the obligor's last known address. ICE also uses routine service to serve invoices and demand letters to surety companies and their agents, sending them either by regular mail, an alternative mailing method that allows ICE to track and confirm delivery, or email (with the co-obligors' consent).

Additionally, ICE uses personal service as defined by 8 CFR 103.8(a)(2)[31] to effect service of demand notices issued on delivery bonds so that ICE may confirm the date on which the obligor receives the demand notice. Currently, for ICE, ''personal service'' may be effected through any of the following methods: personal delivery; delivery at a person's home or usual residence by providing a copy to a person of suitable age and discretion; delivery at the office or residence of an attorney or representative; or mailing by certified or registered mail, with return receipt requested, to a person's last known address.

To establish a baseline analysis for all bond-related notices, ICE calculated the average number of notifications served by mail per year, of each type of immigration bond, based on data from 2018 to 2020 (Table 4). ICE found the average number of all types of notifications per year to be 45,358.

TABLE 4—TYPES OF IMMIGRATION BOND NOTICES

Notice type	Average annual number of notices[32] mailed (2018–2020)
I–391 Cash Bond Cancellations	15,317
I–340 Cash Bond Obligor to Deliver Noncitizen	12,020
I–323 Cash Bond Breaches	7,128
I–340 Surety Bond Obligor to Deliver Noncitizen	6,080
I–391 Surety Bond Cancellations	2,841
I–323 Surety Bond Breaches	1,412
Surety Bond Motion to Reopen or Reconsider	306
Cash Bond Motion to Reopen or Reconsider	254
Total	45,358

[31] Except that portion of 8 CFR 103.8(a)(2) that is applicable solely to USCIS.

[32] Source: DHS/ICE BMIS. Accessed July 26, 2021.

ICE anticipates that, in the absence of this rulemaking, the agency would continue to serve all bond-related notifications using personal or routine service, at a cost to both the Federal Government and the recipients. ICE would still be required to process and serve notifications manually, and bond obligors would continue to receive physical notifications via an authorized form of paper-based service.

Costs of the Interim Final Rule

This alternative electronic method of ICE's process for serving bond notices has the potential to introduce familiarization, technology, and opportunity costs to the affected population.

Quantified Costs

Familiarization—A likely impact of the IFR is that various individuals and other entities will incur costs associated with familiarization with the provisions of the rule. Familiarization costs involve the time spent reviewing and learning the provisions of a rule. Various offices throughout ICE may review the rule to determine how they are subject to the IFR. To the extent these entities are directly regulated by the rule, familiarization costs would be incurred, and those familiarization costs are a direct cost of the rule.

In addition to those being directly regulated by the rule, a wide variety of other entities would likely choose to read the rule and incur familiarization costs. For example, surety companies and noncitizens may want to become familiar with the provisions of this rule. At approximately 16,800 words, ICE estimates the time that would be necessary to read the IFR would be approximately 56 to 67.2 minutes per person, resulting in opportunity costs of time. Congruent with other DHS impact analyses, ICE assumes the average professional reads technical documents at a rate of 250 to 300 words per minute.[33] An entity, such as a surety company may have more than one person who reads the IFR. Using the average hourly rate of total compensation as $37.83 for all occupations (both civilian and private),[34] ICE estimates that the opportunity cost of time will range from $35.31 to $42.37 per individual who must read and review the IFR (in 2021 dollars).[35]

While the analysis assumes the majority of bond obligors will utilize these systems, there are many factors which may impact the adoption of CeBONDS, such as awareness of the system and internet access. Given this, ICE can provide a estimate for the number of people that would familiarize themselves with this rule based on expected users. To estimate this population, ICE utilized counts of bond obligors[36] and surety companies[37] between 2018 and 2020 to derive an annual average of 41,846 obligors (41,820 cash obligors + 11 surety companies + 15 agents). Assuming that at least one person from each entity would be responsible for reading the IFR, the total familiarization cost would range from $1,477,582 to $1,773,015 (in 2021 dollars).[38] The average of this estimated range for familiarization for bond obligor entities, $1,625,299, is used in the accounting of the first year of the cost of this rule.

Account Creation—In accounting for the costs of electronic bond-related notifications, ICE considered whether bond obligors or surety companies would face opportunity costs to utilize eBONDs and CeBONDS. For ICE to send notices electronically to bond obligors, the bond obligors will need to create a personal account to access bond-related notifications and process bond payments. ICE estimates the time that would be necessary to create this account would be no more than 10 minutes. Using the average total rate of compensation as $37.83[39] per hour for all occupations, ICE estimates that the opportunity cost of time will be $6.31 per individual (or surety company) who creates an account. To estimate this population, ICE utilized a three-year average population count[40] of bond obligors between fiscal year 2018 and 2020 (from table 2) and assumes that most obligors will enroll into the program within the first year of implementation The estimated total opportunity cost during the first year adoption period for the current obligor population to transition to these systems is $263,884.[41] To account for surety companies and surety agents, ICE also utilized BMIS to account for each representative which posted surety bonds between fiscal year 2018 and 2020, determining that a total of 15 agents and 11 surety companies had posted immigration bonds. The estimated total opportunity cost during the first year adoption period for this population to transition to these systems is $164.06.[42]

Lastly, in order to determine the cost of new obligors entering the pool and creating new accounts over the time horizon, ICE utilized prior cash bond obligor population data from fiscal years 2018 to 2020 to project that an average of 41,820 new cash bond obligors would create accounts each year. This would equate to a total cost to the public of $2,639,006 over 10 years.

CeBONDS Development & Maintenance—CeBONDS began development in April of 2021, with the total development cost for ICE being estimated at roughly $1,507,000. The maintenance costs for ICE have been estimated to be $150,000 annually.[43] Similar to eBONDS, without this rule, ICE would still develop and implement CeBONDS to allow obligors to post cash bonds electronically and ICE would continue to serve all bond-related notifications using personal or routine service. Therefore, ICE did not include these development and maintenance costs as a part of the total costs in this analysis since the development and operation of the CeBONDS system is occurring independent of this IFR.

Unquantified Costs

ICE also identified additional unquantified costs that could result from this IFR.

Technology—In accounting for the costs of electronic bond-related notifications, ICE considered whether

[33] See 87 FR 10570 (published February 24, 2022) and 87 FR 18078 (published March 29, 2022).

[34] Average hourly total compensation $37.83 = ($39.01 civilian workers + $36.64 private industry workers)/2; Total Compensation for civilian workers and private industry workers: *https://www.bls.gov/news.release/archives/ecec_06172021.pdf.* Accessed July 12, 2022.

[35] Calculation: ((Total compensation for civilian workers + total compensation for private industry workers)/2) * (Time (in minutes) to read rule—(lower or upper bound)) = (Opportunity cost of time [OCT] to read rule) = $37.83 * (67.2/60) = $42.37, = $37.83 * (56/60) = $35.31. Word count estimated as of 8/15/2022.

[36] Data was obtained from the BMIS, accessed July 16, 2021 (see Table 2). An average of 41,820 cash bonds were posted annually between 2018 and 2020. ICE used the average cash bonds posted as an estimate of the number of cash bond obligors. Cash bonds are generally posted by noncitizens or loved ones.

[37] This includes surety agents who post bonds of behalf of obligors. ICE found that between fiscal year 2018 and 2020, a total of 15 agents and 11 surety companies posted ICE immigration bonds on behalf of surety bond obligors.

[38] Range for total familiarization cost: lower bound $35.31 × 41,846 = $1,477,582; upper bound $42.37 × 41,846 = $1,773,015.

[39] Includes both civilian and private occupations. *https://www.bls.gov/news.release/archives/ecec_06172021.pdf.* Accessed July 12, 2022.

[40] Data was obtained from the Bond Management Information System (BMIS), and utilized the number of unique Tax Identification Numbers (TIN) for bond obligors within a given set of years. Accessed July 16, 2021.

[41] $263,884 = $6.31 × 41,820 annual average number of unique cash bond obligors (see Table 2).

[42] $164 = $6.30 × 26 annual average number of surety companies and surety agents FY2018–FY2020.

[43] Estimates provided by ERO, Bond Management Unit, July 14, 2022.

bond obligors would face technology costs to utilize these services, namely the cost to access the internet. There are a variety of means by which obligors can access the internet to receive electronic bond-related notifications, including the use of smart phones or personal computers. That said, due to the high prevalence and wide-ranging public and private access the internet, including access to free WiFi in public and private locations, access to computers and internet at public libraries, as well as likely connections to family and friends who have ready access to the internet, ICE expects bond obligors who opt for electronic service will be able to gain access with de minimis cost. Furthermore, obligors can still opt out of electronic service and follow the same practice as in the baseline case. It is unclear how many obligors will choose to use the in-person option, but since the rule provides greater flexibility by permitting electronic service while retaining the existing method for paying bonds, ICE does not expect the rule to induce substantive access costs.

Validity Check—In creating the online account for obligors, ICE will perform a validity check as part of the sign-up process for receiving electronic bond-related notices, as users cannot complete their account creation if their email is not first validated. The time burden to perform this check will be based on how long it takes for ICE to submit a verification email to the provided email address and confirm the accuracy of that address. However, because this process will likely be automated via computer software that is already available to ICE (see CeBONDS system development costs), ICE does not expect this process to produce a substantive cost.

Total Estimated Costs

Table 5 summarizes the quantified impact of this IFR. The total monetized costs of the rule do not include the development and annual maintenance costs required to operate the CeBONDS system given that they are not tied to this this IFR, as discussed above. The 10-year costs of the IFR are approximately $3.83 million and $3.37 million (in 2021 dollars) at 3 and 7 percent discount rates, respectively, and include the opportunity costs of familiarization and setting up an online account.

TABLE 5—TOTAL ESTIMATED QUANTIFIED COSTS

Year	Undiscounted costs	Annual costs discounted at 3%	Annual costs discounted at 7%
1	$1,889,347	$1,834,317	$1,765,745
2	263,884	248,736	230,487
3	263,884	241,491	215,408
4	263,884	234,458	201,316
5	263,884	227,629	188,146
6	263,884	220,999	175,837
7	263,884	214,562	164,334
8	263,884	208,312	153,583
9	263,884	202,245	143,536
10	263,884	196,354	134,145
Total	4,264,303	3,829,103	3,372,537
Annualized	.....	448,888	480,173

Cost Savings of the Interim Final Rule

This alternative method of ICE's process for issuing electronic bond-related notifications is expected to reduce labor costs for the government by reducing the time needed to process these notices, and it will eventually significantly reduce, if not eliminate, the costs of material items such as postage and paper that would otherwise be incurred for notices that are physically mailed. As mentioned above, ICE calculates quantitative benefits based on the assumption that new obligors are incentivized toward adoption into the eBONDS and CeBONDS systems within the first year of publishing this IFR.

Cost Savings to Electronically Served Bond-Related Notifications

Mailing Cost Savings—ICE estimated the cost-savings to government that would be obtained from a 100 percent transition to electronic service of immigration bond-related notifications to be $573,470 per year (in 2021 dollars). To arrive at the full cost savings estimate, ICE calculated the average cost of sending physical notices by certified or first-class mail. Specifically, ICE calculated the time required for an ICE official to collect, process, and place in the mail each physical notice, which was 5 minutes. ICE divided the 5 minutes by 60 minutes per hour, and multiplied by $52.87, which is the fully loaded average hourly wage based on a General Schedule Grade 11, Step 10 salary, with a ''Rest of U.S.'' locality payment of 15.95 percent.[44] ICE based the fully loaded wage rate on the wage rate of $40.27 per hour, adjusted upward by 31.3 percent to account for compensation for benefits (in addition to wages).[45] This calculation resulted in an estimated labor cost of $4.41 per mailing. ICE then added this labor cost to the cost of materials (for the envelope, paper, etc.)[46] and the postage per notice (which varies depending on the type of notice) to determine the various costs per notice. ICE then multiplied this total by the number of pieces that are mailed per notice (which also varies depending on the type of notice), and by the average total number of notices issued for each type. Table 6 displays how the total cost of $573,470 was derived.

[44] *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/21Tables/html/RUS_h.aspx.*

[45] *https://www.bls.gov/news.release/archives/ecec_03182021.pdf* (released Mar 18, 2021).

[46] Source: Cost per notice estimates provided by ERO Bond Management Unit and include, when applicable, costs for certified mail, postage, paper, envelopes, and materials (such as toner/ink). July 26, 2021.

TABLE 6—GOVERNMENT COST SAVINGS OF BOND-RELATED NOTICES

Notice type	Average number of notices mailed (2018–2020)	Cost per notice *	Total cost
I–391 Cash Bond Cancellations	15,317	$5.08	$77,810
I–340 Cash Bond Obligor to Deliver Alien	12,020	9.99	120,080
I–323 Cash Bond Breaches	7,128	9.99	71,209
I–340 Surety Bond Obligor to Deliver Alien	6,080	39.95	242,896
I–391 Surety Bond Cancellations	2,841	10.16	28,865
I–323 Surety Bond Breaches	1,412	19.98	28,212
Surety Bond Motion to Reopen or Reconsider	306	10.16	3,109
Cash Bond Motion to Reopen or Reconsider	254	5.08	1,290
Totals	45,358	110.39	573,470

* Labor cost included per notice is $4.41.

Total Estimated Quantified Savings

Table 7 summarizes the quantified cost savings of this interim final rule. The total monetized savings of the rule includes the average cost savings for ICE of replacing physically mailed notices (by certified, registered, or regular mail) with electronic bond-related notifications. In order to capture these cost savings over the time horizon of the analysis, ICE assumed a constant average rate of notices over a ten-year period. Thus, this estimate does not account for any change in the total number of notices that may occur in the future, or circumstances under which ICE needs to send paper notices by mail if emails fail, or the possibility of less than full adoption by the public. The 10-year cost-savings of the interim final rule in 2021 dollars are $4.9 million and $4.0 million at 3 and 7 percent discount rates, respectively.

TABLE 7—TOTAL ESTIMATED QUANTIFIED COST SAVINGS

Year	Undiscounted cost-savings	Annual cost-savings discounted at 3%	Annual cost-savings discounted at 7%
1	$573,470	$556,767	$535,953
2	573,470	540,550	500,891
3	573,470	524,806	468,122
4	573,470	509,521	437,498
5	573,470	494,680	408,876
6	573,470	480,272	382,127
7	573,470	466,284	357,128
8	573,470	452,703	333,765
9	573,470	439,517	311,930
10	573,470	426,716	291,523
Total	5,734,700	4,891,815	4,027,813
Annualized	.....	573,470	573,470

Unquantified Benefits of the Interim Final Rule

This alternative method of ICE's process for issuing electronic bond-related notifications is expected to increase efficiency, accessibility, expedited delivery, and reliability of bond notices to the obligor. These benefits are described in more detail below.

Program Delivery—By serving bond-related notifications electronically and making bond obligors responsible for ensuring that electronic bond-related notifications can be received, ICE expects it will significantly reduce the number of bond-related notifications that are not received by the obligor. A random sample of 100 delivery cash bonds that were declared as being breached during calendar years 2017–2019 indicates that approximately 28 percent of demand notices sent by certified mail to the obligor's address of record were returned as undeliverable or unclaimed.[47] Electronic bond-related notifications will significantly reduce the occurrence of notices being lost in the mail during delivery, while still providing notifications in the event that obligors move from their physical address or are away from that address for an extended period of time. Additionally, in creating the online account for obligors, ICE will perform a validity check as part of the sign-up process for receiving electronic bond-related notices, as users cannot create an online account if their email is not validated. This use of a verified email address will ensure that the notices have a high probability of being successfully delivered electronically to an email address that the obligor uses, ensuring that the notification reaches its proper recipient.

ICE also intends to expedite delivery of notifications. For example, when an obligor chooses to post a bond online and receive bond-related notifications electronically, the system is designed to notify the obligor immediately by email when a notification has been issued. ICE, in turn, would also be able to confirm immediately the date that the cash bond obligor opens and

[47] Data obtained internally by DHS/ICE Bond Management Information System (BMIS), Financial Service Center-Burlington. Accessed on Mar. 8, 2021.

acknowledges receipt of the electronic notification. In this way, recipients can receive notifications without being present at their physical mailing address as long as they have access to the internet.

Paperless Records—The changes due to this IFR are consistent with the types of changes now being made across the Federal Government regarding the mechanisms through which Federal offices deliver documents to the public. In accordance with the Government Paperwork Elimination Act,[48] electronic notifications have significantly reduced the use of paper and physical storage space.

Alternative Analysis

Before proposing service of electronic bond-related notifications, ICE evaluated one alternative option that would affect the entities subject to the rule requirements, namely the no action alternative. The details of this option are described below, and Table 8 presents the unquantified costs and benefits for this alternative.

TABLE 8—SUMMARY OF ALTERNATIVES

Action	Benefits	Costs
• Take No Action	• No familiarization, technology, or opportunity cost to public.	• Cost to process nonelectronic mail. • Nonalignment with the Government Paperwork Elimination Act. • No improvement in program delivery. • Costs to maintain physical records.

Alternative: Take No Action

ICE considered a ''no action'' alternative under which ICE would continue to serve bond-related notifications to obligors for immigration bonds using personal or routine service, at a cost to both the Federal Government and the recipients.

The opportunity costs associated with electing a ''no action'' alternative would be equivalent to the current average cost to ICE of sending physical notices by certified or first-class mail, which ICE estimated to be $573,470 per year. ICE would still be required to process and mail notifications by hand, and bond obligors would continue to receive physical notifications. This alternative also means that ICE would not be acting in alignment with government-wide efforts to transition agencies' business processes and recordkeeping to a fully electronic environment as encouraged by statutes like the Government Paperwork Elimination Act,[49] and more recently, the joint memorandum issued by OMB and the National Archives and Records Administration [50] requiring the government to store records electronically. Additionally, this alternative of ''no action'' would also not result in any cost savings with regard to system development or deployment, because the eBONDS systems was already built and deployed independent of this IFR and the CeBONDS system is already being built and deployed independent of this IFR.

The cost savings and benefits associated with this action involve the development, familiarization, technology, and opportunity costs associated with implementing this IFR. Absent the requirement to use the CeBONDS system, bond obligors would not face the potential costs associated with learning about the IFR, acquiring the necessary technological means to access the internet, or the expended time in creating an eBONDS or CeBONDS account.

Additionally, any preference by obligors either to maintain physical records or to receive nonelectronic mail notices has already been considered in the development of IFR. As part of the process of deciding to post a bond electronically with ICE, the obligor will be informed that bond notifications will be served electronically, and the obligor must agree to receive them electronically. If the obligor does not wish to post a bond electronically or receive bond notifications electronically, the obligor may post the bond in-person at an ICE office and receive notifications via another form of authorized paper-based service.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act at 5 U.S.C. 603 requires agencies to consider the economic impact its rules will have on small entities. The term ''small entities'' comprises small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. However, a regulatory flexibility analysis is not required when a rule is exempt from notice and comment rulemaking. This IFR is exempt from the notice and comment rulemaking, as stated in the APA, 5 U.S.C. 551 *et seq.,* section of the preamble. Therefore, a regulatory flexibility analysis is not required for this rule.

D. Small Business Regulatory Enforcement Fairness Act of 1996

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, DHS wants to assist small entities in understanding this rule so that they can better evaluate the effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction, and you have questions concerning the provisions or options for compliance; please consult ICE using the contact information provided in the **FOR FURTHER INFORMATION** section above.

E. Congressional Review Act

This rule is not a major rule as defined by 5 U.S.C. 804, also known as the ''Congressional Review Act,'' as enacted in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 847, 868 *et seq.* This rulemaking would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign based companies in domestic and export markets. A report about the issuance of this IFR has been submitted to Congress and the

[48] *See* Public Law 105–277, tit. XVII, section 1703, 112 Stat. 2681, 2681–749 (Oct. 21, 1998), 44 U.S.C. 3504.

[49] Public Law 105–277, tit. XVII, section 1703, 112 Stat. 2681, 2681–749 (Oct. 21, 1998), 44 U.S.C. 3504.

[50] Transition to Electronic Records (OMB/NARA M–19–21), available at *https://www.archives.gov/files/records-mgmt/policy/m-19-21-transition-to-federal-records.pdf.*

Comptroller General of the United States prior to its effective date.

F. Unfunded Mandates Reforms Act

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

G. Paperwork Reduction Act—Collection of Information

All Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a rule under the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163 (codified at 44 U.S.C. 3501 *et seq.*). Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency obtains approval from OMB for the collection and the collection displays a valid OMB control number. *See* 44 U.S.C. 3506, 3507.

With respect to immigration bonds, regardless of using either eBONDS today or CeBONDS in the future when fully implemented, there would be no changes to the reporting burden for the existing collection of information associated with Form I–352, *Immigration Bond* (OMB control number 1653–0022), or Form I–333, *Obligor Change of Address* (OMB control number 1653–0042). There are no substantive changes to those forms because of this rulemaking. The only changes being made are revisions that will need to be included in the electronic system currently being built to accommodate electronic bond related notifications. Once CeBONDS is fully developed and this rule is effective, if DHS identifies any impacts that would modify or create a new collection, DHS will submit a revision to OMB at that time.

H. Executive Order 13132: Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. DHS has analyzed this rule under Executive Order 13132 and determined that it does not have implications for federalism.

I. Executive Order 12988: Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, *Civil Justice Reform,* to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

J. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

DHS analyzed this rule under Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.* DHS has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

K. National Environmental Policy Act (NEPA)

The U.S. Department of Homeland Security Management Directive (MD) 023–01, Rev. 01 establish procedures that DHS and its Components use to comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4375, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

CEQ regulations allow Federal agencies to establish categories of actions, which do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1508.4. The DHS Categorical Exclusions are listed in IM 023–01–001–01 Rev. 01, Appendix A, Table 1.

For an action to be categorically excluded, MD 023–01 requires the action to satisfy each of the following three conditions:

(1) The entire action clearly fits within one or more of the Categorical Exclusions;

(2) The action is not a piece of a larger action; and

(3) No extraordinary circumstances exist that create the potential for a significant environmental effect. IM 023–01–001–01 Rev. 01, sec. V(B)(2)(a)–(c). If the action does not clearly meet all three conditions, DHS or the Component prepares an Environmental Assessment or Environmental Impact Statement, according to CEQ requirements, MD 023–01, and IM 023–01–001–01 Rev. 01.

ICE has analyzed this rule under MD 023–01 Rev. 01 and IM 023–01–001–01 Rev.01. ICE has made the determination that this rulemaking action is one of a category of actions, which does not individually or cumulatively have a significant effect on the human environment. This IFR clearly fits within the Categorical Exclusion found in IM 023–01–001–01 Rev. 01, Appendix A, Table 1, number A3(d): ''Promulgation of rules . . . that interpret or amend an existing regulation without changing its environmental effect.'' This rule is not part of a larger action. This rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this rule is categorically excluded from further NEPA review.

ICE seeks any comments or information that may lead to the discovery of any significant environmental effects from this IFR.

L. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

M. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

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

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

Executive Order 13045 requires agencies to consider the impacts of environmental health risk or safety risk that may disproportionately affect children. DHS has reviewed this rule and determined that this rule is not an economically significant rule and would not create an environmental risk to

health or risk to safety that might disproportionately affect children. Therefore, DHS has not prepared a statement under this executive order.

O. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, DHS did not consider the use of voluntary consensus standards.

P. Family Assessment

DHS has determined that this rule action will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 8 CFR Part 103

Administrative practice and procedures, Authority delegations (government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Regulatory Amendments

Accordingly, DHS amends chapter I of title 8 of the Code of Federal Regulations as follows:

PART 103—IMMIGRATION BENEFIT REQUESTS; USCIS FILING REQUIREMENTS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b; 31 U.S.C. 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112–54; 125 Stat. 550; 31 CFR part 223.

■ 2. Section 103.6 is amended by adding paragraphs (g) and (h) to read as follows:

§ 103.6 Immigration bonds.

* * * * *

(g) *Delivery bond notifications to surrender aliens.* Notwithstanding the requirements of § 103.8 for the service of other notices, ICE may serve demand notices electronically or by any mail service that allows delivery confirmation to bond obligors, who consent to electronic delivery of service, to cause an alien who has been released from DHS custody on an immigration delivery bond to appear at an ICE office or an immigration court. An electronic record from the ICE bonds system showing that the obligor opened the demand notice will constitute valid proof of receipt service of the notice. If ICE cannot confirm receipt of the electronic notice, ICE will reissue a new another demand notice to the bond obligor's last known address using any mail service that allows delivery confirmation.

(h) *Bond breach, bond cancellation, and other bond notifications.* Notwithstanding the service requirements for demand notices in paragraph (g) of this section, ICE may serve any other bond-related notifications electronically or by first-class mail to obligors, who consent to electronic delivery of service, that pertain to delivery, order of supervision, or voluntary departure immigration bonds, such as bond breach or cancellation notifications. An electronic record from the ICE bonds system showing that the obligor opened the bond-related notification will constitute valid proof of receipt service of the notice. If ICE cannot confirm receipt of the electronic notice, ICE will reissue another notice to the obligor's last known address using regular mail.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2023–16656 Filed 8–7–23; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2021–BT–TP–0036]

RIN 1904–AF26

Energy Conservation Program: Test Procedure for Air Cleaners

Correction

In rule document 2023–03987, appearing on pages 14014 through 14045 in the issue of Monday, March 6, 2023, on page 14045, in the middle column, make the following correction to paragraph 5.1.2.:

PART 430 ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS [Corrected]

* * * * *

Appendix FF of Subpart B

* * * * *

5.1.2. $PM_{2.5}$ CADR may alternately be calculated using the smoke CADR and dust CADR values determined according to sections 5 and 6, respectively, of AHAM AC–1–2020, according to the following equation:

$$PM_{2.5}CADR = \sqrt{Smoke\ CADR\ (0.1 - 1\ \mu m) \times Dust\ CADR\ (0.5 - 3\ \mu m)}$$

* * * * *

[FR Doc. C1–2023–03987 Filed 8–7–23; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2021–BT–TP–0021]

RIN 1904–AF17

Energy Conservation Program: Test Procedure for Fans and Blowers

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

ACTION: Final rule; technical amendments.

SUMMARY: On May 1, 2023, the U.S. Department of Energy (''DOE'') published a final rule adopting procedures for fans and blowers (hereafter the ''May 2023 Final Rule''). This document corrects editorial and typographical errors in the May 2023 Final Rule. Neither the errors nor the corrections in this document affect the

substance of the rulemaking or any conclusions reached in support of the final rule.

DATES: Effective August 8, 2023.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

The May 2023 final rule established: (1) test procedures for fans and blowers and incorporated the relevant industry test standards for measuring the fan electrical power and determining the fan energy index (''FEI'') of fans and blowers other than air-circulating fans; (2) test procedure for air circulating fans measuring the fan airflow in cubic feet per minute per watt of electric power input (''CFM/Watt''); (3) supporting definitions; (4) requirements for alternative efficiency determination methods; and (5) sampling requirements. 88 FR 27312 (May 1, 2023).

Since the publication of the May 2023 Final Rule, DOE identified several typographical and editorial errors that could create confusion when conducting the DOE test procedure.

In the May 2023 Final Rule, in § 431.172, DOE introduced almost all definitions using ''means the'' or ''means a'' to describe each defined term. 88 FR 27312, 27389–27390. However, the definition of ''air circulating fan discharge area'' in § 431.172 of the regulatory text used a colon '':'' rather than ''means the'' to introduce the definition. DOE replaces the colon '':'' by ''means the'' to add consistency with how other definitions are presented. DOE notes that the meaning of the definition for ''air circulating fan discharge area'' is unchanged with this correction.

In the May 2023 Final Rule, DOE incorporated by reference AMCA 214–21, including the definitions of ''fan static pressure'' and ''fan total pressure'' in sections 3.41 and 3.43 of AMCA 214–21. 88 FR 27312, 27392. However, in the definition of ''fan static air power'' in § 431.172 of the regulatory text, the terms ''static pressure'' and ''total pressure'' are used without referencing the term ''fan''. DOE is concerned that this may cause confusion as DOE incorporated the definitions of ''fan static pressure'' and ''fan total pressure'',[1] but did not define the terms ''static pressure'' and ''total pressure''. In addition, the terms ''fan static pressure'' and ''fan total pressure'' are used throughout the preamble of the May 2023 Final Rule and elsewhere in the regulatory text. 88 FR 27312, 27319, 27344, 27353, 27371, 27389, 27390, 27392. Consistent with the definition of ''fan static pressure'' and ''fan total pressure'' in sections 3.41 and 3.43 of AMCA 214–21, as incorporated by reference, and consistent with the terminology used throughout the preamble of the May 2023 Final Rule and elsewhere in the regulatory text, DOE replaces ''using static pressure instead of total pressure'' with ''using fan static pressure instead of fan total pressure'' in the definition of ''fan static air power'' in § 431.172. The meaning of the definition is unchanged by this correction.

DOE identified a missing hyphen in § 431.173, where the text reads as ''ANSI/AMCA Standard 21016 (''AMCA 210–16''), rather than ANSI/AMCA Standard 210–16 (''AMCA 210–16''). 88 FR 27312, 27390. The reference should match the description in the preamble, which includes the hyphen. DOE corrects this to add the hyphen between 210 and 16.

Additionally, in the May 2023 Final Rule, the test procedure established for fans and blowers other than air circulating fans specifies that the applicable rating metric of FEI must be calculated using the electrical input power required to operate a fan in kilowatts (kW), abbreviated as ''FEP''. 88 FR 27312, 27365. The May 2023 Final Rule generally uses the term ''fan electrical input power'' to designate the FEP throughout the preamble. 88 FR 27312, 27312, 27319, 27363, 27365, 27371. The preamble of the May 2023 Final Rule also uses the term ''fan electrical power'' to designate the FEP in one instance. 88 FR 27312, 27355. Further, in a number of places in the regulatory text, the term ''fan electrical input power'' and ''fan electrical power'' are used to describe the electrical input power to the fan in kilowatts (kW), abbreviated as ''FEP''. 88 FR 27312, 27387, 27388, 27391, 27392, 27393. The May 2023 Final Rule also incorporates by reference AMCA 241–21 as the industry standards used to determine and define the FEP. In AMCA 214–21, the term ''fan electrical power'' is used to designate the FEP and defined in section 3 ''Definitions'' of AMCA 214–21, incorporated by reference. DOE believes that the use of ''fan electrical input power'' and ''fan electrical power'' to both designate the FEP may create confusion because only ''fan electrical power'' is the defined term. As such, DOE is correcting the regulatory text to only use ''fan electrical power'', consistent with the definition in section 3 of AMCA 214–22, incorporated by reference, and replaces all instances of ''fan electrical input power'' with ''fan electrical power''.

The preamble of the May 2023 Final Rule states that DOE is adopting the validation classes (1) through (9) and lists them as follows: (1) centrifugal housed; (2) radial housed; (3) centrifugal inline; (4) centrifugal unhoused; (5) centrifugal PRV exhaust; (6) centrifugal power roof ventilator (''PRV'') supply; (7) axial inline; (8) axial panel; (9) axial PRV. 88 FR 27312, 27373. The categories of PRVs are correctly listed in the preamble of the May 2023 Final Rule in footnote 20 where DOE specifies that PRVs include: Centrifugal PRV exhaust fans; Centrifugal PRV supply fans; and Axial PRVs, as defined in AMCA 214–21. 88 FR 27312, 27318. However, in the regulatory text, in § 429.70(n), DOE lists the following validation classes: centrifugal housed fan; radial housed fan; centrifugal inline fan; centrifugal unhoused fan; centrifugal power roof ventilator exhaust fan; centrifugal power roof ventilator supply fan; axial inline fan; axial panel fan; axial centrifugal power roof ventilator fan.'' 88 FR 27312, 27388. DOE included the term ''axial centrifugal power roof ventilator fan'' as one of the validation classes instead of the correct term ''axial power roof ventilator''. Similarly, the same error is included in § 431.174(a)(1), where DOE also used the term ''axial centrifugal power roof ventilator fan'' instead of ''axial power roof ventilator'' when listing the categories of fans in scope. 88 FR 27312, 27391. Therefore, DOE corrects this error and replaces the term ''axial centrifugal power roof ventilator fan'' by ''axial power roof ventilator''.

In the May 2023 Final Rule, DOE established the metric for fans other than air circulating fans as the FEI, which is the fan energy index and represents the ratio of the electrical power of a reference fan to the electrical input power of the actual fan for which the FEI is calculated, both established at the same duty point. 88 FR 27312,

[1] As noted previously, DOE incorporated by reference AMCA 214–21, including the definitions of ''fan static pressure'' and ''fan total pressure'' in sections 3.41 and 3.43 of AMCA 214–21. 88 FR 27312, 27392.

27349, 27365. However, in the regulatory text in § 429.69(a)(1)(iii), DOE wrote ''any represented value of fan electrical input power (''FEI''), or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the tested value'' and incorrectly described the FEI as the ''fan electrical input power'' [2] rather than the ''fan energy index''. 88 FR 27312, 27387. In § 429.69(a)(1)(v), the FEI is correctly described: ''any represented value of the fan energy index (''FEI''), or other measure of energy consumption of a basic model for which consumers would favor higher values''. 88 FR 27312, 27388. DOE corrects this error and replaces ''fan electrical input power (''FEI'')'' by ''fan energy index (''FEI'')'' in § 429.69(a)(1)(iii).

In the test procedure NOPR published on July 25, 2022, DOE proposed to incorporate by reference AMCA 214–21 for air circulating fans, which relies on the FEP and FEI metrics (''wire-to-air metrics'') for air circulating fans. 87 FR 44194, 44236–44237. In the May 2023 Final Rule, DOE established the metric for air circulating fans in terms of efficacy in cubic feet per minute per watt (''CFM/W'') for air circulating fans at maximum speed. 88 FR 27312, 27371. This is also reflected in the regulatory text in section 2.2.1 of appendix B to subpart J of part 431 where DOE states that ''The air circulating fan efficacy (E*ff*circ) in cubic feet per minute (''CFM'') per watt (''W'') (''CFM/W'') at maximum speed must be determined in accordance with the applicable sections of AMCA 230–23 as listed in section 2.2.2 of this appendix''. 88 FR 27312, 27393. However, in the May 2023 Final Rule, in the regulatory text in § 431.174, the text was not updated to reflect the adopted metric and incorrectly references the FEI and FEP metrics as proposed in the July 2022 NOPR, as follows: ''Determine the FEI and the fan electrical input power (''FEP'') or the weighted-average FEI and weighted-average FEP as applicable, using the test procedure set forth in appendix B of this subpart''. 88 FR 27312, 27391. DOE corrects this error such that the text reflects the correct efficacy metric in CFM/W adopted for air circulating fans in the May 2023 Final Rule, such that it reads: ''Determine the air circulating fan efficacy in cubic feet per minute per watt at maximum speed using the test procedure set forth in appendix B of this subpart.''

[2] As noted previously, the term ''fan electrical input power'' is equivalent to ''fan electrical power''.

In the May 2023 Final Rule, DOE stated that, although it incorporated by reference AMCA 214–21, it does not include section 6.5 of AMCA 214.21 in its test procedure. 88 FR 27312, 27350. Similarly, in the regulatory text, when listing the applicable section of AMCA 214–21 in section 0 of appendix A to subpart J of part 431, DOE did not list section 6.5 of AMCA 214–21. 88 FR 27312, 27392. DOE also did not list section 6.5 of AMCA 214–21 as an applicable section in Table 1 appendix A to subpart J of part 431. *Id.* However, in the regulatory text, in section 2.2.1 of appendix A to subpart J of part 431, DOE mistakenly listed section 6.5 in the following statement ''fan shaft power for fans tested in accordance with sections 6.3, 6.4 or 6.5 of AMCA 214–21''. 88 FR 27312, 27392. DOE corrects this error to be consistent with the discussion of the preamble and other sections of the regulatory text in the May 2023 Final Rule that excluded section 6.5 of AMCA 214–21.

In the May 2023 Final Rule, DOE adopted provisions to replace the motor efficiency values in Annex A of AMCA 214–21 with the values in Table 5 of 10 CFR 431.25. DOE stated that while the values are currently identical, referencing the CFR would ensure that the values of polyphase regulated motor efficiencies remain up to date with any potential future updates established by DOE. 88 FR 27312, 27349. In the regulatory text in § 429.69, to reflect this intent, DOE also states: ''Manufacturers must update represented values to account for any change in the applicable motor standards in Table 5 of part 431 of this chapter''. In the regulatory text, DOE also included this provision in section 2.1 of appendix A to subpart J of part 431 as follows: ''Where AMCA 214–21 refers to Annex A, ''Polyphase Regulated Motor Efficiencies (Normative),'' of AMCA 214–21, Table 5 of § 431.25 must be used instead.'' However, because any potential future updates to electric motor energy conservation updates could appear in tables other than Table 5 of 10 CFR 431.25, DOE makes the following correction to reflect the intent of the preamble which is to remain up to date with any potential future updates established by DOE: ''Polyphase Regulated Motor Efficiencies (Normative),'' of AMCA 214–21, Table 5 of § 431.25 or the currently applicable standards in § 431.25 must be used instead.''

In the May 2023 Final Rule, DOE established stability criteria for testing both air circulating fans and fan and blowers other than air circulating fans. As part of the stability requirements for fans and blowers other than air circulating fans, DOE stated that it was adopting provisions to require that the stability will be evaluated and confirmed over at least three 60-second data collection intervals, and that the fan input power shall be monitored at least every 5 seconds over the 60-second data collection intervals. 88 FR 27312, 27360. In addition, DOE specified that the average fan speed from one data collection interval to the next must be within ±1 percent or 1 rpm, whichever is greater; and the average input power by reaction dynamometer, torque meter or calibrated motor must be within ±4 percent, or the average input power by electrical meter must be within ±2 percent of the mean or 1 watt, whichever is greater. *Id.* However, in the May 2023 Final Rule, DOE included incorrect regulatory text for the stability requirement for input power in section 2.4(b)(2) of appendix A to subpart J of part 431, specifying that ''the average input power from the last 60-second interval varies by less than the absolute value of 1 percent, whichever is greater, compared to the average input power measured during the previous 60-second test interval.'' 88 FR 27312, 27393. DOE is correcting this error in section 2.4(b)(2) of appendix A to subpart J of part 431 to remove this language and replace it with the appropriate stability requirement that ''the average input power from the last 60-second interval by reaction dynamometer, torque meter or calibrated motor must be ±4 percent, or the average input power by electrical meter must be ±2 percent of the mean or 1 watt, whichever is greater, compared to the average input power measured during the previous 60-second test interval.''

In addition, for the stability conditions for fans and blowers other than air circulating fans in section 2.4(b) of appendix A to subpart J of part 431, DOE identified that the units for recording input power are listed as ''pound-force, pound-force-in, or watts.'' 88 FR 27312, 27393. but the units should be ''horsepower or watts.'' The pound-force and pound-force-in were listed incorrectly and the horsepower or watts are the correct units, consistent with AMCA 214–21, incorporated by reference. Therefore, DOE is correcting this error and replacing the units for input power in section 2.4(b) in appendix A to subpart J of part 431with ''horsepower or watts.''

DOE identified that in the description of the stability conditions for air circulating fans in section 2.5(b)(3) of appendix B to subpart J of part 431, DOE defines the stable load differential as

''varies by less than the absolute value of 1 percent, whichever is greater.'' The term ''whichever is greater'' is unnecessary as there is not a second criteria. In the May 2023 Final Rule, DOE stated that the average load differential from one data collection interval to the next must be within ±1 percent. 88 FR 27312, 27362. DOE corrects this error by removing the text ''whichever is greater'' from section 2.5(b)(3) of appendix B to subpart J of part 431.

DOE identified inconsistencies in the rounding requirements for FEP for fans and blowers other than air circulating fans. Section 2.6 of appendix A to subpart J of part 431 specifies that FEP must be rounded to three significant figures, but § 429.69(a)(1)(ii) and (iv) specifies that any represented value of FEP, fan shaft input power, or other measure of energy consumption of a basic model for which consumers would favor a lower value must be rounded to the nearest hundredth. 88 FR 27312, 27387–27388, 27393. In the May 2023 Final Rule, DOE noted that it was adopting requirements that FEP (in kilowatts) shall be rounded to three significant figures. 88 FR 27312, 27364. DOE acknowledges that § 429.69(a)(1)(ii) and (iv) contains the incorrect rounding requirements and DOE is revising these sections to specify that FEP be rounded to three significant figures. Fan shaft input power and other measures of energy consumption of a basic model for which consumers would favor a lower value must still be rounded to the nearest hundredth.

Also, as part of the stability condition requirements for both air circulating fans and fans and blowers other than air circulating fans, in the May 2023 Final Rule, DOE adopted provisions in section 2.4(b)(3) of appendix A to subpart J of part 431 and section 2.5(b)(4) of appendix B to subpart J of part 431 that slope of the fan speed, input power, and load differential [3] measurements from one data collection interval to the next shall not be trending positive or negative. 88 FR 27312, 27393, 27394. Specifically, DOE adopted requirements that if the slope of 3 or more successive data collection intervals are all positive or all negative, additional data collection intervals must be run until a negative or positive slope, respectively, is achieved. *Id.* DOE notes that the requirements may not be explicit as to whether a linear trendline should be applied to the data. DOE assumed that a linear trendline would be used and notes that the requirement to calculate the ''slope'' for each sampling interval implies a linear fit trendline, however, DOE is correcting the requirements in section 2.4(b)(3) of appendix A to subpart J of part 431 and section 2.5(b)(4) of appendix B to subpart J of part 431 to explicitly state that a linear fit trendline shall be applied when evaluating the slopes for each data collection interval.

In the May 2023 Final Rule, DOE incorporated by reference AMCA 230–23 and adopted by reference the equations for calculating ambient air density, as defined in Equations 8.5 and section 8.6 of AMCA 230–23. 88 FR 27312, 27393. However, DOE identified a typographical error in Equations 8.5 and section 8.6 of AMCA 230–23. The equations are given as:

$$\rho_0 = \left(\frac{p_b - 0.378p_p}{R(t_{d0} - 273.15)}\right) \quad \text{SI} \quad \text{Eq. 8.5}$$

$$\rho_0 = 70.73\left(\frac{p_b - 0.378p_p}{R(t_{d0} - 459.67)}\right) \quad \text{IP} \quad \text{Eq. 8.6}$$

The correct forms of these equations should use a plus sign in the denominator, rather than a minus sign, to correctly convert the temperature in either degrees Celsius to Kelvin or to convert degrees Fahrenheit to Rankine. DOE also notes that the corrected forms of these equations are consistent with the equations used to calculate ambient air density in AMCA 210-16. DOE amends appendix B to subpart J of part 431 to exclude Equations 8.5 and 8.6 in AMCA 230-23 and to include the corrected equations used to calculate ambient air density, which are given as: $\rho_0 = \left(\frac{p_b - 0.378p_p}{R(t_{d0} + 273.15)}\right)$

$$\rho_0 = 70.73\left(\frac{p_b - 0.378p_p}{R(t_{d0} + 459.67)}\right) \quad \text{I-P}$$

II. Need for Correction

As published, the regulatory text in the May 2023 Final Rule may result in confusion due to the errors discussed in section I of this document. Because this final rule would simply correct errors in the text without making substantive changes in the May 2023 Final Rule, the changes addressed in this document are technical in nature.

III. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the May 2023 Final Rule remain unchanged for this final rule technical correction. These determinations are set forth in the May 2023 Final Rule. 88 FR 27312, 27383–27387.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), DOE finds that there is good cause to not issue a separate notice to solicit public

[3] Load differential is applicable to only air circulating fans.

comment on the changes contained in this document. Neither the errors nor the corrections in this document affect the substance of the May 2023 Final Rule or any of the conclusions reached in support of the final rule. For these reasons, this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d) otherwise applicable to rules that make substantive changes.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Laboratories, Reporting and recordkeeping requirements, Small businesses.

Signing Authority

This document of the Department of Energy was signed on July 19, 2023, by Francisco Alejandro Moreno Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 20, 2023.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE corrects parts 429 and 431 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations by making the following correcting amendments:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

§ 429.69 [Amended]

■ 2. Amend § 429.69 by:
■ a. In paragraph (a)(1)(ii), removing the words ''fan electrical input power (''FEP'')'' and adding in its place, the words ''fan electrical power (''FEP'').''
■ b. In paragraphs (a)(1)(ii) and (a)(1)(iv)(B), removing the text ''Represented values must be rounded to the nearest hundredth'' and adding in its place, the text ''Represented values other than FEP must be rounded to the nearest hundredth. FEP must be rounded to three significant figures.''
■ c. In paragraph (a)(1)(iii), removing the words ''fan electrical input power (''FEI'')'' and adding in its place, the words ''fan energy index (''FEI'').''

§ 429.70 [Amended]

■ 3. Amend § 429.70 in paragraph (n)(2)(i) by removing the words ''axial centrifugal power roof ventilator fan'' and adding in its place, the words ''axial power roof ventilator.''

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 4. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 5. Amend § 431.172 by revising the definitions for ''Air circulating fan discharge area'' and ''Fan static air power'' to read as follows:

§ 431.172 Definitions.

* * * * *

Air circulating fan discharge area means the area of a circle having a diameter equal to the blade tip diameter.

* * * * *

Fan static air power means the static power delivered to air by the fan or blower; it is proportional to the product of the fan airflow rate, the fan static pressure and the compressibility coefficient and is calculated in accordance with section 7.8.1 of AMCA 210–16 (incorporated by reference, see § 431.173), using fan static pressure instead of fan total pressure.

* * * * *

■ 6. Amend § 431.173 by revising paragraph (b)(1) to read as follows:

§ 431.173 Materials incorporated by reference.

* * * * *

(b) * * *

(1) ANSI/AMCA Standard 210–16 (''AMCA 210–16''), Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating, ANSI-approved August 26, 2016; IBR approved for § 431.172; appendix A to this subpart. (Co-published as ASHRAE 51–16).

* * * * *

■ 7. Amend § 431.174 by:
■ a. In paragraph (a)(1), removing the words ''axial centrifugal power roof ventilator'' and adding in its place, the words ''axial power roof ventilator'';
■ b. In paragraph (a)(4)(i)(B) and paragraph (c), removing the words ''fan electrical input power'' and adding in its place, the words ''fan electrical power''; and
■ c. Revising paragraph (d).

The revision read as follows:

§ 431.174 Test Procedure for fans or blowers.

* * * * *

(d) *Testing and calculations for air circulating fan.* Determine the air circulating fan efficacy in cubic feet per minute per watt at maximum speed using the test procedure set forth in appendix B to this subpart.

■ 8. Amend appendix A to subpart J of part 431 by revising sections 2.1., 2.2.1. and 2.4(b), (b)(2), and (3) to read as follows:

Appendix A to Subpart J of Part 431—Uniform Test Method for the Measurement of Energy Consumption of Fans and Blowers Other Than Air Circulating Fans

* * * * *

2.1. *General.*

This section describes the test procedure for fans and blowers other than air circulating fans. In cases where there is a conflict, the provisions in this appendix take precedence over AMCA 214–21. Where AMCA 214–21 refers to Annex A, ''Polyphase Regulated Motor Efficiencies (Normative),'' of AMCA 214–21, Table 5 of § 431.25 or the currently applicable standards in § 431.25 must be used instead.

2.2 Testing

2.2.1. *General.*

The fan electrical power (FEPact) in kilowatts must be determined at every duty point specified by the manufacturer in accordance with one of the test methods listed in table 1, and the following sections of AMCA 214–21: Section 2, ''References (Normative)''; Section 7, ''Testing,'' including the provisions of AMCA 210–16 and ISO 5801:2017 as referenced by Section 7 and

implicated by sections 2.2.2 and 2.2.3 of this appendix; Section 8.1, ''Laboratory Measurement Only'' (as applicable); and Annex J, ''Other data and calculations to be retained.''

TABLE 1 TO APPENDIX A TO SUBPART J OF PART 431

Driver	Motor controller present?	Transmission configuration?	Test method	Applicable section(s) of AMCA 214–21
Electric motor	Yes or No	Any	Wire-to-air	6.1 ''Wire-to-Air Testing at the Required Duty Point''.
Electric motor	Yes or No	Any	Calculation based on Wire-to-air testing.	6.2 ''Calculated Ratings Based on Wire to Air Testing'' (references Section 8.2.3, ''Calculation to other speeds and densities for wire-to-air testing,'' and Annex G, ''Wire-to-Air Measurement—Calculation to Other Speeds and Densities (Normative)'').
Regulated polyphase motor.	No	Direct drive, V-belt drive, flexible coupling or synchronous belt drive.	Shaft-to-air	6.4 ''Fans with Polyphase Regulated Motors,'' (references Annex D, ''Motor Performance Constants (Normative)'') *.
None or non-electric	No	None	Shaft-to-air	Section 6.3, ''Bare Shaft Fans''.
Regulated polyphase motor.	No	Direct drive, V-belt drive, flexible coupling or synchronous belt drive.	Calculation based on Shaft-to-air testing.	Section 8.2.1, ''Fan laws and other calculation methods for shaft-to-air testing''(references Annex D, ''Motor Performance Constants (Normative),'' Annex E, ''Calculation Methods for Fans Tested Shaft-to-Air,'' and Annex K, ''Proportionality and Dimensional Requirements (Normative)'').
None or non-electric	No	None	Calculation based on Shaft-to-air testing.	Section 8.2.1, ''Fan laws and other calculation methods for shaft-to-air testing'' (references Annex E, ''Calculation Methods for Fans Tested Shaft-to-Air,'' and Annex K, ''Proportionality and Dimensional Requirements (Normative)'').

* Excluding Section 6.4.1.4, ''Requirements for the VFD, if included'' and Section 6.4.2.4, ''Combined motor-VFD efficiency.''

Testing must be performed in accordance with the required test configuration listed in Table 7.1 of AMCA 214–21. The following values must be determined in accordance with this appendix at each duty point specified by the manufacturer: fan airflow in cubic feet per minute; fan air density; fan total pressure in inches of water gauge for fans using a total pressure basis FEI in accordance with Table 7.1 of AMCA 214–21; fan static pressure in inches of water gauge for fans using a static pressure basis FEI in accordance with Table 7.1 of AMCA 214–21; fan speed in revolutions per minute; and fan shaft input power in horsepower for fans tested in accordance with sections 6.3 or 6.4 of AMCA 214–21.

In addition, if applying the equations in Section E.2 of Annex E of AMCA 214–21 for compressible flows, the compressibility coefficients must be included in the equations as applicable.

All measurements must be recorded at the resolution of the test instrumentation and calculations must be rounded to the number of significant digits present at the resolution of the test instrumentation.

In cases where there is a conflict, the provisions in AMCA 214–21 take precedence over AMCA 210–16 and ISO 5801:2017. In addition, the provisions in this appendix apply.

* * * * *

2.4. Stability Conditions.

* * * * *

(b) After the fan has been run-in, record the fan speed in rpm and the input power (in horsepower or watts) at least every 5 seconds for at least three 60-second intervals. Readings shall be made simultaneously. Repeat these measurements over 60-second intervals until:

* * * * *

(2) The average input power from the last 60-second interval by reaction dynamometer, torque meter or calibrated motor must be ±4 percent, or the average input power by electrical meter must be ±2 percent of the mean or 1 watt, whichever is greater, compared to the average input power measured during the previous 60-second test interval; and

(3) The slopes of a linear fit trendline calculated from the individual data collected for fan speed and input power during at least three 60-second sampling intervals include both positive and negative values (*e.g.,* two positive and one negative slope value or one positive and two negative slope values). If three positive or three negative slopes are determined in succession, additional sampling intervals are required until slopes from three successive sampling intervals include both positive and negative values.

* * * * *

■ 9. Amend appendix B to subpart J of part 431 by:

■ a. Revising sections 0.1;

■ b. In section 2.2.1., remove the text ''section 2.2.2 of this appendix'' and add, in its place, the text ''section 0.1 of this appendix'';

■ c. Removing section 2.2.2.;

■ d. Revising sections 2.5(b)(3) and (4); and

■ e. Adding section 2.6.

The revisions and addition read as follows:

Appendix B to Subpart J of Part 431—Uniform Test Method for the Measurement of Energy Consumption of Air Circulating Fans

* * * * *

0.1 AMCA 230–23:

(a) Section 4, ''Definitions/Units of Measurement/Symbols,'';

(b) Section 5, ''Instruments and Methods of Measurement,'';

(c) Section 6, ''Equipment and Setup,'';

(d) Section 7, ''Observations and Conduct of Test,'';

(e) Section 8, ''Calculations,'' excluding equations 8.5 and 8.6; and

(f) Section 9, ''Report and Results of Test,''.

* * * * *

2.5. Stability Conditions.

* * * * *

(b) * * *

(3) The average load differential of the last 120-second interval varies by less than the absolute value of 1 percent compared to the average load differential during the previous 120-second test interval; and

(4) The slopes of a linear fit trendline calculated from the individual data collected for fan speed, input power, and load differential during at least three 120-second intervals include both positive and negative values (e.g., two positive and one negative slope value or one positive and two negative slope values). If three positive or three negative slopes are determined in succession, additional sampling intervals are required until slopes from three successive 120-second intervals include both positive and negative values.

2.6. Calculation of Ambient Air Density.

For any references to ambient air density, ρ0, in AMCA 230–23, calculate ρ0, expressed in kg/m3 when using SI units or lbm/ft3 when using I–P units, as follows:

$$\rho_0 = \left(\frac{p_b - 0.378p_p}{R(t_{d0} + 273.15)}\right) \quad \text{SI}$$

$$\rho_0 = 70.73\left(\frac{p_b - 0.378p_p}{R(t_{d0} + 459.67)}\right) \quad \text{I-P}$$

where p_b is the measured barometric pressure of the air, T_{d0} is the measured dry-bulb temperature of the air, p_p is the partial vapor pressure, R is the gas constant, which are all determined according to section 8.2 of AMCA 230–23.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1306

[Docket No. DEA–702]

RIN 1117–AB73

Dispensing of Narcotic Drugs To Relieve Acute Withdrawal Symptoms of Opioid Use Disorder

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA) is revising existing regulations to expand access to medications for the treatment of opioid use disorder pursuant to the Easy Medication Access and Treatment for Opioid Addiction Act (the Act). The Act directed DEA to revise its regulation to allow practitioners to dispense not more than a three-day supply of narcotic drugs to one person or for one person's use at one time for the purpose of initiating maintenance treatment or detoxification treatment (or both).

DATES: This final rule is effective on August 8, 2023.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 776–2265.

SUPPLEMENTARY INFORMATION:

I. Legal Authority and Background

DEA implements and enforces the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act (CSA), and the Controlled Substances Import and Export Act (CSIEA), as amended.[1] DEA publishes the implementing regulations for these statutes in 21 CFR parts 1300 to end. These regulations are designed to ensure a sufficient supply of controlled substances for medical, scientific, and other legitimate purposes, and to deter the diversion of controlled substances for illicit purposes.

As mandated by the CSA, DEA establishes and maintains a closed system of control for the manufacturing, distribution, and dispensing of controlled substances, and requires any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances to register with DEA.[2] The CSA authorizes the Administrator of DEA (by delegation of authority from the Attorney General) to register an applicant to manufacture, distribute or dispense controlled substances if the Administrator determines such registration is consistent with the public interest.[3] The CSA further authorizes the Administrator to promulgate regulations necessary and appropriate to execute the functions of subchapter I (Control and Enforcement) and subchapter II (Import and Export) of the CSA.[4]

[1] 21 U.S.C. 801–971.

[2] 21 U.S.C. 822 (all persons must register with DEA unless they meet an exception as provided for in 21 U.S.C. 822(c) or qualify for a waiver of registration under a regulation promulgated pursuant to 21 U.S.C. 822(d)).

[3] 21 U.S.C. 823.

[4] 21 U.S.C. 871(b) and 958(f).

II. Background and Summary of Changes

To combat substance use disorders and assist individuals in receiving proper treatment, DEA published regulations in October 1974 to implement the Narcotic Addict Treatment Act of 1974 (NATA), allowing for practitioners to administer and dispense certain narcotic medications for detoxification or maintenance treatment as long as they were separately registered as a narcotic treatment program (NTP).[5] An ''emergency treatment'' section was added to DEA regulations to allow physicians to administer (but not prescribe) one day's worth of narcotic drugs, for not more than three continuous days, ''for the purpose of relieving acute withdrawal symptoms when necessary while arrangements are being made for referral for treatment.'' [6] This rule became known as the ''Three Day Rule,'' and is currently codified at 21 CFR 1306.07(b). The current regulation allows for ''a physician who is not specifically registered to conduct a narcotic treatment program'' to administer (but not prescribe) narcotic drugs for not more than one day at one time for not more than three days ''for the purpose of relieving acute withdrawal symptoms while arrangements are being made for referral for treatment.'' [7]

On December 11, 2020, the President signed the Easy Medication Access and Treatment for Opioid Addiction Act (the Act) into law as Public Law 116–215. One of the provisions of the Act directed DEA to revise 21 CFR 1306.07(b) ''so that practitioners . . . are allowed to dispense not more than a three-day supply of narcotic drugs to one person or for one person's use at one time for the purpose of initiating

[5] 39 FR 37986; see also 21 CFR 1306.07(a).

[6] 39 FR 37986; see also 21 CFR 1306.07(b).

[7] 21 CFR 1306.07(b).

maintenance treatment or detoxification treatment (or both).'' [8] The goal of the Act is to significantly expand immediate and emergency access to medications for individuals suffering from acute withdrawal symptoms while the individual awaits further, long-term treatment. The House Report accompanying the Act explains that expanding medication dispensing to a three-days' supply at one time alleviates the burden on both the patient, specifically transportation issues for those with opioid use disorder (OUD), and on the practitioner from having to treat the same patient multiple days in a row.[9] The Report further states that appropriate treatment can lead to ''better retention rates in treatment and recovery, and lower rates of relapse.'' [10] Additional data underscores this fact—roughly one in twenty patients treated for a non-fatal overdose in an emergency department died within one year of their visit, many within two days; and two-thirds of these deaths can be attributed directly to subsequent opioid-related overdoses.[11]

Allowing a practitioner to supply three days' worth of narcotic drugs at one time may help reduce these deaths by providing a short-term maintenance level of medications while arrangements are made for further, more permanent treatment. Therefore, DEA amends the regulatory language in 21 CFR 1306.07(b) as directed by Congress.

VI. Regulatory Analyses

Administrative Procedure Act

An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (APA), including those requiring the publication of a prior notice of proposed rulemaking and the pre-promulgation opportunity for public comment, if such actions are determined to be unnecessary, impracticable, or contrary to the public interest.[12] DEA concludes that ''good cause'' exists to promulgate this rule as a final rule rather than a proposed rule for the following reasons.

The Centers for Disease Control and Prevention's (CDC) National Center for Health Statistics estimates 108,642 drug overdose deaths occurred in the U.S. during the 12-month period ending in February 2022, an increase of approximately 11,500 more people or nearly 12 percent more deaths than the previous year.[13] Specifically, the estimated number of overdose deaths from opioids increased from 72,930 for the 12-month period ending in February 2021 to 81,857 in the 12-month period ending in February 2022.[14] Given the increasing number of overdose deaths associated with the opioid epidemic, and because Congress directed DEA to amend 21 CFR 1306.07(b) in the Easy Medication Access and Treatment for Opioid Addiction Act, DEA concludes that it would be unnecessary and contrary to the public interest to undertake a notice and comment rulemaking prior to the implementation of this rule. As such, DEA concludes that ''good cause'' exists within the meaning of the APA to promulgate this rule as a final rule rather than a proposed rule.

Additionally, under the APA, agencies must generally provide a 30-day delayed effective date for final rules.[15] An agency may dispense with the 30-day delayed effective date requirement ''for good cause found and published with the rule'' or for ''a substantive rule which grants or recognizes an exemption or relieves a restriction''.[16] For the reasons just discussed, DEA concludes that such good cause exists to justify an immediate effective date. Therefore, DEA makes this rule effective immediately.

Executive Orders 12866 (Regulatory Planning and Review) and 13563, (Improving Regulation and Regulatory Review)

This final rule was developed in accordance with the principles of Executive Orders (E.O.) 12866 and 13563. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866.

After consideration of the economic, interagency, budgetary, legal, and policy implications of this final rule, DEA has determined that this rule is not a significant regulatory action under E.O. 12866, and accordingly it has not been reviewed by the Office of Management and Budget. While DEA is unable to quantify the benefits of this final rule, the potential benefits are anticipated to be disproportionally large compared to any cost associated with this rule.

Analysis of Benefits and Costs

This final rule amends DEA regulations to incorporate the Easy Medication Access and Treatment for Opioid Addiction Act (the Act). One of the provisions of the Act directed DEA to revise 21 CFR 1306.07(b) ''so that practitioners . . . are allowed to dispense not more than a three-day supply of narcotic drugs to one person or for one person's use at one time for the purpose of initiating maintenance treatment or detoxification treatment (or both).'' Below is the analysis of the revision to 21 CFR 1306.07(b).

DEA has examined the benefits and costs of this final rule and believes it is of net economic benefit. DEA does not have a good measure of the number of impacted patients or the number of patient-practitioner emergency treatment events pursuant to 21 CFR 1306.07(b). However, the analysis shows that, even on a per-patient basis, the rule will be of net benefit. DEA welcomes any comment on the number of affected patients and patient-provider encounters along with references and sources for information and data.

Baseline Scenarios—Patient Types

DEA examined two baseline scenarios based on types of patients impacted by the final rule. These two types form the two baselines from which the impact of the final rule is analyzed. While emergency treatment of acute withdrawal symptoms is not restricted to the emergency department (ED) of a hospital, DEA believes that the vast majority of the treatment is and will be performed at hospital EDs. Therefore, for the purposes of this analysis, DEA refers to ''ED'' as the location of emergency treatment.

Scenario 1—Returning Patients: who would, under current regulations, return to the ED for second and third days of medication. With the final rule implemented, these patient actions are

[8] Easy Medication Access and Treatment for Opioid Addiction Act, Public Law 116–215, Division B, Title III, Section 1302 (Dec. 11, 2020); see also 21 U.S.C. 829 note.

[9] See pg. 2–3 of the House Report of the Committee on Energy and Commerce on H.R. 2281 (Report 116–587).

[10] *Id.*

[11] *Many People Treated for Opioid Overdose in Emergency Departments Die Within 1 Year,* National Institute on Drug Abuse. *https://nida.nih.gov/news-events/nida-notes/2020/04/many-people-treated-opioid-overdose-in-emergency-departments-die-within-1-year.* Published April 2, 2020. Last accessed November 4, 2022.

[12] 5 U.S.C. 553(b)(B).

[13] Provisional Drug Overdose Death Counts, National Center for Health Statistics, Centers for Disease Control and Prevention. *https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm.* Updated July 13, 2022. Last accessed July 19, 2022.

[14] Ibid.

[15] 5 U.S.C. 553(d).

[16] 5 U.S.C. 553(d)(1), (3).

estimated to result in a lower net burden to patient and practitioner.

Scenario 2—One-time Patients: who would, under current regulations, not return to the ED after the first day of medication. With the final rule implemented, these patient actions are estimated to result in a small increase in costs associated with medication and potentially a large benefit from successful treatment.

DEA does not currently have a basis to estimate the number of each patient type. The analysis evaluates the impact of the final rule for a single emergency treatment event for both baseline scenarios. Additionally, there is a third possible patient type, where the patient returns for the second but not the third day of medication. However, this third type is not analyzed because the analysis of the two baseline scenarios described above is expected to provide the low and high estimates, and the impact of the third possible patient type is expected to be somewhere between the two baseline scenarios described above.

The analysis below examines the impact of the final rule in three general areas:

(1) Impact on treatment providers.

(2) Impact on patients.

(3) Cost and benefit of treatment.

Bureau of Labor Statistics (BLS) occupational wage data is used to calculate labor cost and cost savings for treatment providers and patients.[17] While there are many occupations in the BLS data that may represent treatment providers, DEA selected the occupation that best corresponds with ED personnel that would provide treatment or other service. The occupation and mean hourly wage is:

- 29–1228 Physicians, All Other; and Ophthalmologists, Except Pediatric, $85.70.[18]

The occupation code that best represents the patient and the corresponding mean hourly wage is:

- 00–0000 All Occupations, $27.07.[19]

Additionally, BLS reports that average benefits for private industry is 29.2 percent of total compensation. The 29.2 percent of total compensation equates to 41.2 percent (29.2 percent/70.8 percent) load on wages and salaries.[20] The load of 41.2 percent is added to each of the hourly rates to estimate the loaded hourly rates.

Table 1 lists the hourly wage, load, and loaded hourly wage for physicians ($85.70 + 35.31 = $121.01) and patients ($27.07 + $11.15 = $38.22) for each of the occupations.

TABLE 1—LOADED HOURLY WAGES

Occupation	Hourly wage ($)	Load for benefits ($)	Loaded hourly wage ($)
Physician	85.70	35.31	121.01
Patient	27.07	11.15	38.22

* Weighted average of Physician, NP, and PA.

Scenario 1: Returning Patients

Under current regulations, the patient returns for two additional visits, where the physician is estimated to spend time to examine and administer the narcotic drug for each of the visits. Additionally, the patient is expected to incur cost of travel to the ED.

Under the final rule, the patient is assumed to receive one day's dose during the emergency treatment and leave the treatment facility with dosages for the second and third days and would not need to return to the provider, saving costs for both provider and patient.

Additionally, DEA anticipates the ED will also save administrative cost from not needing to check-in and check-out a patient. However, DEA does not have a basis to quantify the administrative cost.

The economic impact for Returning Patients is detailed below:

(1) *Provider Time Savings:* The provider cost savings is estimated by applying the estimated time for treatment to the hourly wage rate of a provider. Based on Emergency Medicine Provider Productivity by American College of Emergency Physicians, a physician is expected to spend 20 minutes (or 40 minutes for two visits) to provide emergency treatment.[21] From Table 1, the provider average loaded hourly wage is $121.01. As can be seen on Table 2, applying 40 minutes to the loaded hourly wage results in an estimated cost savings of $80.67.

(2) *Patient Wait and Treatment Time Savings:* The patient wait and treatment time cost savings is estimated by applying the estimated amount of time a patients is in an ED by the hourly wage of the patient. Based on data from the CDC,[22] patient wait and treatment time is three hours. Since two visits are saved, the total times savings is six hours. From Table 1, the patient average loaded hourly wage is $38.22. As can be seen on Table 3, applying six hours to the loaded hourly wage results in an estimated cost savings of $229.32.

(3) *Patient Travel Time Benefit:* The patient travel time cost savings is estimated by applying the estimated amount of time a patient travels (both to and from the ED) by the hourly wage of the patient. Based on research from the Pew Research Center, rural travel time is 17.0 minutes, suburban is 11.9 minutes, and urban is 10.4 minutes.[23] Most people in the U.S. do not live in rural areas.[24] While a larger population in urban areas is likely to lead to more patients seeking emergency treatment at lower travel times, DEA does not have a basis to determine the proportion of affected patients that are in rural, urban, and suburban areas. As such, DEA does not have a strong basis on which to weigh the times, so the middle of the three times was used to estimate patient travel time to an ED, or 11.9 minutes. The travel time to and from the ED for each visit is then 23.8 minutes, or 47.6 minutes for two trips. From Table 1, the patient average loaded hourly wage is

[17] BLS, May 2020 National Occupational Employment and Wage Estimates United States. *https://www.bls.gov/oes/current/oes_nat.htm.* (Access 2/27/2022.)

[18] Id.

[19] BLS, May 2020 National Occupational Employment and Wage Estimates United States. *https://www.bls.gov/oes/current/oes_nat.htm.* (Access 2/27/2022.)

[20] BLS, ''Employer Costs for Employee Compensation—September 2021'' (ECEC).

[21] ACEP Emergency Medicine Practice Committee. Emergency Medicine Provider Productivity. *American College of Emergency Physicians.* September 2009.

[22] National Hospital Ambulatory Medical Care Survey: 2018 Emergency Department Summary Tables. *CDC.*

[23] Pew Research Center. How far Americans live from the closest hospital differs by community type. *www.pewresearch.org/fact-tank/2018/12/12/how-far-americans-live-from-the-closest-hospital-differs-by-community-type/,* December 12, 2018.

[24] Ratcliff M, Burd C, Holder K, Fields. Defining Rural at the U.S. Census Bureau, U.S. Census Bureau. Issued December 2016.

$38.22. As can be seen on Table 3, applying 47.6 minutes in hours to the loaded hourly wage results in an estimated cost savings of $30.32.

(4) *Patient Travel Cost Benefit:* The patient travel cost savings is estimated by applying the number of miles a patient travels to and from the ED by the cost per mile. Based on research from the Pew Research Center, rural travel distance to the ED is 10.5 miles, suburban is 5.6 miles, and urban is 4.4 miles.[25] Most people in the U.S. do not live in rural areas.[26] While a larger population in urban areas is likely to lead to more patients seeking emergency treatment at lower travel times, DEA does not have a basis to determine the proportion of affected patients that are in rural, urban, and suburban areas. As such, DEA does not have a strong basis on which to weigh the distances, so the middle of the three distances was used to estimate patient travel distance to an ED, or 5.6 miles. Travel mileage cost can be estimated using the Internal Revenue Service travel reimbursement rate for businesses of 58.5 cents per mile.[27] The cost of travel for one trip is then $3.28. As can be seen on Table 3, the total cost of travel to and from the ED for both visits is $13.10 ($5.6 \times \$0.585 \times 4$).

(5) *Medication Cost and Patient Outcome:* Medication cost and patient outcome is expected to be essentially the same. Under current regulations, the patient returns to the ED for two additional days of medicine. Under the final rule, the patient is dispensed two additional days of medicine. Assuming the patient takes the medication as directed by the provider, the patient received the same medical and medicine-assisted treatment. Therefore, patient outcome is expected to be essentially the same.

TABLE 2—SCENARIO 1—IMPACT ON PROVIDER

	Current			DFR			Net cost/ (cost savings)
	Loaded hourly rate ($)	Minutes	Amount ($)	Loaded hourly rate ($)	Minutes	Amount ($)	
Provider time savings (2 visits)	121.01	40	80.67				(80.67)
Cost (Cost Savings)							(80.67)

TABLE 3—SCENARIO 1—IMPACT ON PATIENT

	Current			DFR			Net cost/ (cost savings)
	Loaded hourly rate ($)	Minutes	Amount ($)	Loaded hourly rate ($)	Minutes	Amount ($)	
Travel Cost to ER (2 visits)	38.22	47.6	30.32				(30.32)
Wait time plus treatment time (2 visits)	38.22	360	229.32				(229.32)
Cost of Travel to ER	N/A	N/A	4.96				(13.10)
Cost of Medication	N/A	N/A	*49.29	N/A	N/A	*49.29	
Cost (Cost Savings)							(272.74)

*$49.29 comes from daily medication pricing of $16.43 per day for 3 days. The pricing calculation can be found later under Scenario 2, economic impact (3), Medication Cost.

In summary, for scenario 1, where the patients would have returned to the ED for the second- and third-days' medication, the final rule will allow for a considerable cost savings for both the patient and provider. The reduction in time in the ED for the patient represents the bulk of the benefit, or $229.32. Including cost savings for travel time and travel cost, the total cost savings per patient is $272.74. The provider is expected to have a time savings of $80.67 per patient.

Therefore, the combined net cost savings is $353.41 ($80.67 + $272.74) for each patient under baseline scenario 1.

Scenario 2—One-Time Patients

Under current regulations, if the patient does not return, the patient will only receive one day of medication. The practitioner will have examined the patient and dispensed only one day of medication.

Under the final rule, the patient will be able to receive three days of medication with just one visit to the ED. The increased medication may lead to an improved patient outcome, resulting in benefits associated with lower societal cost of opioid use disorder, discussed below. Furthermore, additional physician's time will not be needed to dispense medication, resulting in time and cost savings to the ED.

The economic impact for One-time Patients is detailed below:

(1) *Provider Time:* There is no change in the required provider time and cost because there is only one visit and one examination under both the current regulation and the final rule.

(2) *Patient Wait and Treatment Time, Travel Time, and Travel Cost:* There is no change in patient wait and treatment time, travel time, and travel cost because the patient does not return to the ED under both current regulations and the final rule.

[25] Pew Research Center. How far Americans live from the closest hospital differs by community type. *www.pewresearch.org/fact-tank/2018/12/12/how-far-americans-live-from-the-closest-hospital-differs-by-community-type/,* December 12, 2018.

[26] Ratcliff M, Burd C, Holder K, Fields. Defining Rural at the U.S. Census Bureau, U.S. Census Bureau. Issued December 2016.

[27] Internal Revenue Service. Standard Mileage Rates. *www.irs.gov/tax-professionals/standard-mileage-rates,* Accessed March 9, 2022.

(3) *Medication Cost:* The increased flexibility from the rule will allow a greater amount of medication to be dispensed, adding to the cost of medication. Because buprenorphine is predominantly used for maintenance, detoxification, or maintenance and detoxification treatment of opioid use disorder in EDs, the cost of buprenorphine is used to estimate the cost of medication. Based on a 2021 research report from the National Institute on Drug Abuse (NIDA), the estimated cost of buprenorphine is $115 per week, or $16.43 per day.[28] As shown in Table 5, the two additional days of medication equates to an additional medication cost of $32.86 (16.43 × 2).

(4) *Treatment Benefit:* The increased medication dispensed at the ED is expected to result in better patient outcomes for some patients. Under current regulations, the patient receives only one day of medicine and does not return. Under the final rule, the patient is dispensed two additional days of medicine. Assuming the patient takes the medication as directed by the provider, the patient is more likely to have a better outcome.

In the short term, the benefit is from a lower chance of an overdose or death following discharge from an ED. While not everyone seeking emergency treatment is an overdose patient, according to a 2020 study, ''. . . emergency department patients with nonfatal opioid or sedative/hypnotic drug overdose have exceptionally high risks of death from unintentional overdose, suicide, and other causes. ED-based interventions offer potential for reducing these patients' overdose and other mortality risks.'' [29]

In the long term, initiating opioid treatment by dispensing up to three days' supply may increase the odds for a successful treatment of opioid use disorder. In a 2015 study of the efficacy of various interventions for opioid dependence, the study concludes that among opioid-dependent patients, ED-initiated buprenorphine treatment ''significantly increased engagement in addiction treatment, reduced self-reported illicit opioid use, and decreased use of inpatient addiction treatment services.'' [30]

A study published in 2021 of the societal costs for OUD found that the ''[C]osts for opioid use disorder and fatal opioid overdose in 2017 were estimated to be $1.02 trillion. The majority of the economic burden is due to reduced quality of life from opioid use disorder and the value of life lost due to fatal opioid overdose.'' [31] According to the report, in 2017 total non-fatal costs are $471 billion and total fatal costs are $550 billion and there were 2.1 million persons ages 12 years and older with an OUD, and 47,000 fatal opioid overdoses.[32] Non-fatal costs include costs associated with health care, substance use disorder treatment, criminal justice, lost productivity, and the value of reduced quality of life. Dividing the total non-fatal cost of $471 billion by the number of persons ages 12 and older with an OUD, 2.1 million, the societal cost of non-fatal OUD is approximately $224,000 ($471 billion/2.1 million) per person per year. While DEA is unable to quantify how many of the affected patients will be successfully treated for OUD or how many fatal opioid overdoses will be avoided as a result of this final rule, the potential economic benefit is disproportionally large compared to any cost associated with this rule.

TABLE 4—SCENARIO 2—IMPACT ON PROVIDER

	Current			DFR			Net cost
	Loaded hourly rate ($)	Minutes	Amount ($)	Loaded hourly rate ($)	Minutes	Amount ($)	
Provider time savings (2 visits)	.....	.....	.....	.....	.....	.....	.....
Cost (Cost Savings)	.....	.....	.....	.....	.....	.....	.....

TABLE 5—SCENARIO 2—IMPACT ON PATIENT

	Current			DFR			Net cost
	Loaded hourly rate ($)	Minutes	Amount ($)	Loaded hourly rate ($)	Minutes	Amount ($)	
Travel Cost to ER (2 visits)	.....	.....	.....	.....	.....	.....	.....
Wait time plus treatment time (2 visits)	.....	.....	.....	.....	.....	.....	.....
Cost of Travel to ER	.....	.....	.....	.....	.....	.....	.....
Cost of Medication	N/A	N/A	16.43	N/A	N/A	49.29	32.86
Cost (Cost Savings)	.....	.....	.....	.....	.....	.....	32.86

In summary, for scenario 2, where patients would not have returned to the ED for second- and third-days' medication, the primary economic impact of this final rule is from improved patient outcomes. In the short

[28] NIDA. ''How much does opioid treatment cost?'' National Institute on Drug Abuse, 13 Apr. 2021, *https://nida.nih.gov/publications/research-reports/medications-to-treat-opioid-addiction/how-much-does-opioid-treatment-cost.* Accessed 20 Sep. 2022.

[29] Goldman-Mello S, Olfson M, Lidon-Moyano C, Schoenbaum M. Mortality following nonfatal opioid and sedative/hypnotic drug overdose. *Am J Prev Med*. 2020.59:59–67.

[30] D'Onofrio G, O'Connor P, Pantalon M, Chawarski M, Et al. Emergency Department-Initiated Buprenorphine/Naloxone Treatment for Opioid Dependence: A Randomized Clinical Trial. JAMA. 2015 April 28; 313(16): 1636–1644.

[31] Florence C, Luo F, Rice K. The economic burden of opioid use disorder and fatal opioid overdose in the United States, 2017. *Drug Alcohol Depend*. 2021;218:108350. doi:10.1016/j.drugalcdep.2020.108350.

[32] Id.

term, the benefit is from a lower chance of an overdose or death following discharge from an ED. In the long term, initiating opioid treatment by dispensing up to three days' supply may increase the odds for a successful treatment of opioid use disorder, reducing the societal cost of opioid use disorder. As discussed above, the societal cost of non-fatal cost of opioid use disorder is approximately $224,000 per person per year.

As discussed above, in order to obtain the patient outcome benefit, the only increased cost will be an increase in medication dispensed that will cost the patient an additional $32.86.

Summary of Benefits and Costs

DEA examined the economic impact of the final rule for two baseline scenarios based on anticipated patient actions: (1) Returning Patients and (2) One-time Patients. As discussed above, this final rule is expected to have net positive benefits and costs.

For scenario 1, where the patients would have returned to the ED for second- and third-days' medication, the final rule is estimated to generate a total cost savings of $272.74 to each patient and a net cost savings to a provider of $80.67, for a combined net cost savings of $353.41 for each patient treated under baseline scenario 1.

For scenario 2, where patients would not have returned to the ED for second- and third-days' medication, the primary economic impact is from improved patient outcomes. In the short term, the benefit is a lower chance of an overdose or death following discharge from an ED. In the long term, initiating opioid treatment by dispensing up to three days' supply may increase the odds for a successful treatment of opioid use disorder, reducing the societal cost of opioid use disorder. As discussed above, the societal cost of non-fatal cost of OUD is approximately $224,000 per person per year, while the cost of this rule under scenario 2 is $32.86 per patient.

While DEA is unable to estimate the number of patients under scenario 1 or 2, DEA estimates that there is a net benefit for both scenarios, and therefore, the economic impact of this final rule will be a net benefit.

Executive Order 12988, Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This final rule does not have federalism implications warranting the application of E.O. 13132. The final rule does 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.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This final rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA. As explained above, DEA has determined that there is good cause to exempt this final rule from pre-publication notice and comment. Consequently, the RFA does not apply to this final rule.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined that this action would not result in any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This final rule does not impose a new collection requirement under the Paperwork Reduction Act of 1995 (PRA).[33] This final rule does not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

Congressional Review Act

This rulemaking is not a ''major rule'' under the Congressional Review Act.[34] DEA will submit a copy of this final rule to both Houses of Congress and to the Comptroller General.

Signing Authority

This document of the Drug Enforcement Administration was signed on August 2, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

List of Subjects in 21 CFR Part 1306

Drug traffic control, Prescription drugs.

For the reasons stated in the preamble, the Drug Enforcement Administration amends 21 CFR part 1306 as follows:

PART 1306—PRESCRIPTIONS

■ 1. The authority citation for part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 823, 829, 829a, 831, 871(b) unless otherwise noted.

■ 2. In § 1306.07, revise paragraph (b) to read as follows:

§ 1306.07 Administering or dispensing of narcotic drugs.

* * * * *

(b) Nothing in this section shall prohibit a practitioner, who is not specifically registered to conduct a narcotic treatment program, from dispensing (but not prescribing) narcotic drugs, in accordance with applicable Federal, State, and local laws relating to controlled substances, to one person or for one person's use at one time for the purpose of initiating maintenance treatment or detoxification treatment (or both). Not more than a three-day supply of such medication may be dispensed to the person or for the person's use at one time while arrangements are being made for referral for treatment. Such

[33] 44 U.S.C. 3501–3521.

[34] 5 U.S.C. 804(2)(A)–(C).

emergency treatment may not be renewed or extended.

* * * * *

[FR Doc. 2023–16892 Filed 8–7–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 230331–0089; RTID 0648–XD229]

Pacific Halibut Fisheries of the West Coast; 2023 Catch Sharing Plan; Automatic Action

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces closure of the Pacific halibut recreational fishery in the California Coast subarea of the International Pacific Halibut Commission's regulatory Area 2A. The California Coast subarea will close on August 4, 2023 at 11:59 p.m. This action is intended to conserve Pacific halibut.

DATES: Effective August 4, 2023, at 11:59 p.m., through November 15, 2023.

FOR FURTHER INFORMATION CONTACT: Heather Fitch, 360–320–6549, *heather.fitch@noaa.gov*.

SUPPLEMENTARY INFORMATION: On April 11, 2023, NMFS published a final rule approving changes to the Pacific halibut Area 2A Catch Sharing Plan and implementing recreational (sport) management measures for the 2023 Area 2A recreational fisheries (88 FR 21503), as authorized by the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773–773(k)). The Pacific Fishery Management Council (Council) 2023 Catch Sharing Plan provides a recommended framework for NMFS' annual management measures and subarea allocations based on the 2023 Area 2A Pacific halibut catch limit of 1,520,000 pounds (lb) (689 metric tons (mt)) set by the International Pacific Halibut Commission (IPHC). The Area 2A catch limit and recreational fishery allocations were adopted by the IPHC and were published in the **Federal Register** on March 7, 2023 (88 FR 14066) after acceptance by the Secretary of State, with concurrence from the Secretary of Commerce, in accordance with 50 CFR 300.62. The Area 2A Pacific halibut management measures include recreational fishery season dates, bag limits, and subarea allocations. Federal regulations at 50 CFR 300.63(c)(3) state that once NMFS has determined an area or subarea has attained or is projected to attain its area or subarea allocation, NMFS will take automatic action to close the fishery and that such closures will be determined without prior notice or opportunity to comment.

The final rule (88 FR 21503, April 11, 2023) opened the California Coast subarea May 1 through November 15, or until the subarea allocation is estimated to have been taken and the season is therefore closed, whichever is earlier. The California Coast subarea allocation is projected to be attained on August 4, 2023; therefore, the subarea will close on that date. Notice of the subarea closure will also be announced on the NMFS hotline at 206–526–6667 or 800–662–9825.

Weekly catch monitoring reports for the recreational fisheries in Washington, Oregon, and California are available on their respective state Fish and Wildlife agency websites. NMFS and the IPHC will continue to monitor recreational catches in open subareas via state sampling procedures until NMFS has determined there is not sufficient allocation for another full day of fishing, and the area is closed by the IPHC, or the season closes on September 30 in Washington and the Columbia River subarea or October 31 in Oregon, whichever is earlier.

Automatic Action

Description of the action: This automatic action provides notice of closure for the recreational fishery in the California Coast subarea, effective Friday, August 4, 2023 at 11:59 p.m.

Reason for the action: The purpose of this action is to close the California Coast subarea to avoid exceeding the subarea allocation. As of July 31, anglers in the subarea have harvested 37,429 lb (16.98 mt) from an allocation of 39,520 lb (17.93 mt), leaving 2,091 lb (0.95 mt) remaining. Weekly catch amounts have averaged 2,674 lb (1.21 mt). Therefore, NMFS estimates that the subarea allocation will be attained by August 4, 2023, and the subarea is therefore closed on that date.

Classification

NMFS issues this action pursuant to the Northern Pacific Halibut Act of 1982. This action is taken under the regulatory authority at 50 CFR 300.63(c)(3), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. The California Department of Fish and Wildlife provided updated landings data to NMFS on July 31, 2023, showing that through this date, fishery participants in the recreational fishery off of California had caught 95 percent of the California Coast subarea allocation. NMFS uses weekly catch rates to project when subarea allocations will be attained. This action should be implemented as soon as possible to provide sufficient notice to fishery participants of the subarea closure date. As this action closes the subarea on August 4, 2023, implementing this action through proposed and final rulemaking would risk exceeding the subarea allocation. Implementation of this rulemaking in a timely manner is necessary so that planning for the subarea closure can take place, and for business and personal decision making by the regulated public impacted by this action, which includes recreational charter fishing operations, associated port businesses, and private anglers who do not live near the coastal access points for this fishery, among others. To ensure the regulated public is fully aware of this action, notice of this regulatory action will also be provided to anglers through a telephone hotline, news release, and by the relevant state fish and wildlife agencies. No aspect of this action is controversial, and actions of this nature were anticipated in regulations at 50 CFR 300.63(c)(3).

For the reasons discussed above, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date and make this action effective August 4, 2023, as a delay in effectiveness of this action would risk exceeding the subarea allocation.

Authority: 16 U.S.C. 773–773k.

Dated: August 3, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–16958 Filed 8–3–23; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 151
Tuesday, August 8, 2023

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2018–0289]

RIN 3150–AK21

American Society of Mechanical Engineers 2021–2022 Code Editions

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to incorporate by reference the 2021 Edition of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code and the 2022 Edition of the American Society of Mechanical Engineers Operation and Maintenance of Nuclear Power Plants, Division 1: OM Code: Section IST, for nuclear power plants. This action is in accordance with the NRC's policy to periodically update the regulations to incorporate by reference new editions of the American Society of Mechanical Engineers Codes and is intended to maintain the safety of nuclear power plants and to make NRC activities more effective and efficient. This amendment also incorporates editorial changes that do not change the technical information.

DATES: Submit comments by October 23, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject); however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0289. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (eastern time) Federal workdays; telephone: 301–415–1677.

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

FOR FURTHER INFORMATION CONTACT: Tyler Hammock, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1381, email: *Tyler.Hammock@nrc.gov* and Michael Benson, Office of Nuclear Reactor Regulation, telephone: 301–415–2425, email: *Michael.Benson@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Executive Summary:

A. Need for the Regulatory Action

The NRC is proposing to amend its regulations to incorporate by reference the 2021 Edition of the American Society of Mechanical Engineers (ASME) *Boiler and Pressure Vessel Code* (BPV Code) and the 2022 Edition of the ASME *Operation and Maintenance of Nuclear Power Plants,* Division 1: OM Code: Section IST (OM Code), for nuclear power plants.

The ASME periodically revises and updates its Codes for nuclear power plants by issuing new editions; this proposed rule is in accordance with the NRC's practice to incorporate those new editions into the NRC's regulations. This proposed rule maintains the safety of nuclear power plants, makes NRC activities more effective and efficient, and allows nuclear power plant licensees and applicants to take advantage of the latest ASME BPV and OM Codes (ASME Codes). The ASME is a voluntary consensus standards organization, and the ASME Codes are voluntary consensus standards. The NRC's use of the ASME Codes is consistent with applicable requirements of the National Technology Transfer and Advancement Act (NTTAA). See also Section XIII of this document, ''Voluntary Consensus Standards.''

B. Major Provisions

Major provisions of this proposed rule include the incorporation by reference with conditions of the following ASME Codes into NRC regulations and delineation of NRC requirements for the use of these Codes:

- The 2021 Edition of the BPV Code
- The 2022 Edition of the OM Code

C. Costs and Benefits

The NRC prepared a draft regulatory analysis to determine the expected costs and benefits of this proposed rule. The regulatory analysis identifies costs and benefits in both a quantitative fashion as well as in a qualitative fashion.

The analysis concludes that this proposed rule would result in a net quantitative averted cost to the industry and a net cost to the NRC. This proposed rule, relative to the regulatory baseline, would result in a net averted cost for industry of $0.65 million based on a 7-percent net present value (NPV) and $0.72 million based on a 3-percent NPV. This proposed rule, relative to the regulatory baseline, would result in a net cost to the NRC of $44 thousand based on a 7-percent NPV to $10 thousand based on a 3-percent NPV. Qualitative factors that were considered include regulatory stability and predictability, regulatory efficiency, and consistency with the NTTAA. The regulatory analysis shows that the rulemaking is justified because the total quantified benefits of the proposed regulatory action exceed the costs of the proposed action. When the qualitative benefits (including the safety benefit and improvement in knowledge) are considered together with the quantified benefits, the benefits outweigh the identified quantitative and qualitative costs.

The NRC has had a decades-long practice of approving and/or mandating the use of certain parts of editions and addenda of these ASME Codes in § 50.55a. Continuing this practice in this proposed rule ensures regulatory stability and predictability. This practice also provides consistency across the industry and provides assurance to the industry and the public that the NRC will continue to support the use of the most updated and technically sound techniques developed by the ASME to provide adequate protection to the public. In this regard, the ASME Codes are voluntary consensus standards developed by technical committees composed of mechanical engineers and others who represent the broad and varied interests of their industries, from manufacturers and installers to insurers, inspectors, distributors, regulatory agencies, and end users. The standards undergo extensive external review before the NRC considers whether to incorporate them by reference. Finally, the NRC's use of the ASME Codes is consistent with the NTTAA, which directs Federal agencies to adopt voluntary consensus standards instead of developing ''government-unique'' (*i.e.,* Federal agency-developed) standards, unless inconsistent with applicable law or otherwise impractical.

For more information, please see the draft regulatory analysis (Accession No. ML23032A316 in the NRC's Agencywide Documents Access and Management System (ADAMS)).

Table of Contents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0289 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–2018–0289.
- *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, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2018–0289 in your comment submission.

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

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

II. Background

The American Society of Mechanical Engineers develops and publishes the ASME BPV Code, which contains requirements for the design, construction, and inservice inspection (ISI) of nuclear power plant components, and the ASME OM Code,[1] which contains requirements for inservice testing (IST) of nuclear power plant components. Until 2012, the ASME issued new editions of the ASME BPV Code every 3 years and addenda to the editions annually, except in years when a new edition was issued. Similarly, the ASME periodically published new editions and addenda of the ASME OM Code. Starting in 2012, the ASME decided to issue editions of its BPV and OM Codes (no addenda) every 2 years with the BPV Code to be issued on the odd years (*e.g.,* 2013, 2015, etc.) and the OM Code to be issued on the even years [2] (*e.g.,* 2012, 2014, etc.). The new editions typically revise provisions of the ASME Codes to broaden their applicability, add specific elements to current provisions, delete specific provisions, and/or clarify them to narrow the applicability of the provision. The revisions to the editions of the ASME Codes do not significantly change code philosophy or approach.

The NRC's practice is to establish requirements for the design, construction, operation, ISI (examination), and IST of nuclear power plants by approving the use of editions of the ASME BPV and OM Codes (ASME Codes) in § 50.55a of title 10 of the *Code of Federal Regulations* (10 CFR). The NRC approves or mandates the use of certain parts of editions of these ASME Codes in § 50.55a through the rulemaking process of ''incorporation by reference.'' Upon incorporation by reference of the ASME Codes into § 50.55a, the provisions of the ASME Codes are legally-binding NRC requirements as delineated in § 50.55a, and subject to the conditions on certain specific ASME Codes' provisions that are set forth in § 50.55a. The editions of the ASME BPV and OM

[1] The editions and addenda of the ASME *Operation and Maintenance of Nuclear Power Plants* have had different titles from 2005 to 2019 and are referred to collectively in this rule as the ''OM Code.''

[2] The 2014 Edition of the ASME OM Code was delayed and was designated the 2015 Edition. Similarly, the 2016 Edition of the OM Code was delayed and was designated the 2017 Edition.

Codes were last incorporated by reference into the NRC's regulations in a final rule dated October 27, 2022 (87 FR 65128).

The ASME Codes are consensus standards developed by participants, including the NRC and licensees of nuclear power plants, who have broad and varied interests. The ASME's adoption of new editions of the ASME Codes does not mean that there is unanimity on every provision in the ASME Codes. There may be disagreement among the technical experts, including the NRC's representatives on the ASME Code committees and subcommittees, regarding the acceptability or desirability of a particular code provision included in an ASME-approved Code edition. If the NRC believes that there is a significant technical or regulatory concern with a provision in an ASME-approved Code edition being considered for incorporation by reference, then the NRC conditions the use of that provision when it incorporates by reference that ASME Code edition into its regulations. In some instances, the condition increases the level of safety afforded by the ASME Code provision, or addresses a regulatory issue not considered by the ASME. In other instances, where research data or experience has shown that certain code provisions are unnecessarily conservative, the condition may provide that the code provision need not be complied with in some or all respects. The NRC's conditions are included in § 50.55a, typically in paragraph (b) of that section. In a Staff Requirements Memorandum dated September 10, 1999 (ML003755050), the Commission indicated that NRC rulemakings adopting (incorporating by reference) a voluntary consensus standard must identify and justify each part of the standard that is not adopted. For this proposed rule, the provisions of the 2021 Edition of Section III, Division 1; the 2021 Edition of Section XI, Division 1, of the ASME BPV Code; and the 2022 Edition of the ASME OM Code that the NRC are not adopting, or are only partially adopting, are identified in the ''Discussion,'' ''Regulatory Analysis,'' and ''Backfitting and Issue Finality'' sections of this document. The provisions of those specific editions and Code Cases that are the subject of this proposed rule that the NRC finds to be conditionally acceptable, together with the applicable conditions, are also identified in the ''Discussion,'' ''Regulatory Analysis,'' and ''Backfitting and Issue Finality'' sections of this document.

The ASME Codes are voluntary consensus standards, and the NRC's incorporation by reference of these Codes is consistent with applicable requirements of the NTTAA. Additional discussion on the NRC's compliance with the NTTAA is set forth in Section XIII of this document, ''Voluntary Consensus Standards.''

III. Discussion

The NRC regulations incorporate by reference ASME Codes for nuclear power plants. This proposed rule is the latest in a series of rulemakings to amend the NRC's regulations to incorporate by reference revised and updated ASME Codes for nuclear power plants. This proposed rule is intended to maintain the safety of nuclear power plants and make NRC activities more effective and efficient.

The NRC follows a three-step process to determine acceptability of new provisions in new editions of the Codes and the need for conditions on the uses of these Codes. This process was employed in the review of the Codes that are the subjects of this proposed rule. First, the NRC actively participates with other ASME committee members with full involvement in discussions and technical debates in the development of new and revised Codes. This includes a technical justification of each new or revised Code. Second, the NRC's committee representatives discuss the Codes and technical justifications with other cognizant staff to ensure an adequate technical review. Third, the NRC position on each Code is reviewed and approved by NRC management as part of this proposed rule amending § 50.55a to incorporate by reference new editions of the ASME Codes and conditions on their use. This regulatory process, when considered together with the ASME's own process for developing and approving the ASME Codes, assures that the NRC approves for use only those new and revised code editions, with conditions as necessary, that provide reasonable assurance of adequate protection to the public health and safety, and that do not have significant adverse impacts on the environment.

The NRC reviewed changes to the Codes in the editions identified in this proposed rule. The NRC concluded, in accordance with the process for review of changes to the Codes, that these editions of the Codes are technically adequate, consistent with current NRC regulations, and approved for use with the specified conditions upon the conclusion of the rulemaking process.

The NRC is proposing to amend its regulations to incorporate by reference:

- The 2021 Editions of the ASME BPV Code, Section III, Division 1 and Section XI, Division 1, with conditions on their use.
- The 2022 Edition of Division 1 of the ASME OM Code, with conditions on its use.

The current regulations in § 50.55a(a)(1)(i) incorporate by reference ASME BPV Code, Section III, 1963 Edition through the 1970 Winter Addenda; and the 1971 Edition (Division 1) through the 2019 Edition (Division 1), subject to the conditions identified in current § 50.55a(b)(1)(i) through (xiii). This proposed rule would revise § 50.55a(a)(1)(i) to incorporate by reference the 2021 Edition (Division 1) of the ASME BPV Code, Section III.

The current regulations in § 50.55a(a)(1)(ii) incorporate by reference ASME BPV Code, Section XI, 1974 Edition through the 1975 Summer Addenda, the 1995 Edition (Division 1) through the 1997 Addenda (Division 1), and the 2001 Edition (Division 1) through the 2019 Edition (Division 1), subject to the conditions identified in current § 50.55a(b)(2)(i) through (xliii). This proposed rule would revise § 50.55a(a)(1)(ii) to incorporate by reference the 2021 Edition (Division 1) of the ASME BPV Code, Section XI. It would also clarify the wording and add, remove, or revise some of the conditions as explained in this proposed rule.

The current regulations in § 50.55a(a)(1)(iv) incorporate by reference ASME OM Code, 1995 Edition through the 2020 Edition (with some omissions of specific editions and addenda), subject to the conditions currently identified in § 50.55a(b)(3)(i) through (xi). This proposed rule would revise § 50.55a(a)(1)(iv) to incorporate by reference the 2022 Edition of Division 1 of the ASME OM Code.

In the introductory discussion of its Codes, ASME specifies that errata to those Codes may be posted on the ASME website under the Committee Pages to provide corrections to incorrectly published items, or to correct typographical or grammatical errors in those Codes. Users of the ASME BPV Code and ASME OM Code should be aware of errata when implementing the specific provisions of those Codes. Applicants and licensees should monitor errata to determine when they might need to submit a request for an alternative under § 50.55a(z) to implement provisions specified in an errata to their ASME Code of record. Each of the proposed NRC conditions and the reasons for each are discussed in the following sections

of this document. The discussions are organized under the applicable ASME Code and Section.

The NRC prepared an unofficial redline strikeout version of the proposed changes to regulatory text that is intended to help the reader identify the proposed changes. The unofficial redline strikeout version of the proposed rule is publicly available and is listed in the ''Availability of Documents'' section.

A. ASME BPV Code, Section III

Section 50.55a(a)(1)(i)(E) Rules for Construction of Nuclear Facility Components—Division 1

The NRC proposes to revise § 50.55a(a)(1)(i)(E) to incorporate by reference the 2021 Edition of the ASME BPV Code, Section III, including Subsection NCA and Division 1 Subsections NB through NG and Appendices. As stated in § 50.55a(a)(1)(i), the Nonmandatory Appendices are excluded and not incorporated by reference. The Mandatory Appendices are incorporated by reference because they include information necessary for Division 1. However, the Mandatory Appendices also include material that pertains to other Divisions that have not been reviewed and approved by the NRC. Although this information is included in the sections and appendices being incorporated by reference, the NRC notes that the use of Divisions other than Division 1 has not been approved, nor are they required by NRC regulations and, therefore, such information is not relevant to NRC applicants and licensees. The NRC is not taking a position on the non-Division 1 information in the appendices and is including it in the incorporation by reference only for convenience. Therefore, this proposed rule would revise the introductory text to § 50.55a(a)(1)(i)(E) to reference the 2021 Edition of the ASME BPV Code, Section III, including Subsection NCA and Division 1 Subsections NB through NG and Appendices.

Section 50.55a(b)(1)(iv) Section III Condition: Quality Assurance

The NRC proposes to incorporate by reference Subsection NCA of 2021 Edition BPV Code, ASME Section III with the exception that Subpart 2.19 in NQA–1–2017, NQA–1–2019 and NQA–1–2022 is not approved for use.

With regards to the implementation of NCA–3126, NCA–3127, NCA–4255.3, and NCA–4254.3 for the procurement of calibration and testing services, the NRC reminds the users of the ASME Code that the procurement of commercial grade calibration and testing services remains subject to NRC requirements in 10 CFR part 21 and in appendix B to 10 CFR part 50.

For implementation of procurement of calibration and testing services, the NRC recently proposed a draft regulatory guide (DG), DG–1403, ''Quality Assurance Program Criteria (Design and Construction)'' (ML22304A054) that would, among other things, endorse Nuclear Energy Institute (NEI) 14–05A, ''Guidelines for the Use of Accreditation in Lieu of Commercial Grade Surveys for Procurement of Laboratory Calibration and Test Services,'' Revision 1, issued November 2020 (88 FR 27713). As described in the DG licensees and suppliers of basic components can take credit for the ILAC accreditation process as described in NEI 14–05A Revision 1 in lieu of performing on-site commercial-grade surveys as part of the commercial-grade dedication of calibration and testing services. The NRC's proposed endorsement would be for use of NEI 14–05A Revision 1 in lieu of Subpart 2.19 in NQA–1–2017, NQA–1–2019 and NQA–1–2022, which DG–1403 found to not incorporate the controls and conditions necessary for use. Specifically, Subpart 2.19 allows the laboratory accreditation to be performed remotely, which the NRC has determined is not adequate to meet the requirements of appendix B to 10 CFR part 50. Therefore, the NRC is proposing a condition to prohibit the use of Subpart 2.19 in NQA–1–2017.

Section 50.55a(b)(1)(vi) Section III Condition: Subsection NH

The NRC proposes to revise this condition to change the word ''sleeves'' to ''sheaths'' and to note that this condition is not applicable to the 2015 Edition and later editions as Subsection NH has been deleted from Section III Division 1.

Section 50.55a(b)(1)(xi) Section III Condition: Mandatory Appendix XXVI

The NRC proposes to revise this condition. When applying the 2015 and 2017 Editions of Section III, Mandatory Appendix XXVI, ''Rules for Construction of Class 3 Buried Polyethylene Pressure Piping,'' applicants or licensees must meet the first provision, as noted in 50.55a(b)(1)(xi)(A). When applying the 2015 through 2021 Editions of Section III, Mandatory Appendix XXVI, ''Rules for Construction of Class 3 Buried Polyethylene Pressure Piping,'' applicants or licensees must meet the second provision, as noted in 50.55a(b)(1)(xi)(B). When applying the 2017 Edition of Section III, Mandatory Appendix XXVI, ''Rules for Construction of Class 3 Buried Polyethylene Pressure Piping,'' applicants or licensees must meet the third provision, as noted in 50.55a(b)(1)(xi)(C).

Section 50.55a(b)(1)(xiii) Section III Condition: Preservice Inspection of Steam Generator Tubes

The NRC proposes to revise § 50.55a(b)(1)(xiii) including the first provision, § 50.55a(b)(1)(xiii)(A), and second provision, § 50.55a(b)(1)(xiii)(B), to extend the applicability of the conditions through the latest edition of the ASME BPV Code, Section III incorporated by reference in paragraph (a)(1)(i). The 2021 Edition of Section III was not updated to include the provisions of this condition. Therefore, the NRC is proposing to revise this condition to apply to the latest edition incorporated by reference.

Section 50.55a(b)(1)(xiv) Section III Condition: Repairs to Stamped Components

The NRC is proposing to add a condition that if Nonmandatory Appendix NN is used for the elimination of surface defects and repairs of stamped components prior to the completion of Form N–3 Data Report, all applicable requirements of Nonmandatory Appendix NN shall be met. The 2021 Edition included Nonmandatory Appendix NN and stated in the provisions of NCA–8151 and NCA–8500 in the 2021 Edition of Section III that guidance for the elimination of surface defects and repairs of stamped components prior to the completion of Form N–3 Data Report is contained within Nonmandatory Appendix NN.

The section titled ''Organization of Section III'' within Section III and the ''Introduction'' to Section III Appendices state that ''Mandatory Appendices are referred to in the Section III rules and contain requirements that must be followed in construction. Nonmandatory Appendices provide additional information or guidance when using Section III.'' In addition, Nonmandatory Appendix NN states, ''This Appendix provides guidance for the removal of external surface defects from piping, pumps, and valves and performing repairs to stamped components after certification and prior to completion of the N–3 Data Report.'' It should also be noted that the NRC only endorses Mandatory Appendices of Section III to the ASME Code in the regulations (§ 50.55a).

Since this Nonmandatory Appendix is not required to be followed by the ASME Code, all or none of the requirements proposed in the appendix may be performed and the certificate holder or owner potentially could make repairs that do not meet the code requirements, introduce flaws or retain defects, or not disposition defects that can compromise the structural integrity of the component and not properly document the repair. It should be noted that Nonmandatory Appendix NN was developed by combining Code Cases N–801–3 and N–870–1 into the Nonmandatory Appendix NN. NRC approved Code Cases N–801–3 and N–870–1 in RG 1.84, Revision 39. Licensees that used Code Cases N–801–3 and N–870–1 were required to meet all the requirements in the applicable Code Cases. The NRC considers the information in Nonmandatory Appendix NN as requirements, consistent with the Code Cases, that are necessary to ensure certificate holders make satisfactory repairs to stamped ASME Code, Section III components. Therefore, the NRC is adding § 50.55a(b)(1)(xiv) to condition the provision of NCA–8151, NCA–8500, and Nonmandatory Appendix NN to require that all the requirements in Nonmandatory Appendix NN shall be met when used.

B. ASME BPV Code, Section XI

Section 50.55a(a)(1)(ii) ASME Boiler and Pressure Vessel Code, Section XI

The NRC proposes to amend the regulations in § 50.55a(a)(1)(ii)(C) to incorporate by reference the 2021 Edition (Division 1) of the ASME BPV Code, Section XI. The current regulations in § 50.55a(a)(1)(ii)(C) incorporate by reference ASME BPV Code, Section XI, the 1974 Edition through the 1975 Summer Addenda, the 1995 Edition (Division 1) through the 1997 Edition (Division 1), and the 2001 Edition (Division 1) through the 2019 Edition (Division 1), subject to the conditions identified in current § 50.55a(b)(2)(i) through (xliii).

Section 50.55a(b)(2) Conditions on ASME BPV Code Section XI

The NRC proposes to revise the definition of Section XI in § 50.55a(b)(2) to refer to the editions of the ASME BPV Code, Section XI incorporated by reference in paragraph (a)(1)(ii).

Section 50.55a(b)(2)(viii) Section XI Condition: Concrete Containment Examinations

The NRC proposes not to apply the existing conditions in § 50.55a(b)(2)(viii)(H) and § 50.55a(b)(2)(viii)(I), the eighth and ninth provisions for concrete containment examinations, to the 2021 Edition of the ASME Code. Revisions to IWA–6230 require the information described in the existing § 50.55a(b)(2)(viii)(H) condition be included in the required Owner's Activity Report (OAR). These new Section XI provisions address the requirement in the existing NRC condition. Revisions to IWL–2512 require the technical evaluation discussed in IWL–2512(b) be completed every five years. This new Section XI provision addresses the requirement in existing NRC condition § 50.55a(b)(2)(viii)(I).

Section 50.55a(b)(2)(ix) Section XI Condition: Metal Containment Examinations

The NRC proposes not to apply the existing condition in § 50.55a(b)(2)(ix)(A)(2), the first provision for metal containment examinations, to the 2021 Edition of the ASME Code. Revisions to IWA6230 require the information described in the existing § 50.55a(b)(2)(ix) condition be included in the required OAR. This new Section XI provision addresses the requirement in the existing NRC condition.

Section 50.55a(b)(2)(xv) Section XI Condition: Appendix VIII Specimen Set and Qualification Requirements

The NRC proposes to eliminate this condition as it is no longer applicable to any licensee. This condition only applies to the use of the 1995 through the 2001 Editions of ASME Code Section XI, Appendix VIII. Additionally, § 50.55a(b)(2)(xv) requires licensees using ASME Code Section XI Editions later than the 2001 Edition through the 2006 Addenda to use the 2001 Edition of Appendix VIII. This condition therefore only applies to licensees using the 1995 to the 2006 Addenda of ASME Code Section XI.

The 2007 edition of ASME Code Section XI was incorporated by reference in § 50.55a in the rulemaking dated June 21, 2011 (76 FR 36231). Given the requirement to update ISI programs every 120 Months, no licensee is still using the 2001 Edition of Appendix VIII. This condition is therefore unnecessary.

Section 50.55a(b)(2)(xxxiv) Section XI Condition: Nonmandatory Appendix U

The NRC proposes to amend § 50.55a(b)(2)(xxxiv) to prohibit the use of Nonmandatory Appendix U, Supplement U–S1 in the 2021 Edition of Section XI. Nonmandatory Appendix U, Supplement U–S1 provides licensees with a methodology for temporary acceptance of flaws in moderate energy Class 2 and 3 piping. However, Code Case N–513 provides the same rules. The NRC position is that licensees use the more frequently updated Code Case N–513 when seeking to temporarily accept flaws in moderate energy Class 2 and 3 piping. As the ASME continues to update Code Case N–513, there can be different requirements between the version allowed by Nonmandatory Appendix U and the NRC approved version of the Code Case. Furthermore, duplicative rules may create regulatory confusion both for licensees and NRC inspection staff, as well as pose a burden on the NRC to review and compare the two documents to ensure reasonable assurance of safety under all potential combinations of alternatives. Therefore, this proposed condition clarifies that the appropriate reference for temporary acceptance of flaws in moderate energy Class 2 and 3 piping is Code Case N–513, as dispositioned in the latest version of Regulatory Guide (RG) 1.147 incorporated by reference in § 50.55a(a)(3)(ii).

The NRC proposes to modify the existing condition in § 50.55a(b)(2)(xxxiv) to update the version of ASME BPV Code Case N–513 to the latest version currently approved in RG 1.147. The NRC proposes to renumber this existing condition to § 50.55a(b)(2)(xxxiv)(A)(2) and revise § 50.55a(b)(2)(xxxiv)(B) to reflect the added condition on Nonmandatory Appendix U, Supplement U–S1. The purpose of this change is for regulatory efficiency to minimize changes to this condition in future rulemakings and maintain the requirement consistent with the latest NRC approved version of Code Case N–513.

Section 50.55a(b)(2)(xliv) Section XI Condition: Nonmandatory Appendix Y

The NRC proposes to add § 50.55a(b)(2)(xliv) to prohibit the use of Y–2200, Y–2420, and Y–3200 in the 2021 Edition of Section XI. These articles provide three crack growth laws for use in Section XI flaw evaluations. However, Code Cases N–809, N–889, and N–643 respectively provide the same crack growth laws. The NRC position is that licensees use the more frequently updated Code Cases when seeking to use these crack growth laws in Section XI flaw evaluations. Furthermore, duplicative rules may create regulatory confusion for licensees and additional burden on the NRC to review and compare the two documents to provide reasonable assurance of

safety when using the curves and defined variables. Therefore, this proposed condition clarifies that the appropriate references for crack growth laws are the respective Code Cases, as dispositioned in the latest edition of RG 1.147 incorporated by reference in § 50.55a(a)(3)(ii).

Section 50.55a(b)(2)(xlv) Section XI Condition: Pressure Testing of Containment Penetration Piping After Repair/Replacement Activities

The NRC proposes to add § 50.55a(b)(2)(xlv) to require that when applying the provisions of IWA–4540(a) and (e) of the 2021 Edition of the ASME Code, Section XI, a VT–2 examination of the area affected by the repair/replacement activity shall be conducted during the Type C test in appendix J to 10 CFR part 50. The 2021 Edition of the ASME Code, Section XI, revised IWA–4540(a) and (e) by incorporating the requirements of Code Case N–751. The NRC conditioned Code Case N–751 in RG 1.147, Revision 19, to require that nondestructive examination must be performed in accordance with IWA–4540(a)(2) of the 2002 Addenda of Section XI. This includes a VT–2 (visual examination during system walkdown) in accordance with IWA–5211.

Upon incorporating Code Case N–751 and the NRC condition in RG 1.147, the revised IWA–4540(a) and (e) did not fully address the NRC condition in RG 1.147 concerning performing the VT–2 (visual examination). The revised IWA–4540(a) moved the pressure testing requirements for ''[R]epair/replacement activities performed by welding or brazing on piping, including isolation valves, designated Class 2, that penetrates a containment vessel and where the balance of the piping system inside and outside the containment is not within the scope of Section XI'' to IWA–4540(e). Therefore, the specific requirement in IWA–4540(a) to require a VT–2 visual examination during pressure testing is not required. In addition, IWA–4540(e) in the 2021 Edition of ASME Code, Section XI states that for pressure testing of these locations, a Type C test in appendix J to 10 CFR part 50, system leakage test in accordance with IWA–5211(a), or pneumatic test in accordance with IWA–5211(c), shall be performed. The NRC notes that IWA–5211 requires the VT–2, while neither IWA–5211(a) or (c) require a VT–2 (visual examination during walkdown). IWA–4540(e) also states that if ''there is detectable leakage during the Type C test in appendix J to 10 CFR part 50, the brazed joints or welds shall be tested to confirm there is no leakage through the brazed joints or welds.'' The NRC notes that the Type C test in appendix J to 10 CFR part 50 does not require a VT–2 (visual system walkdown) of the piping to verify the leakage or absence thereof, but only a decrease in pressure.

Therefore, the NRC is adding § 50.55a(b)(2)(xlv) to condition provisions IWA–4540(a) and (e) of the 2021 Edition of the ASME Code, Section XI, to require that a VT–2 examination of the area affected by the repair/replacement activity be conducted during the Type C test in appendix J to 10 CFR part 50 to be consistent with the previous NRC condition for Code Case N–751.

Section 50.55a(b)(2)(xlvi) Section XI Condition: Contracted Repair/Replacement Organization Fabricating Items Offsite of the Owner's Facilities

The NRC proposes to add § 50.55a(b)(2)(xlvi) to prohibit a contracted Repair/Replacement Organization, when applying the provisions of IWA–4143 in the 2021 Edition of the ASME Code, Section XI, from fabricating an item off-site of the Owner's facility (*e.g.,* vendor facility) without an ASME Certificate of Authorization and without applying an ASME Stamp/Certification Mark.

IWA–4143 in the 2021 Edition of the ASME Code, Section XI, allows an owner to procure ASME Code, Section III parts, appurtenances, piping subassemblies, and supports (hereinafter referred to as items) with no ASME Stamp/Certification Mark from a Repair/Replacement Organization that does not have an ASME Certificate of Authorization and conducts fabrication activities off-site of the Owner's facility. Therefore, a contracted Repair/Replacement Organization would be able to fabricate an item off-site (at a vendor facility) without an ASME Certificate of Authorization and not apply a Stamp/Certification Mark on the item. This contradicts NCA–8330 in ASME Code, Section III, which only allows an item with no ASME Stamp/Certification Mark applied to the item for an organization with an ASME Certificate of Authorization, since the organization with an ASME Certificate of Authorization is required to follow additional controls of the part in NCA–8330(a)(1) through (3). IWA–4131 in the 2021 Edition of the ASME Code, Section XI, does not provide controls of these items through completion of installation for an organization that does not have an ASME Certificate of Authorization. IWA–4131 in the 2019 Edition of the ASME Code, Section XI, has a restriction that fabrication (of parts) by the Owner or owner's contracted Repair/Replacement Organization (not possessing an ASME Certificate of Authorization) may occur only at the Owner's facility. The proposed condition would be consistent with IWA–4143 of the 2019 Edition of the ASME Code, Section XI, which allowed a Repair/Replacement Organization with a quality assurance program that complies with IWA–4142 to fabricate parts, appurtenances, piping assemblies, and supports at the Owner's facilities without application of an ASME Stamp/Certification Mark.

Therefore, the NRC is adding § 50.55a(b)(2)(xlvi) to condition the provision of IWA–4143 of the 2021 Edition of the ASME Code, Section XI, by prohibiting a contracted Repair/Replacement Organization from fabricating a part off-site of the Owner's facility (*e.g.,* vendor facility) without an ASME Certificate of Authorization and without applying an ASME Stamp/Certification Mark.

Section 50.55a(b)(2)(xlvii) Section XI Condition: Weld Overlay Design Crack Growth Analysis

The NRC proposes to add § 50.55a(b)(2)(xlvii) to require stress corrosion crack growth analysis of the weld overlay material in Nonmandatory Appendix Q of ASME Code, Section XI. In the 2021 Edition, a change was made to Subparagraph Q–3000(a) to specifically note that stress corrosion crack growth analysis is not required within the weld overlay material. While these overlay materials are expected to be more stress corrosion crack resistant, Article Q–2000 does not require all overlay materials to be impervious to potential cracking. If the licensee can justify that the material would not experience stress corrosion cracking growth expected over design life of the overlay, the licensee should document this conclusion in the design. The NRC therefore proposes this condition to require the analysis of a hypothetical flaw in determining the design and design life of a weld overlay under Nonmandatory Appendix Q.

Section 50.55a(b)(2)(xlviii) Section XI Condition: Analytical Evaluations of Degradation

The NRC proposes to add § 50.55a(b)(2)(xlviii) to require that analytical evaluations performed in accordance with IWB–3132.3 and IWC–3132.3 be submitted to the NRC. The 2019 Edition of the ASME BPV Code, Section XI, IWB–3134, *Review by Authorities,* requires that ''[a]nalytical evaluation of examination results as required by IWB–3132.3 shall be submitted to the regulatory authority

having jurisdiction at the plant site.'' IWC–3125, *Review by Authorities,* requires that ''[t]he analytical evaluation of examination results as required by IWC–3122.3 shall be submitted to the regulatory authority having jurisdiction at the plant site.'' The 2021 Edition of the ASME Code, Section XI, eliminates the provisions of IWB–3134 and IWC–3125 in their entirety. The NRC finds that flaw evaluations provide significant regulatory information in the following areas: the condition of the degradation of the affected component, the cause of the degradation, operating experience, methodology used, performance monitoring, and regulatory oversight. For example, the flaw evaluation predicts the flaw size with growth during a certain time period. The final flaw size should not exceed the allowable flaw size, and the affected component would need to be inspected prior to the final flaw size exceeding the allowable flaw size. The NRC needs to monitor the safety of plant operation, considering the flaw may grow during the plant operation. The flaw evaluation provides key information for the NRC's oversight. Accordingly, the NRC proposes to add § 50.55a(b)(2)(xlviii) to retain the requirement from the 2019 Edition of the ASME BPV Code, Section XI, that analytical evaluations performed in accordance with IWB–3132.3 and IWC–3132.3 be submitted to the NRC.

Section 50.55a(b)(2)(xlix) Section XI Condition: Analytical Evaluations of Flaws in Cladding

The NRC proposes to add § 50.55a(b)(2)(xlix) to prohibit the use of IWB–3600(b)(1) in the 2021 Edition of ASME BPV Code, Section XI (Division 1), for the inlay and onlay that are subject to the augmented inspection requirements in paragraph (g)(6)(ii)(F) of this section.

IWB–3600(b)(1) in the 2021 Edition of the Code addresses the provision that a flaw, which lies entirely in the cladding of Class 1 components, need not be analytically evaluated. In the 2021 Edition of the Code, this provision has been relocated from IWB–3610 to IWB–3600. In the code editions and addenda prior to the 2021 Edition since the 1988 Addenda, this provision in IWB–3610 for Class 1 vessels has not been applicable to the analytical evaluation for piping that is separately addressed in IWB–3640. Based on the relocation of the provision to IWB–3600, the 2021 Edition of the Code without a condition would allow that a flaw, which lies entirely in the cladding of piping, need not be analytically evaluated.

In comparison, paragraph (g)(6)(ii)(F) of this section addresses the augmented inspection requirements for Class 1 pressurized water reactor (PWR) piping and vessel nozzle butt welds. As part of the requirements, paragraph (g)(6)(ii)(F)(7) of this section describes the examination evaluation and acceptance standards for the inlay and onlay of the butt welds. Specifically, the condition in the paragraph requires that, for Inspection Items G, H, J, and K of Code Case N–770, when applying the acceptance standards of IWB–3514 for planar flaws contained within the inlay or onlay, the thickness ''t'' in IWB–3514 be the thickness of the inlay or onlay.

Accordingly, when a flaw lies entirely in the inlay or onlay subject to the augmented inspections in paragraph (g)(6)(ii)(F)(7) of this section, the flaw is required to be evaluated in accordance with IWB–3514 by using the thickness of the inlay or onlay as the thickness ''t'' in IWB–3514. Based on paragraph (g)(6)(ii)(F)(7) of this section, if a flaw in the inlay or onlay is not acceptable in accordance with IWB–3514 as conditioned by the paragraph, analytical evaluation of the flaw must be performed in accordance with IWB–3600 or repair/replacement activities must be performed in accordance with IWA–4000.

As discussed above, the use of IWB–3600(b)(1) in the 2021 Edition of ASME BPV Code, Section XI (Division 1) for the inlay and onlay is not consistent with paragraph (g)(6)(ii)(F)(7) of this section and the related provisions of analytical evaluation that are specified in IWB–3600 in the code editions and addenda prior to the 2021 Edition. Therefore, the NRC proposes to add a condition to prohibit the use of IWB–3600(b)(1) in the 2021 Edition of the Code for the inlay and onlay that are subject to the augmented inservice inspection requirements for Class 1 piping and nozzle dissimilar-metal butt welds in paragraph (g)(6)(ii)(F) of this section.

Section 50.55a(g)(6)(ii)(D)(9) Section XI Condition: Volumetric Qualifications

The NRC proposes to add § 50.55a(g)(6)(ii)(D)(9) to allow licensees the option to utilize Supplement 15 of Mandatory Appendix VIII in the 2021 Edition or later of Section XI, incorporated by reference in § 50.55a, for volumetric qualification of examinations required by Table 1 of ASME Code Case N–729–6. The ASME Code in combination with the Electric Power Research Institute Nondestructive Evaluation Center developed expanded qualifications similar to other volumetric qualification requirements in Mandatory Appendix VIII to replace the requirements described in ASME Code Case N–729–6. The NRC found these qualification requirements acceptable, in addition to the current requirements of ASME Code Case N–729–6. Therefore, to reduce the burden of requiring an update to all programs immediately, the NRC is proposing a condition to allow either qualification program to be used. In future § 50.55a rulemakings, in which N–729 is further revised or incorporated into the ASME Code, the NRC expects that the Supplement 15 requirements of Mandatory Appendix VIII will be required. Additionally, as licensees adopt the 2021 Edition or later as an ISI Code of Record for their ISI Interval, Supplement 15 of Mandatory Appendix VIII will be a requirement. The NRC expects that with this proposed transitional time, that has no immediate impact or burden, licensees will be able to update their programs as necessary in as efficient manner as possible.

Section 50.55a(g)(6)(ii)(F) Augmented ISI Requirements: Examination Requirements for Class 1 Piping and Nozzle Dissimilar-Metal Butt Welds

The NRC proposes to update the requirements for the augmented inspection of dissimilar-metal butt welds in U.S. PWRs from ASME Code Case N–770–5 to N–770–7. This change will require condition § 50.55a(g)(6)(ii)(F)(1) to be updated, and condition § 50.55a(g)(6)(ii)(F)(8) to be modified to retain an inspection frequency for optimized butt welds consistent with ASME Code Case N–770–5.

The NRC proposes to update NRC condition § 50.55a(g)(6)(ii)(F)(1) Implementation, by changing the reference of ASME Code Case N–770–5 to N–770–7. Additionally, the implementation requirement will be changed from no later than one year after June 3, 2020, to no later than one year after the rule effective date.

The NRC proposes to modify the existing condition § 50.55a(g)(6)(ii)(F)(8) to retain, in part, the volumetric examination frequency of ASME Code Case N–770–5, which was changed in N–770–6. In N–770–5, the Frequency of Examination for Inspection Item C–2 welds (uncracked butt welds reinforced by optimized weld overlay of Alloy 52/152 material) is ''100% of these welds shall be examined once each inspection interval. For any overlays that have an analyzed life of less than 10 [years], the inspection interval shall be less than or equal to the analyzed life.''

In N–770–5, the Frequency of Examination for Inspection Item F–2

welds (cracked butt weld reinforced by optimized weld overlay of Alloy 52/152 material) is ''[o]nce during the first or second refueling outage following overlay. Examination volumes that show no indication of crack growth or new cracking shall be examined once each inspection interval. For any overlays that have an analyzed life of less than 10 years, the inspection interval shall be less than or equal to the analyzed life.''

The current NRC condition § 50.55a(g)(6)(ii)(F)(8) states, ''[i]nitial inservice examination of Inspection Item C–2 welds shall be performed between the third refueling outage and no later than 10 years after application of the overlay.'' In N–770–7, the Frequency of Examination for Inspection Item C–2 welds is—

[e]xamine all welds no sooner than the third refueling outage and no later than 10 years following optimized weld overlay. After the first interval, examination volumes that show no indication of cracking shall be placed into a population to be examined on a sample basis. Twenty-five percent of this population shall be added to the ISI Program in accordance with –2410 and shall be examined once each inspection interval [Note (10)]. For any optimized weld overlays that have an analyzed life of less than 10 years, the inspection interval shall be less than or equal to the analyzed life.

In N–770–7, the Frequency of Examination for Inspection Item F–2 welds is—

[o]nce during the first or second refueling outage following optimized weld overlay. Weld overlay examination volumes that show no indication of crack growth or new cracking shall be placed into a population to be examined on a sample basis. Twenty-five percent of this population shall be added to the ISI Program in accordance with –2410 and shall be examined once each inspection interval [Note (10)]. For any optimized weld overlays that have an analyzed life of less than 10 years, the inspection interval shall be less than or equal to the analyzed life.

The NRC continues to find that the long-term frequency for examination of optimized weld overlays shall be 100 percent of the welds each inspection interval, consistent with N–770–5 and the current regulation. Optimized weld overlays still structurally rely upon 25 percent of the primary water stress corrosion cracking material of the original butt weld to provide structural integrity for the weld. Further, the deposition of a more crack-resistant material such as Alloy 52/152 acts as a crack growth restriction, allowing growth along the susceptible original weld material rather than through the more crack resistant material that would provide leakage as a defense-in-depth measure to identify cracking. A 25-percent sample inspection could allow optimized weld overlayed welds to have cracks develop into the structural retaining material of an ASME Class 1 butt weld in the reactor coolant system. This condition is not true of full structural weld overlays, which the NRC has found can utilize a long-term examination frequency of a 25-percent sample. Because the design of the optimized weld overlay reduces the effectiveness of the defense-in-depth leak initiation method of identifying potential cracking, a volumetric examination of each weld is required to provide reasonable assurance of structural integrity for these optimized weld overlays. Therefore, the NRC is modifying the condition to state that after initial examination for Inspection Items C–2 and F–2 welds, optimized weld overlay examination volumes that show no indication of crack growth or new cracking shall be examined once each inspection interval.

ASME Code Case N–770–7 also creates a new Inspection Item category for auxiliary head adapter (AHA) butt welds, B–3. Some Westinghouse 4-loop plants have AHA butt welds connected to the upper reactor vessel closure head. The new Inspection Item B–3 caries the same inspection requirements of B–1, which the AHA butt welds fall under currently. The update to a new Inspection Item category was made to facilitate a change to the scope expansion requirements in the event that a crack was found in an AHA butt weld.

The purpose of a scope expansion examination is if a crack is found in one weld, examinations of similar welds should be performed to ensure no generic issues are identified with that type of location or operating condition. The Inspection Item category that AHA butt welds currently fall under, B–1, could trigger scope expansion examinations in any, and potentially all, unmitigated reactor coolant system welds. The AHA butt welds are approximately 6-inches in diameter and are located on top of the reactor pressure vessel head in a low or no flow area. This location, while being of the same weld material, is not generally operating under the same conditions as the rest of the reactor coolant butt welds in the primary system of a Westinghouse PWR. Therefore, the ASME Code revised Code Case N–770 in revision 7 to include the new category and modify the scope expansion rules to reflect this change. The NRC agrees with the change to address the intent of scope expansion if a flaw were to be identified in an AHA butt weld. Therefore, the NRC is proposing to update the augmented inservice inspection requirements of § 50.55a(g)(6)(ii)(F)(1) to mandate the use of N–770–7 in lieu of N–770–5.

C. ASME OM Code

Section 50.55a(a)(1)(iv), ASME Operation and Maintenance Code

The NRC proposes to amend the regulations in § 50.55a(a)(1)(iv)(C) to incorporate by reference the 2022 Edition of the ASME OM Code for nuclear power plants. The NRC is streamlining § 50.55a wherever possible to provide clearer IST regulatory requirements for nuclear power plant licensees and applicants. In the following paragraphs, the NRC includes certain proposed changes that are part of the § 50.55a streamlining efforts.

Section 50.55a(b)(3)(ii) OM Condition: Motor-Operated Valve (MOV) Testing

The NRC proposes to modify § 50.55a(b)(3)(ii) by removing conditions (A), (B), and (C) where licensees are implementing the 2022 Edition of the ASME OM Code as incorporated by reference in § 50.55a, because Appendix III, ''Preservice and Inservice Testing of Active Electric MOV Assemblies in Water-Cooled Reactor Nuclear Power Plants,'' to the 2022 Edition of the ASME OM Code appropriately incorporates the requirements specified in those conditions. Condition (D) has not been incorporated into the 2022 Edition of the ASME OM Code. Therefore, condition (D) in § 50.55a(b)(3)(ii) will continue to apply to all editions and addenda of the ASME OM Code incorporated by reference in § 50.55a.

Section 50.55a(b)(3)(iii) OM Condition: Check Valves

The NRC proposes to revise § 50.55a(b)(3)(iii) by removing condition (B), ''Check valves,'' which states that licensees must perform bi-directional testing of check valves within the IST program where practicable. New reactors are applying more recent editions of the ASME OM Code that require bi-directional testing of check valves. Therefore, condition (B) is not needed in § 50.55a(b)(3)(iii). The NRC proposes to reserve condition (B) in § 50.55a(b)(3)(iii) for possible future use.

Section 50.55a(b)(3)(iii) OM Condition: Flow-Induced Vibration

The NRC proposes to revise § 50.55a(b)(3)(iii) by removing condition (C), ''Flow-induced vibration,'' which states that licensees shall monitor flow-induced vibration from hydrodynamic loads and acoustic resonance during preservice testing or inservice testing to

identify potential adverse flow effects on components within the scope of the IST program. Based on regulatory experience with new reactor licensing, the NRC considers that flow-induced vibration is appropriately addressed during the licensing phase and initial testing program at each new reactor nuclear power plant. Therefore, condition (C) is not needed in § 50.55a(b)(3)(iii). The NRC proposes to reserve paragraph (C) in § 50.55a(b)(3)(iii) for possible future use.

Section 50.55a(b)(3)(vii) OM Condition: Snubber Visual Examination Interval Extension

The NRC proposes to add § 50.55a(b)(3)(vii) to clarify use of ASME OM Code, Subsection ISTD, ''Preservice and Inservice Requirements for Dynamic Restraints (Snubbers) in Water-Cooled Reactor Nuclear Power Plants,'' paragraph ISTD–4253, ''Additional Requirements for 10-year Interval,'' and Note 7 of the Table ISTD–4252–1, ''Visual Examination Table,'' with ASME OM Code Case OMN–15, Revision 2, ''Performance-Based Requirements for Extending the Snubber Operational Readiness Testing Interval at LWR Power Plants.'' OM Code Case OMN–15, Revision 2, Section 3.4, ''Code Case OMN–13,'' states that ''this Code Case [OMN–15] shall not be used in conjunction with Code Case OMN–13, 'Performance-Based Requirements for Extending Snubber Inservice Visual Examination Interval at LWR Power Plants.' '' OM Code Case OMN–13 is incorporated in paragraph ISTD–4253 and Note 7 of Table ISTD–4252–1 of the 2022 Edition of the ASME OM Code. The use of OM Code Case OMN–13 is prohibited in conjunction with the use of OM Code Case OMN–15. However, the specific language of paragraph ISTD–4253 and Note 7 of Table ISTD–4252–1 does not clarify that the use of paragraph ISTD–4253 and Note 7 of Table ISTD–4252–1 is optional. The NRC proposes to clarify the language in the ASME OM Code by stating that when implementing Subsection ISTD, paragraph ISTD–4253, and Note 7 of Table ISTD–4252–1, in the 2022 Edition of the ASME OM Code, incorporated by reference in paragraph (a)(1)(iv) of this section, to extend snubber visual examination beyond two refueling cycles (48 months), the licensee is prohibited from applying OM Code Case OMN–15, Revision 2.

Section 50.55a(b)(3)(x) OM Condition: Class 1 Pressure Relief Valve Sample Expansion

The NRC proposes to add § 50.55a(b)(3)(x) to clarify subparagraph *(1)* in paragraph *(c), Requirements for Testing Additional Valves,* of Section I–1320, ''Test Frequencies, Class 1 Pressure Relief Valves,'' in the ASME OM Code, Appendix I, ''Inservice Testing of Pressure Relief Devices in Water-Cooled Reactor Nuclear Power Plants,'' which states that for each valve tested for which the as-found set-pressure (first test actuation) exceeds the greater of either the plus/minus tolerance limit of the Owner-established set-pressure acceptance criteria of I–1310*(e)* or ±3 percent of valve nameplate set-pressure, two additional valves shall be tested from the same valve group. The expansion of the test sample provides reasonable assurance that a degradation mechanism that might cause multiple Class 1 Pressure Relief Valves to be incapable of performing their safety functions will be identified. Typically, it is expected that variations in actual valve performance will result in an Owner-established set-pressure acceptance criteria for Class 1 Pressure Relief Valves exceeding the default 3-percent valve nameplate set-pressure. The NRC has no concerns with the language of paragraph I–1320*(c)(1)* where the Owner-established set-pressure acceptance criteria are greater than the 3-percent default value. Based on plant-specific valve performance, the Owner might need to establish set-pressure acceptance criteria for Class 1 Pressure Relief Valves lower than the default 3-percent value. The failure of a Class 1 Pressure Relief Valve to meet the Owner-established set-pressure acceptance criteria can signify that the valve is incapable of performing its safety function. In such cases, it is important to determine whether other Class 1 Pressure Relief Valves also have performance problems that could cause them to be unable to perform their safety functions. However, the specific language of paragraph I–1320*(c)(1)* might be interpreted to not require an expansion of the test sample where the default 3-percent value is greater than the Owner-established set-pressure acceptance criteria. This might lead in an unsafe situation where the licensee is unaware that multiple Class 1 Pressure Relief Valves are incapable of performing their safety functions. To resolve this concern, the NRC proposes to clarify paragraph I–1320(c)(1) to be read that for each valve tested for which the as-found set-pressure (first test actuation) exceeds the plus/minus tolerance limit of the Owner-established design set-pressure acceptance criteria of I–1310(e), or ±3 percent of valve nameplate set-pressure if the Owner has not established design set-pressure acceptance criteria, two additional valves shall be tested from the same valve group. The specification of Owner-established ''design'' set-pressure acceptance criteria allows the licensee to establish specific criteria for testing purposes.

D. Editorial Correction

Section 50.55a(d) Quality Group B Components

The NRC proposes to make an editorial correction to § 50.55a(d), ''Quality Group B components,'' by replacing the colon at the end of the second sentence of the introductory paragraph with a period. When the introductory paragraph of § 50.55a(d) was expanded to include a reference to 10 CFR part 52, the new second sentence of the introductory paragraph incorrectly placed a colon at the end of the sentence rather than a period. The use of a colon implies that items (1) and (2) in § 50.55a(d) only apply to 10 CFR part 52 plants. However, item (1) of § 50.55a(d) specifies a requirement for applicants under 10 CFR part 50.

IV. Specific Requests for Comments

In the 2021 Edition of the ASME Code, Section XI, ASME removed the IWB–3134 and IWC–3125 requirements for nuclear plant owners to submit analytical evaluations to the regulatory authority having jurisdiction at the plant site. The NRC proposes to condition the 2021 Edition of the ASME Code, Section XI to require that such evaluations be submitted to the NRC, maintaining the status quo for U.S. plants. The analytical evaluation reports provide the NRC with a tool to efficiently inspect and validate flaws identified by a licensee and the activities to address them (*e.g.,* analysis for continued operation or repair/replacement). Furthermore, the reports provide the NRC with valuable operating experience data to monitor degradation trends across the industry to ensure public health and safety. There are other similar reporting requirements in § 50.55a, including § 50.55a(b)(2)(xxxii), § 50.55a(b)(2)(xliii), and § 50.55a(g)(6)(ii)(F)(6). The NRC is seeking advice and recommendations from the public on the proposed condition and the related requirements to ascertain their perceived value. We are particularly interested in comments and supporting rationale from the public on the following:

(1) What alternative means are there for the NRC to accomplish the goal of monitoring degradation trends such that the NRC could remove the condition?

(2) How can the NRC effectively leverage the information provided in flaw evaluations and associated component degradation in a way that is transparent to stakeholders and ensures structural integrity of nuclear components without incurring excessive administrative burden for plant owners?

V. Section-by-Section Analysis

Paragraph (a)(1)(i)(E)

This proposed rule would revise paragraphs (a)(1)(i)*(E)*(*19*) and *(20)* and add new paragraph (a)(1)(i)*(E)*(*21*) to include the 2021 Edition of the ASME BPV Code.

Paragraph (a)(1)(ii)(C)

This proposed rule would revise paragraphs (a)(1)(ii)*(C)(55) and (56)* and add new paragraph (a)(1)(ii)(C)*(57)* to include the 2021 Edition.

Paragraph (a)(1)(iii)(D)

This proposed rule would revise paragraph (a)(1)(iii)*(D)* to update ASME BPV Code Case N–770–5 to N–770–7 and to update the approval date to December 4, 2020.

Paragraph (a)(1)(iv)(C)

This proposed rule would revise paragraph (a)(1)(iv)*(C)* to add the 2022 Edition of the ASME OM Code.

Paragraph (b)(1)(iv)

This proposed rule would revise and redesignate existing paragraph (b)(1)(iv) as paragraph (b)(1)(iv) introductory text, add new paragraphs (b)(1)(iv)(A) and (B), and remove and reserve paragraph (b)(1)(iv)(B).

Paragraph (b)(1)(vi)

This proposed rule would revise paragraph (b)(1)(vi) to revise ''sleeves'' to ''sheaths'' and add a new sentence that this condition is not applicable to 2015 and later Editions.

Paragraph (b)(1)(xi)

This proposed rule would revise the introductory text to paragraph (b)(1)(xi) to clarify the applicable conditions and add two new conditions specific to polyethylene pressure piping when applying the 2015 through 2021 Editions. The proposed rule also would revise paragraph (b)(1)(xi)*(B)* to add the 2015 to 2021 Editions of BPV Code Section III.

Paragraph (b)(1)(xiii)

This proposed rule would revise the introductory text to paragraph (b)(1)(xiii) and paragraphs (b)(1)(xiii)*(A)* and (*B)* to update the applicability of the latest edition and addenda incorporated by reference in § 50.55a(a)(1).

Paragraph (b)(1)(xiv)

This proposed rule would add new paragraph (b)(1)(xiv) to require that Nonmandatory Appendix NN be used in its entirety.

Paragraph (b)(2)

This proposed rule would revise the introductory text of paragraph (b)(2) to refer the applicability to users of the editions incorporated by reference in paragraph (a)(1)(ii).

Paragraph (b)(2)(viii)

This proposed rule would revise paragraph (b)(2)(viii) to update the applicability of paragraphs (b)(2)(viii)*(H)* and (b)(2)(viii)*(I)* through the 2019 Edition.

Paragraph (b)(2)(ix)

This proposed rule would revise paragraph (b)(2)(ix) to update the applicability of paragraph (b)(2)(ix)(A)(2).

Paragraph (b)(2)(xv)

This proposed rule would eliminate this condition at paragraph (b)(2)(xv).

Paragraph (b)(2)(xxxiv)

This proposed rule would revise the introductory text to paragraph (b)(2)(xxxiv), leaving only the heading; revise paragraph (b)(2)(xxxiv)*(A)* and add new paragraphs (b)(2)(xxxiv)*(A)(1)* and *(B)(1)* to update the version of ASME BPV Code Case N–513 to the latest version currently approved in RG 1.147; and revise paragraph (b)(2)(xxxiv)*(B)* to prohibit the use of Nonmandatory Appendix U, Supplement U–S1 in the 2021 Edition of Section XI.

Paragraph (b)(2)(xliv)

This proposed rule would add new paragraph (b)(2)(xliv) to prohibit the use of Y–2200, Y–2440, and Y–3200 in the 2021 Edition of Section XI.

Paragraph (b)(2)(xlv)

This proposed rule would add new paragraph (b)(2)(xlv) to condition the provision of IWA–4540(a) and (e) of the 2021 Edition of the ASME Code, Section XI, to require that a VT–2 examination of the area affected by the repair/replacement activity be conducted during the Type C test in appendix J to this part.

Paragraph (b)(2)(xlvi)

This proposed rule would add new paragraph (b)(2)(xlvi) to prohibit a contracted Repair/Replacement Organization without an ASME Certificate of Authorization that does not apply an ASME Stamp/Certification Mark from fabricating ASME Code, Section III parts, appurtenances, piping subassemblies, and supports offsite of the Owner's facility (*e.g.,* vendor facility) when applying the provisions of IWA–4143 in the 2021 Edition of the ASME Code, Section XI.

Paragraph (b)(2)(xlvii)

This proposed rule would add new paragraph (b)(2)(xlvii) to require stress corrosion crack growth analysis of the weld overlay material under subparagraph Q–3000(a) of Nonmandatory Appendix Q in the 2021 Edition of the ASME Code, Section XI.

Paragraph (b)(2)(xlviii)

This proposed rule would add new paragraph (b)(2)(xlviii) to require that analytical evaluations performed in accordance with IWB–3132.3 and IWC–3132.3 be submitted to the NRC.

Paragraph (b)(2)(xlix)

This proposed rule would add paragraph (b)(2)(xlix) to prohibit the use of IWB–3600(b)(1) in the 2021 Edition of ASME BPV Code, Section XI (Division 1) for the inlay and onlay that are subject to the augmented inspection requirements in paragraph (g)(6)(ii)(F).

Paragraph (b)(3)(ii)

This proposed rule would revise the introductory text to paragraph (b)(3)(ii) to exclude conditions (A), (B) and (C) from being applicable to the 2022 Edition of the ASME OM Code because those conditions have been incorporated into that edition of the ASME OM Code.

Paragraph (b)(3)(iii)

This proposed rule would revise paragraph (b)(3)(iii) to remove and reserve for future use the conditions in paragraphs (b)(3)(iii)(B) and (C) because those conditions are required by other regulations for new reactors.

Paragraph (b)(3)(vii)

This proposed rule would replace reserved paragraph (b)(3)(vii) with a new condition on ASME OM Code, Subsection ISTD, paragraph ISTD–4253, and Note 7 of the Table ISTD–4252–1 related to snubbers to be consistent with the accepted provisions in OM Code Case OMN–15.

Paragraph (b)(3)(x)

This proposed rule would create a new paragraph (b)(3)(x) to clarify the requirement for expanding the test sample for Class 1 Pressure Relief Valves specified in ASME OM Code, Appendix I, paragraph I–1320*(c)(1).*

Paragraph (d)

This proposed rule would revise the introductory text of paragraph (d) by correcting an editorial error. The colon would be replaced with a period, at the end of the second sentence.

Paragraph (g)(6)(ii)(D)(9)

This proposed rule would add new paragraph (g)(6)(ii)(D)(9) to allow licensees the option to utilize Supplement 15 of Mandatory Appendix VIII, in the 2021 Edition or later of Section XI incorporated by reference in § 50.55a, for volumetric qualification of examinations required by Table 1 of ASME Code Case N–729–6.

Paragraph (g)(6)(ii)(F)(1)

This proposed rule would revise paragraph (g)(6)(ii)(F)(1) to update the requirements for the augmented inspection of dissimilar-metal butt welds in U.S. PWRs from ASME Code Case N–770–5 to N–770–7 and to update the dates to conform with this proposed rule.

Paragraph (g)(6)(ii)(F)(8)

This proposed rule would modify the existing condition in paragraph (g)(6)(ii)(F)(8) to retain, in part, the volumetric examination frequency of ASME Code Case N–770–5, which was changed in N–770–6.

VI. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

VII. Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC requests public comment on the draft regulatory analysis. The regulatory analysis is available as indicated in the ''Availability of Documents'' section of this document. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** caption of this document.

VIII. Backfitting and Issue Finality

Introduction

The NRC's Backfit Rule in § 50.109 states that the NRC shall require the backfitting of a facility only when it finds the action to be justified under specific standards stated in the rule. Section 50.109(a)(1) defines backfitting as the modification of or addition to systems, structures, components, or design of a facility; the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct, or operate a facility. Any of these modifications or additions may result from a new or amended provision in the NRC's rules or the imposition of a regulatory position interpreting the NRC's rules that is either new or different from a previously applicable NRC position after issuance of the construction permit or the operating license or the design approval.

Section 50.55a requires nuclear power plant licensees to:

- Construct ASME BPV Code Class 1, 2, and 3 components in accordance with the rules provided in Section III, Division 1, of the ASME BPV Code (''Section III'').
- Inspect, examine, and repair or replace Class 1, 2, 3, Class MC, and Class CC components in accordance with the rules provided in Section XI, Division 1, of the ASME BPV Code (''Section XI'').
- Test Class 1, 2, and 3 pumps and valves in accordance with the rules provided in the ASME OM Code.
- Inspect, examine, repair or replace, and test Class 1, 2, and 3 dynamic restraints (snubbers) in accordance with the rules provided in either the ASME OM Code or Section XI, depending on the Code Edition.

This rulemaking proposes to incorporate by reference the 2021 Edition of the ASME BPV Code, Section III, Division 1, and ASME BPV Code, Section XI, Division 1, as well as the 2022 Edition of the ASME OM Code.

The ASME BPV and OM Codes are national consensus standards developed by participants with broad and varied interests, in which all interested parties (including the NRC and utilities) participate. A consensus process involving a wide range of stakeholders is consistent with the NTTAA, inasmuch as the NRC has determined that there are sound regulatory reasons for establishing regulatory requirements for design, maintenance, ISI, and IST by rulemaking. The process also facilitates early stakeholder consideration of backfitting issues. Therefore, the NRC finds that the NRC need not address backfitting with respect to the NRC's general practice of incorporating by reference updated ASME Codes.

Overall Backfitting Considerations: Section III of the ASME BPV Code

Incorporation by reference of more recent editions and addenda of Section III of the ASME BPV Code does not affect a plant that has received a construction permit or an operating license or a design that has been approved. This is because the edition and addenda to be used in constructing a plant are, under § 50.55a, determined based on the date of the construction permit or combined license, and are not changed thereafter, except voluntarily by the licensee. The incorporation by reference of more recent editions and addenda of Section III ordinarily applies only to applicants after the effective date of the final rule incorporating these new editions and addenda. Therefore, incorporation by reference of a more recent edition and addenda of Section III does not constitute ''backfitting'' as defined in § 50.109(a)(1).

Overall Backfitting Considerations: Section XI of the ASME BPV Code and the ASME OM Code

Incorporation by reference of more recent editions and addenda of Section XI of the ASME BPV Code and the ASME OM Code affects the ISI and IST programs of operating reactors. However, the Backfit Rule generally does not apply to incorporation by reference of later editions of the ASME BPV Code (Section XI) and OM Code. As previously mentioned, the NRC's longstanding regulatory practice has been to incorporate later versions of the ASME Codes into § 50.55a. Under § 50.55a, licensees must periodically update their ISI and IST programs to the latest edition of Section XI of the ASME BPV Code and the ASME OM Code incorporated by reference into § 50.55a 18 months before the start of a new code of record interval. Therefore, when the NRC approves and requires the use of a later version of the Code for ISI and IST, it is implementing this longstanding regulatory practice and requirement.

Other circumstances where the NRC does not apply the Backfit Rule to the approval and requirement to use later Code editions are as follows:

1. When the NRC takes exception to a later ASME BPV Code or OM Code provision but merely retains the current existing requirement, prohibits the use of the later Code provision, limits the use of the later Code provision, or supplements the provisions in a later Code, the Backfit Rule does not apply because the NRC is not imposing new

requirements. However, the NRC explains any such exceptions to the Code in the preamble to and regulatory analysis for the rule.

2. When an NRC exception relaxes an existing ASME BPV Code or OM Code provision but does not prohibit a licensee from using the existing Code provision, the Backfit Rule does not apply because the NRC is not imposing new requirements.

3. Modifications and limitations imposed during previous routine updates of § 50.55a have established a precedent for determining which modifications or limitations are backfits, or require a backfit analysis (*e.g.,* final rule dated September 10, 2008 (73 FR 52731), and a correction dated October 2, 2008 (73 FR 57235)). The application of the backfit requirements to modifications and limitations in the current rule are consistent with the application of backfit requirements to modifications and limitations in previous rules.

The incorporation by reference and adoption of a requirement mandating the use of a later ASME BPV Code or OM Code may constitute backfitting in some circumstances. In these cases, the NRC would perform a backfit analysis or documented evaluation in accordance with § 50.109. These include the following:

1. When the NRC endorses a later provision of the ASME BPV Code or OM Code that takes a substantially different direction from the existing requirements, the action is treated as a backfit (*e.g.,* 61 FR 41303; August 8, 1996).

2. When the NRC requires implementation of a later ASME BPV Code or OM Code provision on an expedited basis, the action is treated as a backfit. This applies when implementation is required sooner than it would be required if the NRC simply endorsed the Code without any expedited language (*e.g.,* 64 FR 51370; September 22, 1999).

3. When the NRC takes an exception to an ASME BPV Code or OM Code provision and imposes a requirement that is substantially different from the existing requirement as well as substantially different from the later Code (*e.g.,* 67 FR 60529; September 26, 2002).

Detailed Backfitting Discussion: Proposed Changes Beyond Those Necessary To Incorporate by Reference the New ASME BPV and OM Code Provisions

This section discusses the backfitting considerations for all the proposed changes to § 50.55a that go beyond the minimum changes necessary and required to adopt the new ASME Code edition into § 50.55a.

ASME BPV Code, Section III

1. Revise § 50.55a(b)(1)(iv) to not approve Subpart 2.19 in NQA–1–17, NQA–1–19 and NQA–1–22 for use. This proposed revision clarifies current requirements and is considered to be consistent with the meaning and intent of current requirements. The proposed condition does not constitute a new or changed NRC position. Therefore, this proposed condition is not a backfit.

2. Revise § 50.55a(b)(1)(vi) to change the word sleeves to sheaths and to note that this condition is not applicable to 2015 and later Editions. This condition is not applicable to 2015 and later Editions as Subsection NH is deleted from Section III Division 1. The revisions to clarify a word and clarification of Code Edition applicability do not constitute a change in NRC position. Therefore, this is not a backfit.

3. Revise § 50.55a(b)(1)(xi) to revise this condition regarding the applicability to specific Code editions. When applying the 2015 and 2017 Editions of Section III, Mandatory Appendix XXVI, ''Rules for Construction of Class 3 Buried Polyethylene Pressure Piping,'' applicants or licensees must meet the first provision, as noted in 50.55a(b)(1)(xi)(A). When applying the 2015 through 2021 Editions of Section III, Mandatory Appendix XXVI, ''Rules for Construction of Class 3 Buried Polyethylene Pressure Piping,'' applicants or licensees must meet the second provision, as noted in 50.55a(b)(1)(xi)(B). When applying the 2017 Edition of Section III, Mandatory Appendix XXVI, ''Rules for Construction of Class 3 Buried Polyethylene Pressure Piping,'' applicants or licensees must meet the third provision, as noted in 50.55a(b)(1)(xi)(C). The revision is only for Code editions applicability and does not constitute a new or changed NRC position. Therefore, this change is not a backfit.

4. Revise § 50.55a(b)(1)(xiii) including the first provision, § 50.55a(b)(1)(xiii)(A), and second provision, § 50.55a(b)(1)(xiii)(B), to extend the applicability of the conditions through the latest edition of the ASME BPV Code, Section III incorporated by reference in paragraph (a)(1)(i). The NRC is proposing to revise this condition to apply to the latest edition incorporated by reference, which is not a change to NRC position and, therefore, is not a backfit.

5. Add § 50.55a(b)(1)(xiv) to condition the use of the provisions of NCA–8151, NCA–8500, and Nonmandatory Appendix NN in the 2021 Edition of Section III, to require that when Nonmandatory Appendix NN is used for the elimination of surface defects and repairs of stamped components prior to the completion of Form N–3 Data Report, all applicable requirements of Nonmandatory Appendix NN shall be met. The proposed condition on Nonmandatory Appendix NN does not constitute a new or changed NRC position. Therefore, the addition of this proposed condition is not a backfit.

ASME BPV Code, Section XI

1. Revise § 50.55a(b)(2)(viii), to remove the applicability of § 50.55a(b)(2)(viii)(H) and (I) from the 2021 Edition. These changes to § 50.55a(b)(2)(viii) remove conditions that were incorporated in the 2021 Edition. Therefore, this change is not a backfit.

2. Revise § 50.55a(b)(2)(ix), to remove the applicability of § 50.55a(b)(2)(ix)(A)(2) from the 2021 Edition. This change to § 50.55a(b)(2)(ix) removes a condition that was incorporated into the 2021 Edition. Therefore, this change is not a backfit.

3. Remove and reserve § 50.55a(b)(2)(xv). This condition is applicable to older Editions of Section XI that are no longer in use by licensees. Removing this condition does not modify current licensee inservice inspection requirements and, therefore, is not a backfit.

4. Revise § 50.55a(b)(2)(xxxiv)(A) to modify the cited version of ASME Code Case N–513 to the latest version approved in RG 1.147. The revised condition is renumbered § 50.55a(b)(2)(xxxiv)(A)(2). There is no change to the requirements and therefore, this revision is not a backfit.

5. Add § 50.55a(b)(2)(xxxiv)(B) to prohibit the use of Nonmandatory Appendix U, Supplement U–S1. Supplement U–S1 of Nonmandatory Appendix U is obsolete relative to Code Case N–513, as included in the latest revision of RG 1.147 incorporated by reference in § 50.55a(a)(3)(ii). Licensees have adopted the updated rules in Code Case N–513 for temporary acceptance of flaws in moderate energy Class 2 and 3 piping. This revision does not modify the current inservice inspection regulatory requirements and, therefore, is not a backfit.

6. Add § 50.55a(b)(2)(xliv) to prohibit the use of Article Y–2200, Subarticle Y–2440, and Article Y–3200 in Nonmandatory Appendix Y. These articles have corresponding Code Cases,

which have been included in the latest revision of RG 1.147 incorporated by reference in § 50.55a(a)(3)(ii). Licensees have adopted the crack growth laws in the corresponding Code Cases: Cases N–809, N–889, and N–643, respectively. The proposed condition on Nonmandatory Appendix Y does not constitute a new or changed NRC position. Therefore, the addition of this proposed condition is not a backfit.

7. Add § 50.55a(b)(2)(xlv) to condition the provision of IWA–4540(a) and (e) of the 2021 Edition of the ASME Code, Section XI, to require that a VT–2 examination be performed of the area affected by the repair/replacement activity during the Type C test in appendix J to 10 CFR part 50. The proposed condition on IWA–4540(a) and (e) does not constitute a new or changed NRC position. Therefore, the addition of this proposed condition is not a backfit.

8. Add § 50.55a(b)(2)(xlvi) to condition the provision of IWA–4143 of the 2021 Edition of the ASME Code, Section XI, by prohibiting a contracted Repair/Replacement Organization from fabricating a part offsite of the Owner's facility (*e.g.,* vendor facility) without an ASME Certificate of Authorization and without applying an ASME Stamp/Certification Mark. The proposed condition on IWA–4143 does not constitute a new or changed NRC position. Therefore, the addition of this proposed condition is not a backfit.

9. Add § 50.55a(b)(2)(xlvii) to prevent a new exemption in the 2021 Edition of subparagraph Q–3000(a) of the requirement to remove stress corrosion crack growth analysis of the overlay material. This is a new condition that retains the previous requirements and allowances of the previous approved version of Nonmandatory Appendix Q, and accordingly, is not a new or changed position. Therefore, the addition of this proposed condition is not a backfit.

10. Add § 50.55a(b)(2)(xlviii) to require submission of analytical evaluations performed under IWB–3132.3 and IWC–3122.3 to the NRC. This is a new condition that retains the requirements of the previous approved version of Section XI, and accordingly, is not a new or changed position. Therefore, the addition of this proposed condition is not a backfit.

11. Add 10 CFR 50.55a(b)(2)(xlix) to prohibit the use of IWB–3600(b)(1) in the 2021 Edition of the Code for the inlay and onlay that are subject to the augmented inspections specified in paragraph (g)(6)(ii)(F) of this section. The proposed condition on the analytical evaluation of a flaw in the inlay or onlay does not constitute a new or changed NRC position. Therefore, the addition of this proposed condition is not a backfit.

12. Add § 50.55a(g)(6)(ii)(D)(9) to allow licensees the option to utilize Supplement 15 of Mandatory Appendix VIII in the 2021 Edition or later of Section XI, incorporated by reference in § 50.55a, for volumetric qualification of examinations required by Table 1 of ASME Code Case N–729–6. Providing licensees the option of using either the qualification program in ASME Code Case N–729–6 or Supplement 15 of Mandatory Appendix VIII does not constitute a new or changed NRC position. No backfit is implied with the option to allow a new volumetric qualification option for licensees to utilize. No increase in requirements is expected.

13. Modify 50.55a(a)(1)(iii)(D) and 50.55a(g)(6)(ii)(F) to update the requirements for the augmented inspection of dissimilar-metal butt welds in U.S. PWRs from ASME Code Case N–770–5 to N–770–7. This change will require one condition to be updated, § 50.55a(g)(6)(ii)(F)(*1*), and one condition modified to retain an inspection frequency for optimized butt welds consistent with ASME Code Case N–770–5. The current regulatory requirements for the examination frequency of Inspection Items C–2 and F–2 welds have not changed. The change in examination categorization for B–3 provides no change to inspection frequency or requirements. The change in scope expansion requirements is a reduction in the requirements if a flaw is identified in an AHA butt weld consistent with the regulatory purpose of examination scope expansion. Therefore, the update and modification of previous conditions are not backfits.

ASME OM Code

1. Revise § 50.55a(b)(3)(ii) by removing conditions (A), (B), and (C) where licensees are implementing the 2022 Edition of the ASME OM Code as incorporated by reference in § 50.55a, because Appendix III to the 2022 Edition of the ASME OM Code appropriately incorporates the requirements specified in those conditions. The revisions do not modify the current IST regulatory requirements and, therefore, are not backfits.

2. Delete condition (B) in § 50.55a(b)(3)(iii), which states that licensees of new reactors must perform bi-directional testing of check valves within the IST program where practicable. The licensees of new reactors are required to apply more recent editions of the ASME OM Code that require bi-directional testing of check valves. Therefore, condition (B) is not needed in § 50.55a(b)(3)(iii). This change does not modify the current IST regulatory requirements and, therefore, is not a backfit.

3. Delete condition (C) in § 50.55a(b)(3)(iii), which states that licensees of new reactors shall monitor flow-induced vibration from hydrodynamic loads and acoustic resonance during preservice testing or inservice testing to identify potential adverse flow effects on components within the scope of the IST program. Based on regulatory experience with new reactor licensing, the NRC considers that flow-induced vibration is appropriately addressed during the licensing phase and initial testing program at each new reactor nuclear power plant. Therefore, condition (C) is not needed in § 50.55a(b)(3)(iii). This change does not modify the current IST regulatory requirements and, therefore, is not a backfit.

4. Create a new § 50.55a(b)(3)(vii) to clarify use of ASME OM Code, Subsection ISTD, paragraph ISTD–4253, and Note 7 of the Table ISTD–4252–1, with the ASME OM Code Case OMN–15, Revision 2. This modification reflects a clarification of ASME OM Code, Subsection ISTD, paragraph ISTD–4253 and Table ISTD–4252–1, is not a new or changed NRC position, and therefore, is not a backfit.

5. Create a new § 50.55a(b)(3)(x) to clarify ASME OM Code, Appendix I, paragraph I–1320(c)*(1),* which states that for each valve tested for which the as-found set-pressure (first test actuation) exceeds the greater of either the plus/minus tolerance limit of the Owner-established design set-pressure acceptance criteria of paragraph I–1310*(e)* or ±3 percent of valve nameplate set-pressure, two additional valves shall be tested from the same valve group. The expansion of the test sample provides reasonable assurance that a degradation mechanism that might cause multiple Class 1 Pressure Relief Valves to be incapable of performing their safety functions will be identified. However, the specific language of paragraph I–1320*(c)(1)* might be interpreted to not require an expansion of the test sample where the default 3-percent value is greater than the Owner-established set-pressure acceptance criteria. This modification reflects a clarification of ASME OM Code, Appendix I, paragraph I–1320(c)(1), is not a new or changed NRC position, and, therefore, is not a backfit.

ASME Editorial Correction

1. Replace the colon at the end of the second sentence of the introductory paragraph of § 50.55a(d) with a period. This is an editorial correction and, therefore, not a backfit.

Conclusion

The NRC finds that incorporation by reference into § 50.55a of the 2021 Edition of Section III, Division 1, of the ASME BPV Code subject to the identified conditions; the 2021 Edition of Section XI, Division 1, of the ASME BPV Code, subject to the identified conditions; and the 2022 Edition of the ASME OM Code subject to the identified conditions, does not constitute backfitting or represent an inconsistency with any issue finality provisions in 10 CFR part 52.

IX. Generic Aging Lessons Learned Report

Background

In December 2010, the NRC issued ''Generic Aging Lessons Learned (GALL) Report,'' NUREG–1801, Revision 2 (ML103490041), for applicants to use in preparing license renewal applications. The GALL Report provides aging management programs (AMPs) that the NRC has concluded are sufficient for aging management in accordance with the license renewal rule, as required in § 54.21(a)(3). In addition, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants,'' NUREG–1800, Revision 2 (ML103490036), was issued in December 2010, to ensure the quality and uniformity of NRC reviews of license renewal applications and to present a well-defined basis on which the NRC evaluates the applicant's AMPs and activities. In April 2011, the NRC also issued ''Disposition of Public Comments and Technical Bases for Changes in the License Renewal Guidance Documents NUREG–1801 and NUREG–1800,'' NUREG–1950 (ML11116A062), which describes the technical bases for the changes in Revision 2 of the GALL Report and Revision 2 of the standard review plan (SRP) for review of license renewal applications.

Revision 2 of the GALL Report, in Sections XI.M1, XI.S1, XI.S2, XI.M3, XI.M5, XI.M6, XI.M11B, and XI.S3, describes the evaluation and technical bases for determining the sufficiency of ASME BPV Code Subsections IWB, IWC, IWD, IWE, IWF, or IWL for managing aging during the period of extended operation (*i.e.,* up to 60 years of operation). In addition, many other AMPs in the GALL Report rely, in part but to a lesser degree, on the requirements specified in the ASME BPV Code, Section XI. Revision 2 of the GALL Report also states that the 1995 Edition through the 2004 Edition of the ASME BPV Code, Section XI, Subsections IWB, IWC, IWD, IWE, IWF, or IWL, as modified and limited by § 50.55a, were found to be acceptable editions and addenda for complying with the requirements of § 54.21(a)(3), unless specifically noted in certain sections of the GALL Report. The GALL Report further states that future **Federal Register** documents that amend § 50.55a will discuss the acceptability of editions and addenda more recent than the 2004 Edition for their applicability to license renewal. In a final rule issued on June 21, 2011 (76 FR 36232), subsequent to Revision 2 of the GALL Report, the NRC also found that the 2004 Edition with the 2005 Addenda through the 2007 Edition with the 2008 Addenda of Section XI of the ASME BPV Code, Subsections IWB, IWC, IWD, IWE, IWF, or IWL, as subject to the conditions in § 50.55a, are acceptable for the AMPs in the GALL Report and the conclusions of the GALL Report remain valid with the augmentations specifically noted in the GALL Report. In a final rule issued on July 18, 2017 (82 FR 32934), the NRC further found that the 2009 Addenda through the 2017 Edition of Section XI of the ASME BPV Code, Subsections IWB, IWC, IWD, IWE, IWF, or IWL, as subject to the conditions in § 50.55a, are acceptable for the AMPs in the GALL Report. In a final rule issued on May 4, 2020 (85 FR 26540), the NRC further found that Subsections IWB, IWC, IWD, IWE, IWF, or IWL of Section XI of the 2015 Edition and the 2017 Edition of the ASME BPV Code, as subject to the conditions in § 50.55a, are acceptable for the AMPs in the GALL Report. In a final rule issued on October 27, 2022 (87 FR 65128), the NRC further found that Subsections IWB, IWC, IWD, IWE, IWF, or IWL of Section XI of the 2019 Edition of the ASME BPW Code, as subject to the conditions in § 50.55a, are acceptable for the AMPs in the GALL Report.

In July 2017, the NRC issued ''Generic Aging Lessons Learned for Subsequent License Renewal (GALL–SLR) Report,'' NUREG–2191 (ML17187A031 and ML17187A204), for applicants to use in preparing applications for subsequent license renewal. The GALL–SLR Report provides AMPs that are sufficient for aging management for the subsequent period of extended operation (*i.e.,* up to 80 years of operation), as required in § 54.21(a)(3). The NRC also issued ''Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants'' (SRP–SLR), NUREG–2192 in July 2017 (ML17188A158). In a similar manner as the GALL Report does, the GALL–SLR Report, in Sections XI.M1, XI.S1, XI.S2, XI.M3, XI.11B, and XI.S3, describes the evaluation and technical bases for determining the sufficiency of ASME BPV Code Subsections IWB, IWC, IWD, IWE, IWF, or IWL for managing aging during the subsequent period of extended operation. Many other AMPs in the GALL–SLR Report rely, in part but to a lesser degree, on the requirements specified in the ASME BPV Code, Section XI. The GALL–SLR Report also indicates that the 1995 Edition through the 2013 Edition of the ASME BPV Code, Section XI, Subsections IWB, IWC, IWD, IWE, IWF, or IWL, as subject to the conditions in § 50.55a, are acceptable for complying with the requirements of § 54.21(a)(3), unless specifically noted in certain sections of the GALL–SLR Report.

Evaluation With Respect to Aging Management

As part of this proposed rule, the NRC evaluated whether those AMPs in the GALL Report and GALL–SLR Report that rely upon Subsections IWB, IWC, IWD, IWE, IWF, or IWL of Section XI in the editions and addenda of the ASME BPV Code incorporated by reference into § 50.55a, in general continue to be acceptable if the AMP relies upon these Subsections in the 2021 Edition. The NRC finds that the 2021 Edition of Section XI of the ASME BPV Code, Subsections IWB, IWC, IWD, IWE, IWF, or IWL, as subject to the conditions of this proposed rule, are acceptable for the AMPs in the GALL Report and GALL–SLR Report with the exception of augmentation, as specifically noted in those reports, and the NRC finds that the conclusions of the GALL Report and GALL–SLR Report remain valid. Accordingly, an applicant for license renewal (including subsequent license renewal) may use, in its plant-specific license renewal application, Subsections IWB, IWC, IWD, IWE, IWF, or IWL of Section XI of the 2021 Edition of the ASME BPV Code, as subject to the conditions in this proposed rule, without additional justification. Similarly, a licensee approved for license renewal that relied on the AMPs may use Subsections IWB, IWC, IWD, IWE, IWF, or IWL of Section XI of the 2021 Edition of the ASME BPV Code. However, applicants must assess and follow applicable NRC requirements with regard to licensing basis changes and evaluate the possible impact on the elements of existing AMPs.

Some of the AMPs in the GALL Report and GALL–SLR Report recommend augmentation of certain Code requirements in order to ensure adequate aging management for license renewal. The technical and regulatory aspects of the AMPs for which augmentations are recommended also apply if the 2021 Edition of Section XI of the ASME BPV Code is used to meet the requirements of § 54.21(a)(3). The NRC evaluated the changes in the 2021 Edition of Section XI of the ASME BPV Code to determine if the augmentations described in the GALL Report and GALL–SLR Report remain necessary; the NRC's evaluation has concluded that the augmentations described in the GALL and GALL–SLR Reports are necessary to ensure adequate aging management.

For example, GALL–SLR Report AMP XI.S3, ''ASME Section XI, Subsection IWF,'' recommends that volumetric examination consistent with that of the ASME BPV Code, Section XI, Table IWB–2500–1, Examination Category B–G–1 should be performed to detect cracking for high strength structural bolting (actual measured yield strength greater than or equal to 150 kilopound per square inch (ksi)) in sizes greater than 1 inch nominal diameter. The GALL–SLR Report also indicates that this volumetric examination may be waived with adequate plant-specific justification. This guidance for aging management in the GALL–SLR Report is the augmentation of the visual examination specified in Subsection IWF of the 2021 Edition of the ASME BPV Code, Section XI.

A license renewal applicant may either augment its AMPs as described in the GALL Report and GALL–SLR Report (for operation up to 60 and 80 years respectively) or propose alternatives for the NRC to review as part of the applicant's plant-specific justification for its AMPs.

X. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

XI. Environmental Assessment and Final Finding of No Significant Environmental Impact

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

This proposed rule is in accordance with the NRC's policy to incorporate by reference in § 50.55a new editions of the ASME BPV and OM Codes to provide updated rules for construction and inspecting components and testing pumps, valves, and dynamic restraints (snubbers) in light-water nuclear power plants. The ASME Codes are national voluntary consensus standards and are required by the NTTAA to be used by Government agencies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. The proposed rule does not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off-site, and there is no significant increase in public radiation exposure. This proposed rule does not involve non-radiological plant effluents and has no other environmental impact. Therefore, no significant non-radiological impacts are associated with this action.

The determination of this environmental assessment is that there will be no significant effect on the quality of the human environment from this action. Public stakeholders should note, however, that comments on any aspect of this environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** caption.

XII. Paperwork Reduction Act Statement

This proposed rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget (OMB), approval number 3150–0011.

Public Protection Notification

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

XIII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is continuing to use the ASME BPV and OM Codes by incorporating by reference the 2021 Edition of the BPV Code and the 2022 Edition of the OM Code. The ASME Code editions constitute voluntary consensus standards, in which all interested parties (including the NRC and licensees of nuclear power plants) participate. The NRC invites comment on the applicability and use of other standards.

XIV. Public Meeting

The NRC will conduct a public meeting on the proposed rule for the purpose of describing the updates to the Code editions. The NRC staff will be available to answer questions from the public regarding this proposed rule.

The NRC will publish a notice of the location, time, and agenda of the meeting in the **Federal Register**, on *Regulations.gov,* and on the NRC's public meeting website within at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: *https://www.nrc.gov/public-involve/public-meetings/index.cfm.*

XV. Incorporation by Reference—Reasonable Availability to Interested Parties

The NRC proposes to incorporate by reference two recent editions to the ASME Codes for nuclear power plants. As described in the ''Background'' and ''Discussion'' sections of this document, these materials contain standards for the design, fabrication, and inspection of nuclear power plant components.

The NRC is required by law to obtain approval for incorporation by reference from the Office of the Federal Register (OFR). The OFR's requirements for incorporation by reference are set forth in 1 CFR part 51. On November 7, 2014, the OFR adopted changes to its regulations governing incorporation by reference (79 FR 66267). The OFR regulations require an agency to include in a proposed rule a discussion of the ways that the materials the agency proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those

materials reasonably available to interested parties. The discussion in this section complies with the requirement for proposed rules as set forth in § 51.5(a)(1).

The NRC considers ''interested parties'' to include all potential NRC stakeholders, not only the individuals and entities regulated or otherwise subject to the NRC's regulatory oversight. These NRC stakeholders are not a homogenous group but vary with respect to the considerations for determining reasonable availability. Therefore, the NRC distinguishes between different classes of interested parties for the purposes of determining whether the material is ''reasonably available.'' The NRC considers the following to be classes of interested parties in NRC rulemakings with regard to the material to be incorporated by reference:

- Individuals and small entities regulated or otherwise subject to the NRC's regulatory oversight (this class also includes applicants and potential applicants for licenses and other NRC regulatory approvals) and who are subject to the material to be incorporated by reference by rulemaking. In this context, ''small entities'' has the same meaning as a ''small entity'' under § 2.810.
- Large entities otherwise subject to the NRC's regulatory oversight (this class also includes applicants and potential applicants for licenses and other NRC regulatory approvals) and who are subject to the material to be incorporated by reference by rulemaking. In this context, ''large entities'' are those that do not qualify as a ''small entity'' under § 2.810.
- Non-governmental organizations with institutional interests in the matters regulated by the NRC.
- Other Federal agencies, States, local governmental bodies (within the meaning of § 2.315(c)).
- Federally-recognized and State-recognized [3] Indian Tribes.
- Members of the public (*i.e.,* individual, unaffiliated members of the public who are not regulated or otherwise subject to the NRC's regulatory oversight) who may wish to gain access to the materials that the NRC proposes to incorporate by reference by rulemaking in order to participate in the rulemaking process.

The 2021 Edition of the ASME BPV Code and the 2022 Edition of the ASME OM Code may be viewed, by appointment, at the Technical Library, which is located at Two White Flint, 11545 Rockville Pike, Rockville, Maryland 20852. You may submit your request to the Technical Library via email at *Library.Resource@nrc.gov* between 8:00 a.m. and 4:00 p.m. eastern time, Monday through Friday, except Federal holidays. In addition, as described in Section XV of this document, documents related to this proposed rule are available online in the NRC's ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.*

Interested parties may purchase a copy of the ASME materials from ASME at Three Park Avenue, New York, NY 10016, or at the ASME website *https://www.asme.org/shop/standards.* The materials are also accessible through third-party subscription services such as IHS (15 Inverness Way East, Englewood, CO 80112; *https://global.ihs.com*) and Thomson Reuters Techstreet (3916 Ranchero Dr., Ann Arbor, MI 48108; *https://www.techstreet.com*). The purchase prices for individual documents range from $325 to $720 and the cost to purchase all documents is approximately $9,000.

For the class of interested parties constituting members of the public who wish to gain access to the materials to be incorporated by reference in order to participate in the rulemaking, the NRC recognizes that the $9,000 cost may be so high that the materials could be regarded as not reasonably available for purposes of commenting on this proposed rule, despite the NRC's actions to make the materials available at the NRC's PDR. Accordingly, the NRC requested that ASME consider enhancing public access to these materials during the public comment period. On March 2, 2023, the ASME agreed to make the materials available online in a read-only electronic access format during the public comment period (ML23068A033). Therefore, the two editions of the ASME Codes for nuclear power plants that the NRC proposes to incorporate by reference in this rulemaking are available in read-only format at the ASME website *https://go.asme.org/NRC-ASME.*

The materials are available to all interested parties in multiple ways and in a manner consistent with their interest in this proposed rule. Therefore, the NRC concludes that the materials the NRC proposes to incorporate by reference in this proposed rule are reasonably available to all interested parties.

XVI. Availability of Documents

The NRC is making the documents identified in Table 1 available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see the **ADDRESSES** section of this document.

TABLE 1—AVAILABILITY OF DOCUMENTS

Document	ADAMS accession No.
Proposed Rule Documents:	
Rulemaking: Proposed Rule: Regulatory Analysis for American Society of Mechanical Engineers 2021–2022 Code Editions Update, July 2023.	ML23032A316.
Rulemaking: Proposed Rule: Unofficial Redline Strikeout of the NRC's Proposed Rule: RE: Proposed Rule to Incorporate by Reference American Society of Mechanical Engineers Codes, July 2023.	ML23032A318.
Related Documents:	
Draft regulatory guide (DG), DG–1403, ''Quality Assurance Program Criteria (Design and Construction),'' April 2023.	ML22304A054.
Rulemaking: Proposed Rule: Email from Kathryn Hyam (ASME) to Louise Lund (NRC), Request for Limited Public Access of Code for Public Comment Period, March 2, 2023.	ML23068A033.
Staff Requirements—Affirmation Session, 11:30 a.m., Friday, September 10, 1999, Commissioners' Conference Room, One White Flint North, Rockville, Maryland (Open to Public Attendance).	ML003755050.
Regulatory Guide 1.147, Revision 20, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' December 2021.	ML21181A222.
NUREG–1801, Revision 2, ''Generic Aging Lessons Learned (GALL) Report,'' December 2010	ML103490041.

[3] State-recognized Indian Tribes are not within the scope of § 2.315(c). However, for purposes of the NRC's compliance with 1 CFR 51.5, ''interested parties'' includes a broad set of stakeholders, including State-recognized Indian Tribes.

TABLE 1—AVAILABILITY OF DOCUMENTS—Continued

Document	ADAMS accession No.
NUREG–1800, Revision 2, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants,'' December 2010.	ML103490036.
NUREG–2191, ''Generic Aging Lessons Learned for Subsequent License Renewal (GALL–SLR) Report,'' July 2017.	ML17187A031 ML17187A204.
NUREG–1950, ''Disposition of Public Comments and Technical Bases for Changes in the License Renewal Guidance Documents NUREG–1801 and NUREG–1800,'' April 2011.	ML11116A062.
NUREG–2192, ''Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants,'' July 2017.	ML17188A158.
Final Safety Evaluation Enclosure for NEI 14–05A, Rev. 1, November 23, 2020	ML20322A019.
Nuclear Energy Institute (NEI) 14–05A, ''Guidelines for the Use of Accreditation in Lieu of Commercial Grade Surveys for Procurement of Laboratory Calibration and Test Services,'' Revision 1, May 2020.	ML20135H229.
ASME Codes, Standards, and Code Cases:	
ASME BPV Code, Section III, Division 1: 2021 Edition	*https://go.asme.org/NRC-ASME.*
ASME BPV Code, Section XI, Division 1: 2021 Edition	*https://go.asme.org/NRC-ASME.*
ASME OM Code, Division 1: 2022 Edition	*https://go.asme.org/NRC-ASME.*

Throughout the development of this rulemaking, the NRC may post documents related to this proposed rule, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2018–0289. The Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe take the following steps: (1) navigate to the docket folder (NRC–2018–0289); (2) click the ''Subscribe'' link; and (3) enter an email address and click on the ''Subscribe'' button.

List of Subjects in 10 CFR Part 50

Administrative practice and procedure, Antitrust, Backfitting, Classified information, Criminal penalties, Education, Emergency planning, Fire prevention, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

For the reasons set forth in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC proposes to adopt the following amendments to 10 CFR part 50:

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96–295, 94 Stat. 783.

■ 2. In § 50.55a:
■ a. In paragraph (a)(1)(i)(E)(*19*), remove the word ''and'';
■ b. Revise paragraph (a)(1)(i)(E)(*20*);
■ c. Add paragraph (a)(1)(i)(E)(*21*);
■ d. In paragraph (a)(1)(ii)(C)(*55*), remove the word ''and'';
■ e. Revise paragraph (a)(1)(ii)(C)(*56*);
■ f. Add paragraph (a)(1)(ii)(C)(*57*);
■ g. Revise paragraphs (a)(1)(iii)(D) and (a)(1)(iv)(C);
■ h. Revise paragraph (b)(1)(iv);
■ i. Revise paragraphs (b)(1)(vi), (b)(1)(xi) introductory text, (b)(1)(xi)(B), and (b)(1)(xiii);
■ j. Add paragraph (b)(1)(xiv);
■ k. Revise paragraphs (b)(2) introductory text, (b)(2)(viii), and (ix);
■ l. Remove and reserve paragraph (b)(2)(xv);
■ m. Revise paragraph (b)(2)(xxxiv);
■ n. Add paragraphs (b)(2)(xliv) through (xlix);
■ o. Revise paragraph (b)(3)(ii) introductory text;
■ p. Remove and reserve paragraphs (b)(3)(iii)(B) and (C);
■ q. Revise paragraphs (b)(3)(vii) and (x);
■ r. In the last sentence of the introductory text to paragraph (d), remove the text ''conditions:'' and add in its place the text ''conditions.'';
■ s. Add paragraph (g)(6)(ii)(D)(*9*); and
■ t. Revise paragraphs (g)(6)(ii)(F)(*1*) and (*8*).

The revisions and additions read as follows:

§ 50.55a Codes and standards.

(a) * * *
(1) * * *
(i) * * *
(E) * * *
(*20*) 2019 Edition (including Subsection NCA; and Division 1 subsections NB through NG and Appendices); and
(*21*) 2021 Edition (including Subsection NCA; and Division 1 subsections NB through NG and Appendices).
(ii) * * *
(C) * * *
(*56*) 2019 Edition; and
(*57*) 2021 Edition.
(iii) * * *
(D) *ASME BPV Code Case N–770–7.* ASME BPV Code Case *N–770–7,* ''Alternative Examination Requirements and Acceptance Standards for Class 1 PWR Piping and Vessel Nozzle Butt Welds Fabricated with UNS N06082 or UNS W86182 Weld Filler Material With or Without Application of Listed Mitigation Activities Section XI, Division 1'' (Approval Date: December 4, 2020), with the conditions in paragraph (g)(6)(ii)(F) of this section.
* * * * *
(iv) * * *
(C) Operation and Maintenance of Nuclear Power Plants, ''Division 1: OM Code: Section IST'':
(*1*) 2012 Edition;
(*2*) 2017 Edition;
(*3*) 2020 Edition; and
(*4*) 2022 Edition.
* * * * *
(b) * * *
(1) * * *
(iv) *Section III condition: Quality Assurance.* When applying editions and addenda later than the 1989 Edition of Section III, an applicant or licensee may use the requirements of NQA–1, ''Quality Assurance Requirements for Nuclear Facility Applications,'' that is both incorporated by reference in paragraph (a)(1)(v) of this section and specified in either NCA–4000 or NCA–

7000 of that Edition and Addenda of Section III, with the exceptions in paragraph (b)(1)(iv)(A) of this section, provided that the administrative, quality, and technical provisions contained in that Edition and Addenda of Section III are used in conjunction with the applicant's or licensee's appendix B to this part quality assurance program; and that the applicant's or licensee's Section III activities comply with those commitments contained in the applicant's or licensee's quality assurance program description. Where NQA–1 and Section III do not address the commitments contained in the applicant's or licensee's appendix B quality assurance program description, those licensee commitments must be applied to Section III activities.

(A) Subpart 2.19 in NQA–1–2017, NQA–1–2019 and NQA–1–2022 is not approved for use

(B) [Reserved]

* * * * *

(vi) *Section III condition: Subsection NH.* The provisions in Subsection NH, ''Class 1 Components in Elevated Temperature Service,'' 1995 Addenda through all editions and addenda up to and including the 2013 Edition incorporated by reference in paragraph (a)(1) of this section, may only be used for the design and construction of Type 316 stainless steel pressurizer heater sheaths where service conditions do not cause the components to reach temperatures exceeding 900 °F. This condition is not applicable to the 2015 Edition and later editions.

* * * * *

(xi) *Section III condition: Mandatory Appendix XXVI.* When applying the 2015 and 2017 Editions of Section III, Mandatory Appendix XXVI, ''Rules for Construction of Class 3 Buried Polyethylene Pressure Piping,'' applicants or licensees must meet the first provision in paragraph (b)(1)(xi)(A) of this section. When applying the 2015 through 2021 Editions of Section III, Mandatory Appendix XXVI, ''Rules for Construction of Class 3 Buried Polyethylene Pressure Piping,'' applicants or licensees must meet the second provision in paragraph (b)(1)(xi)(B) of this section. When applying the 2017 Edition of Section III, Mandatory Appendix XXVI, ''Rules for Construction of Class 3 Buried Polyethylene Pressure Piping,'' applicants or licensees must meet the third provision in paragraph (b)(1)(xi)(C) of this section.

* * * * *

(B) *Mandatory Appendix XXVI: Second provision.* When performing procedure qualification for high speed tensile impact testing of butt fusion joints in accordance with XXVI–2300 or XXVI–4330 of the 2015 through 2021 Editions of BPV Code Section III, breaks in the specimen that are away from the fusion zone must be retested. When performing fusing operator qualification bend tests of butt fusion joints in accordance with XXVI–4342, guided side bend testing must be used for all thicknesses greater than 1.25 inches.

* * * * *

(xiii) *Section III Condition: Preservice Inspection of Steam Generator Tubes.* Applicants or licensees applying the provisions of NB–5283 and NB–5360 in the 2019 Edition of Section III through the latest edition and addenda incorporated by reference in paragraph (a)(1)(i) of this section, must apply paragraphs (b)(1)(xiii)(A) and (B) of this section.

(A) *Preservice Inspection of Steam Generator Tubes: First provision.* When applying the provisions of NB–5283 in the 2019 Edition of Section III through the latest edition and addenda incorporated by reference in paragraph (a)(1)(i) of this section, a full-length preservice examination of 100 percent of the steam generator tubing in each newly installed steam generator must be performed prior to plant startup.

(B) *Preservice Inspection of Steam Generator Tubes: Second provision.* When applying the provisions of NB–5360 in the 2019 Edition of Section III through the latest edition and addenda incorporated by reference in paragraph (a)(1)(i) of this section, flaws revealed during preservice examination of steam generator tubing performed in accordance with paragraph (b)(1)(xiii)(A) of this section must be evaluated using the criteria in the design specifications.

(xiv) *Section III condition: Repairs to Stamped Components.* Applicants or licensees applying the provisions of NCA–8151, NCA–8500 and Nonmandatory Appendix NN in the 2021 Edition of Section III, are required to meet all of the requirements in Nonmandatory Appendix NN.

(2) *Conditions on ASME BPV Code, Section XI.* As used in this section, references to Section XI refer to Section XI, Division 1, in the editions and addenda of the ASME BPV Code incorporated by reference in paragraph (a)(1)(ii) of this section, subject to the following conditions:

* * * * *

(viii) *Section XI condition: Concrete containment examinations.* Applicants or licensees applying Subsection IWL, 2001 Edition through the 2004 Edition, up to and including the 2006 Addenda, must apply paragraphs (b)(2)(viii)(E) through (G) of this section. Applicants or licensees applying Subsection IWL, 2007 Edition up to and including the 2008 Addenda must apply paragraph (b)(2)(viii)(E) of this section. Applicants or licensees applying Subsection IWL, 2007 Edition with the 2009 Addenda through the 2019 Edition, must apply paragraphs (b)(2)(viii)(H) and (I) of this section.

(ix) *Section XI condition: Metal containment examinations.* Applicants or licensees applying Subsection IWE, 2001 Edition up to and including the 2003 Addenda, must satisfy the requirements of paragraphs (b)(2)(ix)(A) and (B), (F) through (I), and (K) of this section. Applicants or licensees applying Subsection IWE, 2004 Edition, up to and including the 2005 Addenda, must satisfy the requirements of paragraphs (b)(2)(ix)(A) and (B), (F) through (H), and (K) of this section. Applicants or licensees applying Subsection IWE, 2004 Edition with the 2006 Addenda, must satisfy the requirements of paragraphs (b)(2)(ix)(A)(*2*) and (b)(2)(ix)(B) and (K) of this section. Applicants or licensees applying Subsection IWE, 2007 Edition through the 2015 Edition, must satisfy the requirements of paragraphs (b)(2)(ix)(A)(*2*) and (b)(2)(ix)(B), (J), and (K) of this section. Applicants or licensees applying Subsection IWE, 2017 Edition, through the 2019 Edition, must satisfy the requirements of paragraphs (b)(2)(ix)(A)(*2*) and (b)(2)(ix)(B) and (J) of this section. Applicants or licensees applying Subsection IWE, 2021 Edition, through the latest edition and addenda incorporated by reference in paragraph (a)(1)(ii) of this section must satisfy the requirements of paragraphs (b)(2)(ix)(B) and (J) of this section.

* * * * *

(xxxiv) *Section XI condition: Nonmandatory Appendix U.*

(A) When using Nonmandatory Appendix U of the ASME BPV Code, Section XI, 2013 Edition through the 2019 Edition, the following conditions apply:

(*1*) The repair or replacement activities temporarily deferred under the provisions of Nonmandatory Appendix U must be performed during the next schedule refueling outage.

(*2*) In lieu of the appendix referenced in paragraph U–S1–4.2.1(c) of Appendix U of the 2013 and the 2015 Editions, the mandatory appendix of the latest NRC approved version of the ASME BPV Code Case N–513 in NRC Regulatory Guide 1.147 must be used.

(B) Use of Nonmandatory Appendix U, Supplement U–S1 of the ASME BPV Code, Section XI, 2021 Edition is prohibited.

* * * * *

(xliv) *Section XI condition: Nonmandatory Appendix Y.* When using Nonmandatory Appendix Y of the ASME BPV Code, Section XI, 2021 Edition, the following conditions apply:

(A) Use of Nonmandatory Appendix Y, Article Y–2200 is prohibited.

(B) Use of Nonmandatory Appendix Y, Subarticle Y–2440 is prohibited.

(C) Use of Nonmandatory Appendix Y, Article Y–3200 is prohibited.

(xlv) *Section XI condition: Pressure Testing of Containment Penetration Piping After Repair/Replacement Activities.* Applicants or licensees applying the provision of IWA–4540(a) and (e) of the 2021 Edition of the ASME Code, Section XI, are required to perform a VT–2 examination of the area affected by the repair/replacement activity during the Type C test in appendix J to this part.

(xlvi) *Section XI condition: Contracted Repair/Replacement Organization Fabricating Items Offsite of the Owner's Facility.* When applicants or licensees apply the provision of IWA–4143 in the 2021 Edition of Section XI of the ASME Code, a contracted Repair/Replacement Organization fabricating ASME Code, Section III parts, appurtenances, piping subassemblies, and supports offsite of the Owner's facility (*e.g.,* vendor facility) without an ASME Certificate of Authorization and without applying an ASME Stamp/Certification Mark is prohibited.

(xlvii) *Section XI condition: Weld Overlay Design Crack Growth Analysis.* Under Subparagraph Q–3000(a) stress corrosion crack growth analysis is required within the weld overlay material.

(xlviii) *Section XI condition: Analytical Evaluations of Degradation.* Applicants or licensees using the 2021 Edition of Section XI must submit analytical evaluations performed as required by IWB–3132.3 and IWC–3132.3 to the Nuclear Regulatory Commission.

(xlix) *Section XI condition: Analytical Evaluations of Flaws in Cladding.* The use of IWB–3600(b)(1) in the 2021 Edition of ASME BPV Code, Section XI (Division 1) is prohibited for the inlay and onlay that are subject to the augmented inspection requirements in paragraph (g)(6)(ii)(F) of this section.

(3) * * *

(ii) *OM condition: Motor-Operated Valve (MOV) testing.* Licensees must comply with the provisions for testing MOVs in ASME OM Code, ISTC 4.2, 1995 Edition with the 1996 and 1997 Addenda, or ISTC–3500, 1998 Edition through the latest edition and addenda incorporated by reference in paragraph (a)(1)(iv) of this section, and must establish a program to ensure that MOVs continue to be capable of performing their design basis safety functions. Licensees implementing ASME OM Code, Mandatory Appendix III, ''Preservice and Inservice Testing of Active Electric Motor-Operated Valve Assemblies in Water-Cooled Reactor Nuclear Power Plants,'' of the 2009 Edition, through the latest edition and addenda of the ASME OM Code incorporated by reference in paragraph (a)(1)(iv) of this section shall comply with the following conditions (with the exception of conditions in paragraphs (A), (B), and (C) when implementing the 2022 Edition of the ASME OM Code):

* * * * *

(vii) *OM condition: Snubber visual examination interval extension.* When implementing Subsection ISTD, paragraph ISTD–4253, and Note 7 of Table ISTD–4252–1, in the 2022 Edition of the ASME OM Code, incorporated by reference in paragraph (a)(1)(iv) of this section, to extend snubber visual examination beyond 2 refueling cycles (48 months), the licensee is prohibited from applying OM Code Case OMN–15, Revision 2, to extend the operational readiness testing interval of snubbers.

* * * * *

(x) *OM condition: Class 1 Pressure Relief Valve Sample Expansion.* When implementing paragraph I–1320*(c)(1)* in Appendix I, ''Inservice Testing of Pressure Relief Devices in Water-Cooled Reactor Nuclear Power Plants,'' of the editions and addenda of the ASME OM Code, incorporated by reference in paragraph (a)(1)(iv) of this section, the requirement for sample expansion of Class 1 Pressure Relief Valves shall be implemented such that for each valve tested for which the as-found set-pressure (first test actuation) exceeds the plus/minus tolerance limit of the Owner-established design set-pressure acceptance criteria of paragraph I–1310(e), or ±3 percent of valve nameplate set-pressure if the Owner has not established design set-pressure acceptance criteria, two additional valves shall be tested from the same valve group.

* * * * *

(g) * * *

(6) * * *

(ii) * * *

(D) * * *

(*9*) *Volumetric Qualifications.* Volumetric examinations of Table 1 of ASME Code Case N–729–6 may be qualified in accordance with Section XI, Division 1, Mandatory Appendix VIII, Supplement 15, in the 2021 Edition or later Editions, in lieu of subparagraphs (a) through (j) of 2500 of ASME Code Case N–729–6.

* * * * *

(F) * * *

(*1*) *Implementation.* Holders of operating licenses or combined licenses for pressurized-water reactors as of or after September 7, 2023, shall implement the requirements of ASME BPV Code Case N–770–7 instead of ASME BPV Code Case N–770–5, subject to the conditions specified in paragraphs (g)(6)(ii)(F)(*2*) through (*16*) of this section, by no later than one year after September 7, 2023. All NRC authorized alternatives from previous versions of paragraph (g)(6)(ii)(F) of this section remain applicable.

* * * * *

(*8*) *Optimized weld overlay examination.* Following initial inservice volumetric inspection for Inspection Items C–2 and F–2 of Table 1 of ASME Code Case N–770–7, for weld overlay examination volumes that show no indication of crack growth or new cracking, in lieu of sample population, 100 percent of these optimized weld overlayed welds shall be added to the ISI program in accordance with –2410 of ASME Code Case N–770–7 and shall be examined once each inspection interval.

* * * * *

Dated: July 18, 2023.

For the Nuclear Regulatory Commission.

Andrea D. Veil,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–16686 Filed 8–7–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1704; Project Identifier MCAI–2022–00866–T]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 22, 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–2023–1704; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email: *thd.crj@mhirj.com;* internet: *mhirj.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Yaser Osman, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1704; Project Identifier MCAI–2022–00866–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Yaser Osman, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@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

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2022–35, dated June 29, 2022 (Transport Canada AD CF–2022–35) (also referred to after this as the MCAI), to correct an unsafe condition for all MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed.

The FAA is proposing this AD to address cracks in the principal structural elements of the fuselage and wings. The unsafe condition, if not addressed, could result in reduced the structural integrity of the airplane. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1704.

Related Service Information Under 1 CFR Part 51

The FAA reviewed MHI RJ Aviation CRJ550/700/705/900/1000 Maintenance Requirements Manual (MRM) Part 2, CSP B–053, Revision 26, dated March 25, 2022. This service information manual specifies new or revised tasks to detect cracks in the principal structural elements of the fuselage and wings.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES** 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 the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

This proposed AD would require revisions to certain operator maintenance documents to include new

actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (i)(1) of this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 601 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2023–1704; Project Identifier MCAI–2022–00866–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 22, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code: 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address cracks in the principal structural elements of the fuselage and wings. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the tasks identified in figure 1 to paragraph (g) of this AD as specified in MHI RJ Aviation CRJ550/700/705/900/1000 Maintenance Requirements Manual (MRM) Part 2, CSP B–053, Revision 26, dated March 25, 2022. The initial compliance time for doing the tasks is at the applicable times specified in MHI RJ Aviation CRJ550/700/705/900/1000 Maintenance Requirements Manual (MRM) Part 2, CSP B–053, Revision 26, dated March 25, 2022, or within 60 days after the effective date of this AD, whichever occurs later.

Figure 1 to paragraph (g)—*MRM Tasks*

BILLING CODE 4910–13–P

Task Number	Configuration Letter (LTR)	Title
53-11-103	G	Pressure Bulkhead - FS202.75
53-41-115	C	Overwing Longerons, Bottom Flanges - FS693.00 to FS847.00 +16.60, WL73.00
53-41-120	B	Emergency Exit Door Cut-Out Corner
53-41-121	A	Pressure Sill Deck FS693 - FS847
53-51-110	C	Skin Penetrations FS847.00 +8.40 to FS977.00, Below WL72.00
53-61-101	A, B	Skin Lap Splice - FS977.00 to FS1162.00, STGR7L, STGR20L, STGR7R, and STGR20R
53-61-114	C	Aft Pressure Bulkhead FS1098.2
57-42-109	A	Slat #3 Attachment
57-53-101	A, B, C	Outboard Flap Hinge Arms
57-53-102	A, B, C	Outboard Flap Vane Structure
57-53-103	A, B, C	Outboard Flap Vane Mounting Structure
57-53-104	A, B, C	Outboard Flap Box Structure
57-53-105	A, B, C	Outboard Flap Hinge Arm Support Fittings and Surround Structure
57-53-108	A, B, D	Outboard Flap Hinge Support Fittings

(h) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals, may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Other FAA 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 manager of the International Validation Branch, send it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (j)(2) of this AD or email to: *9-avs-nyaco-cos@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *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 Transport Canada; or MHI RJ Aviation ULC's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

(1) Refer to Transport Canada AD CF–2022–35, dated June 29, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1704.

(2) For more information about this AD, contact Yaser Osman, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) MHI RJ Aviation CRJ550/700/705/900/1000 Maintenance Requirements Manual (MRM) Part 2, CSP B–053, Revision 26, dated March 25, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com;* website *mhirj.com.*

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

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

Issued on August 1, 2023.

Victor Wicklund,

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

[FR Doc. 2023–16870 Filed 8–7–23; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1638; Project Identifier AD–2022–00466–E]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2018–02–10, which applies to certain Pratt & Whitney Division (PW) Model PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 engines. AD 2018–02–10 requires performing repetitive fluorescent penetrant inspections (FPIs) to detect cracks in the outer diffuser case (ODC), removal of any ODC that fails inspection, and requires updating the mandatory inspections in the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA). Since the FAA issued AD 2018–02–10, PW developed a modification to reduce the susceptibility of ODC cracking. This proposed AD would retain the ALS update requirement from AD 2018–02–10, would require replacing certain ODC part numbers with parts eligible for installation, would expand the applicability to all ODC part numbers, and would adjust the compliance threshold of the FPIs of the ODC. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 22, 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* by searching for and locating Docket No. FAA–2023–1638; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@prattwhitney.com;* website: *connect.prattwhitney.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7655; email: *carol.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1638; Project Identifier AD–2022–00466–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198. 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 2018–02–10, Amendment 39–19163 (83 FR 2896, January 22, 2018), (AD 2018–02–10), for PW Model PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 engines with ODC part number (P/N) 50J775 or P/N 50J930, installed. AD 2018–02–10 was prompted by the discovery of multiple cracked ODCs. AD 2018–02–10 requires initial and repetitive FPIs of the ODC to detect cracks, and depending on the results of the FPI, replacement of any ODC that fails inspection. Also, AD 2018–02–10 requires updating the

mandatory inspections in the ALS of the ICA to include piece-part inspections. The agency issued AD 2018–02–10 to prevent failure of the ODC.

Actions Since AD 2018–02–10 Was Issued

Since the FAA issued AD 2018–02–10, PW determined that cracks on the ODC originated due to high stress in the area between Tt3 boss and thermocouple bracket boss. PW developed a modification to improve the surface area between Tt3 boss and thermocouple bracket boss to reduce the ODC's susceptibility to cracking.

Consequently, the FAA determined that it is necessary to expand the applicability to all ODC P/Ns, adjust the initial FPI threshold for the ODC to improve the inspection program, and to require certain ODCs to be replaced with an ODC that has been modified to lower the stresses in the area between Tt3 boss and thermocouple bracket boss. This condition, if not addressed, could result in failure of the ODC, uncontained ODC release, damage to the engine, and damage to the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed PW Alert Service Bulletin (ASB) PW4G–112–A72–347, Revision 4, dated September 1, 2022. This ASB provides guidance on performing FPIs on certain bosses of the ODC. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA reviewed PW Service Bulletin (SB) PW4G–112–72–357, dated February 25, 2019. This SB provides procedures to modify and re-identify ODC assemblies to lower the stresses in the area between the Tt3 boss and the thermocouple bracket boss.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2018–02–10. This proposed AD would require revising the ALS of the existing airplane maintenance manual or ICA and your existing approved maintenance program, as applicable, to include piece-part inspections of the ODC, would expand the applicability to include all engines, would require initial and repetitive FPIs, and depending on the results of the FPI, would require removal or re-inspection of the ODC. This proposed AD would also require replacement of certain ODCs with a part eligible for installation at next piece-part exposure.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 108 engines installed on airplanes of U.S. registry. The FAA has no way to determine the number of operators that will replace the ODC with a modified ODC or a zero-time ODC. As a result, the total cost on U.S. operators for these actions is not estimated.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Perform high sensitivity FPI of the ODC T3 thermocouple probe boss.	10 work-hours × $85 per hour = $850	$0	$850	$91,800
Revise the ALS	1 work-hour × $85 per hour = $85	0	85	9,180
Replacement of ODC with modified ODC	3 work-hours × $85 per hour = $255	12,000	12,255	
Replacement of ODC with zero-time ODC	3 work-hours × $85 per hour = $255	2,300,000	2,300,255	

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2018–02–10, Amendment 39–19163 (83 FR 2896, January 22, 2018); and
■ b. Adding the following new airworthiness directive:

Pratt & Whitney Division: Docket No. FAA–2023–1638; Project Identifier AD–2022–00466–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by September 22, 2023.

(b) Affected ADs

This AD replaces AD 2018–02–10, Amendment 39–19163 (83 FR 2896, January 22, 2018).

(c) Applicability

This AD applies to Pratt & Whitney Division (PW) Model PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7240, Turbine Engine Combustion Section.

(e) Unsafe Condition

This AD was prompted by the discovery of multiple cracked outer diffuser cases (ODCs). We are issuing this AD to prevent failure of the ODC. This condition, if not addressed, could result in failure of the ODC, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within the compliance times specified in paragraphs (g)(1)(i) though (iii) of this AD, perform an initial high sensitivity fluorescent penetrant inspection (FPI) of the ODC T3 thermocouple probe boss (Tt3 boss) for crack indications in accordance with the Accomplishment Instructions, paragraph 1.F. of Part A or paragraph 1.B. of Part B, as applicable, of PW Alert Service Bulletin PW4G–112–A72–347, Revision 4, dated September 1, 2022 (ASB PW4G–112–A72–347, Rev 4).

(i) For an ODC that has accumulated less than 12,000 cycles since new (CSN) with no prior high sensitivity FPI of the ODC Tt3 boss, perform the high sensitivity FPI before accumulating 9,200 CSN or within 1,000 flight cycles (FCs), after the effective date of this AD, whichever occurs later.

(ii) For an ODC with unknown CSN or an ODC that has accumulated 12,000 CSN or more with no prior high sensitivity FPI of the ODC Tt3 boss, perform the high sensitivity FPI before accumulating 13,000 CSN or within 1,000 FCs, after February 26, 2018 (the effective date of AD 2018–02–10), whichever occurs later.

(iii) For an ODC that has undergone a high sensitivity FPI of the ODC Tt3 boss prior to the effective date of this AD that resulted in no crack indication, perform the high sensitivity FPI before accumulating 2,000 FCs since performance of the last FPI or during the next engine shop visit, whichever occurs first.

(iv) For an ODC that has undergone a high sensitivity FPI of the ODC Tt3 boss prior to the effective date of this AD that resulted in an indication of a crack, perform the actions required by paragraphs (g)(3)(i) through (iii) of this AD, as applicable.

(2) Thereafter, repeat the high sensitivity FPI of the ODC Tt3 boss at each engine shop visit or before exceeding 2,000 FCs from the last high sensitivity FPI of the ODC Tt3 boss, whichever occurs first, in accordance with the Accomplishment Instructions, paragraphs 1.F. of Part A or paragraph 1.B. of Part B, as applicable, of ASB PW4G–112–A72–347, Rev 4.

(3) If, during any inspection required by paragraphs (g)(1) or (2) of this AD, there is any crack indication, perform the actions specified in paragraphs (g)(3)(i) through (iii) of this AD.

(i) For engines installed on an aircraft, repeat the high sensitivity FPI or remove the ODC from service in accordance with the actions and compliance times specified in the Accomplishment Instructions, Part A, paragraphs 1.G. and 1.H., of ASB PW4G–112–A72–347, Rev 4.

(ii) For engines not installed on an aircraft, repeat the high sensitivity FPI or remove the ODC from service in accordance with the actions and compliance times specified in the Accomplishment Instructions, Part B, paragraphs 1.C. and 1.D., of PW ASB PW4G–112–A72–347, Rev 4.

(iii) For engines at an engine shop visit, before further flight, remove the ODC from service.

(4) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the existing engine maintenance manual or Instructions for Continued Airworthiness and the existing approved maintenance program, as applicable, to include the piece-part inspections of the ODC as defined in Table 1 to paragraph (g)(4) of this AD.

TABLE 1 TO PARAGRAPH (g)(4)—ADDITION TO ALS

Description	Part No.	Cleaning, inspection and repair (CIR) manual section	CIR manual inspection	CIR manual
Case, Diffuser, Outer	All	72–41–13	Inspection/Check (I/C–02)	P/N 51A750.

(5) For engines with ODC part number (P/N) 50J775 or 50J930 installed, at the next piece-part exposure after the effective date of this AD, replace the ODC with a part eligible for installation.

(h) Definitions

(1) For the purpose of this AD, an ''engine shop visit'' is any time the ''M'' flange is separated.

(2) For the purpose of this AD, a ''piece-part exposure'' is when the ODC is removed from the engine and fully disassembled.

(3) For the purpose of this AD, a ''part eligible for installation'' is an ODC with P/N 50J775–001, 50J775–002, 50J930–001, or 50J930–002.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety 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 certification office, send it to the attention of the person identified in paragraph (j) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(j) Related Information

For more information about this AD, contact Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7655; email: *carol.nguyen@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Pratt & Whitney Alert Service Bulletin PW4G–112–A72–347, Revision 4, dated September 1, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT 06118; phone: (800) 565–0140; email: *help24@prattwhitney.com;* website: *connect.prattwhitney.com.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7759.

(5) You may view this service information that is incorporated by reference at the

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

Issued on July 21, 2023.

Victor Wicklund,

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

[FR Doc. 2023–16722 Filed 8–7–23; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AF36

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend the margin requirements for uncleared swaps applicable to swap dealers (''SDs'') and major swap participants (''MSPs'') for which there is no prudential regulator. The proposed amendment would revise the definition of ''margin affiliate'' to provide that certain collective investment vehicles (''investment funds'' or ''funds'') that receive all of their start-up capital, or a portion thereof, from a sponsor entity (''seeded funds'') would be deemed not to have any margin affiliates for the purposes of calculating certain thresholds that trigger the requirement to exchange initial margin (''IM'') for uncleared swaps. This proposed amendment (''Seeded Funds Proposal'') would effectively relieve SDs and MSPs from the requirement to post and collect IM with certain eligible seeded funds for their uncleared swaps for a period of three years from the date on which the eligible seeded fund's asset manager first begins making investments on behalf of the fund (''trading inception date''). The Commission is also proposing to eliminate a provision disqualifying the securities issued by certain pooled investment funds (''money market and similar funds'') that transfer their assets through securities lending, securities borrowing, repurchase agreements, reverse repurchase agreements, and similar arrangements from being used as eligible IM collateral, thereby expanding the scope of assets that qualify as eligible collateral (''Money Market Funds Proposal''). Additionally, the Commission is proposing an amendment to the haircut schedule set forth in a Commission Regulation to add a footnote that was inadvertently omitted when the rule was originally promulgated.

DATES: With respect to the proposed amendments, comments must be received on or before October 10, 2023.

ADDRESSES: You may submit comments, identified by RIN 3038–AF36, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (''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.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking 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 FOIA.

FOR FURTHER INFORMATION CONTACT: Amanda L. Olear, Director, 202–418–5283, *aolear@cftc.gov;* Thomas J. Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov;* Warren Gorlick, Associate Director, 202–418–5195, *wgorlick@cftc.gov;* Rafael Martinez, Associate Director, 202–418–5462, *rmartinez@cftc.gov;* or Liliya Bozhanova, Special Counsel, 202–418–6232, *lbozhanova@cftc.gov*, Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 4s(e) of the Commodity Exchange Act (''CEA'' or ''Act'')[2] requires the Commission to adopt rules establishing minimum initial and variation margin requirements for all swaps[3] that are: (i) entered into by an SD[4] or MSP[5] for which there is no prudential regulator[6] (collectively, ''covered swap entities'' or ''CSEs'');[7] and (ii) not cleared by a registered derivatives clearing organization (''uncleared swaps'').[8] To offset the greater risk to the SD or MSP and the financial system arising from the use of uncleared swaps, these requirements must: (i) help ensure the safety and soundness of the SD or MSP; and (ii) be appropriate for the risk associated with

[1] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR Chapter I.

[2] 7 U.S.C. 6s(e) (capital and margin requirements).

[3] CEA section 1a(47), 7 U.S.C. 1a(47) (swap definition); Commission Regulation 1.3, 17 CFR 1.3 (further definition of a swap). A swap includes, among other things, an interest rate swap, commodity swap, credit default swap, and currency swap.

[4] CEA section 1a(49), 7 U.S.C. 1a(49) (swap dealer definition); Commission Regulation 1.3 (further definition of swap dealer).

[5] CEA section 1a(32), 7 U.S.C. 1a(32) (major swap participant definition); Commission Regulation 1.3 (further definition of major swap participant).

[6] CEA section 1a(39), 7 U.S.C. 1a(39) (defining the term ''prudential regulator'' to include the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency). The definition of ''prudential regulator'' further specifies the entities for which these agencies act as prudential regulators. The prudential regulators published final margin requirements in November 2015. *See generally* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) (''Prudential Regulators Margin Rule''). The Prudential Regulators Margin Rule is substantially similar to the CFTC Margin Rule.

[7] CEA section 4s(e)(1)(B), 7 U.S.C. 6s(e)(1)(B). SDs and MSPs for which there is a prudential regulator must meet the margin requirements for uncleared swaps established by the applicable prudential regulator. CEA section 4s(e)(1)(A), 7 U.S.C. 6s(e)(1)(A).

[8] CEA section 4s(e)(2)(B)(ii), 7 U.S.C. 6s(e)(2)(B)(ii). In Commission Regulation 23.151, the Commission further defined this statutory language to mean all swaps that are not cleared by a registered derivatives clearing organization or a derivatives clearing organization that the Commission has exempted from registration as provided under the CEA. 17 CFR 23.151.

the uncleared swaps held by the SD or MSP.[9] In 2016, the Commission promulgated Commission Regulations 23.150 through 23.161 (''CFTC Margin Rule'') to implement section 4s(e).[10]

The CFTC Margin Rule imposes IM requirements on uncleared swaps entered into by CSEs and certain specified counterparties. More specifically, Commission Regulation 23.152 requires CSEs to collect and post IM [11] with each counterparty that is an SD, MSP or financial end user (''FEU'') with material swaps exposure (''MSE'').[12] Commission Regulation 23.151 defines the term FEU by listing entities, persons, and arrangements whose business is financial in nature, including certain funds.[13]

Commission Regulation 23.161 sets forth a phase-in schedule for compliance with the CFTC Margin Rule.[14] Under the schedule, which commenced on September 1, 2016 and concluded on September 1, 2022, entities have been required to comply with the IM requirements with respect to their uncleared swaps in staggered phases, starting with entities with higher average aggregate notional amount of uncleared swaps and certain other financial products (''AANA''), and then successively those with lesser AANA.[15] The AANA is calculated at a group level (*i.e.,* taking into consideration the AANA of the CSE combined with its margin affiliates,[16] and the AANA of the counterparty combined with its margin affiliates). During the last phase of compliance, which started on September 1, 2022, CSEs and eligible covered counterparties [17] that had not come into the scope of the IM requirements in prior phases of the phase-in schedule, including FEUs with MSE of more than $8 billion, became subject to the IM requirements.

Under this phase-in approach, a fund with MSE will come within the scope of the IM requirements if it undertakes an uncleared swap with a CSE. The CSE and the fund will not be required to post and collect IM for their uncleared swaps until the IM threshold amount of $50 million has been exceeded. The IM threshold amount will be calculated based on the credit exposure from uncleared swaps between the CSE and its margin affiliates on the one hand, and the fund and its margin affiliates on the other.[18]

The CFTC Margin Rule provides that the IM requirements may be satisfied with only certain types of collateral. Commission Regulation 23.156(a)(1) sets forth the types of collateral that CSEs can post or collect as IM with covered counterparties, including cash funds, certain securities issued by the U.S. government or other sovereign entities, certain publicly traded debt or equity securities, securities issued by money market and similar funds, and gold.[19]

Under Commission Regulation 23.156(a)(1)(ix), the securities of money market and similar funds [20] may qualify as eligible collateral if the investments of the fund are limited to securities that are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of Treasury, and immediately-available cash denominated in U.S. dollars; [21] or to securities denominated in a common currency and issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank, or a sovereign entity that is assigned no higher than a 20 percent risk weight under the capital rules applicable to swap dealers subject to regulation by a prudential regulator, and immediately-available cash denominated in the same currency.[22] Also, the asset managers of the money market and similar fund may not transfer the assets of the fund through securities lending, securities borrowing, repurchase agreements, or other means (''repurchase or similar arrangements'') that involve the fund having rights to acquire the same or similar assets from the transferee (''asset transfer restriction'').[23]

II. Market Participant Feedback

In January 2020, the CFTC's Global Markets Advisory Committee (''GMAC'') established a subcommittee of market participants to consider issues raised by

[9] CEA section 4s(e)(3)(A), 7 U.S.C. 6s(e)(3)(A).

[10] *See generally* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016) (''Final Margin Rule'') (adopting the CFTC Margin Rule). The CFTC Margin Rule became effective April 1, 2016 and is codified in part 23 of the Commission's regulations. 17 CFR 23.150–23.159, 23.161. In May 2016, the Commission amended the CFTC Margin Rule to add Commission Regulation 23.160, 17 CFR 23.160, providing rules on its cross-border application. *See generally* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016).

[11] IM (or initial margin) is the collateral (calculated as provided by Commission Regulation 23.154) that is collected or posted in connection with one or more uncleared swaps pursuant to Commission Regulation 23.152. IM is intended to secure potential future exposure following default of a counterparty (*i.e.,* adverse changes in the value of an uncleared swap that may arise during the period of time when it is being closed out). *See* CFTC Margin Rule, 81 FR at 683.

[12] *See* 17 CFR 23.152. Commission Regulation 23.151 provides that MSE for an entity means that the entity and its margin affiliates have an average month-end aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for March, April, or May of the current calendar year that exceeds $8 billion, where such amount is calculated only for the last day of the month. 17 CFR 23.151.

[13] *See* 17 CFR 23.151 for a full list of entities subject to the FEU definition as well as a list of entities excluded from the definition. Among other entities, persons, and arrangements, whose business is financial in nature, the definition of FEU includes counterparties that are not an SD or MSP and are: (i) investment companies registered with the Securities and Exchange Commission under the Investment Company Act of 1940; (ii) private funds as defined in section 202(a) of the Investment Advisers Act of 1940; entities that would be investment companies under section 3 of the Investment Company Act of 1940; or entities that are deemed not to be investment companies under section 3 of the Investment Company Act of 1940 pursuant to Investment Company Act Rule 3a–7 of the Securities and Exchange Commission; (iii) commodity pools; and (iv) entities, persons, or arrangements that are, or hold themselves out as being, entities, persons, or arrangements that raise money from investors, accept money from clients, or use their own money primarily for investing, or trading, or facilitating the investing or trading, in loans, securities, swaps, funds, or other assets.

[14] 17 CFR 23.161.

[15] *Id.*

[16] Commission Regulation 23.151 provides that a company is a ''margin affiliate'' of another company if: (i) either company consolidates the other on a financial statement prepared in accordance with U.S. Generally Accepted Accounting Principles (''U.S. GAAP''), the International Financial Reporting Standards (''IFRS''), or other similar standards; (ii) both companies are consolidated with a third company on a financial statement prepared in accordance with such principles or standards; or (iii) for a company that is not subject to such principles or standards, if consolidation as described in paragraph (1) or (2) of this definition would have occurred if such principles or standards had applied. 17 CFR 23.151.

[17] The term ''covered counterparty'' is defined in Commission Regulation 23.151 as FEU with MSE or a swap entity, including an SD or MSP, that enters into swaps with a CSE. *See* 17 CFR 23.151.

[18] Commission Regulation 23.151 defines the term ''IM threshold amount'' to mean an aggregate credit exposure of $50 million resulting from all uncleared swaps between an SD and its margin affiliates (or an MSP and its margin affiliates) on the one hand, and the SD's (or MSP's) counterparty and its margin affiliates on the other. *See* 17 CFR 23.151.

[19] *See* 17 CFR 23.156(a)(1).

[20] Although the scope of the eligible pooled investment funds described in Commission Regulation 23.156(a)(1)(ix) does not fully coincide with the regulatory definition of money market funds in Rule 2a–7 under the Investment Company Act (17 CFR 270.2a–7), for simplicity purposes, these funds will be referred to as ''money market and similar funds.'' The securities of money market and similar funds may also be used as collateral for variation margin (''VM'') for uncleared swaps between a CSE and a financial end user, provided that the securities qualify as eligible collateral under Commission Regulation 23.156(a)(1)(ix). *See* 17 CFR 23.156(b)(1)(ii). VM (or variation margin), as defined in Commission Regulation 23.151, is the collateral provided by a party to its counterparty to meet the performance of its obligations under one or more uncleared swaps between the parties as a result of a change in the value of such obligations since the trade was executed or the last time such collateral was provided. 17 CFR 23.151.

[21] 17 CFR 23.156(a)(1)(ix)(A).

[22] 17 CFR 23.156(a)(1)(ix)(B).

[23] 17 CFR 23.156(a)(1)(ix)(C).

the implementation of margin requirements for non-cleared swaps, to identify challenges associated with forthcoming implementation phases, and to prepare a report with recommendations.[24] The subcommittee issued a report with its recommendations in May 2020 (''Margin Subcommittee Report'' or ''Report''), and the GMAC voted to adopt the Margin Subcommittee Report and recommended to the Commission that it consider adopting the Report's recommendations.[25]

Among other things, the Margin Subcommittee Report asserted that the current criteria for determining whether a counterparty comes within the scope of the IM requirements unduly penalizes certain funds. Because, under accounting consolidation principles, a fund will generally be consolidated with its sponsor entity during the period in which the start-up capital provided by the sponsor entity exceeds that of third-party investors and represents up to 100 percent of the ownership interest in the fund (''seeding period''), such fund, referred to as a seeded fund, will be considered a margin affiliate of the sponsor entity.[26] As such, the seeded fund will be required to calculate AANA on an aggregate basis with the sponsor entity and the sponsor entity's margin affiliates. Although the fund may individually have small amounts of AANA, due to its affiliation with the sponsor entity and its margin affiliates, the fund may have MSE, on a collective basis with the sponsor entity and its margin affiliates, and may come within the scope of the IM requirements. As such, a CSE that undertakes uncleared swaps with the fund would be required to exchange IM with the fund.

The Report noted that regulators in other major financial markets, including Australia, Canada, the European Union (''EU''), and Japan, have adopted the Basel Committee on Banking Supervision and Board of the International Organization of Securities Commissions' (''BCBS/IOSCO'') Framework for margin requirements for non-centrally cleared derivatives (''BCBS/IOSCO Framework'')[27] without requiring seeded funds to be consolidated with the sponsor and to be treated as a margin affiliate of the sponsor.[28]

The Margin Subcommittee Report also recommended that the Commission eliminate the asset transfer restriction in paragraph (C) of Commission Regulation 23.156(a)(1)(ix). The Report stated that ''the ability to use redeemable securities in a pooled investment fund, more typically referred to as a money market fund (''MMF''), as eligible collateral in the U.S. has been severely restricted by [such] condition.''[29]

The Report noted that MMFs use repurchase and similar arrangements to earn returns on cash and other high quality assets, to avoid any cash drag on performance, to diversify their investments, and to mitigate their potential exposure to their custodian's insolvency and any consolidation issues with respect to any cash held at the custodian.[30] MMF asset managers, as fiduciaries, determine the types of investments and transactions that are in the best interest of the MMF and its investors.[31] The Report further stated that nearly all U.S. MMFs engage in some form of repurchase or similar arrangements, and cited research that found that, given the asset transfer restriction, the securities of only four MMFs, would qualify as eligible collateral.[32]

Having considered the GMAC Subcommittee's arguments and based on its experience administering the CFTC Margin Rule for several years, the Commission preliminarily believes that, for the purpose of determining whether a CSE should exchange IM with a seeded fund for their uncleared swaps, the seeded fund should be treated as a separate legal entity, not affiliated with the sponsor entity, for a period of three years and subject to certain limitations. Similarly, the Commission preliminarily believes that the current restriction on the use of securities of money market and similar funds that transfer their assets through repurchase and similar arrangements should be removed.

III. Proposals

A. Seeded Funds Proposal

The Commission is proposing to revise the definition of ''margin affiliate'' to provide that a seeded fund that meets certain requirements (described in further detail below) (''eligible seeded fund''), would be deemed not to have any margin affiliates for the purpose of calculating the fund's MSE and the IM threshold amount, for a period of three years from the fund's trading inception date (''eligible seeded fund exception''). The Commission is also proposing to define the term ''eligible seeded fund'' to set forth the conditions that investment funds must meet to qualify for the eligible seeded fund exception.

1. Commission Regulation 23.151—Amendments to the Definition of ''Margin Affiliate''

Under the CFTC Margin Rule, a company is a ''margin affiliate'' of another company if, based on accounting principles, either company consolidates the other, or both companies are consolidated with a third company, on a financial statement.[33] The Commission is proposing to adopt the eligible seeded fund exception through an amendment of the definition of ''margin affiliate,'' which would provide that an eligible seeded fund would be deemed not to have margin affiliates solely for the purposes of calculating the fund's MSE and the IM threshold amount for a period of three years after the fund's trading inception date, notwithstanding the consolidation of the fund with another entity under U.S. GAAP, IFRS, or other similar accounting standards.

This proposed eligible seeded fund exception would effectively relieve CSEs that enter into uncleared swaps with an eligible seeded fund from the requirement to exchange IM with such fund for three years after the fund's trading inception date. In addition, uncleared swaps entered into between a CSE and an eligible seeded fund during the three-year period would continue to

[24] Membership of the GMAC Subcommittee on Margin Requirements was comprised of a wide range of industry participants that had expertise in, and experience with, margin requirements for non-cleared swaps and the impact of the requirements on the marketplace and market participants. The Subcommittee included representatives of SDs, FEUs, asset managers, and third-party service providers, among other market participants. The full list of members is available at *https://www.cftc.gov/About/AdvisoryCommittees/GMAC.*

[25] *See Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps,* Report to the CFTC's Global Markets Advisory Committee by the Subcommittee on Margin Requirements for Non-Cleared Swaps (May 2020), *https://www.cftc.gov/media/3886/GMAC_051920MarginSubcommitteeReport/download.*

[26] *Supra note* 16. *See also* CFTC Margin Rule, 81 FR at 646–47.

[27] *See* BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (April 2020), *https://www.bis.org/bcbs/publ/d499.pdf.* The BCBS/IOSCO Framework, which was established in 2013 and most recently amended in 2020, sets out minimum standards for margin requirements for non-centrally cleared derivatives. In connection with the requirement for all covered entities to exchange IM with a threshold not to exceed €50 million applied at the level of the consolidated group, the Framework specifies that ''investment funds that are managed by an investment advisor are considered distinct entities that are treated separately when applying the threshold as long as the funds are distinct legal entities that are not collateralized by or are otherwise guaranteed or supported by other investment funds or the investment advisor in the event of fund insolvency or bankruptcy.''

[28] Margin Subcommittee Report at 7 and 29.

[29] *Id.* at 6.

[30] *Id.* at 27.

[31] *Id.*

[32] Margin Subcommittee Report at 24.

[33] *Supra* note 16.

be relieved from the IM requirement after expiration of such period.[34] At the end of the three-year period, a fund that meets the accounting standards for consolidation due to a sponsor entity holding a significant equity stake in the fund would be deemed to have margin affiliates. As a result, a CSE would be required to exchange IM with the fund, if the fund, on a consolidated group basis, has MSE and the IM threshold amount has been exceeded, for swaps entered into following the expiration of the three-year period.

The proposed eligible seeded fund exception is intended to address challenges confronted by seeded funds that have limited individual swaps exposure, but, due to their affiliation with an entity or group of entities, have on a collective basis sufficient AANA to meet the MSE threshold, therefore requiring CSEs undertaking uncleared swaps with the funds to post and collect IM with such funds. To limit the relief to only such funds, the proposed treatment would be applicable only to funds that have one or more margin affiliates that are already subject to the IM requirements and post and collect IM pursuant to Commission Regulation 23.152. Also, the Commission notes that notwithstanding the proposed eligible seeded fund exception, CSEs would still be required to count the uncleared swaps that they undertake with eligible seeded funds for purposes of calculating their own AANA.

Market participants, including the members of the GMAC Margin Subcommittee, have argued that absent relief, seeded funds would experience a performance drag given that a portion of their investment would be committed to, and segregated as, IM and would also incur operational costs that are not commensurate with the size of their uncleared swaps activity and the risks of their swaps. In addition, the overall ability of start-up funds to attract new investors may be compromised as a result.[35]

In its Report, the GMAC Margin Subcommittee discussed the costs that seeded funds would incur if the funds were consolidated with their sponsor entities and were treated as margin affiliates of their sponsor entities, including the cost of setting up and maintaining margin accounts and establishing custodial arrangements to segregate IM collateral under Commission Regulation 23.157.[36] The seeded funds would also be required to engage in negotiation of complex margin documentation and develop compliance infrastructures to handle the exchange of IM.[37] The Report further observed that, given their typically small size, seeded funds are likely to encounter difficulties in establishing the necessary margin documentation and processes, as CSEs and custodians, which face competing demands for resources and services to operationalize the exchange of IM, may prioritize larger counterparties.[38]

The Margin Subcommittee Report stated that although seeded funds may be consolidated with other entities on a financial statement, they are legally and operationally distinct and, as a result, may not be able to share information about their exposure for purposes of managing the $50 million IM threshold amount above which IM for uncleared swaps must be exchanged. In addition to operational challenges, the Report indicated that potential confidentiality obligations may prevent the different affiliates within the seeded fund's consolidated group from sharing uncleared swaps exposure information. As an example, the Report noted that because of regulatory restrictions, an insurance company that sponsors a seeded fund would not be permitted to share information about the fund's trading activity with an affiliate engaging in swap transactions for purposes of hedging general insurance risk.

Finally, the Report stated that seeded funds that do not otherwise hold assets qualifying as eligible IM collateral under Commission Regulation 23.156 [39] would need to hold larger cash reserves, which would be unavailable to implement the fund's investment strategy, or would need to incur the costs of converting fund assets into eligible IM collateral. The operational costs and potential difficulties arising in the execution of margin documentation could also either negatively impact a seeded fund's performance or inhibit its ability to trade, defeating the purpose of the original seed capital.[40]

The Commission notes that the proposed eligible seeded fund exception is consistent with the approach in other countries. Jurisdictions such as Australia, Canada and the EU have adopted provisions that permit investment funds to be treated as distinct, separate entities for purposes of calculating the relevant IM thresholds, subject to conditions similar to those that the Commission intends to adopt through the proposed definition of ''eligible seeded fund'' discussed below.[41]

The proposed approach is also consistent with the BCBS–IOSCO Framework, which provides that investment funds should be treated as separate legal entities when applying the IM threshold amount provided that they are distinct legal entities that are not collateralized or otherwise guaranteed or supported by other investment funds or the investment advisor in the event of fund insolvency or bankruptcy.[42] As such, the proposed approach would contribute to global harmonization with respect to the treatment of investment funds, preventing potential reductions in liquidity or trading disruptions due to non-U.S. funds' limiting their trading activities to non-U.S. counterparties to take advantage of approaches to

[34] For purposes of clarity, the Commission notes, however, that if at any point during the three-year period from the fund's trading inception date, the fund's AANA, calculated on an individual entity basis, exceeds the MSE threshold and the fund, individually, with its counterparty and the counterparty's margin affiliates crosses the IM threshold amount, the exchange of IM would be required.

[35] Margin Subcommittee Report at 32.

[36] For purposes of clarity, these arguments, as well as the proposed rule amendments, pertain only to the margin requirements for uncleared swap transactions. The proposed amendments would not impact any potential margin requirements that a seeded fund would have to meet in connection with futures contracts or cleared swap transactions.

[37] Margin Subcommittee Report at 32.

[38] *Id.*

[39] *Id.*

[40] Margin Subcommittee Report at 31.

[41] Margin Subcommittee Report at 29. As noted in the Report, Canada has excluded investment funds from consolidated margin calculations via the Office of the Superintendent for Financial Institutions of Canada Guideline E–22 Margin Requirements for Non-centrally Cleared Derivatives effective as of June 2017, Section 1.1. Scope of Applicability, Footnote 2, available at *https://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/e22.aspx*; the EU adopted a similar approach via Commission Delegated Regulation No. 2016/2251 of October 4, 2016, Supplementing Regulation (EU) No.648/2012 of the European Parliament and of the Council of July 4, 2012 on OTC Derivatives, Central Counterparties and Trade Repositories with Regard to Regulatory Technical Standards for Risk-Mitigation Techniques for OTC Derivative Contracts Not Cleared by a Central Counterparty, 2016 O.J. L340/11, Articles 28(3); 29(3) and 39(2), available at *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2016.340.01.0009.01.ENG;* and the Australian Prudential Regulatory Authority noted, in paragraph 25 of Prudential Standard CPS 226 (available here *https://www.apra.gov.au/sites/default/files/prudential_standard_cps_226_margining_and_risk_mitigation_for_non-centrally_cleared_derivatives.pdf*) that for purposes of calculating the IM threshold, an investment fund may be treated separately from the investment adviser and other investment vehicles, provided certain conditions are met. The Margin Subcommittee Report also noted that Japan has adopted a similar approach, however, the Commission could not verify that assertion because the Report did not provide a citation to the relevant Japanese rules.

[42] BCBS–IOSCO Framework, Footnote 10, *supra* note 27.

consolidation that exist in other jurisdictions.

The Commission recognizes, however, that the proposed amendments would be a departure from the prudential regulators' approach, whose margin requirements for uncleared swaps include a definition of ''margin affiliate'' that is equivalent to the current definition in the CFTC Margin Rule. Furthermore, the prudential regulators have reserved the right to include any entity as an affiliate or a subsidiary based on the conclusion that an entity may provide significant support to, or may be materially subject to the risks of losses of, another entity.[43] As noted below, the Commission requests comment on whether it should proceed with the Seeded Funds Proposal if the prudential regulators do not amend their rules in a manner consistent with the proposal.

The Commission preliminarily believes that the proposed approach supports the CFTC Margin Rule's objective of imposing margin requirements that are commensurate with the risk of uncleared swaps entered into by CSEs.[44] The Commission preliminarily believes, as discussed in the Margin Subcommittee Report, that seeded investment funds do not pose significant risks to their swap counterparties or the financial system given that typically their capitalization does not exceed $50–100 million and the funds have limited notional exposure. The Report cited the results of an informal sampling conducted in 2018 among members of the Securities Industry and Financial Markets Association's Asset Management Group (''SIFMA AMG'') and the American Council of Life Insurers. According to the Report, the respondents identified a total of 33 funds that would be within the scope of the IM requirements due to their derivatives notional exposures being consolidated with entities with MSE. The average gross notional exposure for each seeded fund was $32 million. As the Report concluded, none of these funds would be within the scope of the IM requirements absent consolidation with their sponsor entity. Given their size and limited individual swap activity, the Commission preliminarily believes that affording relief to seeded funds at the early stages of formation from coming within the scope of the IM requirements is consistent with the CFTC Margin Rule's risk-based approach.

The Commission also preliminarily believes that safeguards already present in the CEA and CFTC regulations would mitigate the increase in uncollateralized credit risk resulting from swap transactions between CSEs and seeded funds that would be relieved from the IM requirements given the disaggregation of eligible seeded funds from their sponsor entities and other affiliated entities for purposes of calculating the funds' MSE and the IM threshold amount. The Commission notes that notwithstanding the relief, uncleared swap transactions between CSEs and eligible seeded funds would still be subject to the VM requirements.[45] Moreover, section 4s(j)(2) of the CEA mandates CSEs to adopt a robust and professional risk management system adequate for the management of their swap activities[46] and Commission Regulation 23.600 requires that CSEs, in establishing a risk management program to monitor and manage risks associated with their swap activities, must account for credit risk and must set risk tolerance limits.[47]

As an additional safeguard, the proposed eligible seeded fund exception would be applicable only for a period of three years from an eligible seeded fund's trading inception date. The three-year term is designed to cover the period during which the fund would work towards establishing a performance track record and towards attracting unaffiliated investors.[48]

In adopting the CFTC Margin Rule, the Commission stated that the requirement to calculate MSE and the IM threshold amount on a consolidated basis was intended to prevent CSEs and their counterparties from creating legal entities and netting sets that have no economic basis and are constructed solely for the purpose of applying additional thresholds to evade margin requirements.[49] Consistent with this goal, the Commission intends for the eligible seeded fund exception to be applied only for purposes of calculating MSE and the IM threshold amount of the eligible seeded fund. Under the Seeded Funds Proposal, a fund's sponsor entity and other margin affiliates would continue to include the eligible seeded fund's exposure in the calculation of their MSE and the IM threshold amount, unless they independently qualify for the proposed eligible seeded fund exception. As such, the proposed treatment for eligible seeded funds would not serve as an incentive for a sponsor entity to create seeded funds merely to reduce its own exposure and circumvent the applicability of the IM requirements.

In addition, the Commission proposes to make the eligible seeded fund exception available only with respect to funds that have a bona fide business and economic purpose, meaning that the funds are not created for the sole purpose of evading the IM compliance thresholds. Rather, the exception is intended for funds that engage in genuine efforts to test their investment strategy and distribute the funds' shares to third-party investors.[50] To that end, in addition to relying on anti-evasion provisions already existing in the Commission regulations[51] to address

[43] *See* Prudential Regulators Margin Rule at 74859–60.

[44] *See* Section 4s(e)(3)(A)(2) of the CEA (directing the Commission to adopt margin requirements ''appropriate to the risks associated with'' the uncleared swaps held by the SD or the MSP). 7 U.S.C. 6s(e)(3)(A).

[45] *See* 17 CFR 23.153.

[46] *See* 7 U.S.C. 6s(j).

[47] 17 CFR 23.600.

[48] Market participants have noted that after three years, investment funds have typically established a sufficient record to draw in third-party investors and are no longer consolidated with their sponsor entity for AANA calculation purposes. *See* Margin Subcommittee Report at 30.

[49] CFTC Margin Rule, 81 FR at 652.

[50] The Commission notes that this position is consistent with the policy approach taken by the prudential regulators and the Commission in the regulations implementing the requirements of section 619 of the Dodd-Frank Act, commonly referred to as the ''Volcker Rule.'' The implementing regulations recognize the concept of a seeding period and exempt banking entities that acquire and retain an ownership interest in a covered fund (as the concept is defined under the implementing regulations) from some of the prohibitions of the Rule during the seeding period, under certain conditions. *See* 12 CFR 248.12(a)(1) and (2). In particular, these conditions include that the covered fund must actively seek unaffiliated investors to reduce, through redemption, sale, dilution, or other methods, the aggregate amount of all ownership interests of the banking entity in the covered fund to the amount permitted under the regulations. 12 CFR 248.12(a)(2)(i). Also, the aggregate value of all ownership interests of the banking entity and its affiliates in all covered funds acquired and retained under the relevant exemptions must not exceed 3 percent of the tier 1 capital of the banking entity. 12 CFR 248.12(a)(2)(iii). Although the Commission is not proposing identical conditions, the Commission is proposing to incorporate a number of requirements to achieve the same purpose as appropriate in the context of the CFTC Margin Rule, including the requirement in the proposed definition discussed below that an ''eligible seeded fund'' be managed pursuant to a written investment strategy that follows a written plan to reduce each sponsor entity's ownership interest in the fund.

[51] *See* Commission regulation 23.402(a)(1)(ii) (requiring CSEs to have written policies and procedures to prevent the evasion, or participation in or facilitation of an evasion, of any provision of the CEA or Commission regulation). 17 CFR 23.402(a)(1)(ii). *See also* the definition of MSE in Commission Regulation 23.151 (stating that activities not carried out in the regular course of business and willfully designed to circumvent the calculation of the AANA at month-end to evade meeting the definition of MSE shall be prohibited). 17 CFR 23.151. The Commission also reminds market participants that section 4b of the CEA prohibits any person entering into a swap with another person from cheating, defrauding, or

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the potential circumvention of the IM compliance thresholds, the Commission proposes to limit the availability of the proposed treatment for seeded funds to entities that meet certain requirements. These requirements would be incorporated in the proposed definition of ''eligible seeded fund'' discussed below.

2. Commission Regulation 23.151—Definition of ''Eligible Seeded Fund''

The Commission proposes to amend Commission Regulation 23.151 by adding a definition for the term ''eligible seeded fund.'' ''Eligible seeded fund'' would be defined as a collective investment vehicle that has received a part or all of its start-up capital from a parent and/or affiliate (each, a sponsor entity) and that meets certain specified conditions.

A seeded fund would meet the proposed definition of eligible seeded fund if, among other conditions: (i) the fund is a distinct legal entity from each sponsor entity; (ii) the fund is managed by an asset manager pursuant to an agreement that requires the fund's assets to be managed in accordance with a specified written investment strategy; (iii) the fund's asset manager has independence in carrying out its management responsibilities and exercising its investment discretion, and to the extent applicable, has independent fiduciary duties to other investors of the fund; and (iv) the fund's written investment strategy includes a written plan for reducing each sponsor entity's ownership interests in the fund that stipulates divestiture targets over the three-year period after the seeded fund's trading inception date. Additionally, to meet the ''eligible seeded fund'' definition, in respect of any of the seeded fund's obligations, a fund must not be collateralized, guaranteed, or otherwise supported, directly or indirectly, by any sponsor entity, any margin affiliate of any sponsor entity, other collective investment vehicles, or the fund's asset manager. These conditions are designed to ensure that the sponsor entity would not retain a level of influence or exposure that is materially above that of other minority or passive investors and that the fund would follow a genuine plan to emerge from the seeding phase by attracting unaffiliated investors.

To ensure that the three-year period contemplated by the eligible seeded fund exception is not reinstated, due to rollovers of fund assets or similar activities, the proposed definition would require that the seeded fund has not received any of its assets, directly or indirectly, from an eligible seeded fund that has relied on the proposed exception.

Furthermore, the Seeded Funds Proposal is intended to be limited to those seeded funds that, absent amendments to the CFTC Margin Rule, would have to exchange IM due to their consolidation with a group that collectively exceeds the thresholds triggering compliance with the IM requirements. That is, the Seeded Funds Proposal, consistent with the Margin Subcommittee Report, is intended to address seeded funds that are ''seeded'' by parent entities that have MSE and thus cause the seeded funds to come within the scope of the IM requirements. For purposes of targeting these seeded funds, the proposed definition of ''eligible seeded fund'' would require as a condition for qualification that at least one of the seeded fund's margin affiliates must be subject to the IM requirements and must be required to post and collect IM pursuant to Commission Regulation 23.152.

Finally, the proposed definition of ''eligible seeded fund'' would provide that the seeded fund must not be a securitization vehicle. This condition is designed to further limit the proposed treatment of seeded funds only to funds subject to the Margin Subcommittee Report's recommendation. The Commission notes that in adopting the CFTC Margin Rule, despite receiving multiple comments from industry representatives to exclude securitization vehicles from the definition of FEU, and recommendations subsequent to the adoption of the rule, the Commission has maintained the position that there are sufficient reasons to keep these entities within the scope of the IM requirements. The Commission stated in the preamble to the final CFTC Margin Rule that the relevant IM compliance thresholds would address concerns related to the applicability of the IM requirements to these entities.[52] At this time, the Commission does not believe that it is prudent to extend the proposed eligible seeded fund exception to such entities.

In adopting the CFTC Margin Rule, the Commission modified the proposed definition of ''margin affiliate,'' which relied on the concept of legal control as a criterion for affiliation, to the current definition based on accounting consolidation, in consideration of a concern that the proposed definition may have been over-inclusive. The Commission noted that the accounting consolidation analysis typically results in a positive outcome (consolidation) at a higher level of an affiliation relationship than the 25 percent voting interest standard of the legal control test.[53]

The Commission recognized, however, that consolidation between a seeded fund and the sponsor may occur during the seeding period or other periods in which the sponsor may hold an outsized portion of the fund's interest. The Commission stated that during those periods, when an entity may hold up to 100 percent of the ownership interests of an investment fund, it was appropriate to treat the investment fund as an affiliate.[54] The Commission further stated that such treatment may be likewise justified for a sponsor or asset manager and a special purpose entity created for asset management when accounting standards, such as GAAP and IFRS variable interest standards, require consolidation for such entities even though the manager might not hold an interest comparable to a majority equity or voting control share given the level of influence and exposure typically retained by the manager.[55]

The Commission notes that subsequently, in letters to the CFTC, SIFMA AMG (on behalf of its asset manager members) requested relief from the treatment as margin affiliate for seeded funds, consistent with the arguments made in the Margin Subcommittee Report described above. While acknowledging that a sponsor of a seeded investment fund has influence beyond that of a passive, unaffiliated investor, SIFMA AMG urged that seeded funds not be consolidated with their sponsors in applying the CFTC's margin requirements because there are structural and contractual safeguards that limit the sponsor's influence and exposure with respect to the seeded fund.[56] In particular, SIFMA AMG noted that each seeded fund is a distinct legal entity that is managed by an investment manager pursuant to an investment advisory agreement that, among other things, requires the assets of the fund to be managed in accordance with specified investment guidelines, objectives, and strategies, and not

willfully deceiving, or attempting to cheat, defraud, or deceive, the other person. 7 U.S.C. 6b.

[52] *See* CFTC Margin Rule, 81 FR at 683.

[53] *Id.* at 647.

[54] *Id.*

[55] *Id.*

[56] Letter by SIFMA AMG to the Commission and the Prudential Regulators Regarding Final Margin Rules for Uncleared Swap Transactions (Jan., 19, 2016) (''SIFMA AMG 2016 Letter'') at 3; *see also* Margin Subcommittee Report at 16.

capriciously at the desire of the fund sponsor.[57]

Further, the Margin Subcommittee Report noted that neither the sponsor nor its commonly consolidated entities controls or has transparency into the management or trading of the seeded fund.[58] Moreover, the Report stated that, typically, the sponsor or affiliate of a seeded fund does not guarantee the obligations of the seeded fund or participate in or control the management of the fund.[59] The Report further noted that the sponsor's exposure to the seeded fund is generally capped at its investment, similar to any other passive investor in a third-party instrument or vehicle.[60]

These arguments highlight the safeguards generally exhibited in seeded funds. As previously noted, the Commission is proposing to incorporate these safeguards, among other conditions, in the proposed definition of ''eligible seeded fund'' as requirements to be met by a fund in order to benefit from the proposed treatment for eligible seeded funds, discussed in more detail above. In proposing these conditions, the Commission seeks to ensure that eligible seeded funds are sufficiently independent and risk-remote from other entities in their group such that treating them separately for purposes of determining whether the thresholds for compliance with the IM requirements have been met would be justified.

In particular, the proposed requirements that the fund is managed in accordance with a written investment strategy, by an asset manager that maintains independence in carrying out its management responsibilities and exercising its investment discretion, and that, to the extent applicable, has independent fiduciary duties to other investors in the fund, seek to ensure that no sponsor entity or an affiliate of a sponsor entity has control or transparency into the management or trading of the seeded fund. Furthermore, the proposed condition that the fund's investment strategy follows a written plan for reducing each sponsor entity's ownership interest in the fund aims to reserve the benefit of the proposed approach to seeded funds that have a genuine economic purpose and intentions to emerge from the seeding phase.

In addition, the proposed definition of ''eligible seeded fund'' would prohibit a fund sponsor entity, entities affiliated with a sponsor entity, other collective investment vehicles, or the fund's asset manager from collateralizing, guaranteeing or otherwise directly or indirectly providing support in respect of any of the fund's obligations. The Commission proposes this condition in recognition that the sponsor of a seeded fund or its asset manager may be motivated to provide financial assistance to the seeded fund whose uncleared swaps may be uncollateralized as a result of the Seeded Funds Proposal, which might heighten the risk of the fund's swap positions and weaken the fund's financial condition. The sponsor entity or the asset manager may also be inclined to provide financial assistance to the fund because of reputational or other concerns even in the absence of a guarantee or formal commitment, and at the risk of exhausting its own resources, raising the risk of contagion and systemic risk, in particular during times of widespread financial stress. The Commission preliminarily believes that the requirements in the proposed definition of ''eligible seeded fund,'' which seek to ensure the fund's genuine independence, would serve as effective safeguards against financial contagion.

The Commission also intends to rely on tools that already exist under the CEA and the Commission regulations to address evasion concerns. In particular, the Commission notes that Commission Regulation 23.402(a)(ii) requires CSEs to have written policies and procedures to prevent the evasion, or participation in or facilitation of an evasion, of any provision of the CEA or the Commission regulations.[61] The Commission also reminds market participants that section 4b of the CEA prohibits any person entering into a swap with another person from cheating, defrauding, or willfully deceiving, or attempting to cheat, defraud, or deceive, the other person.[62]

Request for comments: The Commission requests comments regarding the proposed amendments to Commission Regulation 23.151, generally. The Commission specifically requests comment on the following questions:

1. Under the Seeded Funds Proposal, eligible seeded funds would be deemed not to have margin affiliates for purposes of calculating the fund's MSE and the IM threshold amount during a period of three years from the fund's trading inception date. As such, CSEs that undertake uncleared swaps with such funds and would otherwise be required to exchange IM with the funds, may be relieved from such obligation, as only each fund's individual exposure would be considered in determining whether the IM requirements apply to uncleared swaps between CSEs and the fund. As a result, less margin may be collected and posted for uncleared swaps than would be otherwise required under the current requirements. Is the Seeded Funds Proposal appropriate in light of the resulting potential uncollateralized swap risk?

2. The Commission recognizes that the proposed eligible seeded fund exception would not only benefit the eligible seeded funds but would also relieve CSEs from their obligation to post IM with seeded funds that would otherwise come within the scope of the CFTC IM requirements. Should only the eligible seeded fund, and not its CSE counterparty, be relieved of the IM obligation?

3. Should the Commission impose any additional limits or conditions to the proposed eligible seeded fund exception such as: (i) imposing a separate MSE and/or IM threshold amount, calculated on the basis of the eligible seeded fund's individual exposure and proportionate to the perceived risks associated with funds' swap activities, (ii) imposing a limit on the total number of eligible seeded funds to which a sponsor entity provides start-up capital that may rely on the eligible seeded fund exception, or (iii) requiring that all eligible seeded funds, consolidated within the same group on the basis of accounting principles, aggregate their exposures for purposes of calculating the MSE and IM threshold amounts that apply to such funds?

4. What are the costs associated with a seeded fund calculating IM and establishing a relationship with a custodian to transfer IM?

5. The proposed amendments to Commission Regulation 23.151, in particular the requirements in the proposed definition of ''eligible seeded fund,'' aim to ensure that the relevant funds are genuinely and practically independent and risk-remote from their sponsor entities and other affiliates. Do the proposed amendments incorporate sufficient safeguards to achieve this goal? Given that other entities such as sponsor entities or the asset manager may be incentivized to provide resources to a seeded fund in financial distress even in the absence of an

[57] SIFMA AMG 2016 Letter at 3.

[58] Margin Subcommittee Report at 16.

[59] Margin Subcommittee Report at 6 and16.

[60] Margin Subcommittee Report at 16.

[61] 17 CFR 23.402(a)(ii). As discussed above, the Commission also notes that the definition of MSE in Commission Regulation 23.151 prohibits activities not carried out in the regular course of business and willfully designed to circumvent the calculation of the AANA at month-end to evade meeting the definition of MSE shall be prohibited. 17 CFR 23.151.

[62] 7 U.S.C. 6b.

explicit business arrangement or guarantee, potentially putting their own financial position at risk and thereby increasing the risk of contagion and systemic risk, what measures could the Commission take to limit the potential risks to such other entities and ultimately to the financial system?

6. The Commission proposes to include, among other conditions, a requirement providing that a fund would qualify as an eligible seeded fund only if one or more of the seeded fund's margin affiliates is required to post and collect IM pursuant to Commission Regulation 23.152. This condition is intended to limit the availability of the proposed eligible seeded fund exception only to funds that, for reasons described in the Margin Subcommittee Report, are disadvantaged domestically and globally due to their affiliation with a group that has MSE. Is this condition appropriate? Should the condition be amended to ensure that the Commission is appropriately circumscribing the proposed treatment of eligible seeded funds?

7. The Commission also proposes to include, among other conditions, a requirement providing that to qualify as an eligible seeded fund, the seeded fund's investment strategy must follow a written plan for reducing each sponsor entity's ownership interest in the seeded fund that stipulates divestiture targets over the three-year period after the seeded fund's trading inception date. Should the Commission include more specific requirements in connection with the written plan?

8. The Prudential Regulators Margin Rule contains a definition of ''margin affiliate'' that is equivalent to the current definition under the CFTC Margin Rule. Furthermore, the prudential regulators have reserved the right to include any entity as an affiliate or a subsidiary based on the conclusion that an entity may provide significant support to, or may be materially subject to the risks or losses of, another entity. If the Commission amends Commission Regulation 23.151, counterparties that trade with both prudentially regulated SDs and CFTC-regulated SDs may need to adjust their swap-related documentation and collateral management systems to reflect the different margin requirements that may apply under the CFTC's and the prudential regulators' rules. In that regard, the Commission requests information on the potential additional costs associated with maintaining two separate and distinct documentation and collateral management processes. How much weight should the Commission give with respect to the possible challenge that counterparties may need to maintain two separate and distinct documentation and collateral management systems? Should the Commission proceed to adopt the proposed amendments to Commission Regulation 23.151 if the prudential regulators do not adopt similar regulatory changes?

9. The Commission intends that the final rule will become effective 30 days after its publication in the **Federal Register**. With respect to the Seeded Funds Proposal, are there any comments on the effective date?

B. Money Market Funds Proposal

The Commission proposes to amend Commission Regulation 23.156(a)(1)(ix) to eliminate the restriction on the use of securities of money market and similar funds that transfer their assets through repurchase or similar arrangement (the asset transfer restriction). The Commission is also proposing an amendment to the haircut schedule set forth in Commission Regulation 23.156(a)(3)(i)(B) to add a footnote that was inadvertently omitted when the rule was originally promulgated.

1. Commission Regulation 23.156(a)(1)(ix)—Elimination of the Asset Transfer Restriction

In adopting the CFTC Margin Rule, the Commission added redeemable securities in money market and similar funds to the list of eligible collateral in response to comments arguing for the inclusion of MMF securities as eligible collateral for IM.[63] The Commission explained that the addition of money market and similar fund securities to the list of eligible collateral would provide flexibility while maintaining a level of safety, noting that to qualify, such fund securities would need to meet the conditions in Commission Regulation 23.156(a)(1)(ix), including the asset transfer restriction in paragraph (C), which has the effect of disqualifying the securities of funds that transfer their assets through repurchase or similar arrangements.[64]

As discussed above, market participants, and the GMAC Margin Subcommittee, have urged the Commission to eliminate the asset transfer restriction in paragraph (C), noting that it disqualifies the securities of most MMFs and significantly restricts the ability of swap counterparties to use such form of collateral.[65] Based on its experience implementing the margin requirements for several years and for the reasons described below, the Commission preliminarily recommends the elimination of the restriction.

MMFs are regulated, short-term investment vehicles that are subject to liquidity and diversification requirements under U.S. regulations, such as SEC Rule 2a–7.[66] The MMFs that could qualify as eligible IM collateral under Commission Regulation 23.156 invest in high quality underlying instruments, namely securities issued or unconditionally guaranteed as to the timely payment of principle and interest by the U.S. Department of the Treasury and cash. More generally, the Margin Subcommittee Report stated that the Commission has recognized MMFs as safe, high quality investments, noting that, for example, Commission Regulation 1.25 permits the investment of customer margin by futures commission merchants (''FCM'') in MMFs without an asset transfer restriction.[67]

The elimination of the asset transfer restriction in paragraph (C) of Commission Regulation 23.156(a)(1)(ix) would allow for a broader range of money market and similar fund securities to qualify as eligible IM collateral.[68] This is consistent with the Commission's intent in identifying certain fund securities as eligible collateral when it adopted the CFTC Margin Rule. The Commission stated that it intended to permit MMF securities to be pledged as IM collateral in order to permit flexibility, while also ''maintaining a level of safety.'' [69] As noted above, according to the Margin Subcommittee Report, most multi-billion dollar MMFs available to the institutional marketplace use repurchase or similar arrangements as part of their management strategy.[70] Given the widespread use of repurchase and similar arrangements by MMFs,

[63] *See* CFTC Margin Rule, 81 FR at 666.

[64] *Id.*

[65] Margin Subcommittee Report at 23.

[66] 17 CFR 270.2a–7.

[67] Margin Subcommittee Report at 26. In the Commission's view, the fact that Commission Regulation 1.25 permits investments in interests in money market funds without imposing restrictions on repurchase agreements and similar arrangements is not dispositive in considering the proposed amendment to Commission Regulation 23.156(a)(1)(ix). Commission Regulation 1.25 was adopted under a different regime (concerning FCMs and derivative clearing organizations) and addresses different concerns than those Commission Regulation 23.156 aims to target.

[68] If adopted, the amendment would also result in an expanded scope of money market and similar fund securities that can serve as VM for uncleared swap transactions between a CSE and an FEU, given that Commission Regulation 23.156(b)(1)(ii), defining the types of assets qualifying as VM collateral for these transactions, incorporates the assets identified as eligible collateral for IM in Commission Regulation 23.156(a)(1).

[69] *See* 81 FR at 666.

[70] Margin Subcommittee Report at 27.

only a few of the MMFs currently available to institutional clients satisfy the asset transfer restriction in paragraph (C).[71] As a result, unless the restriction is eliminated, this form of margin collateral would be of very limited availability to swap counterparties, contrary to the intent of the Commission.

The Commission preliminarily believes that expanding the scope of eligible money market and similar fund securities may lead to more efficient collateral management practices. In particular with respect to the use of MMF securities as IM collateral, the Margin Subcommittee Report noted that many custodians offer money market sweep programs, which facilitate buy-side market participants' timely meeting margin calls in cash that is subsequently used to purchase MMF securities, thereby avoiding the settlement delays or additional costs associated with the purchase and posting of non-cash assets.[72] This is particularly important given that under the custodian arrangement rules under Commission Regulation 23.157, IM collateral in cash must be promptly converted into other types of eligible collateral, such as securities of MMF or similar funds, to avoid the possibility that cash collateral may become a deposit liability of the custodian and to prevent rehypothecation by the custodian.[73]

Moreover, the Report stated that the use of MMF securities as collateral may enable market participants to avoid potential negative interest rate charges that may be applied by custodian banks on cash collateral.[74] Finally, according to the Report, the sweep of cash into MMF securities helps market participants mitigate the risk of custodian insolvency as non-cash assets would not be consolidated with the custodian's balance sheet or estate from a supplemental leverage ratio [75] or bankruptcy perspective.[76]

Allowing a broader selection of money market and similar fund securities to serve as collateral may address the potential concentration of margin collateral in the securities of a few MMFs.[77] The removal of the asset transfer restriction could lead to an increased use of MMF securities as margin collateral. The Commission acknowledges the risk of concentration of collateral in particular assets and reiterates, as stated in the preamble to the CFTC Margin Rule, that CSEs should take concentration into account and prudently manage their margin collateral.[78] For the same reasons, the Commission preliminarily believes that CSEs should consider the overall investment strategy of a money market or similar fund, including the terms of repurchase or similar arrangements the fund may undertake, in determining whether to use the fund's securities to meet margin obligations under the CFTC rules.

The Commission explained in the preamble to the CFTC Margin Rule that the asset transfer restriction in paragraph (C) of Commission Regulation 23.156(a)(1)(ix) was included to ensure consistency with the prohibition against rehypothecation of IM collateral under Commission Regulation 23.157(c)(1). After further consideration and based on its experience implementing the margin requirements for several years, the Commission now preliminarily believes that although these rules are similar in that they aim to mitigate loss, the objectives of these rules are distinguishable as further discussed below.

Commission Regulation 23.157 provides for the segregation of IM collateral with a third-party custodian to ensure that: (i) the IM is available to a counterparty when its counterparty defaults and a loss is realized that exceeds the amount of VM that has been collected as of the time of default; and (ii) the IM is returned to the posting party after its swap obligations have been fully discharged.[79] In this context, the prohibition in Commission Regulation 23.157(c)(1) against rehypothecation, repledging, reuse, or other transfer (through securities lending, repurchase agreement, reverse repurchase agreement, or other means) of funds or property held by the custodian advances the Commission's goal of ensuring that the pledged assets are available to the non-defaulting party in the event of a default by its counterparty.[80] In the preamble to the CFTC Margin Rule, the Commission explained that rehypothecation could allow the collateral posted by one counterparty to be used by the other counterparty as collateral for additional swaps, resulting in rehypothecation chains and embedded leverage throughout the financial system.[81]

In contrast, Commission Regulation 23.156(a) aims to identify assets as eligible collateral that are liquid, and, with haircuts, will hold their value in times of financial stress.[82] Current paragraph (C) of Commission Regulation 23.156(a)(1)(ix) furthers the goal that money market and similar fund securities posted as IM collateral remain liquid and retain their value during times of financial stress. More specifically, paragraph (C) disqualifies the securities of money market and similar funds that transfer their assets through repurchase or similar arrangements to mitigate the potential impact of such transfers on the liquidity or value of fund securities.

For example, if the counterparty to a money market and similar fund in a repurchase or similar arrangement does not fulfill its obligation under the

[71] *Id.* at 24 (noting that a leading custodial bank has researched all the U.S. MMFs currently available to its institutional clients in the U.S. and found that only four would meet the requirements of Commission Regulation 23.156(a)(1)(ix)).

[72] Under Commission Regulation 23.157, a custodian may accept and hold cash collateral as IM only if the funds are subsequently used to purchase an asset that qualifies as an eligible form of collateral under Commission Regulation 23.156(a)(1)(ii) through (x).

[73] *See* 81 FR at 671.

[74] *See* Margin Subcommittee Report at 27.

[75] The supplementary leverage ratio represents the amount of common equity capital that banks or bank holding companies must hold relative to their total leverage exposure. CSEs and SD or MSP counterparties that are banks or bank holding companies and supervised by a U.S. banking regulator may be subject to this requirement. For further information, *see* Regulatory Capital Rules: Regulatory Capital, Revisions to the Supplementary Leverage Ratio, 79 FR 57725 (Sept. 26, 2014).

[76] Margin Subcommittee Report at 26–27.

[77] As noted above, according to the Margin Subcommittee Report (citing research by a leading custodian bank), only four MMFs have securities that qualify as eligible collateral under the current rules. *See* Margin Subcommittee Report at 24.

[78] *See* 81 FR at 666.

[79] *Id.* at 670.

[80] In this regard, the Margin Subcommittee Report stated that ''in [ ] MMF sweep arrangements, under no circumstances does the pledgor's custodian have any right to rehypothecate, reuse the IM collateral or take any other independent actions with respect to the pledged MMF shares. Instead, the CSE and financial end user agree upfront in the collateral documentation to the list of eligible MMFs and any associated haircuts, as pledgor any cash sweep into a MMF is instructed by the financial end user or its manager and absent any default, any transfers into and out of the collateral account by the custodian is instructed by the financial end user and agreed to by the CSE (as secured party).'' Margin Subcommittee Report at 25.

[81] *Id.* at 688, n. 392 (describing as an example, the situation where a default or liquidity event that occurs at one link along the rehypothecation chain may induce further defaults or liquidity events for other links in the rehypothecation chain as access to the collateral for other positions may be obstructed by a default further up the chain, and also explaining that in the event of default along a rehypothecation chain, there is an increased chance that each party along the chain will ask for the rehypothecated collateral to be returned to them at the same time, leaving just one party with the collateral).

[82] *Id.* at 665.

arrangement, the fund may be left holding assets that might not be easily resold or that might not provide sufficient compensation for the assets tendered in the repurchase arrangement, in particular during a period of financial stress, reducing the overall net asset value of the fund and the price of the fund's securities. Also, the inability to liquidate assets that a money market and similar fund might be left holding upon the failure of a repurchase or similar arrangement, or the inability to extract assets originally tendered in the repurchase arrangement, may impact a fund's ability to promptly respond to redemption requests, which may hinder the liquidity of the money market and similar funds' securities, making the securities less suitable as margin collateral.[83] Repurchase and similar arrangements may therefore undermine efforts that collateral be ''subject to low credit, market, and liquidity risk.'' [84]

As discussed above, the asset transfer restriction was included in the CFTC Margin Rule to provide consistency with the prohibition against rehypothecation of IM collateral, given the possibility that assets exchanged by parties in a repurchase or similar arrangement might be lost in a chain of transactions similar to the chain of hypothecations that the Commission intended to avert by prohibiting the rehypothecation of IM collateral by custodians under Commission Regulation 23.157(c)(1). However, unlike in the rehypothecation situation, where collateral might be lost at any link of the chain with the posting counterparty in the uncleared swap transaction potentially losing its collateral without any recourse, in the repurchase or similar arrangement context, each party to the arrangement would be partially secured because the parties would exchange assets with each other under the arrangement. Hence, the risk of loss would be mitigated. If a party to the repurchase arrangement defaults by failing to return assets tendered by its counterparty, the counterparty would not lose the entire value of its assets as it would hold the assets committed by the other party under the arrangement.[85]

While acknowledging the concerns associated with repurchase and similar arrangements, the Commission preliminarily believes that the flexibility and safety that it aimed to achieve by specifically identifying assets as eligible collateral, including certain money market and similar fund securities, may be advanced even if repurchase and similar arrangements are not restricted for the purpose of qualifying money market and similar fund securities as eligible collateral. In that regard, based on its experience administering the CFTC Margin Rule, the Commission preliminarily believes that risks associated with repurchase and similar arrangements would be adequately addressed even in the absence of the asset transfer restriction by safeguards already present in the CFTC regulations, as further discussed below, which, in the Commission's view, can achieve the desired level of safety with respect to fund securities without restricting a fund's ability to undertake repurchase or similar transactions.

First, Commission Regulation 23.156(a)(1)(ix)(A) and (B) qualify as eligible collateral the securities of money market and similar funds that invest only in securities issued or unconditionally guaranteed by the U.S. Department of the Treasury, the European Central Bank or certain other sovereign entities, and cash. The Commission preliminarily believes that these provisions ensure that money market and similar fund securities present the fundamental characteristics of liquidity and value stability contemplated by the CFTC Margin Rule.[86] In addition, the Commission notes that subparagraphs (A) and (B) of Commission Regulation 23.156(a)(1)(ix) effectively limit the types of assets that a money market and similar fund can receive in repurchase or similar arrangements. As such, the securities of money market and similar funds will qualify as eligible collateral only if the types of assets that the fund receives in a repurchase or similar arrangement are those described in subparagraphs (A) and (B).

Second, Commission Regulation 23.156(c) requires that CSEs monitor the market value and eligibility of all collateral and, to the extent that the market value has declined, promptly collect or post additional eligible collateral to maintain compliance with Commission Regulations 23.150 through 23.161.[87] Thus, even if the value or liquidity of pledged money market and similar fund securities may be affected by a repurchase or similar arrangement undertaken by the fund, CSEs have the obligation to monitor the value and suitability of the fund's securities as margin collateral and collect or post additional eligible collateral to compensate for collateral deficiencies.

In addition, section 4s(j)(2) of the CEA requires CSEs to adopt a robust and professional risk management system that is adequate for the management of their swap activities,[88] and Commission Regulation 23.600 mandates that CSEs establish a risk management program to monitor and manage risks associated with their swap activities including, among other things, credit and liquidity risks. In particular, pursuant to Commission Regulation 23.600(c)(4), credit risk policies and procedures should provide for the regular valuation of collateral used to cover credit exposures and the safeguarding of collateral to prevent loss, disposal, rehypothecation, or use unless appropriately authorized, and liquidity risk policies and procedures should provide for, among other things, the assessment of procedures for liquidating all non-cash collateral in a timely manner and without a significant effect on price, and the application of appropriate collateral haircuts that accurately reflect market and credit risk.[89]

Given these safeguards and the recognition that the asset transfer restriction is severely limiting the use of money market and similar fund securities as eligible collateral, the Commission preliminary believes that it is appropriate to eliminate the asset transfer restriction. The Commission also notes that the elimination of the restriction would bring the CFTC's eligible collateral framework more in line with the SEC approach, which does not impose asset transfer restrictions on funds whose securities are used as collateral for margining purposes and expressly permits the use of government money market fund securities as collateral, thereby potentially leading to a reduction in costs for those market participants that dually register as SDs and security-based swap SDs with the CFTC and the SEC, respectively.

[83] The Commission, however, notes that any potential risk of such a repurchase or similar arrangement may be mitigated by the standard industry practice of applying haircuts to non-cash collateral in repurchase or similar arrangements to compensate for the risk that the value of the collateral may decline over the term of the arrangement. *See* Primer: Money Market Funds and the Repo Market, Prepared by the staff of the Division of Investment Management, U.S. Securities and Exchange Commission at pp. 5–6.

[84] 81 FR at 667 (noting that the CFTC Margin Rule does not allow CSEs to fulfill the margin requirements with any asset not included in the list of eligible collateral set forth in Commission Regulation 23.156, as the use of alternative types of collateral could introduce liquidity, price volatility, or other risks of collateral during a period of stress that could further exacerbate such stress and could undermine efforts to ensure that collateral be subject to low credit, market, and liquidity risk).

[85] Of course, it might experience some loss as the retained assets might not fully compensate such party for the unreturned assets.

[86] *See* 81 FR at 665.

[87] 17 CFR 23.156(c).

[88] *See* 7 U.S.C. 6s(j).

[89] 17 CFR 23.600.

2. Commission Regulation 23.156(a)(3)—Amendments to the Haircut Schedule

Commission Regulation 23.156(a)(3) sets forth percentage discounts to be applied to the value of eligible collateral collected or posted to satisfy IM requirements, varying according to asset class (''haircut requirements'').[90] The haircut requirements are intended to address the possibility that the value of non-cash eligible collateral may decline between a counterparty's default and the close out of such counterparty's swap positions by the CSE.[91]

Although the Commission intended to align its margin rule for uncleared swaps with the Prudential Regulators Margin Rule, in adopting its rule, the Commission inadvertently omitted a footnote to the haircut schedule included in the Prudential Regulators Margin Rule.[92] The Commission is therefore proposing an amendment to Commission Regulation 23.156(a)(3) to incorporate the omitted footnote. The footnote, consistent with the footnote in the Prudential Regulators Margin Rule, would describe the haircut applicable to the securities of money market and similar funds. The haircut for such money market and similar fund securities would be the weighted average discount on all assets within the funds (the discount for each asset is specified in Commission Regulation 23.156(a)(3)) at the end of the prior month. The footnote would further specify that the weights to be applied in the weighted average should be calculated as a fraction of each fund's total market value that is invested in each asset with a given discount amount.

Request for comments: The Commission requests comment regarding the proposed amendments to Commission Regulation 23.156, generally. The Commission specifically requests comment on the following questions:

10. Does the existing asset transfer restriction significantly limit the use of money market and similar fund securities as eligible collateral under the CFTC Margin Rule?

11. Under the Money Market Funds Proposal, the securities of certain money market and similar funds that engage in repurchase or similar arrangements would qualify as eligible collateral. A money market and similar fund that engages in asset transfer transactions under a repurchase or similar arrangement may be exposed to increased risks, which may affect the liquidity and value of the fund's securities pledged as collateral under the CFTC Margin Rule. In light of the potential increased risk, should the Commission consider an alternative to the proposed rule amendment, such as allowing the securities of money market and similar funds to qualify as eligible collateral only if a fund's repurchase or similar arrangements are cleared? Should the Commission impose any additional limits or conditions, such as restrictions on the type and terms of the repurchase or similar arrangements permitted for money market and similar funds for their shares to qualify as eligible collateral?

12. If the Commission eliminates the asset transfer restriction, should the Commission impose an additional haircut beyond that required by the haircut schedule in Commission Regulation 23.156(a)(3), as revised by the proposed amendment? If an additional haircut were to be adopted, what should the haircut be and how should the haircut be calculated? Should such an additional haircut be proportionate to the net asset value of the assets of a money market and similar fund that are subject to repurchase or similar arrangements? Or instead, should the additional haircut be a fixed percentage similar to the percentages applicable to other assets that qualify as eligible collateral under the haircut schedule, as it may be less complex to administer? Should such additional fixed haircut apply to all securities of money market and similar funds that are used as eligible collateral, or be applicable only to such securities of money market and similar funds that engage in repurchase or similar arrangements?

13. Given the potential impact that repurchase or similar agreements may have on the liquidity and value of securities of money market and similar funds that may be used as eligible collateral, should there be a percentage cap on the amount of assets that a fund can use for repurchase or similar arrangements, such as 10 percent of the total net asset value of the fund?

14. To gain a better understanding of the risks posed by repurchase and similar arrangements, the Commission requests information concerning the types of counterparties that typically face money market and similar funds in repurchase or similar agreements; the extent to which repurchase and similar arrangements are used by money market and similar funds; and whether the market treats differently money market and similar funds according to the types of repurchase and similar arrangements the funds enter into and the extent of repurchase agreements or arrangements the funds engage in. Further, the Commission requests comment with respect to the manner in which, and the extent to which, CSEs will meet their obligation to monitor the value and suitability of securities of money market and similar funds pledged as margin collateral where the funds engage in repurchase or similar arrangements.

15. Are the regulatory safeguards referenced in the Money Market Funds Proposal adequate to address the potential risks that may arise from the proposal? Are there other regulatory safeguards that the Commission should consider?

16. Are there any risks associated with the Money Market Funds Proposal that the Commission has not considered? In addition to the possible measures discussed above, including a possible additive haircut, or a percentage cap on the amount of assets that funds could use in repurchase and similar agreements, are there other measures that the Commission could take to mitigate such risks?

17. The Prudential Regulators Margin Rule contains an equivalent asset transfer restriction. If the Commission amends Commission Regulation 23.156, counterparties that trade with both prudentially regulated SDs and CFTC-regulated SDs may need to adjust their swap-related documentation and collateral management systems to reflect the different treatments for fund securities under the CFTC's and the prudential regulators' rules. In that regard, the Commission requests information on the potential additional costs associated with maintaining two separate and distinct documentation and collateral management processes. How much weight should the Commission give with respect to the possible challenge that counterparties may need to maintain two separate and distinct documentation and collateral management systems? Should the Commission proceed to adopt the proposed amendments to Commission Regulation 23.156 if the prudential regulators do not adopt similar regulatory changes?

18. The Commission intends that the final rule will become effective 30 days after its publication in the **Federal Register**. With respect to the Money Market Funds Proposal, are there any comments on the effective date?

[90] 17 CFR 23.156(a)(3). Also, Commission Regulation 23.156(b)(1)(ii) provides that assets that qualify as eligible collateral for IM can be used as collateral for VM for swap transactions between a CSE and a FEU, subject to the applicable haircuts for each asset. *See also supra* note 20.

[91] 81 FR at 668.

[92] Prudential Regulators Margin Rule at 74910.

IV. Administrative Compliance

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires Federal agencies to consider whether the rules they propose pursuant to the notice-and-comment provisions of the Administrative Procedure Act, or any other law, will have a significant economic impact on a substantial number of small entities and provide a regulatory flexibility analysis respecting the impact or issue a certification that the rule does not have such impact.[93] The Commission previously has established certain definitions of ''small entities'' to be used in evaluating the impact of its regulations on small entities in accordance with the RFA.[94] The proposed amendments would only affect certain SDs and MSPs and their counterparties, which must be eligible contract participants (''ECPs'').[95] The Commission has previously established that SDs, MSPs and ECPs are not small entities for purposes of the RFA.[96]

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [97] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number. The proposed amendments contain no requirements subject to the PRA.

C. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA.[98] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) considerations, and seeks comments from interested persons regarding the nature and extent of such costs and benefits.

As described in more detail above, under the Seeded Funds Proposal, the Commission is proposing to amend the definition of ''margin affiliate'' to provide for a limited eligible seeded fund exception, pursuant to which, during a period of three years after the fund's trading inception date, a seeded fund meeting certain specified requirements would be deemed to not have margin affiliates for purposes of calculating the fund's MSE and the IM threshold. This proposed treatment for eligible seeded funds would effectively relieve CSEs that enter into uncleared swaps with certain seeded funds from the requirement to exchange IM with the seeded funds during the three-year period after the funds' trading inception date. The Seeded Funds Proposal would make the proposed treatment available only with respect to eligible seeded funds that, among other requirements: (i) are distinct legal entities from each sponsor entity; (ii) have one or more margin affiliates that are required to post and collect IM; (iii) are managed by an asset manager pursuant to an agreement that requires the assets of the fund to be managed in accordance with a specified written investment strategy; (iv) have an asset manager who maintains independence in carrying out its management responsibilities and exercising its investment discretion, and has independent fiduciary duties to other investors in the fund (if any), such that no sponsor entity or any margin affiliate of a sponsor entity controls or has transparency into the management or trading of the seeded fund; (v) follow a written plan for the reduction of the sponsor entity's ownership interest in the fund that stipulates divestiture targets over the three-year period after the seeded fund's trading inception date; (vi) are not collateralized, guaranteed or otherwise supported, directly or indirectly by any sponsor entity, any margin affiliate of a sponsor entity, other collective investment vehicles, or the seeded fund's asset manager, in respect of any of the fund's obligations; (vii) have not received any of their assets, directly or indirectly, from an eligible seeded fund that has relied on the proposed eligible seeded fund exception; and (viii) are not securitization vehicles.

Under the Money Market Funds Proposal, the Commission is proposing to eliminate the asset transfer restriction in paragraph (C) of Commission Regulation 23.156(a)(1)(ix), which has the effect of disqualifying as eligible collateral the securities of money market and similar funds that transfer their assets through repurchase or similar arrangements. The Margin Subcommittee Report indicated that the asset transfer restriction significantly limits the money market fund securities that are available for use as collateral under the CFTC Margin Rule.[99]

The baseline against which the benefits and costs associated with the proposed rule amendments are compared is the uncleared swaps markets as they exist today, including the treatment of seeded funds and the securities of money market and similar funds under the current CFTC Margin Rule.

The Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving U.S. firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of these proposed amendments on all activity subject to the proposed amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with activities in, or effect on, U.S.

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[93] *See* 5 U.S.C. 601(2), 603, 604, and 605.

[94] *See* Registration of Swap Dealers and Major Swap Participants, 77 FR 2613 (Jan. 19, 2012).

[95] Pursuant to section 2(e) of the CEA, 7 U.S.C. 2(e), each counterparty to an uncleared swap must be an ECP, as defined in section 1a(18) of the CEA, 7 U.S.C. 1a(18). Section 1a(18) of the CEA defines ECP by listing certain entities and individuals whose business is financial in nature or that meet defined asset or net worth thresholds, as well certain government entities.

[96] *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' '''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 77 FR 30596, 30701 (May 23, 2012).

[97] 44 U.S.C. 3501 *et seq.*

[98] 7 U.S.C. 19(a).

[99] As previously noted, according to the Margin Subcommittee Report (citing research by a leading custodian bank), the securities of only four MMFs would qualify as eligible collateral under the current rules. *See* Margin Subcommittee Report at 24.

commerce under section 2(i) of the CEA.[100]

The Commission recognizes that the proposed rules may impose additional costs on market participants, including CSEs. Although the Commission has endeavored to assess the expected costs and benefits of the proposed rulemaking in quantitative terms, due to the lack of data and information to estimate those costs, the Commission has identified and considered the costs and benefits of the proposal in qualitative terms. The lack of data and information to estimate costs is attributable to the nature of the proposal and uncertainty relating to how particular market participants would implement the proposed rules. The Commission specifically requests data and information from market participants and other commenters to allow it to better estimate the costs of the proposal.

1. General Cost-Benefits Considerations

Seeded Funds Proposal

(a) Benefits

The Seeded Funds Proposal would effectively relieve CSEs entering into uncleared swaps with eligible seeded funds from the requirement to collect IM from the funds, subject to specified conditions. Absent the Seeded Funds Proposal, seeded funds would be disadvantaged domestically and globally in comparison to similar investment funds that are not margin affiliates of an entity required to exchange IM or are subject to the rules of jurisdictions such as Australia, Canada and the EU that treat certain investment funds as separate legal entities, consistent with the international standards established by the BCBS–IOSCO Framework.[101] The Seeded Funds Proposal would therefore level the playing field domestically and globally with respect to the treatment of seeded funds. However, the Seeded Funds Proposal may incentivize trading with CSEs over SDs or MSPs subject to the U.S. prudential regulators' margin rules given that the prudential regulators might not revise their rules in a manner consistent with the Seeded Funds Proposal and the prudential regulators' rules may continue to require that seeded funds calculate the MSE and IM threshold amount on a consolidated basis with their margin affiliates.

The Commission preliminarily believes that the Seeded Funds Proposal would tend to benefit seeded funds whose AANA falls below the $8 billion MSE threshold and that, given their level of swap activity, such seeded funds would pose relatively low risk to the uncleared swaps market and the U.S financial system in general. In that regard, the Margin Subcommittee Report stated that seeded funds have limited notional exposure and their capitalization typically does not exceed $50–100 million.[102] The Report further cited an informal sampling of members of SIFMA AMG and the American Council of Life Insurers conducted in 2018, which indicated that a total of 33 funds would be in scope of the CFTC margin requirements due to their derivatives notional exposures being consolidated with entities with MSE. Individually, each of the funds had an average gross notional exposure of $32 million.[103]

As a result, in the Commission's preliminary view, the Seeded Funds Proposal, if adopted, would address seeded funds that tend to engage in less uncleared swap trading activity and, in the aggregate, pose less systemic risk than entities that meet the MSE threshold. The impacted eligible seeded funds, which would be in an initial stage of development, would presumably have fewer resources to devote to IM compliance and hence would benefit from being discharged from posting IM during their seeding period without contributing significantly to systemic risk. The eligible seeded fund's sponsor entities and their margin affiliates that do not independently qualify for the proposed eligible seeded fund exception would continue to include the eligible seeded funds' exposure in their calculation of the MSE and IM threshold amount. The CSE counterparty to the eligible seeded fund would also still be required to count the uncleared swaps that it undertakes with the eligible seeded fund for purposes of calculating its own AANA. The Commission preliminarily believes that the flexibility provided by the eligible seeded fund exception would be instrumental for investment funds during the seeding period when funds typically use all their resources to establish a performance track record to attract unaffiliated investors.

In addition, the Commission believes that the Seeded Funds Proposal would be beneficial for CSEs that enter into swap transactions with investment funds. As a result of the proposed amendments, CSEs would apply a consistent approach in their swap dealing activities with U.S. and non-U.S. investment funds, which may lead to cost efficiencies. Also, as noted in the Margin Subcommittee Report, a consistent approach to seeded funds would reduce the incentive for non-U.S. funds to avoid business with CSEs given the perceived more onerous treatment of funds in the U.S.[104]

The proposed eligible seeded fund exception may also incentivize some market participants to expand their swap business or enter into the swaps markets because, by counting their AANA and uncleared swaps credit exposure individually, seeded funds may not meet the thresholds that would bring them within the scope of the IM requirements. This would relieve CSEs entering into uncleared swaps with the funds from the requirement to exchange IM with the funds. In turn, the elimination of IM-related costs may encourage uncleared swaps trading between CSEs and investment funds and increase the pool of potential swap counterparties, enhancing competition and liquidity and facilitating price discovery in the uncleared swaps markets.

(b) Costs

Amending the definition of ''margin affiliate'' to provide for a limited eligible seeded fund exception under which seeded funds would be deemed to not have margin affiliates for purposes of calculating the funds' MSE and the IM threshold amount, subject to specified conditions, may lead to the exchange of less margin between a CSE and a seeded fund. The Commission recognizes that the uncollateralized exposure that may result from the proposed change to the ''margin affiliate'' definition could increase credit risk associated with uncleared swaps. The Commission believes, however, that a number of safeguards exist to mitigate this risk. The Commission notes that seeded funds that would qualify for the eligible seeded fund exception would typically be smaller entities that have limited swaps activity.[105] To grow in size, the funds would have to attract unaffiliated investors, which may result in such funds no longer being subject to consolidation with their sponsor entity.

As such, the eligible seeded fund exception under the Seeded Funds Proposal would primarily impact the exchange of IM between a CSE and investment funds that are in their seeding period. During that period, such investment funds would pose less risk to a CSE counterparty and the financial system as a whole given the small size of the funds and the scope of their derivatives activity. To ensure that

[100] 7 U.S.C. 2(i).

[101] Margin Subcommittee Report at 7, 30 and 33.

[102] Margin Subcommittee Report at 31.

[103] *Id.*

[104] Margin Subcommittee Report at 30.

[105] See Margin Subcommittee Report at 31.

eligible seeded funds are afforded the benefit of a separate treatment from margin affiliates only during the seeding period, the Commission proposes to limit the applicability of the eligible seeded fund exception only to three years after the fund's trading inception date. To ensure that the three-year period is not reinstated as a result of rollovers of fund assets or similar activities, the proposed definition of eligible seeded fund would include a condition that the seeded fund has not received, directly or indirectly, any of its assets from an eligible seeded fund that has relied on the eligible seeded fund exception to the definition of ''margin affiliate.'' The Commission further notes that, pursuant to section 4s(j)(2) of the CEA and Commission Regulation 23.600, CSEs are required to monitor and manage risks related to their swap activities, including credit risk, and set risk tolerance limits.[106] Thus, if the credit risk associated with CSEs' transactions with eligible seeded funds exceeds the CSEs' risk tolerance limits, CSEs would be expected to take mitigating measures.

In certain circumstances, the increase in uncollateralized credit risk resulting from the Seeded Funds Proposal could also negatively impact the sponsor entity or the asset manager of a seeded fund. In particular, if a seeded fund is facing financial distress, a sponsor entity or the fund's asset manager may be incentivized to intervene, because of reputational risks or other concerns, and contribute additional resources even in the absence of an explicit business arrangement to provide financial support or a guarantee. Similarly, if the fund is suffering the consequences of a swap counterparty default, the sponsor entity or the asset manager may contribute financial resources to improve the fund's condition and increase its own exposure, potentially putting at risk its own financial position. Thus, the fund's uncollateralized exposure may lead the sponsor entity or the asset manager to incur risks, increasing the potential for contagion and systemic risk. To account for these risks, the Commission is proposing to define the term ''eligible seeded fund'' to incorporate requirements meant to ensure that seeded funds are genuinely independent and that the risks associated with their activities are not assumed by other entities such as their sponsor entities or asset managers. Specifically, among other conditions, the seeded fund would have to be a distinct legal entity from each sponsor entity that is not collateralized, guaranteed, or otherwise supported, directly or indirectly, by any sponsor entity, any margin affiliate of any sponsor entity, other collective investment vehicles, or the seeded fund's asset manager, in respect of any of the fund's obligations. This should mitigate the incentive for the sponsor's assets to be used if the seeded fund fails.

Treating seeded funds as separate unaffiliated legal entities for purposes of calculating the thresholds for determining whether compliance with the IM requirements is required could also incentivize swap counterparties to create legal entities that have no economic basis and are constructed solely for the purpose of applying additional thresholds to evade margin requirements. To address these concerns, the Commission proposes to limit the applicability of the eligible seeded fund exception by providing that eligible seeded funds would be deemed not to have margin affiliates solely for the purpose of calculating the fund's MSE and IM threshold amount. As such, under the Seeded Funds Proposal, the eligible seeded funds' sponsor entities and their margin affiliates would continue to include the eligible seeded funds' exposures in the calculation of the IM compliance thresholds applicable to such sponsor entities and margin affiliates. In addition, the Commission proposes to include, in the proposed definition of ''eligible seeded fund,'' conditions designed to ensure that funds that qualify as eligible seeded funds have a bona fide business purpose. In particular, the proposed definition provides that the eligible seeded fund must be managed by an asset manager pursuant to an agreement that requires that the assets of the fund be managed in accordance with a specified written investment strategy and that the asset manager has independence in carrying out its management responsibilities and exercising its investment discretion, and to the extent applicable, has independent fiduciary duties to other investors in the fund, such that no sponsor entity or a margin affiliate of a sponsor entity controls or has transparency into the management or trading of the seeded fund. Furthermore, the proposed definition of eligible seeded fund would require that the seeded fund's investment strategy must follow a written plan for reducing the sponsor entity's ownership interest in the fund.

The Commission, therefore, believes that the costs associated with the potential evasion of the IM requirements would be mitigated by the proposed rule amendment, which would be narrowly tailored to make available the proposed approach only for purposes of calculating the IM compliance thresholds applicable to seeded funds that meet specified requirements and only during the three years that follow the fund's trading inception date. In addition, the Commission intends to use its anti-evasion authority to prevent circumvention of the margin requirements.[107]

Furthermore, given that the U.S. prudential regulators may not amend their margin requirements in line with the Seeded Funds Proposal, if the Commission finalizes the proposal described herein, the Commission acknowledges the possibility that its requirements with respect to the treatment of eligible seeded funds may diverge from that of the U.S. prudential regulators, requiring funds that engage in swaps transactions with both CSEs and prudentially-regulated SDs to adjust their swap-related documentation and IM processes to reflect such different treatments. Thus, market participants may incur additional costs by having to maintain two separate and distinct types of documentation and IM management processes. Similar costs may also be incurred by CSEs that already transact with seeded funds that are currently consolidated. Also, as discussed previously, given that the Seeded Funds Proposal would provide for an eligible seeded fund exception from the definition of ''margin affiliate,'' effectively providing for the funds' deconsolidation for purposes of calculating the funds' MSE and IM threshold amount, seeded funds may favor CSEs as counterparties over SDs or MSPs subject to the prudential regulators' margin rules, which might not be revised to provide for a similar eligible seeded fund exception.

As noted above, to better assess the impact of a potential divergence between the CFTC Margin Rule and the Prudential Regulators Margin Rule, the Commission is requesting information on the potential costs associated with maintaining distinct documentation and IM management processes.

Money Market Funds Proposal

(a) Benefits

The Money Market Funds Proposal would expand the scope of assets that

[106] 7 U.S.C. 6s(j)(2) (mandating that CSEs adopt a robust and professional risk management system adequate for the management of day-to-day swap activities) and 17 CFR 23.600 (requiring CSEs, in establishing a risk management program for the monitoring and management of risk related to their swap activities, to account for credit risk and to set risk tolerance limits).

[107] *See* supra note 51.

qualify as eligible collateral. In this regard, the GMAC Margin Subcommittee Report stated that absent elimination of the asset transfer restriction, the securities of very few MMFs would qualify as eligible collateral, noting that nearly all U.S. MMFs engage in some form of repurchase or similar arrangements.[108] The Money Market Funds Proposal may therefore reduce the potential concentration of collateral in the few MMFs whose securities currently qualify as eligible collateral under Commission Regulation 23.156(a)(1)(ix), which could lead to greater diversity of assets used for collateral, thereby reducing the riskiness of IM assets.

Also, the Money Market Funds Proposal, by increasing the number of MMFs whose securities qualify as eligible collateral, may promote more efficient collateral management practices. The Margin Subcommittee Report stated that custodians offer money market sweep programs that afford institutional clients of such custodians the ability to timely and efficiently meet margin calls without settlement delay, avoiding other transaction costs that would otherwise arise in the absence of the sweep programs. Such direct sweeps from cash into MMF securities mitigate the risk of insolvency by the custodian because non-cash collateral deposited with the custodian will not be consolidated in the custodian's balance sheet. The Margin Subcommittee Report also stated that the use of MMFs may avoid the risk of potential negative interest rate charges that may be applied by custodian banks on cash collateral.

By eliminating the asset transfer restriction, the Money Market Funds Proposal could also promote asset management policies that improve the performance of money market and similar funds. Without the restriction, the funds may undertake repurchase or similar arrangements that increase returns for investors, including the return for CSEs that post money market and similar fund securities as margin collateral for uncleared swaps, contributing to the fund securities' liquidity and retention of value even during periods of financial stress.

In summary, these benefits will accrue to CSEs and their counterparties that enter into uncleared swaps transactions. As discussed above, the potential concentration in certain types of collateral has been acknowledged previously by the Commission as a potential risk that CSEs should consider in managing their margin collateral. CSEs and their counterparties will also benefit from the more efficient use of their capital as discussed above and enhanced returns on securities posted as collateral. Furthermore, the proposal may lead to reduced costs for those market participants that dually register as SDs and security-based swap SDs with the CFTC and the SEC, respectively, as the proposed amendment would bring the CFTC's eligible collateral framework more in line with the SEC approach, which does not impose asset transfer restrictions on funds whose securities are used as collateral for margining purposes and expressly permits the use of government money market fund securities as collateral.

(b) Costs

The elimination of the asset transfer restriction in paragraph (C) of Commission Regulation 23.156(a)(1)(ix) would remove a safeguard intended to ensure that money market and similar fund securities posted as margin collateral remain liquid and maintain their value in times of financial stress. More specifically, paragraph (C) prevents the transfer of money market and similar fund assets through repurchase or similar arrangements to mitigate the impact of such transfers on the liquidity or value of fund securities. For example, if a counterparty to a money market and similar fund in a repurchase or similar arrangement defaults, the fund may be left holding assets that, in times of financial stress, may not be easily resold and might not compensate for the value of assets tendered in the repurchase arrangement. Such a default would reduce the overall net asset value of the fund and the price of the fund's securities. Also, the inability to liquidate assets that a money market and similar fund might be left holding upon the failure of a repurchase or similar arrangement or the inability to extract assets originally tendered in the repurchase arrangement may impact the fund's ability to promptly respond to redemption requests, hindering the liquidity of the fund's securities, making them less suitable as margin collateral. The Commission, however, notes that subparagraphs (A) and (B) of Commission Regulation 23.156(a)(1)(ix), which are not being amended, limit the types of assets that a money market and similar fund can receive in repurchase or similar arrangements to those assets specifically identified in those paragraphs, alleviating in part the risks associated with repurchase or similar arrangements.

In light of the proposed elimination of the asset transfer restriction, the Commission is also seeking input on whether it would be appropriate to include an additional haircut beyond that required by the haircut schedule in Commission Regulation 23.156(a)(3), as corrected by the proposed amendment discussed herein.

The Commission further notes that Commission Regulation 23.156(c) requires that CSEs monitor the market value and eligibility of all collateral and, to the extent that the market value has declined, promptly collect or post additional eligible collateral to maintain compliance with Commission Regulations 23.150 through 23.161.[109] Thus, even if the value or liquidity of pledged money market and similar fund securities may be affected by repurchase or similar arrangements undertaken by the fund, CSEs have the obligation to monitor the value and suitability of the fund's securities as margin collateral and collect or post additional eligible collateral to compensate for collateral deficiencies.

The elimination of the asset transfer restriction could give rise to other costs. Given that the U.S. prudential regulators may not amend their margin requirements in line with the proposed rule amendments, if the amendments proposed herein are adopted as final, the CFTC and U.S. prudential regulators' margin rules would diverge with respect to the treatment of securities of money market and similar funds as eligible collateral, requiring parties that trade with both prudentially-regulated SDs and CSEs to adjust their swap-related documentation and collateral management systems to reflect such different treatments. Thus, market participants may incur additional costs by having to maintain two separate and distinct types of documentation and collateral management systems. Also, the Money Market Funds Proposal may incentivize trading with CSEs over SDs or MSPs subject to the U.S. prudential regulators' margin rules given that the prudential regulators might not revise their rules in a manner consistent with the Money Market Funds Proposal and the prudential regulators' rules may continue to restrict the use of securities of money market and similar funds that transfer their assets through repurchase and similar agreements.

At the same time, the Commission notes that the removal of the asset transfer restriction would bring the CFTC's eligible collateral framework closer to the approach adopted by the Securities and Exchange Commission (''SEC''), which does not impose asset

[108] Margin Subcommittee Report at 24.

[109] 17 CFR 23.156(c).

transfer restrictions with respect to money market and similar fund securities and expressly permits the use of government money market fund securities as collateral.[110] Therefore, although there is the potential for greater costs as a result of divergence with the U.S. prudential regulators, there may be lower costs overall, given that many CSEs are also cross-registered with the SEC as security-based SDs.

2. Section 15(a) Considerations

In light of the foregoing, the CFTC has evaluated the costs and benefits of the proposals pursuant to the five considerations identified in section 15(a) of the CEA as follows:

Seeded Funds Proposal

(a) Protection of Market Participants and the Public

As discussed, the Seeded Funds Proposal would provide that, during a period of three years from the fund's trading inception date, a seeded fund meeting specific requirements would be deemed not to have margin affiliates solely for purposes of calculating the fund's MSE and the IM threshold amount. As a result, only the seeded fund's individual AANA would be used to determine whether the fund has MSE, and only the individual credit exposure of the fund resulting from the fund's swaps with a CSE would be used to determine whether the posting and collection of IM is required, and not the exposures calculated on an aggregate basis with the fund's sponsor entities and other margin affiliates, as currently required under the CFTC Margin Rule.

The Seeded Funds Proposal is thus proposing an approach to eligible seeded funds that is consistent with the BCBS–IOSCO Framework and similar approaches adopted by jurisdictions such as Australia, Canada and the EU.[111] As such, the Seeded Funds Proposal would eliminate a disadvantage that U.S. investment funds face compared to non-U.S. funds that are not subject to a consolidation requirement. The Seeded Funds Proposal would also address the potential liquidity drain and trading disruptions that CSEs might encounter if non-U.S. investments funds were to avoid doing uncleared swaps business with the CSEs because of the current treatment of seeded funds in the U.S. under the CFTC Margin Rule. In addition, the Seeded Funds Proposal would level the playing field between U.S. seeded funds that are consolidated within a group of entities that collectively have MSE and other domestic investment funds that are not part of a group whose combined exposure exceeds the threshold for compliance with the IM requirements, while, at the same time, potentially spurring greater interest in seeded funds as potential counterparties.

As a result of the Seeded Funds Proposal, less collateral may be collected by seeded funds given that individually they may not meet the threshold for exchanging IM. A seeded fund's uncollateralized swaps exposure may negatively impact the sponsor entities of the fund or its asset manager, given that, for reputational reasons, a sponsor entity or the asset manager may provide financial support to the seeded fund in times of financial distress, potentially putting at risk their own financial position.

The Seeded Funds Proposal may also have implications for CSEs entering into uncleared swap transactions with the fund's sponsor entity. Specifically, a CSE evaluating the creditworthiness of its counterparty—the fund's sponsor entity—may not be aware of the sponsor entity's potentially weakened financial position. As such, the Seeded Funds Proposal, by allowing seeded funds' exposures to not be consolidated with the exposures of their sponsor entities and other margin affiliates for purposes of determining the applicability of the IM requirements, may increase the risk of contagion.

The Commission, however, believes that such concerns are mitigated by the requirements incorporated in the proposed definition of eligible seeded fund, including the condition that the seeded fund is not collateralized, guaranteed or otherwise supported, directly or indirectly by any sponsor entity, any margin affiliate of any sponsor entity, other collective investment vehicles, or the fund's asset manager in respect of any of the fund's obligations. These conditions are intended to ensure that seeded funds are genuinely independent and risk remote from the sponsor entities.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

The Seeded Funds Proposal would amend the definition of ''margin affiliate'' in Commission Regulation 23.151 to provide an exception for eligible seeded funds, which would effectively relieve CSEs from the requirement to exchange IM for uncleared swaps with such eligible seeded funds, subject to specified conditions. This eliminates a competitive disadvantage between seeded funds that are consolidated with their sponsor entities and margin affiliates, which collectively exceed the thresholds for compliance with the IM requirements on the one hand, from those investment funds whose sponsor entities and margin affiliates do not have collective exposures exceeding such thresholds on the other. This would potentially spur greater interest in seeded funds as potential counterparties. In addition, the proposed amendment to the ''margin affiliate'' definition would level the playing field between U.S. funds and non-U.S. investment funds from jurisdictions that do not require fund swaps exposures to be considered on a consolidated basis for purposes of determining whether compliance with the IM requirements is required.

The Seeded Funds Proposal would relieve CSEs entering into uncleared swaps with eligible seeded funds from the requirement to exchange IM with the funds if the funds meet specified requirements. This would reduce the operational costs associated with the exchange of IM for CSEs and their eligible seeded funds counterparties and would allow seeded funds to allocate their financial resources to testing their investment strategy and attracting unaffiliated investors. The cost reduction may also incentivize more market participants to enter into uncleared swaps. The Seeded Funds Proposal would thus promote efficiency in the uncleared swaps market by increasing the pool of swap counterparties and fostering competition.

Given that the Seeded Funds Proposal would relieve CSEs from the exchange of IM with certain eligible seeded funds for their uncleared swaps, the uncollateralized credit exposure for the uncleared swaps would increase and could undermine the integrity of the markets. The Commission, however, believes that the increased exposure would be limited given the relatively limited derivatives activity of seeded funds that would benefit from the eligible seeded fund exception. In

[110] *See* Capital, Margin and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Securities and Exchange Commission, 84 FR 43872, 43919 (Aug. 22, 2019). In the preamble to its final rule, the SEC noted that the final rule does not specifically exclude any type of security provided it has a ready market, is readily transferable, and does not consist of securities or money market instruments issued by the counterparty or a party related to the nonbank security-based SD or major security-based swap participant, or the counterparty. Generally, U.S. government money market funds should be able to serve as collateral under these conditions.

[111] *See supra* notes 27 and 41.

addition, the proposed relief is narrowly tailored given the requirements incorporated in the proposed definition of ''eligible seeded fund'' and the fact that it would only apply for purposes of calculating the MSE and IM threshold amount applicable to the eligible seeded funds, and not for the calculation of the IM compliance thresholds applicable to the funds' sponsor entities and margin affiliates that do not independently qualify as eligible seeded funds (nor for the funds' CSE counterparties).

(c) Price Discovery

By amending the definition of ''margin affiliate'' in Commission Regulation 23.151, the Seeded Funds Proposal would relieve CSEs from the requirement to exchange IM when entering into uncleared swaps with an eligible seeded fund. As a counterparty to a CSE, an eligible seeded fund therefore would not have to incur operational costs associated with setting up and maintaining processes and documentation to exchange IM. The relief would permit eligible seeded funds to direct more resources to building a successful performance track record and attracting new investors. As a result, the overall cost of entering into an uncleared swap transaction may decrease, incentivizing increased participation in the uncleared swaps markets. In turn, the trading of uncleared swaps may increase, leading to increased liquidity and enhanced price discovery.

(d) Sound Risk Management

Because the Seeded Funds Proposal would relieve CSEs from the obligation to exchange IM with certain seeded funds, less margin may be collected and posted to offset the risk of uncleared swaps, which could increase the risk of default. Nevertheless, the Commission believes that the uncollateralized risk would be mitigated because during the seeding period, investment funds are typically small and the extent of uncleared swap activity a seeded fund may undertake with CSEs may be limited. In addition, CSEs are required to manage the risk associated with their uncleared swaps, including those swaps that might be uncollateralized, by maintaining a robust and professional risk management program that provides, among other things, for the implementation of internal parameters for the monitoring and management of swap risk, including credit risk.

The Commission also notes that the Seeded Funds Proposal, by relieving CSEs from the requirement to exchange IM with certain seeded funds, would reduce the operational costs of both CSEs and their eligible seeded fund counterparties, potentially encouraging more market participants to enter the uncleared swaps market. As such, by increasing the pool of swap counterparties, the Seeded Funds Proposal would encourage the careful consideration and selection of counterparties, promoting sound risk management.

(e) Other Public Interest Considerations

By proposing a treatment of certain investment funds that is consistent with the BCBS/IOSCO Framework, the Seeded Funds Proposal would alleviate the potential disadvantage that U.S. seeded funds have compared to non-U.S. investment funds, which may be perceived to be subject to more favorable regulatory regimes than in the United States given the differing consolidation treatments applicable to funds.

However, given that the U.S. prudential regulators may not amend their margin requirements in line with the proposed amendments, the possibility exists that the CFTC and U.S. prudential regulators' differing rules may motivate certain investment funds to undertake swaps with particular SDs based on which U.S. regulatory agency is responsible for setting margin requirements for such SDs. In that sense, the change can lead to trades that do not reflect the relative merits of competing SDs. The divergence could also lead to additional costs for investment funds that trade with both CSEs and prudentially-regulated SDs because such funds would need to adjust their swap related documentation and collateral management systems to reflect the different margin requirements that may apply under the CFTC's and the prudential regulators' rules.

Money Market Funds Proposal

(a) Protection of Market Participants and the Public

The Commission believes that the Money Market Funds Proposal would protect market participants and the public by eliminating the asset transfer restriction and allowing a broader range of money market and similar fund securities to serve as collateral, thus addressing the potential that margin collateral may be concentrated in the securities of a few money market and similar funds and leading to greater diversification by increasing the range of assets that may be used as collateral.

The elimination of the asset transfer restriction would also promote effective asset management policies for the benefit of fund investors and market participants in general. Without the restriction, money market and similar funds that otherwise would have refrained from undertaking repurchase or similar arrangements to avoid the disqualification of their securities as eligible collateral may enter into such arrangements. The arrangements might generate higher returns for investors, including for CSEs that use money market and similar fund securities as margin collateral for uncleared swaps, and enable funds to meet their commitments to investors concerning fund performance.

Nevertheless, market participants might be harmed by the rule change if a counterparty to the money market or similar fund in a repurchase or similar arrangement defaults, and the fund is unable to recover assets tendered to the counterparty in the arrangement and is left holding assets of lesser value. The fund's overall net asset value may decline, reducing the value and liquidity of the fund's securities. This potential outcome would make the securities less suitable as collateral for margining uncleared swaps.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

By eliminating the asset transfer restriction, the Money Market Funds Proposal would allow a broader range of money market and similar fund securities to serve as collateral for margining uncleared swaps, increasing diversification in the assets that can be used as collateral, and fostering competition among the funds whose securities qualify as eligible collateral under the Proposal.

The elimination of the asset transfer restriction would also promote effective asset management policies for the benefit of fund investors and market participants in general. Without the restriction, money market or similar funds would be able to undertake repurchase and similar agreements, which may enable them to generate higher returns for investors, including for CSEs that use the funds' securities as collateral, and to meet commitments to investors concerning fund performance.

Notwithstanding these benefits, the proposed elimination of the asset transfer restriction might negatively impact market participants. If a money market and similar fund undertakes a repurchase or similar arrangement and the fund's counterparty in the arrangement defaults, the fund may be unable to recover assets it tendered in the arrangement and may be left holding assets of lesser value. The fund's overall net asset value may decrease, affecting the value and liquidity of the fund's

securities. This potential outcome would make the fund's securities less suitable as collateral for margining uncleared swaps.

(c) Price Discovery

As previously discussed, with the removal of the asset transfer restriction, fund managers may have more flexibility in determining the type of investment and transactions that are in the best interest of their fund and investors, leading to higher returns for investors, including CSEs using money market and similar fund securities as margin collateral for uncleared swaps. With such increased returns, the overall costs of entering into an uncleared swap transaction may decrease, incentivizing increased participation in the uncleared swaps markets. In turn, trading in uncleared swaps may increase, leading to increased liquidity and enhanced price discovery.

(d) Sound Risk Management

The proposed amendment would eliminate the asset transfer restriction, allowing the use of securities of money market funds that undertake repurchase or similar arrangements as collateral for the margining of uncleared swaps. As such, even if the asset manager for a money market and similar fund, as a fiduciary, acts in the best interest of the fund and its investors, there is the risk that the fund may incur a loss if the fund's counterparty in a repurchase or similar arrangement defaults. Such a default would leave the fund holding assets that it may not be able to easily resell in times of financial stress, which might impact the value and liquidity of pledged fund securities and make them less suitable as margin collateral for uncleared swaps. The Commission, however, notes that any potential risk of such a repurchase or similar arrangement may be mitigated by the standard industry practice of applying haircuts to non-cash collateral in repurchase or similar arrangements to compensate for the risk that the value of collateral may decline over the term of the arrangement.[112]

In addition, the Commission notes that Commission Regulation 23.156(c) requires that CSEs monitor the market value and eligibility of all collateral and, to the extent that the market value has declined, promptly collect or post additional eligible collateral to maintain compliance with Commission Regulations 23.150 through 23.161. Thus, even if the value or liquidity of pledged money market and similar fund securities may be affected by repurchase or similar arrangements undertaken by the fund, CSEs have the obligation to monitor the value and suitability of the fund securities as margin collateral and collect or post additional eligible collateral to compensate for collateral deficiencies, although the risk that a fund's repurchase or similar arrangements may fail remains. The Commission further notes, however, that subparagraphs (A) and (B) of Commission Regulation 23.156(a)(1)(ix), which are not being amended, limit the types of assets that a money market and similar fund can receive in repurchase or similar arrangements to those assets specifically identified in those paragraphs, alleviating in part the risks associated with repurchase or similar arrangements.

While the Money Market Funds Proposal could lead to more variability in the value of the assets used as IM, it can also promote sound risk management in that it increases the range of money market and similar fund securities available as collateral for the margining of uncleared swaps, reducing the chance of concentration in a few money market and similar funds and the risks associated with such concentration. As such, the removal of the restriction may incentivize the increased use of money market and similar fund securities as collateral. Consistent with Commission Regulation 23.156(c), which requires CSEs to monitor the market value and eligibility of collateral posted or collected as margin for uncleared swaps, the Commission notes that CSEs must take into account the potential concentration of collateral in particular assets and prudently manage margin collateral.

(e) Other Public Interest Considerations

As is the case for the Seeded Funds Proposal, it is possible that the U.S. prudential regulators may not amend their margin rule in line with the Money Market Funds Proposal. As such, the prudential regulators and the Commission would diverge with respect to the treatment of money market and similar funds securities as eligible collateral for margining uncleared swaps. This divergence might lead to increased costs for market participants that trade both uncleared swaps subject to the CFTC's and the prudential regulators' margin rules, as they may need to adjust or even maintain separate documentation and collateral management systems to address the differing treatments for fund securities under the different rules.

On the other hand, the Money Market Funds Proposal may lead to reduced costs for those market participants that dually register as SDs and security-based swap SDs with the CFTC and the SEC, respectively, as the proposed amendment would bring the CFTC's eligible collateral framework more in line with the SEC approach, which does not impose asset transfer restrictions on funds whose securities are used as collateral for margining purposes and expressly permits the use of government money market fund securities as collateral.

Request for Comments on Cost-Benefit Considerations

The Commission invites public comment on its cost-benefit considerations, including the section 15(a) factors described above. Commenters are also invited to submit any data or other information they may have quantifying or qualifying the costs and benefits of the proposed amendments. In particular, the Commission seeks specific comment on the following:

1. Has the Commission accurately identified all the benefits of the proposed amendments? Are there other benefits to the Commission, market participants, and/or the public that may result from the adoption of the proposed amendments that the Commission should consider? Please provide specific examples and explanations of any such benefits.

2. Has the Commission accurately identified all the costs of the proposed amendments? Are there additional costs to the Commission, market participants and/or the public that may result from the adoption of the proposed amendments that the Commission should consider? Please provide specific examples and explanations of any such costs.

3. Do the proposed amendments impact the section 15(a) factors in any way that is not described above? Please provide specific examples and explanations of any such impact.

4. Does the existing asset transfer restriction significantly limit the use of money market and similar fund securities as eligible collateral under the CFTC Margin Rule?

D. Antitrust Laws

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of this Act, in issuing any order or adopting any Commission rule or regulation

[112] *See* Primer: Money Market Funds and the Repo Market, Prepared by the staff of the Division of Investment Management, U.S. Securities and Exchange Commission at pp. 5–6.

(including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.[113]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether the proposed amendments implicate any other specific public interest to be protected by the antitrust laws.

The Commission has considered the proposed amendments to determine whether they are anticompetitive, and has preliminarily identified no anticompetitive effects. The Commission requests comment on whether the proposed amendments are anticompetitive and, if so, what the anticompetitive effects are.

Because the Commission has preliminarily determined that the proposed amendments are not anticompetitive and have no anticompetitive effects, the Commission has not identified any less competitive means of achieving the purposes of the Act. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the Act that would otherwise be served by adopting the proposed amendments.

List of Subjects in 17 CFR Part 23

Capital and margin requirements, Major Swap Participants, Swap Dealers, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 23 as set forth below:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 1. The authority citation for Part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21. Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Pub. L. 111–203, 124 Stat. 1641 (2010).

■ 2. In § 23.151, add the definition of ''Eligible seeded fund'' in alphabetical order and revise the definition of ''Margin affiliate''.

The addition and revision read as follows:

§ 23.151 Definitions applicable to margin requirements.

* * * * *

Eligible seeded fund: An eligible seeded fund is a collective investment vehicle that has received a part or all of its start-up capital from a parent and/or affiliate (each, a sponsor entity) where:

(1) The seeded fund is a distinct legal entity from each sponsor entity;

(2) One or more of the seeded fund's margin affiliates is required to post and collect initial margin pursuant to § 23.152;

(3) The seeded fund is managed by an asset manager pursuant to an agreement that requires the seeded fund's assets to be managed in accordance with a specified written investment strategy;

(4) The seeded fund's asset manager has independence in carrying out its management responsibilities and exercising its investment discretion, and, to the extent applicable, has independent fiduciary duties to other investors in the fund, such that no sponsor entity or any of the sponsor entity's margin affiliates controls or has transparency into the management or trading of the seeded fund;

(5) The seeded fund's investment strategy follows a written plan for reducing each sponsor entity's ownership interest in the seeded fund that stipulates divestiture targets over the three-year period after the date on which the seeded fund's asset manager first begins to make investments on behalf of the fund;

(6) In respect of any of the seeded fund's obligations, the seeded fund is not collateralized, guaranteed, or otherwise supported, directly or indirectly, by any sponsor entity, any margin affiliate of any sponsor entity, other collective investment vehicle, or the seeded fund's asset manager;

(7) The seeded fund has not received any of its assets, directly or indirectly, from an eligible seeded fund that has relied on the exception provided in paragraph 2 of the definition of margin affiliate in § 23.151; and

(8) The seeded fund is not a securitization vehicle.

* * * * *

Margin affiliate has the following meaning:

(1) A company is a margin affiliate of another company if:

(i) Either company consolidates the other on a financial statement prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards,

(ii) Both companies are consolidated with a third company on a financial statement prepared in accordance with such principles or standards, or

(iii) For a company that is not subject to such principles or standards, if consolidation as described in paragraph (i) or (ii) of this definition would have occurred if such principles or standards had applied.

(2) *Eligible seeded fund exception.* Notwithstanding paragraph (1) of this definition, until the date that is three years after the date on which an eligible seeded fund's asset manager first begins to make investments on behalf of the fund, an eligible seeded fund will be deemed not to have any margin affiliates solely for purposes of calculating the fund's material swaps exposure and the initial margin threshold amount.

* * * * *

■ 3. In § 23.156:

■ a. Republish the introductory text of paragraph (a)(1);

■ b. Republish the introductory text of paragraph (a)(1)(ix);

■ c. Republish paragraph (a)(1)(ix)(A);

■ d. Revise paragraph (a)(1)(ix)(B);

■ e. Remove paragraph (a)(1)(ix)(C);

■ f. Revise paragraph (a)(3)(i)(B).

The republications and revisions read as follows:

§ 23.156 Forms of Margin

(a) * * * (1) *Eligible collateral.* A covered swap entity shall collect and post as initial margin for trades with a covered counterparty only the following types of collateral:

* * * * *

(ix) Securities in the form of redeemable securities in a pooled investment fund representing the security-holder's proportional interest in the fund's net assets and that are issued and redeemed only on the basis of the market value of the fund's net assets prepared each business day after the security-holder makes its investment commitment or redemption request to the fund, if the fund's investments are limited to the following:

(A) Securities that are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury, and immediately-available cash funds denominated in U.S. dollars; or

(B) Securities denominated in a common currency and issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under the capital rules applicable to swap dealers subject to regulation by a prudential regulator, and immediately-available cash funds denominated in the same currency; or

* * * * *

(3) * * *

(i) * * *

(B) The discounts set forth in the following table:

[113] 7 U.S.C. 19(b).

STANDARDIZED HAIRCUT SCHEDULE [1]

Cash in same currency as swap obligation	0.0
Eligible government and related debt (*e.g.,* central bank, multilateral development bank, GSE securities identified in paragraph (a)(1)(v) of this section): Residual maturity less than one-year	0.5
Eligible government and related debt (*e.g.,* central bank, multilateral development bank, GSE securities identified in paragraph (a)(1)(v) of this section): Residual maturity between one and five years	2.0
Eligible government and related debt (*e.g.,* central bank, multilateral development bank, GSE securities identified in paragraph (a)(1)(v) of this section): Residual maturity greater than five years	4.0
Eligible corporate debt (including eligible GSE debt securities not identified in paragraph (a)(1)(v) of this section): Residual maturity less than one-year	1.0
Eligible corporate debt (including eligible GSE debt securities not identified in paragraph (a)(1)(v) of this section): Residual maturity between one and five years	4.0
Eligible corporate debt (including eligible GSE debt securities not identified in paragraph (a)(1)(v) of this section): Residual maturity greater than five years	8.0
Equities included in S&P 500 or related index	15.0
Equities included in S&P 1500 Composite or related index but not S&P 500 or related index	25.0
Gold	15.0
Additional (additive) haircut on asset in which the currency of the swap obligation differs from that of the collateral asset	8.0

[1] The discount to be applied to an eligible investment fund is the weighted average discount on all assets within the eligible investment fund at the end of the prior month. The weights to be applied in the weighted average should be calculated as a fraction of the fund's total market value that is invested in each asset with a given discount amount. As an example, an eligible investment fund that is comprised solely of $100 of 91 day Treasury bills and $100 of 3 year U.S. Treasury bonds would receive a discount of (100/200) * 0.5 + (100/200) * 2.0 = (0.5) * 0.5 + (0.5) * 2.0 = 1.25 percent.

* * * * *

Issued in Washington, DC, on July 31, 2023, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Voting Summary and Chairman's and Commissioners' Statements

Appendix 1—Voting Summary

On this matter, Chairman Behnam and Commissioners Mersinger and Pham voted in the affirmative. Commissioner Goldsmith Romero voted in the negative. Commissioner Johnson voted to concur.

Appendix 2—Statement of Chairman Rostin Behnam

Today the Commission considered an eligible seeded funds proposal and a money market funds proposal within a notice of proposed rulemaking on margin requirements for uncleared swaps for swap dealers (SDs) and major swap participants (MSPs) for which there is no prudential regulator. The proposal would amend the CFTC's margin rule for SDs and MSPs, as promulgated in 2016, to incorporate two recommendations in the 2020 report to the CFTC's Global Markets Advisory Committee (GMAC) by the Subcommittee on Margin Requirements for Non-Cleared Swaps (the ''GMAC Subcommittee Report'').[1]

The seeded funds proposal would revise the definition of ''margin affiliate'' in Commission Regulation 23.151 to provide that certain investment funds that receive all of their start-up capital, or a portion thereof, from a sponsor entity would be deemed not to have any margin affiliates for the purposes of calculating certain thresholds that trigger the requirement to exchange initial margin for uncleared swaps. This proposed amendment would effectively relieve SDs and MSPs from the requirement to post and collect initial margin with a limited number of eligible seeded funds for their uncleared swaps for a period of three years from the date on which the eligible seeded fund's asset manager first begins making investments on behalf of the fund. While today's proposal builds upon the GMAC Subcommittee Report's 2020 recommendation, the proposal today also sets forth eight carefully calibrated conditions to ensure that only the investment funds that were intended to be targeted by the GMAC Subcommittee Report's recommendations are eligible to qualify for the seeded funds exception.

I support today's seeded funds proposal as it is consistent with the CFTC's margin rule risk-based approach of imposing margin requirements that are commensurate with the risk of uncleared swaps entered into by SDs and MSPs; is appropriately calibrated to acknowledge the operational challenges for start-up funds; and supports international harmonization as the approach is consistent with the BCBS–IOSCO Framework.

The money market funds proposal would eliminate the current provision in Commission Regulation 23.156(a)(1)(ix)(C) that disqualifies certain securities issued by certain money market funds (MMFs) from being used as eligible initial margin collateral. This would expand the scope of assets that qualify as eligible collateral. I support today's MMF proposal as it would remove a restriction that has unintentionally and severely restricted the use of securities of MMF and similar assets that transfer their assets through repurchase and similar arrangements. According to the GMAC Subcommittee Report, the impact of the restriction was that only securities of four U.S. MMFs would meet the requirements to be used as eligible collateral.[2]

Lastly, the proposal would also add a footnote that was inadvertently omitted for the haircut schedule in Regulation 23.156(a)(3)(i)(B), when the Commission originally promulgated the margin rule in 2016.

I look forward to receiving public comments on this proposal.

Appendix 3—Dissenting Statement of Commissioner Christy Goldsmith Romero

I cannot support the proposed rule.

Seeded Funds

I am concerned that the proposed exception to initial margin requirements for seeded funds rolls back Dodd-Frank Act reforms designed for financial stability. I cannot support the Commission changing our existing requirements—requirements that match U.S. banking regulator requirements. The proposed change would relieve initial margin requirements for uncleared swaps that are not prudentially regulated in certain affiliate transactions known as ''seeded funds'' for three years.[1]

The buildup of uncleared swap positions during the crisis exposed swap entities to losses, putting the financial system at risk. Dodd-Frank Act reforms required *all* uncleared swaps be subject to initial and variation margin requirements, whether prudentially regulated or not.[2] Post Dodd-

[1] *See Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps,* Report to the CFTC's Global Markets Advisory Committee by the Subcommittee on Margin Requirements for Non-Cleared Swaps (May 2020), *https://www.cftc.gov/media/3886/GMAC_051920MarginSubcommitteeReport/download.*

[2] *Id.* at 24.

[1] Seeded funds are investment vehicles that receive start-up capital from a sponsor entity. Under the Commission's current regulatory requirements, a seeded fund is treated as a margin affiliate of a sponsor entity for the purpose of triggering the exchange of initial margin for uncleared swaps.

[2] 7 U.S.C. 6s(e)(2)—Registration and regulation of swap dealers and major swap participants. Dodd Frank Act reforms provide that:

Frank, the Commission and federal banking agencies adopted margin rules to protect the safety and soundness of swap entities and to guard against risks to financial stability.

Dodd Frank Act reforms in the Commodity Exchange Act required that to offset the greater risk to the swap dealer or major swap participant and the financial system arising from the use of uncleared swaps, the Commission's margin requirements for uncleared swaps must (i) help ensure the safety and soundness of the swap dealer or major swap participant and (ii) be appropriate for the risk associated with the uncleared swaps held by the swap dealer or major swap participant.[3]

I do not find that standard to be met in the proposed rule. Post Dodd-Frank, regulators recognized that derivatives transactions with affiliated parties can pose important risks that necessitate margin requirements. The Commission and banking regulators adopted the same definition of ''margin affiliate'' to cover both swaps that are, and are not, prudentially regulated. The proposed rule would depart from that definition where there is not a prudential regulator.

The proposed rule raises concerns about the prudence of the Commission having two different definitions of ''margin affiliate'' for swap dealers, particularly when the majority of swap dealers (55 of 106) are prudentially regulated, and they account for a substantial majority of swap activity. In a regulatory system where jurisdiction is shared with other U.S. market and banking regulators, it is important that the Commission maintain regulatory harmonization with U.S. regulators where we can. Otherwise, we risk a race to the bottom.

The proposed rule discusses the importance of harmonization with global regulation but not U.S. banking regulations. And this proposed rule came from recommendations by the Global Markets Advisory Committee in 2020 (during the last Administration). The majority of the nonbank swap dealers are U.S.-domiciled (27 of 51). Also, importantly, the GMAC public interest representative from Better Markets at that time did not vote for these recommendations.

I have serious concerns with potentially increasing risks related to uncleared swaps, including risks to financial stability by adopting a definition that harmonizes with global regulation, but not domestic banking regulation. U.S. banking regulators are aware of the Basel Committee on Banking Supervision and the International Organization for Securities Commission's ''International Margin Framework,'' but have chosen not to change their definition of ''margin affiliate.''

Likewise, I do not support the Commission changing our existing definition. I appreciate that Commission staff have tried to put constraints on this initial margin exception.[4] The constraints are not enough in my view to break from U.S. banking regulators on the definition of margin affiliate. I am concerned that the effect of this proposal would be to roll back Dodd-Frank Act reforms. Given that those reforms were designed to promote the safety and soundness of U.S. financial institutions and our financial system, I am concerned that this change could produce unacceptable levels of risk, possibly even systemic risk and harm to financial stability. We do not know the full consequences of this change. While it may save costs for these start-up funds, we cannot increase any risk to financial stability of institutions or our financial system.

Therefore, I must dissent.

Money Market Funds

I have concerns about the Commission's proposal to expand money market funds that could be used for eligible non-cash collateral for swap dealers for initial margin. The proposal contemplates eliminating the restriction on the money market fund's use of repurchase agreements or similar agreements.

In Dodd-Frank Act reforms contained in the Commodity Exchange Act section 4s(e)(3)(C), Congress provided that ''[i]n prescribing margin requirements,'' the Commission ''shall permit the use of noncash collateral'' as ''determine[d] to be consistent with—preserving the financial integrity of markets trading'' non-cleared derivatives and ''preserving the stability of the United States financial system.'' I have not seen an analysis that such standard is met. I am very interested in public comment about whether that standard is met.

We must not forget the lessons of the 2008 financial crises, including when the Reserve Primary Fund ''broke the buck'', and the role it had in the 2008 crisis. Money market funds are designed to give retail customers and institutional investors a market-based instrument that is highly liquid with lower risk and limited volatility. For many Americans, money market funds often appear on their bank app, right next to checking and savings accounts, as they are financial vehicles often thought of as similar to a bank account. That's why it came as such a shock when the Reserve Primary Fund broke the buck.

I was counsel to the SEC Chairman when the Reserve Primary Fund broke the buck, which contributed to Lehman failing, and short-term lending drying up. Repurchase agreements also contributed to liquidity problems at financial institutions. In my role as the Special Inspector General for TARP, I reported to Congress about the interconnectedness of these events. These experiences show how interconnected money market funds and repurchase agreements are to the overall stability of our financial institutions and the broader financial system.

As a result, the SEC and other regulators implemented reforms to make money market funds more stable and repurchase agreements more transparent. Despite these reforms, in March 2020, during the Covid-19 pandemic, money market funds and the short-term funding markets experienced stress when institutional investors withdrew cash from money market funds to avoid liquidity fees and gates, safeguards that were part of post-crisis reforms.

With 2008 and 2020 as the backdrop, the Commission must be careful how it approaches changes to our regulations that impact money market funds and the short-term funding markets. These are highly interconnected markets. Changes in one can impact changes in the other markets. Before we take any action, it will be critical for the Commission to determine that the change is ''consistent with preserving the financial integrity of markets trading'' non-cleared derivatives and ''preserving the stability of the United States financial system.'' I look forward to public comment on whether the rule meets this standard.

I thank the staff for their work. I am also grateful to the former GMAC members. It must be remembered that advisory committees' role is to advise the Commission. While I may not agree with their recommendations, I am grateful for their service.

Appendix 4—Statement of Commissioner Caroline D. Pham

I support the notice of proposed rulemaking on margin requirements for uncleared swaps for swap dealers and major swap participants (Seeded Funds and MMFs Proposal) because it provides a solution for seeded funds, and it supports greater liquidity by providing more flexibility for money market and similar funds that use repos, among other things. I thank the team in the Market Participants Division for their dedication to ensuring the Commission's uncleared swaps rules do not unduly burden market participants, and for proposing workable solutions to challenges that arose during an implementation period. I specifically commend Amanda Olear, Tom Smith, Warren Gorlick, Rafael Martinez, and Liliya Bozhanova for their work on the proposal.

This Seeded Funds and MMFs Proposal, looking at the big picture, actually benefits

(A) Swap dealers and major swap participants that *are banks.* The prudential regulators, in consultation with the Commission and the Securities and Exchange Commission, shall jointly adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a prudential regulator imposing—(i) capital requirements; and (ii) both initial and variation margin requirements on *all* swaps that are not cleared by a registered derivatives clearing organizations.

(B) Swap dealers and major swap participants that *are not banks.* The Commission shall adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is not a prudential regulator imposing—(i) capital requirements; and (ii) both initial and variation margin requirements on *all* swaps that are not cleared by a registered derivatives clearing organization (emphasis added). *See* Section 4s(e) of the Commodity Exchange Act.

[3] 7 U.S C. 6s(e)(3)(A); CEA section 4s(e)(3)(A).

[4] For example, the exception requires that the seeded fund ''is not a securitization vehicle.'' Should the Commission move forward with this proposed rule, I have other concerns that I invite public comment. This includes whether the proposed 3-year exception period is too long a runway. Also, whether the exemption is meant to apply to private funds? Private funds are part of a ''shadow banking system'', and unlike banks, are not fully subject to risk, liquidity, or capital restrictions. Private funds and shadow banking contributed to the 2008 financial crisis, which has grown larger since the crisis, and continues to pose risks to American investors, pensioners, and the U.S. financial system.

the end investors who will be able to more efficiently deploy capital, access liquidity, and provide investment returns at less cost to funds, such as pension plans that manage Americans' hard-earned savings. The key public interest here is providing more liquidity to markets. We have seen over the past several years many recent market stresses, which seem to occur with greater and greater frequency and high volatility, low liquidity market conditions. Where there is shallow depth of liquidity, costs for end users, customers, and investors go up, and access to markets is restricted. When there is not enough liquidity, risks to financial stability increase. The most significant and systemic financial crises in recent years, including the 2008 financial crisis, were caused by a critical lack of liquidity in markets, and our post-crisis reforms have traded less credit risk for more liquidity risk.

Simply put, less liquidity means higher costs and more risk. And risk to not only financial stability, but also systemic risk. In light of ongoing capital reforms, it is incumbent upon me to remind everyone that of course markets are interconnected, and that's why we need to take a holistic approach to market structure with a full understanding of the impact of various regulatory regimes, particularly the impact of prudential requirements on the ability of markets to function well, and especially the ability for market participants to access markets for the benefit of American savers.

As an advocate for good policy that enables growth, progress, and access to markets, I strongly support workable solutions to any problems with our rules. While regulations play a critical role in safeguarding our markets, we must acknowledge that issues—ranging from technical [1] to policy—must be continuously evaluated for regulations to remain both effective and relevant in an ever-changing landscape.

The first step in evaluating our regulations is to conduct thorough assessments and identify areas for improvement. Collaboration and open dialogue are key to formulating well-rounded solutions that consider the interests of all impacted. That is why I am grateful for the efforts of former Commissioner Dawn Stump, who, as sponsor of the Global Markets Advisory Committee (GMAC), established the GMAC's Subcommittee on Margin Requirements for Non-Cleared Swaps to evaluate the CFTC's uncleared margin rules.[2] The subcommittee's thorough assessment, engagement with stakeholders, and practical, flexible recommendations have given staff a comprehensive roadmap to follow in implementing fixes that minimize adverse impacts on market participants. I appreciate that staff is continuing [3] to try to adopt the recommendations that came out of the GMAC subcommittee.

The adoption of margin requirements for uncleared swaps was a key pillar of the 2008 financial crisis reform.[4] Today, we continue to appreciate that the requirements help ensure the exchange of margin between large, systemic, and interconnected financial institutions for their uncleared swap transactions.

Consistent with the G20 commitments, the Commodity Exchange Act (CEA or Act) [5] requires that the Commission adopt rules establishing margin requirements for all uncleared swaps that are entered into by a swap dealer or major swap participant for which there is no prudential regulator. These requirements help ensure the safety and soundness of the swap dealer or major swap participant. In 2016, the Commission adopted Regulations 23.150 through 23.161 to implement section 4s(e).[6]

Currently, a fund with material swaps exposure will fall within the scope of the initial margin requirements if it undertakes an uncleared swap with a covered swap entity. The covered swap entity and the fund will not be required to post and collect initial margin for their uncleared swaps until the initial margin threshold amount of $50 million has been exceeded. The initial margin threshold amount will be calculated based on the credit exposure from uncleared swaps between the covered swap entity and its margin affiliates on the one hand, and the fund and its margin affiliates on the other.[7] As discussed above, this requirement has unduly burdened certain funds.

Initial margin requirements may be satisfied with only certain types of collateral.[8] Under Regulation 23.156(a)(1)(ix), the securities of money market and similar funds [9] may qualify as eligible collateral if the investments of the fund are limited to securities that are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of Treasury, and immediately-available cash denominated in U.S. dollars; [10] or to securities denominated in a common currency and issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank, or a sovereign entity that is assigned no higher than a 20 percent risk weight under the capital rules applicable to swap dealers subject to regulation by a prudential regulator, and immediately-available cash denominated in the same currency.[11] Also, the asset managers of the money market and similar fund may not transfer the assets of the fund through securities lending, securities borrowing, repurchase agreements, or any other means that involve the fund having rights to acquire the same or similar assets from the transferee.[12] As discussed above, this requirement has unintentionally restricted funds.

Of course, compliance with significant reforms necessarily entails significant resource expenditure by regulated entities. Because of the vast number of counterparties impacted by the uncleared margin rules, swap dealers and major swap participants have been forced to engage in significant operational and technological development to avoid disruptions which would limit their options for taking on and hedging risk.[13] As I have stated in the past, it is imperative that the Commission continuously—or at least periodically—evaluate its rules to ensure they are functioning as intended, and propose workable solutions to any challenges discovered to ensure that firms are able to effectively comply with our rules.[14]

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[1] Statement of Commissioner Caroline D. Pham on Staff Letter Regarding ADM Investor Services, Inc., U.S. Commodity Futures Trading Commission (June 16, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement061623*.

[2] CFTC Commissioner Stump Announces New GMAC Subcommittee on Margin Requirements for Non-Cleared Swaps, U.S. Commodity Futures Trading Commission (Oct. 28, 2019), *https://www.cftc.gov/PressRoom/PressReleases/8064-19*.

[3] In 2020, the Commission adopted rules that addressed different GMAC recommendations on the uncleared margin rules. *See* Statement of Commissioner Dawn D. Stump in Support of Final Uncleared Margin Rules Based on Recommendations of Global Markets Advisory Committee, U.S. Commodity Futures Trading Commission (Dec. 8, 2020), *https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement120820*. Commissioner Mersinger has advocated for adopting additional recommendations. *See* Dissenting Statement of Commissioner Summer K. Mersinger Regarding CFTC's Regulatory Agenda, U.S. Commodity Futures Trading Commission (Jan. 9, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement010923*. Commissioner Pham now sponsors the GMAC. *See* Commissioner Pham Announces CFTC Global Markets Advisory Committee Meeting on July 17, U.S. Commodity Futures Trading Commission (July 17, 2023), *https://www.cftc.gov/PressRoom/Events/opaeventgmac071723*.

[4] G20 Pittsburgh Summit (Sept. 24–25, 2009).

[5] 7 U.S.C. 6s(e) (capital and margin requirements).

[6] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016) (effective April 1, 2016 and codified in part 23 of the Commission's regulations). 17 CFR 23.150—23.159, and 23.161. In May 2016, the Commission added Regulation 23.160 (17 CFR 23.160), providing rules on its cross-border application. *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016).

[7] Commission Regulation 23.151 defines the term ''IM threshold amount'' to mean an aggregate credit exposure of $50 million resulting from all uncleared swaps between an SD and its margin affiliates (or an MSP and its margin affiliates) on the one hand, and the SD's (or MSP's) counterparty and its margin affiliates on the other. See 17 CFR 23.151.

[8] Commission Regulation 23.156(a)(1) sets forth the types of collateral that CSEs can post or collect as IM with covered counterparties, including cash funds, certain securities issued by the U.S. government or other sovereign entities, certain publicly traded debt or equity securities, securities issued by money market and similar funds, and gold. 17 CFR 23.156(a)(1).

[9] Although the scope of the eligible pooled investment funds described in Commission Regulation 23.156(a)(1)(ix) does not fully coincide with the regulatory definition of money market funds in Rule 2a–7 under the Investment Company Act (17 CFR 270.2a–7), for simplicity purposes, these funds will be referred to as ''money market and similar funds.''

[10] 17 CFR 23.156(a)(1)(ix)(A).

[11] 17 CFR 23.156(a)(1)(ix)(B).

[12] 17 CFR 23.156(a)(1)(ix)(C).

[13] Joint ISDA–SIFMA Report, Initial Margin for Non-Centrally Cleared Derivatives: Issues for 2019 and 2020, 3–4 (July 2018), *https://www.isda.org/a/D6fEE/ISDA-SIFMA-Initial-Margin-Phase-in-White-Paper-July-2018.pdf*.

[14] *See, e.g.,* Statement of Commissioner Caroline D. Pham Regarding Reporting and Information Requirements for Derivatives Clearing Organizations, U.S. Commodity Futures Trading

I encourage commenters to comment on whether the Commission's proposal sufficiently addresses the practical and operational issues, and whether it gives sufficient time for firms to implement and comply with a final rule.

[FR Doc. 2023–16572 Filed 8–7–23; 8:45 am]

BILLING CODE 6351–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0352; FRL–10399–01–R9]

RIN 2009–AA05

Federal Implementation Plan for Contingency Measures for the Fine Particulate Matter Standards; San Joaquin Valley, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to promulgate a Federal Implementation Plan (FIP) under the Clean Air Act (CAA) that consists of contingency measures for the 1997, 2006, and 2012 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or ''standards'') for the San Joaquin Valley $PM_{2.5}$ nonattainment area. The contingency measures would apply to residential wood burning heaters and fireplaces and rural open areas. The proposed FIP, if finalized, would be implemented by the EPA, unless and until replaced through the EPA's approval of a contingency measure state implementation plan (SIP) submission.

DATES:

Comments: Comments must be received on or before September 22, 2023. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before September 7, 2023.

Public Hearing: The EPA will hold a virtual public hearing on August 23, 2023. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R09–OAR–2023–0352; via the Federal eRulemaking Portal: *https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For questions regarding this proposed rule, please contact Rory Mays, Planning and Analysis Branch (AIR–2), Air and Radiation Division, EPA Region IX, (415) 972–3227. For questions regarding the virtual public hearing, please contact Kobi Cook, Communities and Partnerships Branch (AIR–4), Air and Radiation Division, EPA Region IX, (415) 972–3989. Both can be reached by emailing *SJVPublicMeetings@epa.gov.*

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

Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0352 at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

B. Participation in Virtual Public Hearing

The EPA will begin pre-registering speakers for the hearing no later than 1 business day after publication of this document in the **Federal Register**. To register to speak at the virtual hearing, please visit *https://www.epa.gov/sanjoaquinvalley* for online registration. The last day to pre-register to speak at the hearing will be August 21, 2023. The EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: *https://www.epa.gov/sanjoaquinvalley.*

The virtual public hearing will be held via teleconference on August 23, 2023. The virtual public hearing will convene at 4 p.m. Pacific Time (PT) and will conclude at 7 p.m. PT. The EPA may close the session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. For information or questions about the public hearing, please contact Kobi Cook, per the **FOR FURTHER INFORMATION CONTACT** section of this document. The EPA will announce further details at *https://www.epa.gov/sanjoaquinvalley.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule. Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to *SJVPublicMeetings@epa.gov.* The EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/sanjoaquinvalley.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact Kobi Cook, per the **FOR FURTHER INFORMATION CONTACT** section of this document, to determine if there are any updates. The EPA does not intend

Commission (Nov. 10, 2022), *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement111022b.*

to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing and describe your needs by August 21, 2023. The EPA may not be able to arrange accommodations without advanced notice.

The information presented in this preamble is organized as follows:

Table of Contents

I. Background for Proposed Action

In the following sections, we describe the $PM_{2.5}$ standards that this proposed rule addresses, a brief history of the designation and classification of the San Joaquin Valley as nonattainment, the State's air quality planning and EPA rulemaking, and the basis for the current contingency measure FIP proposal for the $PM_{2.5}$ NAAQS in the San Joaquin Valley.

A. Standards, Designations, Classifications, and Plans

Under section 109 of the Clean Air Act (CAA or ''Act''), the EPA has established National Ambient Air Quality Standards (NAAQS or ''standards'') for certain pervasive air pollutants (referred to as ''criteria pollutants'') and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established. To date, the EPA has established NAAQS for particulate matter, ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide and lead. Under CAA section 110, states have primary responsibility for meeting the NAAQS within the state, and must submit an implementation plan that specifies the manner in which the state will attain and maintain the NAAQS. These implementation plans are referred to as ''state implementation plans'' or ''SIPs.'' Periodically, states must make SIP submissions of different types to meet additional CAA requirements. For example, after the EPA promulgates a new or revised NAAQS, under CAA section 110(a)(1) and (2), states are required to adopt and submit to the EPA a state implementation plan that provides for implementation, maintenance, and enforcement of the NAAQS. Such plans are referred to as ''infrastructure SIPs.'' Similarly, after the EPA promulgates designations for a new or revised NAAQS, states with designated nonattainment areas must make SIP submissions that meet additional requirements for such nonattainment areas, under CAA section 172(c) and, in the case of the $PM_{2.5}$ NAAQS, CAA sections 188 and 189. This type of SIP submission is referred to as an ''attainment plan.'' Under CAA section 110(k), the EPA is charged with evaluation of each SIP submission submitted by states for compliance with applicable CAA requirements, and for approval or disapproval (in whole or in part) of the submission. The EPA evaluates SIP submissions and takes action to approve, disapprove, or conditionally approve them through notice-and-comment rulemaking published in the **Federal Register**. Where appropriate, the EPA may act on specific parts of a SIP submission in separate rulemaking actions.

In 1997, the EPA promulgated new NAAQS for fine particulate matter, using particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (''$PM_{2.5}$'') as the indicator.[1] The EPA established primary and secondary annual and 24-hour standards for $PM_{2.5}$. The EPA set the 1997 annual $PM_{2.5}$ NAAQS, both primary and secondary standards, at 15.0 micrograms per cubic meter (μg/m^3), based on a 3-year average of annual mean $PM_{2.5}$ concentrations. The EPA set the 1997 24-hour $PM_{2.5}$ NAAQS, both primary and secondary standards, at 65 μg/m^3, based on the 3-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations. Collectively, we refer herein to the 1997 24-hour and annual $PM_{2.5}$ NAAQS as the ''1997 $PM_{2.5}$ NAAQS'' or ''1997 $PM_{2.5}$ standards.'' In 2006, the EPA promulgated a new, more stringent 24-hour NAAQS for $PM_{2.5}$ by lowering the primary and secondary standards level from 65 μg/m^3 to 35 μg/m^3 (referred to herein as the ''2006 24-hour $PM_{2.5}$ NAAQS'').[2] In 2012, the EPA promulgated a new, more stringent annual NAAQS for $PM_{2.5}$ by lowering the primary standards level from 15.0 μg/m^3 to 12.0 μg/m^3 (herein referred to as the ''2012 annual $PM_{2.5}$ NAAQS'').[3] Each iteration of the $PM_{2.5}$ NAAQS remains in effect, and states with designated nonattainment areas for each of them are obligated to meet applicable attainment plan requirements for them.

The EPA established each of these NAAQS after considering substantial evidence from numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$ concentrations above these levels. Epidemiological studies have shown statistically significant correlations between elevated $PM_{2.5}$ levels and premature mortality. Other important health effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), changes in lung function, and increased respiratory symptoms. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.[4] $PM_{2.5}$ can be particles emitted by sources directly into the atmosphere as a solid or liquid particle (''primary $PM_{2.5}$'' or ''direct $PM_{2.5}$''), or can be particles that form in the atmosphere as a result of various chemical reactions involving $PM_{2.5}$ precursor emissions emitted by sources (''secondary $PM_{2.5}$''). The EPA has identified the precursors of $PM_{2.5}$ to be oxides of nitrogen (''NO_X''), sulfur

[1] 62 FR 38652 (July 18, 1997) and 40 CFR 50.7.

[2] 71 FR 61144 (October 17, 2006) and 40 CFR 50.13.

[3] 78 FR 3086 (January 15, 2013) and 40 CFR 50.18.

[4] 78 FR 3086, 3088.

oxides, volatile organic compounds, and ammonia.[5]

Following promulgation of a new or revised NAAQS, the EPA is required under CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. As noted previously, for areas the EPA has designated nonattainment, states are required under the CAA to submit attainment plan SIP submissions. These SIP submissions must provide for, among other elements, reasonable further progress (RFP) towards attainment of the NAAQS, attainment of the NAAQS no later than the applicable attainment date, and implementation of contingency measures to take effect if the state fails to meet RFP or to attain the NAAQS by the applicable attainment date.

The San Joaquin Valley is located in the southern half of California's Central Valley and includes all of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, and Kings counties, and the valley portion of Kern County.[6] The area is home to four million people and is the nation's leading agricultural region. Stretching over 250 miles from north to south and averaging 80 miles wide, it is partially enclosed by the Coast Mountain range to the west, the Tehachapi Mountains to the south, and the Sierra Nevada range to the east. In 2005, the EPA designated the San Joaquin Valley as nonattainment for the 1997 annual $PM_{2.5}$ NAAQS, and nonattainment for the 1997 24-hour $PM_{2.5}$ NAAQS.[7]

The local air district with primary responsibility for developing attainment plan SIP submissions for the $PM_{2.5}$ NAAQS in this area is the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or ''District''). Once the District adopts the regional plan, the District submits the plan to the California Air Resources Board (CARB) for adoption as part of the California SIP. CARB is the State agency responsible for adopting and revising the California SIP and for submitting the SIP and SIP revisions to the EPA. Under California law, generally speaking, CARB is responsible for regulation of mobile sources while the local air districts are responsible for regulation of stationary sources.

Originally, the EPA designated areas for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS under subpart 1 (of part D of title I of the CAA), *i.e.,* without specifying the classifications of nonattainment required by subpart 4. Later, in response to a court decision,[8] the EPA classified nonattainment areas for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS, consistent with the classifications set forth in subpart 4. With respect to San Joaquin Valley, the EPA classified the San Joaquin Valley as a ''Moderate'' nonattainment area,[9] and then later reclassified the area as a ''Serious'' nonattainment area for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS.[10]

In 2016, the EPA determined that the San Joaquin Valley had failed to attain the 1997 annual and 24-hour $PM_{2.5}$ NAAQS by the applicable ''Serious'' area attainment date.[11] As a result, the State of California was required, under CAA section 189(d), to submit a new SIP submission that, among other elements, provides for expeditious attainment of the 1997 annual and 24-hour $PM_{2.5}$ NAAQS and for a minimum five percent annual reduction in the emissions of direct $PM_{2.5}$ or a $PM_{2.5}$ plan precursor pollutant in the San Joaquin Valley (herein, referred to as a ''Five Percent Plan''). The Five Percent Plan for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS was due no later than December 31, 2016.[12]

With respect to the 2006 24-hour $PM_{2.5}$ NAAQS, the EPA initially designated San Joaquin Valley as nonattainment under subpart 1 (*i.e.,* without classification) [13] but, in 2014, in response to the court decision referred to previously, the EPA classified the area as Moderate.[14] In 2016, the EPA reclassified San Joaquin Valley as a Serious nonattainment area for the 2006 24-hour $PM_{2.5}$ NAAQS based on the EPA's determination that the area could not practicably attain these NAAQS by the applicable attainment date of December 31, 2015.[15] The EPA established an August 21, 2017 deadline for California to adopt and submit a SIP submission addressing the Serious nonattainment area requirements for the 2006 24-hour $PM_{2.5}$ NAAQS.[16]

With respect to the 2012 annual $PM_{2.5}$ NAAQS, the EPA designated San Joaquin Valley as a Moderate nonattainment area in 2015.[17] Under CAA section 189 and the EPA's $PM_{2.5}$ SIP Requirements Rule,[18] the deadline for the state to submit an attainment plan SIP submission addressing the Moderate nonattainment area requirements for the 2012 annual $PM_{2.5}$ NAAQS is 18 months from the effective date of the designation of the area.[19] The effective date of the designation of the San Joaquin Valley as a Moderate nonattainment area for the 2012 annual $PM_{2.5}$ NAAQS was April 15, 2015, and thus, the deadline for a SIP submission addressing the Moderate area requirements was October 15, 2016.

B. Findings and Contingency Measure Disapprovals

In the wake of these EPA actions, CARB and the District worked together to prepare a comprehensive SIP submission to address the nonattainment area requirements for the 1997, 2006, and 2012 $PM_{2.5}$ NAAQS for San Joaquin Valley, but did not meet the various SIP submission deadlines. In late 2018, the EPA issued a finding of failure to submit to the State for the required attainment plan SIP submissions for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the 2012 annual $PM_{2.5}$ NAAQS for the San Joaquin Valley.[20] The EPA's finding of failure to submit was effective January 7, 2019. Under CAA section 110(c), the EPA is obligated to promulgate a Federal Implementation Plan (FIP) within two years of a finding that a state has failed to make a required SIP submission, unless the state submits a SIP submission that corrects the deficiency, and the EPA approves that SIP submission, before the EPA promulgates such FIP.[21] In this case, the finding of failure to submit established a deadline of January 7, 2021, for the EPA to promulgate a FIP to address all applicable attainment plan requirements for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and 2012 annual $PM_{2.5}$

[5] EPA, Air Quality Criteria for Particulate Matter, No. EPA/600/P–99/002aF and EPA/600/P–99/002bF, October 2004.

[6] For a precise description of the geographic boundaries of the San Joaquin Valley nonattainment area, see 40 CFR 81.305.

[7] 70 FR 944 (January 5, 2005), codified at 40 CFR 81.305.

[8] In *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013), the U.S. Court of Appeals for D.C. Circuit concluded that the EPA erred in implementing the 1997 $PM_{2.5}$ standards solely pursuant to the general implementation requirements of subpart 1, without also considering the requirements specific to PM_{10} nonattainment areas in subpart 4, part D of title I of the CAA.

[9] 79 FR 31566 (June 2, 2014).

[10] 80 FR 18528 (April 7, 2015).

[11] 81 FR 84481 (November 23, 2016).

[12] Id. at 84482.

[13] 74 FR 58688 (November 13, 2009).

[14] 79 FR 31566.

[15] 81 FR 2993 (January 20, 2016).

[16] Id. at 3000.

[17] 80 FR 2206 (January 15, 2015).

[18] 81 FR 58010 (August 24, 2016); codified at 40 CFR part 51, subpart Z.

[19] 40 CFR 51.1003(a).

[20] 83 FR 62720 (December 6, 2018).

[21] The finding of failure to submit also started an 18-month New Source Review (NSR) offset sanction clock and a 24-month highway sanction clock for the State of California. CAA section 179(a) and 40 CFR 52.31.

NAAQS for San Joaquin Valley, for which the EPA had not received and approved an adequate SIP submission from the State.

On May 10, 2019, CARB submitted two SIP submissions to address the nonattainment area requirements for all four of the relevant $PM_{2.5}$ NAAQS for the San Joaquin Valley, including the contingency measure requirement.[22] As discussed in the following paragraph, the EPA has previously taken a series of actions on these SIP submissions to address different nonattainment area requirements for each of the NAAQS. In this proposed action, we are focused only on the contingency measure requirements.

In 2020, the EPA approved the portion of the SIP submissions related to the 2006 24-hour $PM_{2.5}$ NAAQS, but deferred action on the contingency measure element.[23] In 2021, the EPA approved the portion of the SIP submissions related to the Moderate area requirements for the 2012 annual $PM_{2.5}$ NAAQS except for the contingency measure element, which the EPA disapproved.[24] The EPA also disapproved the previously-deferred contingency measure element for the 2006 24-hour $PM_{2.5}$ NAAQS.[25] In another 2021 action, the EPA disapproved the portion of the SIP submissions related to the 1997 annual $PM_{2.5}$ NAAQS except for the emissions inventory, which the Agency approved.[26] In 2022, the EPA approved the portion of the SIP submission related to the 1997 24-hour $PM_{2.5}$ NAAQS, with the exception of the contingency measure element.[27] In our action on the SIP submission related to the 1997 24-hour $PM_{2.5}$ NAAQS, we disapproved the contingency measure element, but also found that the contingency measure requirement was moot for that particular $PM_{2.5}$ NAAQS because of the EPA's concurrent determination of attainment by the applicable attainment date for San Joaquin Valley for the 1997 24-hour $PM_{2.5}$ NAAQS.[28]

The EPA's various actions in 2020 and 2021 on the SIP submissions for San Joaquin Valley for the 1997, 2006, and 2012 $PM_{2.5}$ NAAQS have served to narrow the scope of the EPA's FIP duty arising from the December 6, 2018 finding of failure to submit (effective January 7, 2019) to: (1) the contingency measure requirement for the 2006 24-hour $PM_{2.5}$ NAAQS and the 2012 annual $PM_{2.5}$ NAAQS, and (2) certain nonattainment area requirements (including the contingency measure requirement) for the 1997 annual $PM_{2.5}$ NAAQS other than the base year emissions inventory requirement.[29] This proposed rule addresses only the Serious Area contingency measure requirements for the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS, and the Moderate Area contingency measure requirement for the 2012 annual $PM_{2.5}$ NAAQS for San Joaquin Valley. We are proposing this contingency measure FIP at this time to fulfill the EPA's statutory duties by deadlines established under a consent decree in a lawsuit brought against the EPA to compel promulgation of a FIP arising from the finding of failure to submit.[30] The EPA has proposed action on the various other nonattainment area requirements for the 1997 annual $PM_{2.5}$ NAAQS in a separate rulemaking.[31]

II. Contingency Measure Requirements, Guidance, and Legal Precedent

The EPA first provided its views on the CAA's requirements for particulate matter plans under part D, title I of the Act in the following guidance documents: (1) ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble'');[32] (2) ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental'';[33] and (3) ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble Addendum'').[34] More recently, in the $PM_{2.5}$ SIP Requirements Rule, the EPA established regulatory requirements and provided further interpretive guidance on the statutory SIP requirements that apply to areas designated nonattainment for all $PM_{2.5}$ NAAQS.[35]

A. Statutory and Regulatory Requirements

Under CAA section 172(c)(9), states required to make an attainment plan SIP submission must include contingency measures to be implemented if the area fails to meet RFP (''RFP contingency measures'') or fails to attain the NAAQS by the applicable attainment date (''attainment contingency measures''). Under the $PM_{2.5}$ SIP Requirements Rule, states must include contingency measures that provide that the state will implement them following a determination by the EPA that the state has failed: (1) to meet any RFP requirement in the approved SIP; (2) to meet any quantitative milestone (QM) in the approved SIP; (3) to submit a required quantitative milestone report; or (4) to attain the applicable $PM_{2.5}$ NAAQS by the applicable attainment date.[36] Contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon failure to meet RFP or failure of the area to meet the relevant NAAQS by the applicable attainment date.[37] In general, we expect all actions needed to effect full implementation of

[22] The SIP revisions submitted on May 10, 2019 include the ''2016 Moderate Area Plan for the 2012 $PM_{2.5}$ Standard'' (''2016 $PM_{2.5}$ Plan'') and the ''2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards'' (''2018 $PM_{2.5}$ Plan''), which incorporates by reference the ''San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan'' (''Valley State SIP Strategy''). On February 11, 2020, CARB submitted a revised version of App. H (''RFP, Quantitative Milestones, and Contingency'') that replaces the version submitted with the 2018 $PM_{2.5}$ Plan on May 10, 2019. The EPA found the SIP submissions complete in a letter dated June 24, 2020, from Elizabeth J. Adams, Director, EPA Region IX, to Richard W. Corey, Executive Officer, CARB. The EPA's completeness determination terminated the NSR offsets and highway sanctions started by the December 6, 2018 finding of failure to submit but did not affect the FIP obligation.

[23] 85 FR 44192 (July 22, 2020).

[24] 86 FR 67343 (November 26, 2021).

[25] Id.

[26] 86 FR 67329 (November 26, 2021).

[27] 87 FR 4503 (January 28, 2022).

[28] Id.

[29] The disapprovals published by the EPA on November 26, 2021, for certain elements of the SIP submissions for the 1997 annual $PM_{2.5}$ NAAQS and the contingency measures elements for the 2006 24-hour $PM_{2.5}$ NAAQS and 2012 annual $PM_{2.5}$ NAAQS started new 18-month NSR offset sanction clocks and 24-month highway sanctions clocks, that began on the effective date of the disapprovals (December 27, 2021).

[30] *Comité Progreso de Lamont* v. *EPA,* N.D. Cal., 21–cv–08733.

[31] 88 FR 45276 (July 14, 2023). Specifically, these nonattainment requirements include a section 189(d) plan that demonstrates expeditious attainment of the 1997 annual $PM_{2.5}$ NAAQS within the time period provided under CAA section 179(d) and provides for annual reductions in emissions of direct $PM_{2.5}$ or a $PM_{2.5}$ plan precursor pollutant within the area of not less than five percent per year from the most recent emissions inventory for the area until attainment; provisions for the implementation of BACM, including best available control technology (BACT), for sources of direct $PM_{2.5}$ and all $PM_{2.5}$ plan precursors no later than four years after the area is reclassified; provisions that require reasonable further progress (RFP); quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate RFP toward attainment by the applicable date.

[32] 57 FR 13498 (April 16, 1992).

[33] 57 FR 18070 (April 28, 1992).

[34] 59 FR 41998 (August 16, 1994).

[35] 81 FR 58010.

[36] 40 CFR 51.1014(a).

[37] 81 FR 58010, 58066 and General Preamble Addendum, 42015.

the measures to occur within 60 days after the EPA notifies the state of a failure to meet RFP or to attain.[38] Moreover, we expect the additional emissions reductions from the contingency measures to be achieved within a year of the triggering event.[39]

The purpose of contingency measures is to continue progress in reducing emissions while a state revises its SIP to meet the missed RFP requirement or to correct ongoing nonattainment. Neither the CAA nor the EPA's implementing regulations establish a specific level of emission reductions that implementation of contingency measures must achieve, but the EPA recommends that contingency measures should provide for emission reductions equivalent to approximately one year of reductions needed for RFP in the nonattainment area. For $PM_{2.5}$ NAAQS SIP planning purposes, the EPA recommends that RFP should be calculated as the overall level of reductions needed to demonstrate attainment divided by the number of years from the base year to the attainment year. As part of the attainment plan SIP submission, the EPA expects states to explain the amount of anticipated emissions reductions that the contingency measures will achieve. In the event that a state is unable to identify and adopt contingency measures that will provide for approximately one year's worth of emissions reductions, then EPA recommends that the state provide a reasoned justification why the smaller amount of emissions reductions is appropriate.[40]

To satisfy the requirements of 40 CFR 51.1014, the contingency measures adopted as part of a $PM_{2.5}$ NAAQS attainment plan must consist of control measures for the area that are not otherwise required to meet other attainment plan requirements (*e.g.,* to meet RACM/RACT requirements). By definition, contingency measures are measures that are over and above what a state must adopt and impose to meet RFP and to provide for attainment by the applicable attainment date.

Contingency measures serve the purpose of providing additional emission reductions during the period after a failure to meet RFP or failure to attain as the state prepares a new SIP submission to rectify the problem. Accordingly, contingency measures must provide such additional emission reductions during an appropriate period of time and must specify the timeframe within which their requirements would become effective following any of the EPA determinations specified in 40 CFR 51.1014(a).

In addition, to comply with CAA section 172(c)(9), contingency measures must be both conditional and prospective, so that they will go into effect and achieve emission reductions only in the event of a future triggering event such as a failure to meet RFP or a failure to attain. In a 2016 decision called *Bahr* v. *EPA* (''*Bahr*''),[41] the Ninth Circuit Court of Appeals held that CAA section 172(c)(9) does not allow EPA approval of already-implemented control measures as contingency measures. Thus, already-implemented measures cannot serve as contingency measures under CAA section 172(c)(9). For purposes of the $PM_{2.5}$ NAAQS, a state must develop, adopt, and submit one or more contingency measures to be triggered upon a failure to meet any RFP requirement, failure to meet a quantitative milestone requirement, or failure to attain the NAAQS by the applicable attainment date, regardless of the extent to which already-implemented measures would achieve surplus emission reductions beyond those necessary to meet RFP or quantitative milestone requirements and beyond those predicted to achieve attainment of the NAAQS.

In a recent decision on the EPA's approval of a SIP contingency measure element for the ozone NAAQS, the Ninth Circuit Court of Appeals held that, under the EPA's current guidance, the surplus emissions reductions from already-implemented measures cannot be relied upon to justify the approval of a contingency measure that would achieve far less than one year's worth of RFP as sufficient by itself to meet the contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9) for the nonattainment area.[42]

B. Draft Revised Contingency Measure Guidance

In March 2023, the EPA published notice of availability announcing a new draft guidance addressing the contingency measures requirement of section 172(c)(9), entitled: ''*DRAFT: Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter (DRAFT–3/17/23—Public Review Version)*'' (herein referred to as the ''Draft Revised Contingency Measure Guidance'') and opportunity for public comment.[43] The principal differences between the draft revised guidance and existing guidance on contingency measures relate to the EPA's recommendations concerning the specific amount of emission reductions that implementation of contingency measures should achieve, and the timing for when the emissions reductions from the contingency measures should occur.

Under the draft revised guidance, the recommended level of emissions reductions that contingency measures should achieve would represent one year's worth of ''progress'' as opposed to one year's worth of RFP. One year's worth of ''progress'' is calculated by determining the average annual reductions between the base year emissions inventory and the projected attainment year emissions inventory, determining what percentage of the base year emissions inventory this amount represents, then applying that percentage to the projected attainment year emissions inventory to determine the amount of reductions needed to ensure ongoing progress if contingency measures are triggered.

With respect to the time period within which reductions from contingency measures should occur, the EPA previously recommended that contingency measures take effect within 60 days of being triggered, and that the resulting emission reductions generally occur within one year of the triggering event. Under the draft revised guidance, in instances where there are insufficient contingency measures available to achieve the recommended amount of emissions reductions within one year of the triggering event, the EPA believes that contingency measures that provide reductions within up to two years of the triggering event would be appropriate to consider towards achieving the recommended amount of emissions reductions. The draft revised guidance does not alter the 60-day recommendation for the contingency measures to take initial effect.

III. Proposed FIP Contingency Measures

A. General Considerations

1. Legal Authority

CAA section 110(c)(1) authorizes and obligates the EPA to promulgate a FIP

[38] 81 FR 58010, 58066. See also General Preamble 13512, 13543–13544, and General Preamble Addendum, 42014–42015.

[39] General Preamble, 13511.

[40] 81 FR 58010, 58067.

[41] *Bahr* v. *EPA,* 836 F.3d 1218, 1235–1237 (9th Cir. 2016). See also, *Sierra Club* v. *EPA,* 21 F.4th 815, 827–828 (D.C. Cir. 2021).

[42] *Assoc. of Irritated Residents* v. *EPA,* 10 F.4th 937 (9th Cir. 2021) (''*AIR* v. *EPA*'' or ''*AIR*'').

[43] 88 FR 17571 (March 23, 2023). The Draft Revised Contingency Measure Guidance is available at: *https://www.epa.gov/air-quality-implementation-plans/draft-contingency-measures-guidance.*

when the EPA finds that a state has failed to make a required submission or finds that the plan or plan revision submitted by the state does not satisfy the minimum completeness criteria set forth in 40 CFR part 51, Appendix V, or when the EPA disapproves a SIP submission in whole or in part, unless the state first makes a complete SIP submission that corrects the deficiency, and the EPA approves that submission, before the EPA promulgates such FIP. In this instance, on December 6, 2018, we published our finding that California had failed to submit attainment plan SIP submissions addressing various nonattainment area SIP requirements for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and 2012 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley. As a result of that finding of failure to submit, the EPA was authorized and obligated to promulgate a FIP for all of those SIP requirements covered by the finding, except those for which the EPA has subsequently approved SIP submissions or that the EPA has subsequently found to be no longer applicable. CAA section 302(y) defines the term ''Federal Implementation Plan'' to mean ''a plan (or portion thereof) promulgated by the [EPA] to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a [SIP], and which includes enforceable emission limitations or other control measures, means, or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances), and provides for attainment of the relevant [NAAQS].''

In promulgating regulations in a FIP, the EPA may rely on its authority under section 110(c) or under authority it has under other provisions of the CAA. Under CAA section 110(c), the EPA ''stands in the shoes'' of the state and may exercise all authority that the state may exercise under the CAA.[44] For this particular proposed FIP, the measures that the EPA is proposing are measures that the state has the authority to adopt.

2. Implementation and Enforcement

Congress has determined that the primary responsibility for air pollution prevention and control at its source rests with state and local governments. CAA section 101(a)(3). Accordingly, the EPA has attempted to design the FIP contingency measures to ensure that, wherever possible, state and local implementation is encouraged and facilitated by the proposed FIP's regulatory approach. Thus, for example, the FIP generally employs local California rule organization and terminology in the proposed measures.

With respect to enforcement of the FIP, we note that the EPA has a comprehensive enforcement program as specified in section 113(a) of the CAA. Under this program, the EPA is authorized to take enforcement actions to ensure compliance with the CAA and the rules and regulations promulgated under the CAA. Such actions include the issuance of an administrative order requiring compliance with the applicable implementation plan; the issuance of an administrative order requiring the payment of a civil penalty for past violations; and the commencement of a civil judicial action. Orders issued under CAA section 113(a) require subject entities to comply with the requirements set forth in the order as expeditiously as practicable, but in no event longer than one year after the date the order was issued. Issuance of any such order does not prohibit the EPA from assessing any penalties. Under CAA section 113(b), civil judicial enforcement may require assessment of penalties of up to $117,468 per day for each violation.[45] Additionally, under CAA section 113(c), any person who knowingly violates any requirement or prohibition of an implementation plan may be subject to criminal enforcement, with penalties including fines and imprisonment.

3. FIP Obligation for 2012 Annual $PM_{2.5}$ NAAQS Contingency Measures

The EPA's December 6, 2018 finding of failure to submit relates, in relevant part, to an overdue Moderate area attainment plan SIP submission for San Joaquin Valley for the 2012 annual $PM_{2.5}$ NAAQS. In 2021, we approved the portion of the SIP submissions that demonstrate that attainment of that NAAQS by the Moderate area attainment date of December 31, 2021, was impracticable, and thus we reclassified San Joaquin Valley as a Serious area for the 2012 annual $PM_{2.5}$ NAAQS.[46] [47] Unlike statutory provisions applicable to other NAAQS, section 189(a)(1)(B) authorizes a state to make a nonattainment plan SIP submission for an area classified as Moderate demonstrating that it is impractical to attain the NAAQS in an area by the outermost statutory attainment date.

The EPA does not interpret the requirement for contingency measures for failing to attain the NAAQS by the applicable attainment date to apply to a Moderate area that a state adequately demonstrates cannot practicably attain the NAAQS by the statutory attainment date. Because it is a given that the area at issue could not attain by the attainment date, it would be illogical to require contingency measures (*i.e.,* conditional and prospective measures) that would be triggered specifically in the event of such a failure to attain. Rather, the EPA believes it is appropriate for the state to identify and adopt these contingency measures in a timely way as part of the Serious area attainment plan that it will develop once the EPA reclassifies such an area. However, if a state with a Moderate area that the EPA has found cannot practicably attain the NAAQS by the attainment date fails to meet RFP, when reviewed as part of the quantitative milestone either 4.5 or 7.5 years after designation, then the requirement to implement contingency measures would be triggered as required by CAA section 172(c)(9).[48] Thus, contingency measures for failure to meet RFP, failure to submit a quantitative milestone report, or failure to meet the quantitative milestones, are necessary for the San Joaquin Valley, even if they are not required for purposes of a failure to attain under these specific circumstances.

We note that the EPA will separately review SIP submission(s) for the Serious area contingency measure requirements for the 2012 annual $PM_{2.5}$ NAAQS, which are outside the scope of the EPA's FIP obligation for the San Joaquin Valley. This action addresses the Moderate area plan contingency measures requirement for the 2012 annual $PM_{2.5}$ NAAQS.

4. Applicable $PM_{2.5}$ Precursors

Under the CAA, states are required to regulate not only direct emissions of $PM_{2.5}$ in an attainment plan, but also all

[44] Under CAA section 110(c), the EPA ''stands in the shoes of the defaulting state, and all of the rights and duties that would otherwise fall to the state accrue instead to EPA.'' *Central Ariz. Water Conservation Dist.* v. *EPA,* 990 F.2d 1531, 1541 (9th Cir. 1993).

[45] Pursuant to the EPA's Civil Monetary Penalty Inflation Adjustment final rule, 88 FR 986 (January 6, 2023), codified at 40 CFR 19.4.

[46] 86 FR 67343.

[47] The reclassification action triggered statutory deadlines for California to submit SIP submissions addressing the Serious area attainment plan requirements for the 2012 annual $PM_{2.5}$ NAAQS: June 27, 2023, for emissions inventories, BACM, and nonattainment new source review (NSR), and December 31, 2023, for the attainment demonstration and related planning requirements. While we anticipate that the State's SIP submission for the latter will address contingency measures, we note that the requirement for Serious area contingency measures for the 2012 annual $PM_{2.5}$ NAAQS is outside the scope of this proposed rule; there is no requirement for the EPA to promulgate a Serious area contingency measures FIP for the 2012 annual $PM_{2.5}$ NAAQS.

[48] 81 FR 58010, 58067.

$PM_{2.5}$ precursors. Section 189(e) explicitly requires that states do so for major stationary sources, unless such sources do not significantly contribute to violations of the NAAQS in the nonattainment area at issue. The EPA has interpreted this provision to authorize states to establish that it is not necessary to regulate precursor emissions from other source categories under the same conditions. Courts have upheld this approach.[49]

Under the EPA's $PM_{2.5}$ SIP Requirements Rule, states must identify, adopt, and implement control measures, including control technologies, on sources of direct $PM_{2.5}$ emissions and sources of emissions of $PM_{2.5}$ plan precursors located in $PM_{2.5}$ nonattainment areas.[50] $PM_{2.5}$ plan precursors are those $PM_{2.5}$ precursors (which are SO_2, NO_X, volatile organic compounds (VOCs), and ammonia) that the state must regulate in the applicable attainment plan.[51] A state may elect to submit to the EPA precursor demonstrations for a specific nonattainment area in order to establish that regulation of one or more precursors is not necessary for attainment in the nonattainment area at issue.[52] A precursor demonstration refers to an optional set of analyses provided by a state that are designed to show that emissions of a particular $PM_{2.5}$ precursor do not contribute significantly to $PM_{2.5}$ levels that exceed the relevant $PM_{2.5}$ standards in a particular nonattainment area.[53] If a comprehensive precursor demonstration is approved by the EPA, then the state is not required to control emissions of the relevant precursor from existing sources in the current attainment plan.[54] Accordingly, the state would not need to address the precursor in order to meet attainment plan requirements, including RFP, in QMs and associated QM reports, or be required to adopt contingency measures to reduce the precursor at issue.[55]

For San Joaquin Valley, we have considered the State's precursor demonstrations with respect to the 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the 2012 annual $PM_{2.5}$ NAAQS in taking action on the portions of the SIP submissions applicable to those NAAQS. For the 1997 annual $PM_{2.5}$ NAAQS, we disapproved the comprehensive precursor demonstration from the 2019 SIP submissions.[56] More recently, however, the EPA proposed to approve the comprehensive precursor demonstration in connection with the State's 2021 submission of a revised attainment plan for the 1997 annual $PM_{2.5}$ NAAQS.[57] [58] The State's comprehensive precursor demonstration documents indicate that SO_2, VOC, and ammonia emissions do not contribute significantly to $PM_{2.5}$ levels that exceed the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley. On the basis of our proposed approval of the comprehensive precursor demonstration for the 1997 annual $PM_{2.5}$ NAAQS, we are not proposing FIP contingency measures for SO_2, VOC, or ammonia but do identify such measures for direct $PM_{2.5}$ and NO_X. If we do not finalize our proposed approval of the comprehensive precursor demonstration for the 1997 annual $PM_{2.5}$ NAAQS, we will reconsider the potential need for FIP contingency measures for emissions sources of those $PM_{2.5}$ precursors for purposes of this NAAQS.

For the 2006 24-hour $PM_{2.5}$ NAAQS, the EPA approved the comprehensive precursor demonstration that established that SO_2, VOC, and ammonia emissions do not contribute significantly to $PM_{2.5}$ levels that exceed the 2006 24-hour $PM_{2.5}$ NAAQS in the San Joaquin Valley.[59] A petition for review challenged the EPA's approval of the portions of the 2019 SIP submissions related to the 2006 24-hour $PM_{2.5}$ NAAQS, and in 2021, the Ninth Circuit Court of Appeals vacated the approval of aggregate commitments to the extent such commitments relied on inadequately-funded incentive-based control measures and remanded to the EPA for further consideration of the aggregate commitments, and for further proceedings consistent with the decision, but denied the petition in all other respects.[60] The EPA's approval of the comprehensive precursor demonstration was not the subject of the court challenge, and thus, based on our approval of the comprehensive precursor demonstration for the 2006 24-hour $PM_{2.5}$ NAAQS, we are not proposing FIP contingency measures for SO_2, VOC, or ammonia for the 2006 24-hour $PM_{2.5}$ NAAQS but do identify such measures for direct $PM_{2.5}$ and NO_X. If, in response to the court's remand, we withdraw our approval of the comprehensive precursor demonstration for the 2006 24-hour $PM_{2.5}$ NAAQS in whole or in part, we will reconsider the potential need for FIP contingency measures for emissions sources of the relevant $PM_{2.5}$ precursors for purposes of this NAAQS.

With respect to the San Joaquin Valley as a Moderate nonattainment area for the 2012 annual $PM_{2.5}$ NAAQS, the EPA approved the comprehensive precursor demonstration that established that SO_2, VOC, and ammonia emissions do not contribute significantly to $PM_{2.5}$ levels that exceed the 2012 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley.[61] Based on that approval, we are not proposing FIP contingency measures for SO_2, VOC, or ammonia for the 2012 annual $PM_{2.5}$ NAAQS (as a Moderate area) but do identify such measures for direct $PM_{2.5}$ and NO_X. Our decision not to propose FIP contingency measures for SO_2, VOC, or ammonia for the 2012 annual $PM_{2.5}$ NAAQS relates to San Joaquin Valley as a Moderate nonattainment area for that NAAQS, which is the relevant classification for the purposes of the proposed FIP. We will consider the issue of $PM_{2.5}$ precursors for San Joaquin Valley for the 2012 annual $PM_{2.5}$ NAAQS once again as part of our evaluation of the to-be-submitted Serious area plan for the San Joaquin Valley for that NAAQS.

5. Magnitude of Emissions Reductions From Contingency Measures

As noted previously, neither the CAA nor the EPA's implementing regulations establish a specific level of emission reductions that implementation of contingency measures must achieve, but the EPA has recommended in existing guidance that contingency measures should provide for emission reductions equivalent to approximately one year of reductions needed for RFP in the nonattainment area. For $PM_{2.5}$, one year of reduction needed for RFP is calculated as the overall level of reductions needed to demonstrate attainment by the applicable attainment year, divided by the number of years from the base year to the attainment year. For example, if the attainment plan provides for attainment in five years, then each year RFP would generally be one-fifth of the required overall emission reductions needed for attainment. Thus, contingency measures

[49] See, *e.g., Assoc. of Irritated Residents* v. *EPA, et al.,* 423 F.3d 989 (9th Cir. 2005).

[50] See generally 40 CFR 51.1009(a) and 40 CFR 51.1010(a).

[51] 40 CFR 51.1000.

[52] 40 CFR 51.1006(a).

[53] 40 CFR 51.1000.

[54] 40 CFR 51.1006(a)(1)(iii).

[55] 40 CFR 51.1009(a)(4)(i).

[56] 86 FR 67329.

[57] CARB submitted the ''Attainment Plan Revision for the 1997 Annual $PM_{2.5}$ Standard (August 19, 2021)'' (''15 $\mu g/m^3$ SIP Revision'') to the EPA as a SIP revision on November 8, 2021.

[58] 88 FR 45276.

[59] 85 FR 17382, 17390–17396 (March 27, 2020), finalized at 85 FR 44192.

[60] *Medical Advocates for Healthy Air* v. *EPA,* Case No. 20–72780, Dkt. #58–1 (9th Cir., April 13, 2022).

[61] 86 FR 49100, 49107–49112 (September 1, 2021), finalized at 86 FR 67343.

should achieve approximately that amount of emission reductions to be triggered in the event of a failure to meet RFP, or a failure to attain.

Using the longstanding approach, contingency measures should provide for emissions reductions of approximately one year's worth of RFP for each of the relevant $PM_{2.5}$ NAAQS. For the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS, one year's worth of RFP is calculated by dividing the emission reductions from the base year emissions inventory to the attainment year emissions inventory by the number of years between those years. For the 2012 annual $PM_{2.5}$ NAAQS, one year's worth of RFP is calculated by dividing the emission reductions from the base year emissions inventory to the outermost Moderate area RFP milestone year emissions inventory by the number of years between those years. For the 2012 annual $PM_{2.5}$ NAAQS in this case, RFP is based on the outermost Moderate area RFP milestone year rather than the attainment year because, as an area for which we approved an impracticability demonstration, the attainment year and emissions level providing for attainment have not yet been determined and approved.

As shown in Table 1, for the San Joaquin Valley, one year's worth of RFP and the amount of emissions reductions that contingency measures should provide for is approximately 0.44 tons per day (tpd) for direct $PM_{2.5}$ and 16.7 tpd for NO_X for the 1997 annual $PM_{2.5}$ NAAQS, approximately 0.58 tpd for direct $PM_{2.5}$ and 18.4 tpd for NO_X for the 2006 24-hour $PM_{2.5}$ NAAQS, and approximately 0.46 tpd for direct $PM_{2.5}$ and 15.3 tpd for NO_X for the 2012 annual $PM_{2.5}$ NAAQS.

TABLE 1—ONE YEAR'S WORTH OF RFP FOR THE $PM_{2.5}$ NAAQS IN SAN JOAQUIN VALLEY

Applicable $PM_{2.5}$ NAAQS	Pollutant	Emissions (annual average, tpd) [a b c]		Difference (tpd)	Number of years between base year and attainment/ RFP year	One year's worth of RFP (tpd)
		Base year inventory	Projected attainment/RFP inventory			
1997 Annual $PM_{2.5}$ NAAQS ..	Direct $PM_{2.5}$	62.5	58.1	4.4	10	0.44
	NO_X	317.2	150.6	166.6	10	16.7
2006 24-hour $PM_{2.5}$ NAAQS	Direct $PM_{2.5}$	62.5	56.1	6.4	11	0.58
	NO_X	317.2	115.0	202.2	11	18.4
2012 Annual $PM_{2.5}$ NAAQS ..	Direct $PM_{2.5}$	62.5	58.4 (RFP in 2022)	4.1	9	0.46
	NO_X	317.2	179.8 (RFP in 2022)	137.4	9	15.3

[a] Base year and 2023 attainment year emissions for the 1997 annual $PM_{2.5}$ NAAQS are from Table H–6 (page H–12) of the revisions to the 2018 $PM_{2.5}$ Plan adopted for the 1997 annual $PM_{2.5}$ NAAQS on August 19, 2021 ("15 μg/m³ SIP Revision").
[b] Base year and 2024 attainment year emissions for the 2006 24-hour $PM_{2.5}$ NAAQS are from 85 FR 17382, 17421, Table 10, citing 2018 $PM_{2.5}$ Plan, Appendix H (rev. February 11, 2020), Table H–5.
[c] Base year and 2022 RFP year emissions for the 2012 annual $PM_{2.5}$ NAAQS are from 86 FR 49100, 49121, Table 5, citing 2018 $PM_{2.5}$ Plan, Appendix H (rev. February 11, 2020), Table H–11.

Using the new approach described in the EPA's Draft Revised Contingency Measure Guidance, the EPA recommended that contingency measures should provide for emissions reductions of approximately one year's worth of progress for each of the relevant $PM_{2.5}$ NAAQS. For the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS, one year's worth of progress is calculated by determining the average annual reductions between the base year emissions inventory and the projected attainment year emissions inventory, determining what percentage of the base year emissions inventory this amount represents, then applying that percentage to the projected attainment year emissions inventory. For the 2012 annual $PM_{2.5}$ NAAQS, one year's worth of progress is calculated by determining the average annual reductions between the base year emissions inventory and the projected outermost Moderate area RFP milestone year emissions inventory, determining what percentage of the base year emissions inventory this amount represents, then applying that percentage to the projected outermost Moderate area RFP milestone year emissions inventory. For the 2012 annual $PM_{2.5}$ NAAQS in this case, the calculation of one year's worth of progress is based on the outermost Moderate area RFP milestone year rather than the attainment year because, as an area for which we approved an impracticability demonstration, the attainment year and emissions level providing for attainment have not yet been determined and approved.

As shown in Table 2, for the San Joaquin Valley, one year's worth of progress and the amount of emissions reductions that contingency measures should provide for is approximately 0.41 tpd for direct $PM_{2.5}$ and 7.9 tpd for NO_X for the 1997 annual $PM_{2.5}$ NAAQS, approximately 0.52 tpd for direct $PM_{2.5}$ and 6.7 tpd for NO_X for the 2006 24-hour $PM_{2.5}$ NAAQS, and approximately 0.43 tpd for direct $PM_{2.5}$ and 8.7 tpd for NO_X for the 2012 annual $PM_{2.5}$ NAAQS.

TABLE 2—ONE YEAR'S WORTH OF PROGRESS FOR THE $PM_{2.5}$ NAAQS IN SAN JOAQUIN VALLEY

Applicable $PM_{2.5}$ NAAQS	Pollutant	Emissions (annual average, tpd) [a b c]		One year's worth of RFP (tpd) [d]	RFP as a percentage of the base year inventory (%)	One year's worth of progress (tpd)
		Base year inventory	Projected attainment/RFP inventory			
1997 Annual $PM_{2.5}$ NAAQS ..	Direct $PM_{2.5}$	62.5	58.1	0.44	0.7	0.41
	NO_X	317.2	150.6	16.7	5.3	7.9
2006 24-hour $PM_{2.5}$ NAAQS	Direct $PM_{2.5}$	62.5	56.1	0.58	0.9	0.52
	NO_X	317.2	115.0	18.4	5.8	6.7
2012 Annual $PM_{2.5}$ NAAQS ..	Direct $PM_{2.5}$	62.5	58.4 (RFP in 2022)	0.46	0.7	0.43

TABLE 2—ONE YEAR'S WORTH OF PROGRESS FOR THE $PM_{2.5}$ NAAQS IN SAN JOAQUIN VALLEY—Continued

Applicable $PM_{2.5}$ NAAQS	Pollutant	Emissions (annual average, tpd) [a b c]		One year's worth of RFP (tpd) [d]	RFP as a percentage of the base year inventory (%)	One year's worth of progress (tpd)
		Base year inventory	Projected attainment/RFP inventory			
	NO_X	317.2	179.8 (RFP in 2022)	15.3	4.8	8.7

[a] Base year and 2023 attainment year emissions for the 1997 annual $PM_{2.5}$ NAAQS are from Table H–6 (page H–12) of the 15 μg/m^3 SIP Revision.
[b] Base year and 2024 attainment year emissions for the 2006 24-hour $PM_{2.5}$ NAAQS are from 85 FR 17382, 17421, Table 10, citing 2018 $PM_{2.5}$ Plan, Appendix H (rev. February 11, 2020), Table H–5.
[c] Base year and 2022 RFP year emissions for the 2012 annual $PM_{2.5}$ NAAQS are from 86 FR 49100, 49121, Table 5, citing 2018 $PM_{2.5}$ Plan, Appendix H (rev. February 11, 2020), Table H–11.
[d] From Table 1 of this proposed rule.

6. Substitution Between Direct $PM_{2.5}$ and NO_X Emissions

To determine whether a set of contingency measures would be capable of achieving one year's worth of RFP or one year's worth of progress, excess emissions reductions of one precursor may be substituted for a shortfall in emissions reductions from another precursor or direct $PM_{2.5}$ if supported by the attainment modeling results. The $PM_{2.5}$ SIP Requirements Rule supports the concept of states using reductions in one pollutant to meet the RFP requirement for another pollutant.[62] It envisages an air quality-based RFP analysis with an ''equivalency determination,'' in which ''a state . . . could rely upon attainment demonstration modeling results that link emissions reductions with air quality improvements.'' The EPA considers it reasonable also to apply the interpollutant trading (IPT) concept to contingency measures, which should provide one year's worth of RFP reductions. The EPA previously approved IPT for contingency measures in the 2008 San Joaquin Valley plan for the 1997 annual $PM_{2.5}$ NAAQS, as well as for other plan actions.[63]

Our longstanding guidance on contingency measures did not directly address this particular issue, but in our Draft Revised Contingency Measure Guidance, citing the $PM_{2.5}$ SIP Requirements Rule, we noted that the attainment demonstration modeling in an attainment plan SIP submission may provide a reasonable basis to identify ratios for the effectiveness of reductions of one precursor to reduce ambient concentrations relative to other precursors. If that is the case, it may be appropriate for a state to use the ratio to substitute contingency measure reductions of one precursor for a shortfall in contingency measure reductions of another precursor.[64] While, with respect to the $PM_{2.5}$ NAAQS, the Draft Revised Contingency Measure Guidance refers to substitution of emissions reductions among $PM_{2.5}$ plan precursors, the same holds true for substitution of emissions reductions between direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors.

For San Joaquin Valley, modeling conducted by the State for the SIP submissions for the 1997 annual $PM_{2.5}$ NAAQS and the 2012 annual $PM_{2.5}$ NAAQS supports the use of a 10.3 to 1 ratio for the relative effectiveness of NO_X and direct $PM_{2.5}$ emissions reduction to reduce ambient $PM_{2.5}$ concentrations. For the 2006 24-hour $PM_{2.5}$ NAAQS, the corresponding ratio is 2.6 to 1. Thus, for example, one tpd of excess direct $PM_{2.5}$ emissions reductions (*i.e.,* beyond one year's worth of RFP or progress) could substitute for a shortfall of 10.3 tpd of NO_X reductions for the purposes of the 1997 annual $PM_{2.5}$ NAAQS or the 2012 annual $PM_{2.5}$ NAAQS, or for a shortfall of 2.6 tpd for the purposes of the 2006 24-hour $PM_{2.5}$ NAAQS. For further detail on our interpollutant trading analysis, please see the EPA's Interpollutant Trading Technical Support Document (TSD) in the docket for this action.

7. Using Same Contingency Measures for More Than One Triggering Event, NAAQS

Under CAA section 172(c)(9), SIPs must provide for the implementation of specific contingency measures if the area fails to meet RFP or to attain the NAAQS by the applicable attainment date. For $PM_{2.5}$, there are four potential triggering events: failure to meet any RFP requirement, failure to submit a QM report, failure to meet a QM, and failure to attain the NAAQS by the applicable attainment date.[65]

To meet the contingency measure requirement, states may adopt different measures for different triggering events but are not required to do so. If the state adopts the same set of contingency measures for all of the triggering events, however, then the contingency measures may all be implemented by earlier-occurring triggering events leaving no contingency measures for potential later-occuring events. In that case, if a state has no remaining approved contingency measures, then the EPA believes that states must adopt and submit additional contingency measures to be available for potential later-occuring triggering events.

The potential for states to have used all approved contingency measures, and thus to lack contingency measures for potential later-triggering events is compounded by the reliance on the same set of contingency measures for more than one iteration of the $PM_{2.5}$ NAAQS. For this proposed rule, we have identified a single set of contingency measures that could be triggered by any of the regulatory triggers in 40 CFR 51.1014(a) and that would apply to the 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the 2012 annual $PM_{2.5}$ NAAQS (for purposes of the Moderate

[62] 81 FR 58010, 58057 and 40 CFR 51.1012. See also proposed rule, 80 FR 15340, 15387 (March 23, 2015).

[63] 79 FR 29327 (May 22, 2014); see discussion in proposed approval, 78 FR 53113, 53122 (August 28, 2013). The EPA later withdrew the approval of the contingency measure SIP at 81 FR 29498 (May 12, 2016) for reasons unrelated to IPT. At 82 FR 58747 (December 14, 2017), the EPA found that the deficiency that had been the basis for the May 12, 2016 disapproval had been resolved. The EPA has approved IPT for showing that aggregate commitments for emissions reductions have been met for example in approving the 2018 $PM_{2.5}$ Plan for the 2006 24-hour $PM_{2.5}$ NAAQS. 85 FR 44192. See also, discussion in the preamble of the affiliated proposed rule. 85 FR 17382, 17407 and 17429. See also, South Coast Air Quality Management District (SCAQMD), ''2016 Air Quality Management Plan,'' App. VI, VI–D–5 and VI–D–6; SCAQMD, ''Technical clarification regarding emission reductions associated with contingency measures for the 2006 24-hour $PM_{2.5}$ standard attainment and 2012 annual $PM_{2.5}$ standard Reasonable Further Progress,'' February 2020, 4; and 85 FR 71264 (November 9, 2020).

[64] Draft Revised Contingency Measure Guidance, 25.

[65] 40 CFR 51.1014(a).

area attainment plan). However, in light of the potential for triggering the contingency measures for one $PM_{2.5}$ NAAQS and the resultant absence of contingency measure for the other $PM_{2.5}$ NAAQS, we are proposing regulatory text that would commit the Agency to promulgate additional contingency measures if all the contingency measures are implemented for one of the $PM_{2.5}$ NAAQS with the result that no FIP contingency measures would be left to be implemented for the other $PM_{2.5}$ NAAQS.

B. Candidate Measure Identification Process

The EPA has used several guiding principles in identifying candidate contingency measures for this FIP proposal. These include consideration of:

- Larger emission sources of direct $PM_{2.5}$ and NO_X, based on our review of the State's emissions inventories (*i.e.,* where the potential magnitude of reductions may be greater),
- Past recommendations of new control measures or improvements to existing control measures by the EPA and community and environmental groups (to leverage the considerable past efforts to identify potential additional emission reduction opportunities),
- Awareness of recent and ongoing emission reduction strategies by CARB and the District (whose adoption and submission to meet another SIP requirement, or whose status as an already implemented measure, would render the measure ineligible as a potential contingency measure),
- Timing limitations that prevent the measure from being implemented without significant further action by the state or the EPA as required for contingency measures, or that prevent the potential resulting emissions reductions from being achieved within one year of a triggering event for the contingency measure (such as the statutory four-year lead time for mobile source vehicle and engine standards),[66] and
- The potential for changing the EPA's FIP contingency measures into SIP contingency measures (*i.e.,* measures that the State could adopt, in whole or in part, or adapt in combination with other measures), that would achieve comparable emission reductions, as part of a contingency measure SIP submission to replace the FIP in future).[67]

Furthermore, as necessary parts of the process for selecting measures for inclusion in the proposed contingency measure FIP, the EPA evaluated the measures for their emission reduction potential; technological and economic feasibility; and suitability as contingency measures (*i.e.,* they can be implemented within 60 days of triggering, reductions can occur within two years of triggering, etc.).

1. Emissions Inventory (Direct $PM_{2.5}$ and NO_X)

We reviewed emissions inventories in the 2018 $PM_{2.5}$ Plan and CARB's CEPAM standard emissions tool (2019v1.03) for San Joaquin Valley to identify the principal source categories that contribute to regional emissions totals and thereby to identify the source categories for which meaningful emissions reductions from contingency measures might be most achievable. As shown in Table 3, based on the 2018 $PM_{2.5}$ Plan emissions inventory,[68] the top ten source categories for direct $PM_{2.5}$ emissions in the San Joaquin Valley in 2023 will contribute approximately 78% of the regional total direct $PM_{2.5}$ emissions. Most of the top ten direct $PM_{2.5}$ sources are stationary and area sources, including direct $PM_{2.5}$ combustion sources such as Cooking and Residential Fuel Combustion and direct $PM_{2.5}$ dust sources such as Farming Operations and Fugitive Windblown Dust. With respect to NO_X emissions, the top ten source categories will contribute approximately 77% of the regional total in 2023. Most of the top ten NO_X sources are mobile sources, including on-road sources such as Heavy Heavy-Duty Diesel Trucks and Light-Duty Vehicles and non-road sources such as Farm Equipment and Trains.

TABLE 3—TOP TEN SOURCE CATEGORIES FOR DIRECT $PM_{2.5}$ AND NO_X EMISSIONS, SAN JOAQUIN VALLEY, 2023

[Annual average]

Pollutant or precursor	Source category	Emissions (tpd) [a]	Emissions as percentage of total inventory
Direct $PM_{2.5}$	Farming Operations	13.0	22.3
	Fugitive Windblown Dust	7.2	12.3
	Paved Road Dust	5.5	9.4
	Cooking	4.2	7.2
	Unpaved Road Dust	3.7	6.3
	Residential Fuel Combustion	3.3	5.7
	Managed Burning and Disposal	3.0	5.1
	Farm Equipment	1.8	3.1
	Light-Duty Vehicles (LDA, LDT1, LDT2)	1.8	3.1
	Mineral Processes	1.7	2.9
	Total of Top Ten Source Categories	45.2	77.5
NO_X	Heavy Heavy-Duty Diesel Trucks (HHDV)	33.1	21.5
	Farm Equipment	30.1	19.6
	Off-Road Equipment	14.7	9.6
	Trains	8.8	5.7
	Light-Duty Vehicles (LDA, LDT1, LDT2)	6.4	4.2

[66] In our Draft Revised Contingency Measure Guidance, in instances where there are insufficient contingency measures available to achieve the recommended amount of emission reductions within one year, we are considering a change to our guidance to allow for up to two years of being triggered for achieving emissions reductions from contingency measures.

[67] The facility of translating proposed FIP contingency measures into SIP contingency measures has two potential benefits: first, implementation and enforcement build on existing structures with which the regulated communities are familiar, resulting in swift implementation consistent the statutory requirements for contingency measures; and second, drafting the FIP measures within the context of existing rules may be more readily adapted by the state in its contingency measure SIP submission.

[68] 2018 $PM_{2.5}$ Plan, App. B, Table B–1 (direct $PM_{2.5}$) and Table B–2 (NO_X).

TABLE 3—TOP TEN SOURCE CATEGORIES FOR DIRECT $PM_{2.5}$ AND NO_X EMISSIONS, SAN JOAQUIN VALLEY, 2023—Continued

[Annual average]

Pollutant or precursor	Source category	Emissions (tpd) [a]	Emissions as percentage of total inventory
	Residential Fuel Combustion	5.8	3.8
	Manufacturing and Industrial	5.3	3.5
	Medium Heavy-Duty Diesel Trucks (MHDV)	5.0	3.3
	Service and Commercial	4.6	3.0
	Aircraft	4.6	3.0
	Total of Top Ten Source Categories	118.4	77.1

[a] Source: 2018 $PM_{2.5}$ Plan, Appendix B, tables B–1 and B–2.

2. Identification of Current and Future Planned Controls for Source Categories

Using the emission inventory information, we identified the existing controls for these sources in the EPA approved SIP for the San Joaquin Valley, and the planned future controls that apply (or will apply) to the source categories or subcategories present in the nonattainment area. Existing controls refer to the limits and requirements for different source categories set forth in the District, CARB, and EPA rules and regulations. Planned future controls refer to the commitments to develop and propose control measures found in District plans [69] and in CARB's Valley State SIP Strategy and the 2022 State SIP Strategy.[70]

For example, the District and CARB have adopted many measures from 2018 to the present that address top ten sources of direct $PM_{2.5}$ and/or NO_X in the San Joaquin Valley, including but not limited to the following by adoption year:

- Residential Fuel Combustion (2019 amendments to Rule 4901 (''Wood Burning Fireplaces and Wood Burning Heaters '') and 2021 residential wood burning incentive measure),
- Managed Burning and Disposal (2021 agricultural burning phase-out measure),
- Farming Equipment (2019 agricultural equipment incentive measure),
- Heavy-Duty Diesel Trucks (2020 Advanced Clean Trucks Regulation and 2021 Heavy-Duty Inspection and Maintenance Regulation)

The District and CARB continue to workshop and evaluate control measures for other top ten source categories, including Farming Operations (*e.g.,* potential amendments to Rule 4550 (''Conservation Management Practices'')) [71] and Cooking (*e.g.,* commercial under-fired charbroiling).[72] The exact form and timing of such control measures remain uncertain and subject to the State's further evaluation of technological and economic feasibility and interaction with other governmental entities.

In addition, as examples of federal action, the EPA has finalized Heavy-Duty vehicle and engine standards for model year 2027 and beyond,[73] proposed more stringent emission standards for criteria pollutants, including NO_X, for both Light-Duty and Medium-Duty vehicles for model years 2027–2032,[74] and proposed new greenhouse gas standards for Heavy-Duty vehicles starting in model year 2028 that would also reduce Heavy-Duty vehicle emissions of NO_X and other criteria pollutant precursors.[75]

Regarding the fourth largest source of NO_X in the San Joaquin Valley (trains), in November 2022 the EPA responded to a petition from the District that sought action by the EPA to address harmful emissions from locomotives.[76] The EPA committed in the response to undertake a notice and comment rulemaking process to reconsider existing locomotive preemption regulations to ensure that they don't inappropriately limit California's and other states' authorities under the CAA to address their air quality issues. In April 2023, the EPA proposed changes to the locomotive preemption regulations delivering on the Agency's commitment.[77]

The EPA also committed to engage with stakeholders including locomotive and locomotive engine manufacturers, technology suppliers, environmental justice communities, environmental and public health non-governmental organizations, other federal partners, state and local air quality agencies, railroad companies, and labor unions as the Agency develops options for how new locomotives can achieve the greatest degree of emission reduction achievable through the application of technology. That engagement, which is ongoing, has already highlighted that potential opportunities may exist to reduce emissions from locomotives through possible changes to the EPA's regulations to control unnecessary idling by new and remanufactured locomotives. Technologies that reduce the time that large high-emitting locomotive engines operate at idle have the potential to directly reduce PM and NO_X emissions from locomotives. The EPA is actively considering how best to address the emissions from idling locomotives among the suite of regulatory options being considered for new and remanufactured locomotives.

With respect to the State's current and planned controls specifically for contingency measures in the San Joaquin Valley, on June 8, 2023, the State submitted the ''$PM_{2.5}$ Contingency Measure State Implementation Plan Revision'' to the EPA as a revision to the California SIP (''June 2023 Contingency

[69] See, *e.g.,* 2018 $PM_{2.5}$ Plan, Ch. 4, Table 4–4; and SJVUAPCD, ''2022 Plan for the 2015 8-Hour Ozone Standard,'' adopted December 15, 2022, section 3.3.3, 3–9.

[70] Valley State SIP Strategy, Table 7; and CARB, ''2022 State Strategy for the State Implementation Plan (adopted September 22, 2022),'' submitted electronically to the EPA on February 23, 2023, as an enclosure to a letter dated February 22, 2023.

[71] SJVUAPCD, ''$PM_{2.5}$ Contingency Measure State Implementation Plan Revision,'' May 18, 2023, 23–24. See also, SJVUAPCD, ''Public Workshop for Potential Amendments to District Rule 4550 (Conservation Management Practices),'' November 7, 2022.

[72] SJVUAPCD, ''$PM_{2.5}$ Contingency Measure State Implementation Plan Revision,'' May 18, 2023, 32–41.

[73] 88 FR 4296 (January 24, 2023).

[74] 88 FR 29184 (May 5, 2023).

[75] 88 FR 25926 (April 27, 2023).

[76] Letter dated November 9, 2022, from Joe Goffman, Principal Deputy Assistant Administrator, EPA, to Liane M. Randolph, Chair, CARB, and letter dated November 9, 2022, from Joe Goffman, Principal Deputy Assistant Administrator, EPA, to Samir Sheikh, Executive Director, SJVUAPCD.

[77] 88 FR 25926, 26092–26096 (April 27, 2023).

Measure SIP Submission'').[78] In that SIP submission, the District and CARB present their evaluation of potential contingency measures, amendments to the contingency provisions of Rule 4901 (''Wood Burning Fireplaces and Wood Burning Heaters''), a commitment to evaluate potential contingency provisions for Rule 8051 (''Open Areas''), analysis of one year's worth of emission reductions, and infeasibility justification for rejecting other potential contingency measures. The residential wood burning contingency measure would, upon a first triggering event, lower the episodic wood burning curtailment thresholds for registered and unregistered devices in five non-hot spot counties to match the thresholds that currently apply in the three hot-spot counties and, upon a second triggering event, would further lower the curtailment threshold for unregistered devices in all eight counties of the San Joaquin Valley. The District estimates that the residential wood burning contingency measures for the first and second triggering events would achieve annual average emission reductions of 0.69 tpd direct $PM_{2.5}$ and 0.10 tpd NO_X in the San Joaquin Valley.[79]

In addition, by letter dated June 23, 2023, CARB committed to bring to the CARB Board for consideration no later than February 28, 2024, and submit to the EPA no later than March 31, 2024, a contingency measure to implement a change to the exemptions for light-duty motor vehicles in the California vehicle emissions inspection and maintenance (I/M) program—the Smog Check Program—if triggered by an EPA determination under 40 CFR 51.1014(a).[80] CARB indicates that the contingency measure for San Joaquin Valley for the $PM_{2.5}$ NAAQS will, within 30 days of the effective date of the EPA determining that an applicable triggering event occurred, obligate CARB to transmit a letter to the California Bureau of Automotive Repair and Department of Motor Vehicles finding that providing an exception from Smog Check for certain vehicles will prohibit the State from meeting the State's commitments with respect to the SIP required by the CAA, effectuating a change to the Smog Check exemption for motor vehicles from eight or less model-years old to seven or less model-years old throughout the San Joaquin Valley.[81]

The EPA is evaluating the June 2023 Contingency Measure SIP Submission and June 23, 2023 commitment and will propose action on the submission and commitment in a separate rulemaking.

3. Past EPA Recommendations

When the EPA reviews individual District rules in SIP submissions for approval, the EPA routinely includes recommendations for changes to the rules to strengthen or clarify them, even if the particular change is not required for approval as meeting applicable stringency requirements. These recommendations are generally found in the EPA's technical support documents prepared for individual rulemakings. We have reviewed past recommendations in numerous technical support documents prepared in connection with past SIP actions to identify potential rule changes that might be suitable as contingency measures.

4. Environmental and Community Group Recommendations

In 2021, a group of 18 environmental justice, environmental and community groups in the San Joaquin Valley sent the EPA a letter in which they attached a list of specific control measures that the group believes should be adopted or strengthened in the San Joaquin Valley area.[82] These groups later supplemented the 2021 letter with additional information concerning the list of control measures.[83] We have taken into account the information contained in the two letters and attachments in developing this proposed contingency measure FIP.

C. Residential Wood Burning

1. Background

Residential wood burning includes wood-burning heaters (*i.e.,* woodstoves, pellet stoves, and wood-burning fireplace inserts), which are used primarily for heat generation, and wood-burning fireplaces, which are used primarily for aesthetic purposes. All of these devices emit direct $PM_{2.5}$ and NO_X. However, wood-burning heaters, that are certified under the EPA's New Source Performance Standards (NSPS) emit lower levels of $PM_{2.5}$ compared to wood-burning fireplaces and non-certified heaters when properly installed, operated, and maintained.

Residential wood-burning is included within the ''Residential Fuel Combustion'' emissions inventory category within the 2018 $PM_{2.5}$ Plan's emissions inventories. In the 2018 $PM_{2.5}$ Plan, the District estimates emissions of 2.82 tpd of $PM_{2.5}$ and 0.42 tpd NO_X (annual average) specifically from residential wood burning for each year from 2017 onward. However, these estimates do not account for the effect of the 2019 amendments to Rule 4901, discussed in the following section of this document.

2. Regulatory History

District Rule 4901 establishes requirements for the sale/transfer, operation, and installation of wood-burning devices and on the advertising of wood for sale intended for burning in a wood-burning fireplace, wood-burning heater, or outdoor wood-burning device within the San Joaquin Valley.

One of the most effective ways to reduce wintertime smoke is a curtailment program that restricts use of wood-burning heaters and fireplaces on days that are conducive to buildup of PM concentrations (*i.e.,* days where ambient $PM_{2.5}$ and/or PM_{10} concentrations are forecast to be above a particular level, known as a ''curtailment threshold'').

Rule 4901 includes a tiered mandatory curtailment program that establishes different curtailment thresholds based on the type of devices (*i.e.,* registered clean-burning devices[84] vs. unregistered devices) and different counties (*i.e.,* hot spot vs. non-hot spot). During a Level One Episodic Wood Burning Curtailment, operation of wood-burning fireplaces and other unregistered wood-burning heaters or devices is prohibited, but properly operated, registered wood-burning heaters may be used.[85] During a Level Two Episodic Wood Burning Curtailment, operation of any wood-

[78] Letter dated June 7, 2023, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX.

[79] June 2023 Contingency Measure SIP Submission, 31.

[80] Letter dated June 23, 2023, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX.

[81] Id.

[82] Letter dated October 22, 2021, from Tom Frantz, Association of Irritated Residents, et al., to Michael S. Regan, EPA Administrator, including Attachment.

[83] Letter dated May 18, 2022, from Tom Frantz, Association of Irritated Residents, et al., to Michael S. Regan, EPA Administrator, including Attachments A, B, and C.

[84] In order to be registered, a device must either be certified under the NSPS at time of purchase or installation and at least as stringent as Phase II requirements or be a pellet-fueled wood burning heater exempt from EPA certification requirements at the time of purchase or installation (section 5.9.1). The rule includes requirements for documentation and inspection to verify compliance with these standards (sections 5.9.2 and 5.10).

[85] Rule 4901, section 5.7.1.

burning device is prohibited.[86] However, the rule includes an exemption from the curtailment provisions for (1) locations where piped natural gas service is not available and (2) residences for which a wood-burning fireplace or wood-burning heater is the sole available source of heat.[87]

In order to implement the curtailment program under Rule 4901, the District develops daily air quality forecasts, based on EPA and CARB guidance, which include a projection of the maximum $PM_{2.5}$ concentration in each county for the following day.[88] District staff then compare this maximum county $PM_{2.5}$ concentration forecast with the curtailment thresholds in Rule 4901. If a county's $PM_{2.5}$ forecast exceeds the applicable threshold, then the District's Air Pollution Control Officer declares a curtailment for the county for the following day.

In 2019, the District lowered the curtailment thresholds in Madera, Fresno, and Kern counties, which the District identified as ''hot spot'' counties, because they were ''either new areas of gas utility or areas deemed to have persistently poor air quality.'' [89] Table 4 presents the residential curtailment thresholds in District Rule 4901, as revised in 2019.

TABLE 4—RESIDENTIAL WOOD BURNING CURTAILMENT THRESHOLDS IN RULE 4901

	Hot spot counties (Madera, Fresno, and Kern)	Non-hot spot counties (San Joaquin, Stanislaus, Merced, Kings, and Tulare)
Level One (No Burning Unless Registered)	12 μg/m³	20 μg/m³.
Level Two (No Burning for All)	35 μg/m³	65 μg/m³.

The 2019 revision by the District also added a provision to the rule to operate as a contingency measure, which would lower the curtailment levels for any county that failed to attain the applicable standards to levels consistent with current thresholds for hot spot counties. However, the EPA disapproved this provision because it did not meet all of the CAA requirements for contingency measures.[90] Specifically, it did not address three of the four required triggers for contingency measures in 40 CFR 51.1014(a) and was not structured to achieve any additional emissions reductions if the EPA found that the monitoring locations in the ''hot spot'' counties (*i.e.,* Fresno, Kern, or Madera) were the only counties in the San Joaquin Valley that are violating the applicable $PM_{2.5}$ NAAQS as of the attainment date.[91] Accordingly, the SIP-approved version of Rule 4901 does not include any contingency provision.

On May 18, 2023, the District adopted a new contingency measure in section 5.7.3 of Rule 4901, and CARB submitted this contingency measure as part of the June 2023 Contingency Measure SIP Submission. The contingency measure would be triggered by a final determination by the EPA that the District failed to meet one or more of the following triggering events of the applicable $PM_{2.5}$ NAAQS:

(1) Any Reasonable Further Progress requirement;

(2) Any quantitative milestone;

(3) Submission of a quantitative milestone report; or

(4) Attainment of the applicable $PM_{2.5}$ NAAQS by the applicable attainment date.

Following the first such triggering event, the measure would lower the thresholds for the non-hot spot counties to the current thresholds for hot spot counties (*i.e.,* 12 μg/m³ for unregistered devices; 35 μg/m³ for registered devices). Following the second such event, the measure would further lower the threshold for unregistered devices to 11 μg/m³.

3. Proposed Measure

As described further in the EPA's Proposed Contingency Measures TSD, we considered various possible contingency measures that could apply to the wood-burning source category and concluded that strengthening the curtailment program would be the most effective means of providing meaningful emissions reductions from this source category within one to two years of the triggering event.

Specifically, the proposed contingency measure for this source category would strengthen the curtailment program in Rule 4901 by lowering the curtailment levels for the five non-hot-spot counties to the current thresholds for hot spot counties (*i.e.,* 12 μg/m³ for unregistered devices; 35 μg/m³ for registered devices). Curtailments would continue to be determined on a county-by-county basis, so restrictions would continue to be tailored based on the air quality for the particular county.

We estimate the annual average emissions reductions associated with this contingency measure would be 0.579 tpd of direct $PM_{2.5}$ and 0.082 tpd of NO_X. Please refer to the EPA's Proposed Contingency Measures TSD for more detail on the proposed measure and associated reductions.

D. Rural Open Areas Dust

1. Background

In areas where there is open, uncovered land, a natural crust will form and minimize dust emissions. However, activities such as earthmoving activities, material dumping, weed abatement, and vehicle traffic will disturb otherwise naturally stable land and allow windblown fugitive dust emissions to occur. As a contingency measure, the EPA is proposing to add to an existing District measure to further reduce emissions from this category. The contingency measure would lower the applicability threshold of the District's Rule 8051 from 3.0 acres to 1.0 acres for rural open areas, thereby reducing windblown fugitive dust, including the direct $PM_{2.5}$ portion of such dust emissions.

2. Regulatory History

SJVUAPCD adopted Regulation VIII (containing the 8000 series rules) on November 15, 2001, to address RACM/RACT and BACM/BACT attainment plan requirements for the 1987 PM_{10}

[86] Rule 4901, section 5.7.2.

[87] Rule 4901, section 5.7.4.

[88] Email dated October 9, 2019, from Jon Klassen, SJVUAPCD to Meredith Kurpius, EPA Region IX, Subject: ''RE: Info to support Rule 4901.''

[89] 2018 $PM_{2.5}$ Plan, App. J, 60.

[90] 86 FR 67329, 67338 (for the 1997 annual $PM_{2.5}$ NAAQS) and 86 FR 67343, 67345 (for the 2006 24-hour $PM_{2.5}$ NAAQS and 2012 annual $PM_{2.5}$ NAAQS).

[91] Id. See also, 86 FR 38652, 38669 (July 22, 2021) (proposed rule on contingency measure element for the 1997 annual $PM_{2.5}$ NAAQS) and 86 FR 49100, 49125 and 49133–49134 (proposed rule on contingency measure element for the 2012 annual $PM_{2.5}$ NAAQS and 2006 24-hour $PM_{2.5}$ NAAQS, respectively).

NAAQS.[92] The EPA found that new provisions in Regulation VIII ''significantly strengthened'' the prior existing rules by tightening standards, covering more activities, and adding more requirements to control dust-producing activities.[93] Subsequently, the District adopted amendments to Regulation VIII on August 19, 2004, and September 16, 2004, that the EPA approved into the San Joaquin Valley portion of the California SIP in 2006.[94] More recently the EPA has reviewed Regulation VIII for RACM/RACT, BACM/BACT, and most stringent measures requirements in acting on San Joaquin Valley plans for the 2006 24-hour $PM_{2.5}$ NAAQS.[95] Among the rules of Regulation VIII, Rule 8051 applies to open areas and the 2004 amendments added applicability thresholds for rural and urban areas required to meet both the conditions for a stabilized surface (defined in Rule 8011) and a 20% opacity standard. In addition, under Rule 8051, upon evidence of vehicle trespass, owners/operators must apply a measure(s) that effectively prevents access to the lot.

3. Proposed Measure

The proposed contingency measure for this source category would lower the applicability threshold from 3.0 acres to 1.0 acres in rural areas. As a result, if triggered by a failure to meet RFP requirements or a failure to attain, Rule 8051 would then apply to any rural open area having 1.0 acre or more and containing at least 1,000 square feet of disturbed surface area.

This measure will require these additional areas to meet the existing requirements in Rule 8051. Specifically, Section 5 (Requirements) of Rule 8051 requires that:

> Whenever open areas are disturbed or vehicles are used in open areas, an owner/operator shall implement one or a combination of control measures indicated in Table 8051–1 to comply with the conditions of a stabilized surface at all times and to limit VDE to 20% opacity. In addition to the requirements of this rule, a person shall comply with all other applicable requirements of Regulation VIII.[96]

Table 8051–1 contains the following control measures for open areas:

> A. Open Areas:
>
> Implement, apply, maintain, and reapply if necessary, at least one or a combination of the following control measures to comply at all times with the conditions for a stabilized surface and limit VDE to 20% opacity as defined in Rule 8011:
>
> A1. Apply and maintain water or dust suppressant(s) to all unvegetated areas; and/or
>
> A2. Establish vegetation on all previously disturbed areas; and/or
>
> A3. Pave, apply and maintain gravel, or apply and maintain chemical/organic stabilizers/suppressant(s).
>
> B. Vehicle Use in Open Areas:
>
> Upon evidence of trespass, prevent unauthorized vehicle access by:
>
> Posting 'No Trespassing' signs or installing physical barriers such as fences, gates, posts, and/or other appropriate barriers to effectively prevent access to the area.

The District makes available certain forms through the District's website that owners or operators may use to document compliance with the requirements of the rules under Regulation VIII.[97] For open areas, these include ''Form A—Area Water Application'' and/or ''Form C—For Permanent/Long Term Dust Controls,'' consistent with the measure an owner or operator would select from Table 8051–1. The EPA would require owners and operators of rural open areas newly subject to the requirements of Rule 8051 (*i.e.,* those with open areas 1.0 to 3.0 acres in size) to use the two forms, which the EPA intends to adapt for use in connection with this proposed FIP contingency measure. The EPA would apply the same recordkeeping requirements found in the District rule to newly subject owners and operators—*i.e.,* generally one year following project completion except for owners/operators subject to Rule 2520 who must retain records for five years. The EPA, however, would add a requirement that owners and operators of rural open areas newly subject to the requirements of Rule 8051 pursuant to this FIP submit copies of records prepared during a calendar year to the EPA by March 31st of the following year.

Given the availability and variability of county-based parcel data, which inform the location, number, and size of open areas in the 1.0 acre to 3.0 acres size range, and the differences in emission factors for fugitive windblown dust by county, it is difficult to precisely quantify the emission reductions associated with lowering the applicability threshold for rural open area in Rule 8051 from 3.0 acres to 1.0 acre. Nonetheless, based on the information available, we estimate that lowering the applicability threshold in rural areas from 3.0 acres to 1.0 acre would result in direct $PM_{2.5}$ emission reductions of 0.01 tpd (after applying a compliance rate of 75%). However, given uncertainties in our methodology for this estimate, we are seeking comment on our estimated emissions reductions. This contingency measure requires the same kinds of dust control options as currently apply to rural areas larger than 3.0 acres. We estimate that the annual cost of controlling the dust emission would range from $160/acre/year to $360/acre/year, depending on the control option selected from Table 8051–1 of Rule 8051. Please refer to the EPA's Proposed Contingency Measures TSD for more detail on the proposed measure and associated reductions and annual cost estimates.

E. Summary of EPA Analysis and Conclusion

Table 5 summarizes the estimated emissions reductions from the proposed contingency measures.

[92] Regulation VIII includes eight rules. Rule 8011 (''General Requirements'') provides definitions and the general requirements on which the seven other rules rely. In turn, those seven rules apply to different sources of fugitive windblown dust based on activity type. They include Rule 8021 (''Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities''), Rule 8031 (''Bulk Materials''), Rule 8041 (''Carryout and Trackout''), Rule 8051 (''Open Areas''), Rule 8061 (''Paved and Unpaved Roads''), Rule 8071 (Unpaved Vehicle/Equipment Traffic Area''), and Rule 8081 (''Agricultural Sources''). In this proposed rule, the EPA proposes a contingency measure for rural open areas by adding to Rule 8051.

[93] 67 FR 15345, 15346–15447 (April 1, 2002) (proposed rule on 2001 version of Regulation VIII).

[94] 71 FR 8461 (February 17, 2006).

[95] See, *e.g.,* 85 FR 17382, 17431 (proposal on BACM/BACT and MSM for the 2006 24-hour $PM_{2.5}$ NAAQS); and EPA Region IX, ''Technical Support Document, EPA Evaluation of BACM/MSM, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020.

[96] VDE is Visible Dust Emissions.

[97] *https://www.valleyair.org/busind/comply/PM10/forms/Regulation_VIII_RecordKeeping_Forms.pdf.*

TABLE 5—ANNUAL AVERAGE EMISSIONS REDUCTIONS FROM PROPOSED FIP CONTINGENCY MEASURES

Proposed FIP contingency measure	Direct $PM_{2.5}$ emissions reductions (tpd)	NO_X emissions reductions (tpd)
Residential Wood Burning	0.579	0.082
Rural Open Areas	0.010	.....
Total	0.589	0.082

Table 6 presents the estimated emissions reductions as percentages of one year's worth of RFP and one year's worth of progress both with and without trading between direct $PM_{2.5}$ and NO_X emissions. As noted previously in this proposed rule, one year's worth of RFP is the longstanding recommendation by the EPA to states regarding the magnitude of emissions reductions that contingency measures should be capable of achieving. One year's worth of progress is the new recommendation described in the EPA's Draft Revised Contingency Measure Guidance. In addition, as discussed in section III.A.6 of this proposed rule, we are proposing to trade excess direct $PM_{2.5}$ emission reductions to substitute for a portion of the shortfall in NO_X emission reductions compared to one year's worth of RFP and one year's worth of progress.[98]

Specifically, based on modeling conducted for the SIP submissions, we are proposing a ratio of 10.3 to 1 for the 1997 annual $PM_{2.5}$ NAAQS and 2012 annual $PM_{2.5}$ NAAQS and a ratio of 2.6 to 1 for the 2006 24-hour $PM_{2.5}$ NAAQS, where an excess of one tpd of direct $PM_{2.5}$ emission reductions would substitute for 10.3 tpd of NO_X for the 1997 or 2012 annual $PM_{2.5}$ NAAQS or 2.6 tpd of NO_X for the 2006 24-hour $PM_{2.5}$ NAAQS. For further detail on our interpollutant trading analysis, please see the EPA's Interpollutant Trading TSD.

TABLE 6—PROPOSED FIP CONTINGENCY MEASURES AS PERCENTAGE OF ONE YEAR'S WORTH OF RFP AND ONE YEAR'S WORTH OF PROGRESS [a]

$PM_{2.5}$ NAAQS	Pollutant	One year's worth of RFP			One year's worth of progress		
		Reductions target	% OYW (no trading)	% OYW (with trading)	Reductions target	% OYW (no trading)	% OYW (with trading)
1997 Annual	Direct $PM_{2.5}$ ...	0.44	134	100	0.41	144	100
	NO_X	16.7	0.5	9.7	7.9	1.0	24.5
2006 24-hour ...	Direct $PM_{2.5}$ ...	0.58	101	100	0.52	113	100
	NO_X	18.4	0.4	0.6	6.7	1.2	3.9
2012 Annual	Direct $PM_{2.5}$ ...	0.46	129	100	0.43	138	100
	NO_X	15.3	0.5	9.6	8.7	0.9	20.4

[a] See tables 1 and 2 of this proposed rule for the derivation of one year's worth of RFP and one year's worth of progress for the 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the 2012 annual $PM_{2.5}$ NAAQS.

As shown in Table 5, the sum of the emissions reductions from the two proposed FIP contingency measures is approximately 0.589 tpd direct $PM_{2.5}$ and 0.082 tpd NO_X. Without taking into account the substitution principle, these reductions would exceed one year's worth of RFP for direct $PM_{2.5}$ and provide a portion of one year's worth of RFP for NO_X for the 1997 annual $PM_{2.5}$ NAAQS, 2006 24-hour $PM_{2.5}$ NAAQS, and the 2012 annual $PM_{2.5}$ NAAQS, as shown in Table 6. With respect to one year's worth of progress, these reductions would exceed one year's worth of progress for direct $PM_{2.5}$ and provide a portion of one year's worth of progress for NO_X for all three $PM_{2.5}$ NAAQS, as shown in Table 6.

Taking into account the substitution principle, under which, in this case, excess direct $PM_{2.5}$ emissions are substituted for a shortfall in NO_X emissions, the reductions would amount to 100% of one year's worth of RFP for direct $PM_{2.5}$ and the following amounts of one year's worth of RFP for NO_X by NAAQS: 1997 annual $PM_{2.5}$ NAAQS (9.7%), 2006 24-hour $PM_{2.5}$ NAAQS (0.6%), and 2012 annual $PM_{2.5}$ NAAQS (9.6%). Similarly, the reductions would amount to 100% of one year's worth of progress for direct $PM_{2.5}$ and the following amounts of one year's worth of progress for by NAAQS: 1997 annual $PM_{2.5}$ NAAQS (24.5%), 2006 24-hour $PM_{2.5}$ NAAQS (3.9%), and 2012 annual $PM_{2.5}$ NAAQS (20.4%).

In the preamble to the $PM_{2.5}$ SIP Requirements Rule and the EPA's Draft Revised Contingency Measures Guidance, we have stated that, in those instances where a state is unable to identify contingency measures for a given nonattainment area that would provide approximately one year's worth of emissions reductions, the state should provide a reasoned justification why the smaller amount of emissions reductions is appropriate. For this proposed contingency measure FIP, we have evaluated a broad range of source categories and a broad range of potential emission controls in order to identify possible contingency measures. As a result of that analysis, we are proposing the two specific contingency measures described in sections III.C and III.D of this proposed rule. The proposed contingency measures in this FIP would not provide for one year's worth of emissions reductions measured by the longstanding RFP method or the new progress method, and we are therefore providing a reasoned justification for proposing contingency measures that will achieve less than the amount of emission reductions that the EPA normally recommends.

The justification is based on the EPA's determination that we are unable to identify and adopt feasible contingency

[98] While this trading would not make up the entire shortfall in NO_X emission reductions, it gives a sense for the magnitude of the relative ambient effect of the excess direct $PM_{2.5}$ emission reductions towards meeting one year's worth of RFP or one year's worth of progress.

measures that provide the recommended one year's worth of emission reductions. While the EPA notes that CAA section 172(c)(9) and section 182(c)(9) do not explicitly provide for consideration of whether specific measures are feasible, the Agency believes that it is reasonable to infer that the statute does not require control measures regardless of any technological or cost constraints whatsoever. It is more reasonable to interpret the contingency measure requirement not to require air agencies to adopt and impose infeasible measures. The statutory provisions applicable to other nonattainment area plan control measure requirements, including RACM/RACT (for ozone and PM), BACM/BACT (for PM), and most stringent measures (for PM), allow air agencies to exclude certain control measures that are deemed unreasonable or infeasible (depending on the requirement). For example, the most stringent measures provision in CAA section 188(e) requires plans to include ''the most stringent measures that are included in the implementation plan of any state or are achieved in practice in any state, and can feasibly be implemented in the area.'' The EPA considers it reasonable to conclude that Congress similarly did not expect air agencies to satisfy the contingency measure requirement with infeasible measures. Thus, the EPA anticipates that a demonstrated lack of feasible measures would be a reasoned justification for adopting contingency measures that only achieve a lesser amount of emission reductions.

When promulgating a FIP, the EPA is ''standing in the shoes'' of the state to meet a SIP requirement that the state has thus far not fulfilled. Accordingly, the EPA considers it appropriate to interpret the requirements of section 172(c)(9) in the same fashion in the context of a FIP. Thus, when the EPA evaluates control measures for adoption as potential contingency measures, it is reasonable for the Agency to consider such factors as technological and economic feasibility. Even a control measure that may theoretically be available as a contingency measure, and otherwise meet other legal parameters for a contingency measure, may nonetheless be so technologically or economically infeasible as to render it unviable as a contingency measure. Thus, with a reasoned justification establishing that there are no additional feasible measures, it is appropriate for the Agency to promulgate a FIP for contingency measures that might result in less than the recommended amount of emission reductions.

To further explain the basis for the EPA's determination that it is unable to identify and adopt additional feasible contingency measures that would achieve one years' worth of RFP or progress reductions, we have prepared a detailed evaluation of source categories and measures that we considered as potential additional contingency measures but determined to be infeasible or otherwise unsuitable for contingency measures and therefore did not include in the proposed FIP. This evaluation is presented in the Reasoned Justification TSD (for measures not included in this proposed contingency measures FIP). See, for example, our evaluation for commercial charbroiling, almond harvesting, light-duty vehicles, and large boilers, steam generators, and process heaters.

IV. Environmental Justice Considerations

Executive Order 12898 (59 FR 7629, February 16, 1994) requires that federal agencies, to the greatest extent practicable and permitted by law, identify and address disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations. Additionally, Executive Order 13985 (86 FR 7009, January 25, 2021) directs federal government agencies to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups, and Executive Order 14008 (86 FR 7619, February 1, 2021) directs federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities.

To identify environmental burdens and susceptible populations in underserved communities in the San Joaquin Valley nonattainment area and to better understand the context of our proposed FIP on these communities, we conducted a screening-level analysis for $PM_{2.5}$ in the San Joaquin Valley using the EPA's environmental justice (EJ) screening and mapping tool (''EJSCREEN'').[99] The results of this analysis are being provided for informational and transparency purposes.

Our screening-level analysis indicates that all eight counties in the San Joaquin Valley score above the national average for the EJSCREEN ''Demographic Index'' (*i.e.,* ranging from 48% in Stanislaus County to 61% in Tulare County, compared to 36% nationally).[100] [101] The Demographic Index is the average of an area's percent minority and percent low income populations, *i.e.,* the two populations explicitly named in Executive Order 12898.[102] All eight counties also score above the national average for demographic indices of ''linguistically isolated population'' and ''population with less than high school education.''

With respect to pollution, all eight counties score at or above the 97th percentile nationally for the $PM_{2.5}$ index and seven of the eight counties in the San Joaquin Valley score at or above the 90th percentile nationally for the $PM_{2.5}$ EJ index, which is a combination of the Demographic Index and the $PM_{2.5}$ index.[103] Most counties also scored above the 80th percentile for each of 11 additional EJ indices included in the EPA's EJSCREEN analysis. In addition, several counties scored above the 90th percentile for certain EJ indices, including, for example, the Ozone EJ Index (Fresno, Kern, Madera, Merced,

[99] EJSCREEN provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN is available at: *https://www.epa.gov/ejscreen/what-ejscreen.* The EPA used EJSCREEN to obtain environmental and demographic indicators representing each of the eight counties in the San Joaquin Valley. We note that the indicators for Kern County are for the entire county. While the indicators might have slightly different numbers for the San Joaquin Valley portion of the county, most of the county's population is in the San Joaquin Valley portion, and thus the differences would be small. These indicators are included in EJSCREEN reports that are available in the rulemaking docket for this action.

[100] EPA Region IX, ''EJSCREEN Analysis for the Eight Counties of the San Joaquin Valley Nonattainment Area,'' August 2022.

[101] By comparison, the eight counties score above the State average for the EJSCREEN ''Demographic Index'' (*i.e.,* ranging from 52% in Stanislaus County to 71% in Tulare County, compared to 47% in California).

[102] EJSCREEN reports environmental indicators (*e.g.,* air toxics cancer risk, Pb paint exposure, and traffic proximity and volume) and demographic indicators (*e.g.,* people of color, low income, and linguistically isolated populations). The score for a particular indicator measures how the community of interest compares with the state, the EPA region, or the national average. For example, if a given location is at the 95th percentile nationwide, this means that only five percent of the U.S. population has a higher value than the average person in the location being analyzed. EJSCREEN also reports EJ indexes, which are combinations of a single environmental indicator with the EJSCREEN Demographic Index. For additional information about environmental and demographic indicators and EJ indexes reported by EJSCREEN, see EPA, ''EJSCREEN Environmental Justice Mapping and Screening Tool—EJSCREEN Technical Documentation,'' section 2 (September 2019).

[103] By comparison, two counties score at or above the 97th percentile in California for the $PM_{2.5}$ index and five counties score at or above the 80th percentile in California for the $PM_{2.5}$ EJ index (rather than seven of eight counties that score at or above the 90th percentile nationally).

and Tulare counties), the National Air Toxics Assessment (NATA) Respiratory Hazard EJ Index (Madera and Tulare counties), and the Wastewater Discharge Indicator EJ Index (Merced, San Joaquin, Stanislaus, and Tulare counties).[104]

As discussed in the EPA's EJ technical guidance, people of color and low-income populations, such as those in the San Joaquin Valley, often experience greater exposure and disease burdens than the general population, which can increase their susceptibility to adverse health effects from environmental stressors.[105] Underserved communities may have a compromised ability to cope with or recover from such exposures due to a range of physical, chemical, biological, social, and cultural factors.[106] The EPA is committed to environmental justice for all people, and we acknowledge that the San Joaquin Valley nonattainment area includes minority and low income populations that are subject to higher levels of $PM_{2.5}$ and other pollution relative to State and national averages, and that such concerns could be affected by this action.

Regarding the specific contingency measures proposed herein, we have considered the geographic scope of each proposed contingency measure on $PM_{2.5}$ concentrations in each county of the San Joaquin Valley, as well as other environmental considerations that pertain to applicable pollutant (*i.e.,* combustion $PM_{2.5}$, dust $PM_{2.5}$, or NO_X) and the applicable source category or categories.

For residential wood burning, our proposed contingency measure would lower the No Burn (*i.e.,* curtailment) thresholds for the five non-hot spot counties (Kings, Merced, San Joaquin, Stanislaus, and Tulare counties) to match the tighter No Burn thresholds for the three hot spot counties (Fresno, Madera, and Kern counties). A prominent effect of this change would be to provide similar protections to people in the two southern-most non-hot spot counties that record among the highest year-to-year $PM_{2.5}$ design values in the San Joaquin Valley (*i.e.,* Kings County, including Corcoran and Hanford monitoring sites, and Tulare County, including Visalia monitoring site).[107] Were No Burn days to be called in Kings or Tulare County according to the more stringent thresholds, we also anticipate there would be smaller but still beneficial effect in the adjacent Fresno or Kern counties, depending on the meteorology of the day.

Where these direct $PM_{2.5}$ emission reductions from combustion occur, we also note that they do not require further chemical transformation in the atmosphere to form $PM_{2.5}$ (*i.e.,* the benefit is immediate) and, as they include fine particulate matter under one micron and toxic air chemicals, the reduction of such sub-micron particles would similarly reduce exposure of all residents in these areas, including minority and low-income populations to these environmental stressors. These reductions would also specifically reduce emissions on the winter days with the highest ambient $PM_{2.5}$ levels. We also note that environmental and community groups have recommended several measures to reduce direct $PM_{2.5}$ emissions from residential wood burning, including a recommendation that requirements apply District-wide, rather than distinguishing between hot spot and non-hot spot counties.[108] The proposed measure, if triggered, would align all counties to the tighter No Burn thresholds of the hot spot counties.

For open areas, the proposed contingency measure, if triggered, would lower the applicability threshold for the rural open area requirements of Rule 8051 (*i.e.,* for parcels having at least 1,000 square feet of disturbed soil) from 3.0 acres to 1.0 acre. Based on our analysis of land use to date, such rural open areas are found in all counties of the San Joaquin Valley, though with some variation from county to county consistent with overall land use types (*e.g.,* San Joaquin County has the smallest proportion of rural open areas, while Madera County has the highest proportion of rural open areas). Furthermore, there is variation in the number of rural open areas that would be newly subject to the rule, *i.e.,* those between 1.0 to 3.0 acres in size (*e.g.,* Kern County has the most total rural open area acreage from parcels between 1.0 to 3.0 acres in size, while Tulare County has the least). Given the overall land use and emission factors, as discussed further in the EPA's Proposed Contingency Measures TSD, and assuming roughly equal levels of activity in each county (*i.e.,* soil disturbances over 1,000 square feet), we anticipate that the proposed contingency measure would provide air quality benefits in all counties of the San Joaquin Valley, with most air quality benefits occuring in Fresno, Kern, Kings and Madera counties.

Given that Rule 8051 for open areas was originally introduced as a PM_{10} control measure, we anticipate that the proposed measure would provide co-benefits to limiting PM_{10} levels in the San Joaquin Valley, with the same geographical distribution as discussed herein for direct $PM_{2.5}$ emission reductions.[109]

V. Proposed Action and Request for Public Comment

The EPA is proposing to promulgate a FIP under CAA section 110(c) intended to meet the CAA section 172(c)(9) requirements for contingency measures for purposes of the 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the 2012 annual $PM_{2.5}$ NAAQS (Moderate area requirements only) for the San Joaquin Valley $PM_{2.5}$ nonattainment area. The contingency measures would apply to residential wood burning heaters and fireplaces and rural open areas. Unless and until replaced through the EPA's approval of a contingency measure SIP submission, the proposed FIP, if finalized, would be implemented by the EPA, or by the State or District if the EPA delegates that authority to the State or District.

We will accept comments from the public on these proposals for the next 45 days. The deadline and instructions for submission of comments are provided in the **DATES** and **ADDRESSES** sections at the beginning of this proposed rule.

[104] Notably, Tulare County scores above the 90th percentile on six of the 12 EJ indices in the EPA's EJSCREEN analysis, including the $PM_{2.5}$ EJ Index, which is the highest count among all San Joaquin Valley counties.

[105] EPA, ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,'' June 2016, section 4.

[106] Id. at section 4.1.

[107] For example, the certified 2020–2022 $PM_{2.5}$ design value for Visalia (AQS Site ID 061072003) is 18.4 $\mu g/m^3$ for the 2012 annual $PM_{2.5}$ NAAQS and 65 $\mu g/m^3$ for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA design value workbook dated May 23, 2023, ''PM25_DesignValues_2020_2022_FINAL_05_23_23.xlsx,'' worksheets ''Table5a. Site Status Ann'' and ''Table5b.Site Status 24hr.'' The certified design value includes all available data; no data flagged for exceptional events have been excluded. The EPA's Air Quality System (AQS) contains ambient air pollution data collected by federal, state, local, and tribal air pollution control agencies from thousands of monitors. More information is available at: *https://www.epa.gov/aqs.*

[108] Letter dated May 18, 2022, from Tom Frantz, Association of Irritated Residents, et al., to Michael S. Regan, EPA Administrator, May 18, 2022, Attachment A, Attachment, 2; Attachment B, 2, 7; and Attachment C, 2, 16–17, 38–48, and 69.

[109] We also note that environmental and community groups have recommended that fugitive dust sources in the San Joaquin Valley be subject to specific requirements rather than having the option to select from a menu of control requirements in Rule 8011 (where the definition for open areas is found). Letter dated May 18, 2022, from Tom Frantz, Association of Irritated Residents, et al., to Michael S. Regan, EPA Administrator, Attachment B, 7. The proposed measure would not alter the existing structure but rather tighten the applicability threshold for rural open areas.

VI. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023).

B. Paperwork Reduction Act

The information collection activities in this proposed rule have been submitted to the Office of Management and Budget (OMB) for approval under the PRA. The Information Collection Request (ICR) document that the EPA has prepared has been assigned EPA ICR number 2782.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

This ICR covers information collection requirements in a CAA FIP for contingency measures for the 1997 annual, 2006 24-hour, and 2012 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) in the San Joaquin Valley $PM_{2.5}$ nonattainment area in California (40 CFR part 52, subpart F, § 52.249), herein referred to as the SJV FIP.

The EPA's proposed FIP will include provisions to lower the existing applicability threshold of District Rule 8051 for rural areas from 3.0 acres or larger with at least 1,000 square feet of disturbed surface area to 1.0 acres or larger with the same square footage of disturbed surface area. If this FIP contingency measure is enacted and triggered, dust minimization control measures and recordkeeping and annual reporting would be required for the newly regulated parcels when owners or operators disturb the surface of the applicable rural open areas. In general, such owners or operators will be required to maintain records of rule compliance consistent with the requirements applicable to those owners or operators already subject to the rule, with two additional requirements. First, the EPA would add a requirement that owners and operators of rural open areas newly subject to the requirements of Rule 8051 pursuant to this FIP use two existing District forms for such recordkeeping, which the EPA intends to adapt for use in connection with this proposed FIP contingency measure. Second, while the EPA generally would apply the same record retention requirements found in the District rule to newly subject owners and operators—*i.e.,* the requirement to maintain records for one year following project completion, except for owners/operators subject to Rule 2520, who must retain records for five years—the EPA would also add a requirement that the owners and operators of rural open areas who perform such recordkeeping pursuant to the FIP contingency measure submit copies of the records prepared during a calendar year to the EPA by March 31st of the following year. These records and reports are essential in determining compliance and are required of all sources subject to this proposed FIP that disturb the surface of applicable rural open areas.

Respondents/affected entities: Potential respondents are owners or operators of open area parcels that range in size of at least 1.0 acre but less than 3.0 acres and which contain at least 1,000 square feet of disturbed surface area in the San Joaquin Valley $PM_{2.5}$ nonattainment area.

Respondents' obligation to respond: Mandatory (CAA sections 110 and 114(a)).

Estimated number of respondents: 3,546.

Frequency of response: An annual report is required for any year in which an owner or operator's rural open area parcel triggers the FIP's open area dust control requirements. Records showing adherence to such requirements must be maintained for one year, or for five years for certain sources, when the control requirements are triggered.

Total estimated burden: 3,546 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $360,923 (per year), includes $0 in annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden using the docket identified at the beginning of this rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. OMB must receive comments no later than September 7, 2023.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This proposed rule includes two separate contingency measures: one applicable to residential wood burning heaters and fireplaces and one applicable to rural open areas. The proposed residential wood burning measure primarily applies to private residents, which do not qualify as small entities, but also applies to businesses, such as restaurants and hotels, some of which constitute ''small entities.'' However, the proposed measure is not expected to impose any additional costs because any increase in heating costs during additional curtailment days would be offset by savings on purchases of seasoned wood or pellets, which these entities would otherwise be allowed to burn.[110]

The ''small entities'' subject to the requirements of the rural open areas measure are those that are owners/operators of residential and commercial lots in rural areas with open areas (*i.e.,* vacant portions of residential or commercial lots and contiguous parcels) of 1.0 acre or more and less than 3.0 acres in the San Joaquin Valley, and which contain at least 1,000 square feet of disturbed surface area, as defined in District Rule 8011, section 3.36. These ''small entities'' may include industrial entities such as construction, oilfield, equipment and vehicle storage, and truck stop owners/operators, as identified in the District's ''Regulation VIII Recordkeeping Reporting Forms'' (revised June 1, 2009), as well as other residential, industrial, institutional, governmental, or commercial lot owners/operators. To identify the small entities for these industries, the EPA identified North American Industry Classification System (NAICS) codes, the applicable small entity thresholds (based on the U.S. Small Business Administration's table of small business size standards), and then compared the cost of the proposed rural open areas measure against average annual receipts data available from the Census Bureau's Statistics of U.S. Businesses for 2017 (the latest year for which annual receipts are listed by NAICS). The

[110] June 2023 Contingency Measure SIP Submission, App. D (''Economic Analysis for Rule 4901''), D–3.

Agency has determined that, while most potentially affected entities in these industries are small, such entities in the San Joaquin Valley may experience an impact of 0% to 0.58% of annual revenues (*i.e.,* not a significant impact). Details of this analysis are presented in section III.F of the EPA's Proposed Contingency Measures TSD.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments. To the extent that the contingency measures of this proposed rule, if triggered, would impose costs on the private sector, they would collectively be less than the $100 million expenditure threshold identified in 2 U.S.C. 1532(a).

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

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

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not economically significant under Executive Order 12866 and because it implements specific standards established by Congress in statutes. However, to the extent this proposed rule will reduce emissions of direct $PM_{2.5}$ or NO_X (as a $PM_{2.5}$ precursor), the rule will have a beneficial effect on children's health by reducing air pollution.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order 12898 (59 FR 7629 (February 16, 1994)) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' Consistent with the EPA's discretion under the CAA, the EPA has evaluated the environmental justice considerations of this action, as is described in section IV (''Environmental Justice Considerations'') of this proposed rule. The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being proposed, this proposed action is expected to have a neutral to positive impact on the air quality of the San Joaquin Valley. In addition, the information in the record is sufficient to support the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects 40 CFR Part 52

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

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

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, part 52 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.249 is added to read as follows:

§ 52.249 Contingency measures—San Joaquin Valley Air Basin.

(a) The requirements of section 172(c)(9) of the Clean Air Act and 40 CFR 51.1014 are not met in the San Joaquin Valley Air Basin for the 1997 Annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the 2012 annual $PM_{2.5}$ NAAQS.

(1) *Triggers for implementation of contingency measures.* The provisions in paragraphs (a)(2) and (3) of this section shall apply 60 days after the effective date of a final EPA determination under 40 CFR 51.1014(a) for the 1997 Annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, or the 2012 annual $PM_{2.5}$ NAAQS.

(2) *Wood burning fireplaces and wood burning heaters.* The requirements of § 52.220(c)(535)(i)(A)(*1*) shall apply except as provided in paragraphs (a)(2)(i), (ii) and (iii) of this section.

(i) The episodic wood burning curtailment provisions of Paragraphs 5.7.1.2 and 5.7.2.2 shall apply throughout the entire jurisdiction of the San Joaquin Valley Unified Air Pollution Control District.

(ii) The episodic wood burning curtailment provisions in Paragraphs 5.7.1.1 and 5.7.2.1 are deleted.

(iii) The EPA shall notify the public of each episodic wood burning curtailment required pursuant to this paragraph (a)(2) of this section by any of the following methods:

(A) Provide notice to newspapers of general circulation within the San Joaquin Valley.

(B) Broadcast of messages presented by radio or television stations operating in the San Joaquin Valley.

(C) A recorded telephone message for which the telephone number is published.

(D) Messages posted on the EPA's website.

(E) Any other method as the EPA determines is appropriate.

(3) *Rural open areas dust.* The requirements of § 52.220(c)(334)(i)(B)(*2*) shall apply except as provided in paragraphs (a)(3)(i) and (ii) of this section.

(i) The Applicability provision in Paragraph 2.0 is revised to the following:

This rule applies to any open area having 0.5 acres or more within urban areas, or 1.0 acres or more within rural areas; and contains at least 1,000 square feet of disturbed surface area.

(ii) The Recordkeeping provision in Paragraph 6.2 is revised to the following:

An owner/operator shall comply with the recordkeeping requirements of § 52.220(c)(334)(i)(B)(*2*), except that owners/operators of open areas of 1.0 acres or more to less than 3.0 acres within rural areas shall use forms made available by the EPA and shall submit copies of the forms prepared during a calendar year to the EPA by March 31st of the following year.

(iii) Records that are required to be submitted under this rule must be sent to: U.S. EPA Region IX, Rules Section Manager, Air and Radiation Division (Air-3–2), 75 Hawthorne Street, San Francisco, CA 94105.

(b) In the event that paragraphs (a)(2) and (3) of this section are triggered, and within one year of the triggering of paragraphs (a)(2) and (3) of this section, the Administrator shall undertake rulemaking to promulgate any contingency measures that are determined to be appropriate for the EPA and needed to meet the contingency measure requirement for the 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, or the 2012 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley.

(c) This section shall not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

(d) The Administrator may delegate the authority to implement the measures in paragraph (a)(2) or (3) of this section to the San Joaquin Valley Unified Air Pollution Control District or to the California Air Resources Board. Nothing in this paragraph shall prevent the Administrator from implementing or enforcing the measures in paragraphs (a)(2) and (3) of this section.

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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FGIS–23–0035]

Solicitation of Nominations for Members of the Grain Inspection Advisory Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice to solicit nominees.

SUMMARY: The United States Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is seeking nominations for individuals to serve on the Grain Inspection Advisory Committee (Advisory Committee). The Advisory Committee meets no less than once annually to advise AMS on the programs and services it delivers pursuant to the U.S. Grain Standards Act (USGSA) and in accordance with the Federal Advisory Committee Act (FACA), as amended. Recommendations by the Advisory Committee help AMS better meet the needs of its customers who operate in a dynamic and changing marketplace.

DATES: AMS will consider nominations received by September 22, 2023.

ADDRESSES: Submit nominations for the Advisory Committee by completing form AD–755 and send via email as an attachment to: *Kendra.C.Kline@usda.gov.* Form AD–755 may be obtained via USDA's website: *https://www.usda.gov/sites/default/files/documents/ad-755.pdf.* For more information about the committee visit the Grain Inspection Advisory Committee website: *https://www.ams.usda.gov/about-ams/facas-advisory-councils/giac.*

FOR FURTHER INFORMATION CONTACT: Kendra Kline, Designated Federal Officer, Telephone (202) 690- 2410 or Email *Kendra.C.Kline@usda.gov.*

SUPPLEMENTARY INFORMATION: As required by section 21 of the USGSA (7 U.S.C. 87j), as amended, and pursuant to the Federal Advisory Committee Act (FACA), as amended, the Secretary of Agriculture (Secretary) established the Advisory Committee on September 29, 1981, to provide advice to the AMS Administrator on implementation of the USGSA. As specified in the USGSA, no member may serve, successively, for more than 2 terms.

The Advisory Committee consists of 15 members, who represent the interests of grain producers, processors, handlers, merchandisers, consumers, exporters, and scientists with expertise in research related to the policies in section 2 of the USGSA (7 U.S.C. 74). Members are appointed and serve at the pleasure of the Secretary of Agriculture. Members of the advisory committee serve without compensation, but may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. 5703), consistent with the availability of funds.

A list of current Advisory Committee members and other relevant information are available on the USDA website at: *https://www.ams.usda.gov/about-ams/facas-advisory-councils/giac.*

The grain industry that utilizes Official Inspection and Weighing services for barley, canola, corn, flaxseed, oats, rye, soybeans, sorghum, sunflower seed, triticale, wheat, and mixed grain is diverse. AMS is seeking nominations for the Advisory Committee that will reflect the diversity of the grain industry, including, but not limited to, grain producers, processors, handlers, merchandisers, consumers, exporters, and scientists. Therefore, when making recommendations for appointments, the industry must consider the diversity of the population served and the knowledge, skills, and abilities of the members to serve a diverse population.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: August 2, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–16869 Filed 8–7–23; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology.

Comments regarding this information collection received by September 7, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: Subpart U-Ineligibility for Programs under the Federal Crop Insurance Act.

OMB Control Number: 0563–0085.

Summary of Collection: FCIC is a wholly-owned Government corporation created February 16, 1938 (7 U.S.C. 1501). The program was amended previously, but Public Law 96–365, dated September 26, 1980, provided for nationwide expansion of a comprehensive crop insurance program. The Federal Crop Insurance Act (Act), as amended in later years, further expanded the role of the crop insurance program to be the principal tool for risk management by producers of agricultural commodities. The Act further required that the crop insurance program operate on an actuarially sound basis. To meet these goals, existing crop programs must be improved and expanded, new crop products developed, and new insurance concepts studied for possible implementation. Meeting these goals requires the collection of a wide range of information (data elements). These data elements are used in part to determine insurance coverage, premiums, subsidies, payments, and indemnities. It creates an information database used to support continued development and improvements in crop insurance products available to producers and which meet the goal of a sound insurance program. The Act was again amended on June 20, 2000, by Public Law 106–224 which mandates changes to crop insurance regulations, provides for independent review of crop insurance products by persons experienced as actuaries and in underwriting, and gives contracting authority for the development of new products.

Need and Use of the Information: The purpose of collecting the information is to ensure persons that are ineligible for benefits under the Federal crop insurance program are accurately identified as such and do not obtain benefits to which they are not eligible. A person can become ineligible for benefits for three reasons: (1) Debt on unpaid premium or overpaid indemnity (information provided by AIP; (2) Debt on unpaid CAT fee (information provided by AIP); and (3) Debarment/disqualification/suspension, including but not limited to judgement, civil fines, etc. The Federal Crop Insurance Corporation and AIPs use the information collected to determine whether a person seeking to obtain Federal crop insurance coverage are ineligible for such coverage according to the statutory/regulatory mandates identified. Failure to collect the applicable information could result in unearned Federal benefits being issued.

Description of Respondents: Businesses or other for-profits.

Number of Respondents: 14.

Frequency of Responses: On occasions; Annually.

Total Burden Hours: 2,207.

Levi S. Harrell,

Departmental Information Clearance Officer.

[FR Doc. 2023–16859 Filed 8–7–23; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF COMMERCE

Census Bureau

[Docket Number 230728–0178]

RIN 0607–XC070

Annual Integrated Economic Survey

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of determination.

SUMMARY: Notice is hereby given that the Bureau of the Census (Census Bureau) is conducting the Annual Integrated Economic Survey (AIES). We have determined that data to be collected in this survey are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of businesses, organizations, and the public. The AIES will provide the only comprehensive national and subnational data on business revenues, expenses, and assets on an annual basis. The data derived from this survey are not publicly available from nongovernmental or other governmental sources.

ADDRESSES: The Census Bureau will make available the reporting instructions to the organizations included in the surveys. Additional copies are available upon written request to the Director, U.S. Census Bureau, 4600 Silver Hill Road, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Nick Orsini, Associate Director for Economic Programs, Telephone: 301–763–1858; Email: *Nick.Orsini@census.gov.*

SUPPLEMENTARY INFORMATION: In an effort to improve measurements of the economy in the United States, the Census Bureau will conduct the Annual Integrated Economic Survey (AIES). The AIES is a new survey designed to combine several existing Census Bureau annual survey collections to reduce respondent burden and simultaneously increase data quality and operational efficiencies. The AIES integrates and replaces the following existing annual collections: the Annual Retail Trade Survey (ARTS) (Office of Management and Budget (OMB) control number 0607–0013), the Annual Wholesale Trade Survey (AWTS) (OMB control number 0607–0195), the Service Annual Survey (SAS) (OMB control number 0607–0422), the Annual Survey of Manufactures (ASM) (OMB control number 0607–0449), the Annual Capital Expenditures Survey (ACES) (OMB control number 0607–0782), the Manufacturer's Unfilled Orders Survey (M3UFO) (OMB control number 0607–0561), and the Report of Organization (OMB control number 0607–0444).

The Census Bureau plans to conduct the AIES on an annual basis, beginning with a preparatory 2022 AIES dress rehearsal (collected in calendar year 2023) and the full-scale AIES implementation beginning in survey year 2023 (collected in calendar year 2024). The 2022 AIES dress rehearsal will be a small-scale collection that will mimic the collection instrument and procedures planned for the full-scale 2023 AIES. The 2022 AIES dress rehearsal will allow the Census Bureau to examine patterns of response and to determine what additional support respondents will need in future collections. To minimize the burden imposed on companies already in one or more of the seven annual surveys that the AIES will replace, responses submitted for the 2022 AIES dress rehearsal will fulfill survey year 2022 reporting requirements for the

integrated surveys. The 2022 AIES dress rehearsal and subsequent full-scale AIES collections are authorized by title 13 U.S.C. 131, 182, and 193. Response to the dress rehearsal and the AIES is mandatory per sections 224 and 225 of title 13 U.S.C. All information collected will be kept confidential, consistent with the provisions of title 13 U.S.C. 9.

The AIES covers all domestic, private, non-farm employer businesses headquartered in the U.S. as defined by the 2017 North American Industry Classification System (NAICS). Exclusions are most foreign operations of U.S. businesses and most government operations (including the U.S. Postal Service), agricultural production companies, and private households. The AIES sample is selected from a frame of approximately 5.4 million companies constructed from the Business Register (BR), which is the Census Bureau's master business list. The 2022 AIES dress rehearsal will sample approximately 8,500 employer businesses and the full-scale AIES will sample approximately 385,000 employer businesses. Of the 385,000 employer businesses, the Census Bureau will select approximately 36,500 companies with 100% probability, based on the complexity of their operations. The remaining companies in the frame will be stratified within sector by geographic category within 3-digit industry NAICS classification. This is an unequal probability sample, with company inclusion probabilities accounting for contribution(s) to both national and subnational estimates of annual payroll.

The AIES estimates will include data on employment; revenue including sales; shipments; receipts; revenue by class of customer; sources of revenue; taxes, contributions; gifts and grants; products; e-commerce activity; operating expenses including purchased services; payroll; benefits; rental payments; utilities; interest; resales; equipment; materials and supplies; research and development; other detailed operating expenses; and assets which includes capital expenditures; inventories; depreciable assets; and robotics.

The AIES will provide continuous and timely national and subnational statistical data on the economy. Government program officials, industry organization leaders, economic and social analysts, business entrepreneurs, and domestic and foreign researchers in academia, business, and government will use statistics from AIES. More details on expected uses of the statistics from the AIES are found in the 30-Day Notice for the AIES (88 FR 19906; April 4, 2023).

Public Comments: The Census Bureau published a Notice of Consideration in the **Federal Register** on November 4, 2022 (87 FR 66643) giving notice that it was considering a proposal to conduct the AIES. No comments were received in response to that notice. The Census Bureau subsequently published a Notice in the **Federal Register** on April 4, 2023 (88 FR 19906), which invited comment on the information collection request associated with the AIES. Census received one comment on that latter notice. The commenter agreed that the AIES should reduce respondent burden, increase data quality, and allow greater operational efficiencies. In addition, the commenter supported situations where the AIES may include new questions each year on policy-relevant topics such as technological advances, management and business practices, exporting practices, and globalization. The commenter also requested that Census be required to carry out additional research to ensure a reduction in NAICS code misclassification among survey respondents.

Census Bureau Response to the Public Comment: The Census Bureau supports conducting additional research and identifying opportunities to reduce NAICS misclassification. However, this effort is outside the scope of this action, research should be conducted on a larger-scale and not confined to the AIES. NAICS classification for companies selected in the AIES is driven by the Economic Census and the Census Bureau's BR. The Census Bureau is participating in discussions that are underway regarding a Federal statistical agency ''data synchronization'' effort across multiple agencies. The Census Bureau agrees to provide a research plan to address NAICS misclassification issues within one year of ICR approval.

OMB Terms of Clearance: OMB approved the 2022 AIES dress rehearsal portion of the Annual Integrated Economic Survey (AIES), including all relevant testing aspects. Prior to conducting the full-scale AIES, the Census Bureau will consult with OMB to determine next steps for clearing the full-scale AIES. In addition, in light of the Census Bureau's finding in Supporting Statement Part B ''that NAICS classifications can be unnatural or challenging for some businesses,'' the Census Bureau within 1 year of this clearance shall provide OMB a research plan (and relevant research updates) to address such NAICS classification issues. This research plan will include ways the Census Bureau plans to estimate the percentage of respondents across collections that select an incorrect NAICS code; how the Census Bureau plans to estimate the extent and source of differences in NAICS code assignments by the Census Bureau and the Bureau of Labor Statistics for the same establishments; and possible approaches the Census Bureau could take to reduce NAICS misclassification.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 45, OMB approved the AIES under the OMB control number 0607–1024.

Based upon the foregoing, I have directed that the Annual Integrated Economic Survey be conducted for the purpose of collecting these data.

Robert L. Santos, Director, Census Bureau, approved the publication of this Notice in the **Federal Register**.

Dated: August 3, 2023.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2023–16926 Filed 8–7–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC993]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey in Coastal Waters Off of Texas

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the University of Texas at Austin (UT) for authorization to take marine mammals incidental to a marine geophysical survey in coastal waters off of Texas. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal

to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than September 7, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, NMFS and should be submitted via email to *ITP.Wachtendonk@noaa.gov.* Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed above.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

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

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs 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 proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On March 7, 2023, NMFS received a request from UT for an IHA to take marine mammals incidental to conducting a marine geophysical survey in coastal waters off of Texas. Following NMFS' review of the application, UT submitted a revised version on April 25, 2023. The application was deemed adequate and complete on April 27, 2023. UT's request is for take of bottlenose dolphins, Atlantic spotted dolphins, and rough-toothed dolphin by Level B harassment only. Neither UT nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

UT proposes to conduct a marine geophysical survey, specifically a low energy seismic survey, in coastal waters off of Texas during a 10 day period in the fall of 2023. The survey would take place in coastal waters off of Texas, in water depths of less than 20 meters (m). To complete this survey the vessel would tow one to two Generator-Injector (GI) airguns, each with a volume of 105 cubic inch (in^3; 1,721 cubic cm (cm^3)), for a total volume of 210 in^3 (3,441 cm^3). The airguns would be deployed at a depth of about 4 m below the surface, spaced about 2 m apart, while the receiving system consists of four 25 m hydrophone streamers towed at a depth of about 2 m.

The purpose of the proposed survey is to validate novel dynamic positioning technology for improving the accuracy in time and space of high resolution 3-dimensional (HR3D) seismic datasets, in particular as it pertains to field technology of offshore carbon capture systems.

Dates and Duration

The proposed survey is planned to occur over a 10 day period during the fall of 2023 (the exact dates are uncertain). During that time, the airguns would operate continuously (*i.e.,* 24-hours per day).

Specific Geographic Region

The proposed survey area is 222 km2 and would occur within the approximate area of 28.9–29.1° N latitude, 94.9–95.2° W longitude in the coastal waters off of Texas. This location is offshore San Luis Pass, which defines the southern tip of Galveston Island, Texas. The closest point of approach of the proposed survey area to the coast is approximately 3 kilometers (km). The proposed survey area is depicted in Figure 1, and the survey lines could occur anywhere within the survey area. The water depth of the proposed survey area ranges from 10 to 20 m. The survey vessel (the R/V Brooks McCall (McCall) or similar vessel operated by TDI-Brooks

International) would likely depart and return to Freeport or Galveston, Texas.

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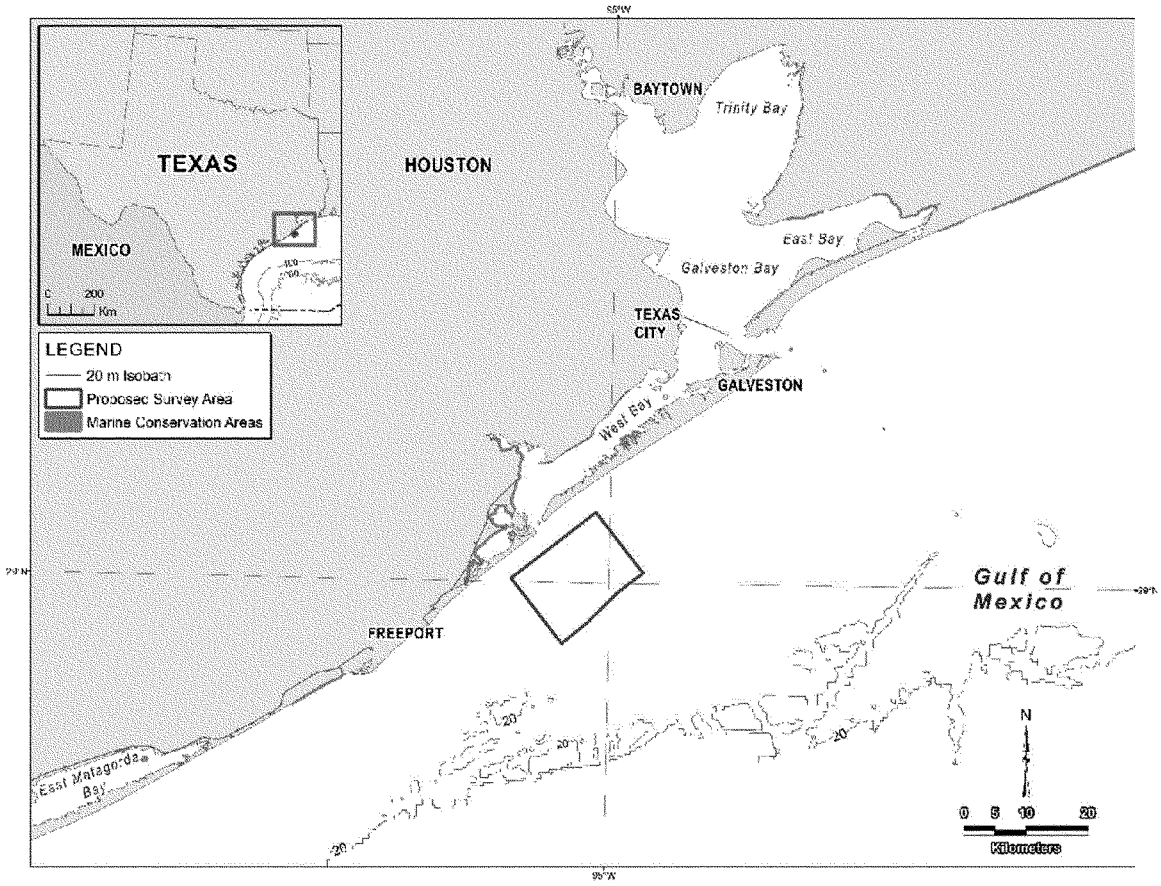

Figure 1-- Location of the Proposed Northwest Gulf of Mexico Survey.
Note: Survey tracklines could occur anywhere within the proposed survey area.

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Detailed Description of the Specified Activity

The proposed survey would entail use of conventional seismic methodology. The survey would involve one source vessel, the McCall or similar, and would tow one or two 105 in^3 GI airguns with a total volume of up to 210 in^3. The airgun array would be deployed at a depth of about 4 m below the surface, spaced about 2 m apart, and have a shot interval of 12.5 m about 5–10 seconds (s)). The receiving system would consist of four 25 m solid state hydrophone streamers, spaced 10 m apart and towed at a depth of 2 m. As the airguns are towed along the survey lines, the hydrophone streamer would transfer data to the on-board processing system. Approximately 1,704 km of transect lines would be surveyed within the survey area. When not towing seismic survey gear, the McCall has a maximum speed of 11 knots (kn; 20.4 kilometers per hour (kmh)), but cruises at an average speed of 4–5 kn (7.4–9.3 kmh) while towing airgun arrays. All survey effort would occur in water 10–20 m. The vessel would be self-contained, and the crew would live aboard the vessel.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this Notice (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species).*

Table 1 lists all species or stocks for which take is expected and proposed to be authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR

and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico SARs. All values presented in Table 1 are the most recent available at the time of publication (including from the draft 2022 SARs) and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES [1]

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]	Gulf of Mexico population abundance; (Roberts *et al.* 2016) [5]
Odontoceti (toothed whales, dolphins, and porpoises)							
Family Delphinidae:							
Atlantic spotted dolphin.	*Stenella frontalis*	Gulf of Mexico	-/-; N	21,506 (0.26; 17,339; 2018).	166	36	47,488
Rough-toothed dolphin.	*Steno bredanensis*	Gulf of Mexico	-/-; N	unk (n/a; unk; 2018)	undetermined	39	4,853
Bottlenose dolphin	*Tursiops truncatus*	Gulf of Mexico Western Coastal.	-/-; N	20,759 (0.13; 18,585; 2018).	167	36	138,602
		Northern Gulf of Mexico Continental Shelf.	-/-; N	63,280 (0.11; 57,917; 2018).	556	65	138,602

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/;* Committee on Taxonomy (2022)).

[2] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, vessel strike). Annual M/SI (mortality/serious injury) often cannot be determined precisely and is in some cases presented as a minimum value or range.

As indicated above, all 3 species (with 4 managed stocks) in Table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the proposed survey areas are included in Table 2 of the IHA application. While the additional 11 species listed in Table 2 of UT's application have been infrequently sighted in the survey area, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Species or stocks that only occur in deep waters (>200 m) within the Gulf of Mexico are unlikely to be observed during this survey where the maximum water depth is 20 m, and thus, the following species or stocks will not be considered further: offshore stock of bottlenose dolphins, pantropical spotted dolphin, spinner dolphin, striped dolphin, Clymene dolphin, Fraser's dolphin, Risso's dolphin, melon-headed whale, pygmy killer whale, false killer whale, killer whale, and short-finned pilot whale.

Bottlenose Dolphin

Bottlenose dolphins are cosmopolitan, occurring in tropical, subtropical, and temperate waters around the world (Wells and Scott 2018). The bottlenose dolphin is the most widespread and common delphinid in coastal waters of the Gulf of Mexico (Würsig *et al.* 2000; Würsig 2017). While there are multiple stocks of bottlenose dolphins in the Gulf of Mexico, only the Northern Gulf of Mexico Continental Shelf and Gulf of Mexico Western Coastal stocks overlap with the study area, with the shelf stock assumed to occur in waters >20 m and the coastal stock assumed to occur in waters <20 m. Fall sightings have been made throughout the northern Gulf but primarily on the shelf, including within survey waters.

There are 31 bay, sound, and estuary (BSE) stocks in the northern Gulf of Mexico, which are small, resident populations of bottlenose dolphins that live inshore or, occasionally, close to shore or in passes, and are genetically discrete. There are two of the BSE stocks that occur near the survey area, the West Bay stock and the Galveston Bay/East Bay/Trinity Bay stock. The West Bay stock occurs within roughly 20 km of the survey area, but individuals from this stock are only likely to occur in inshore waters or, occasionally, up to 1 km from shore off San Luis Pass (Hayes *et al.* 2022). The Galveston Bay/East Bay/Trinity Bay stock occurs >20 km away, with most individuals staying within 2 km from shore and up to 5 km out from the Galveston jetties and ship channel (Hayes *et al.* 2022). These areas in and near West Bay and Galveston Bay, along with numerous other ones along the coast of Texas, have been identified as year-round Biologically Important Areas (BIAs) for resident bottlenose dolphins (LeBresque *et al.* 2015). Due to the distance that the survey will occur off the coast (minimum 3 km) and general expectation that BSE dolphins are most likely to occur in inshore waters, we do not expect the survey to encounter any BSE stocks of bottlenose dolphins.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing

groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65-decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 hertz (Hz) to 35 kilohertz (kHz).
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Description of Active Acoustic Sound Sources

This section contains a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document.

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the dB. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)) and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa) while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2 -s) represents the total energy contained within a pulse and considers both intensity and duration of exposure. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-p) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure. Another common metric is peak-to-peak sound pressure (pk-pk), which is the algebraic difference between the peak positive and peak negative sound pressures. Peak-to-peak pressure is typically approximately 6 dB higher than peak pressure (Southall *et al.,* 2007).

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for pulses produced by the airgun arrays considered here. The compressions and decompressions associated with sound waves are detected as changes in

pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- *Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf sound becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions;
- *Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times;
- *Biological:* Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz; and
- *Anthropogenic:* Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly. Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of this dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from a given activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.,* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Airgun arrays produce pulsed signals with energy in a frequency range from about 10–2,000 Hz, with most energy radiated at frequencies below 200 Hz. The amplitude of the acoustic wave emitted from the source is equal in all directions (*i.e.,* omnidirectional), but airgun arrays do possess some directionality due to different phase delays between guns in different directions. Airgun arrays are typically tuned to maximize functionality for data acquisition purposes, meaning that sound transmitted in horizontal directions and at higher frequencies is minimized to the extent possible.

Acoustic Effects

Here, we discuss the effects of active acoustic sources on marine mammals.

Potential Effects of Underwater Sound—Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment; non-auditory physical or physiological effects; behavioral disturbance; stress; and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing, if it occurs at all, will occur almost exclusively in cases where a noise is within an animal's hearing frequency range. We first describe specific manifestations of acoustic effects before providing discussion specific to the use of airgun arrays.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would

be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological response. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects of certain non-auditory physical or physiological effects only briefly as we do not expect that use of airgun arrays are reasonably likely to result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The survey activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Threshold Shift—Marine mammals exposed to high-intensity sound or to lower-intensity sound for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). Threshold shift can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness while in most cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage) whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not typically consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals. There is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dBs above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as airgun pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

For mid-frequency cetaceans in particular, potential protective mechanisms may help limit onset of TTS or prevent onset of PTS. Such mechanisms include dampening of hearing, auditory adaptation, or behavioral amelioration (*e.g.,* Nachtigall and Supin, 2013; Miller *et al.,* 2012; Finneran *et al.,* 2015; Popov *et al.,* 2016).

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with other members of the species and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother and calf interactions could have more serious impacts.

Finneran *et al.* (2015) measured hearing thresholds in three captive bottlenose dolphins before and after exposure to 10 pulses produced by a seismic airgun in order to study TTS induced after exposure to multiple pulses. Exposures began at relatively low levels and gradually increased over a period of several months, with the highest exposures at peak SPLs from 196 to 210 dB and cumulative (unweighted) SELs from 193–195 dB. No substantial TTS was observed. In addition, behavioral reactions were observed that indicated that animals can learn behaviors that effectively mitigate noise exposures (although exposure patterns must be learned, which is less likely in wild animals than for the captive animals considered in this study). The authors noted that the failure to induce more significant auditory effects was likely due to the intermittent nature of exposure, the relatively low peak pressure produced by the acoustic source, and the low-frequency energy in airgun pulses as compared with the frequency range of best sensitivity for dolphins and other mid-frequency cetaceans.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale, harbor porpoise, and Yangtze finless porpoise) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). The existing marine mammal TTS data come from a limited number of individuals within these species.

Critical questions remain regarding the rate of TTS growth and recovery after exposure to intermittent noise and the effects of single and multiple pulses. Data at present are also insufficient to construct generalized models for recovery and determine the time necessary to treat subsequent exposures as independent events. More

information is needed on the relationship between auditory evoked potential and behavioral measures of TTS for various stimuli. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007, 2019), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2018).

Behavioral Effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific, and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007, 2019; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). However, many delphinids approach acoustic source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a, b). Variations in dive behavior may reflect disruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007, 2016).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of sound or other stressors and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the

affected region if habituation to the presence of the sound does not occur (*e.g.,* Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors, such as sound exposure, are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than 1 day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stone (2015) reported data from at-sea observations during 1,196 seismic surveys from 1994 to 2010. When arrays of large airguns (considered to be 500 in^3 or more) were firing, lateral displacement, more localized avoidance, or other changes in behavior were evident for most odontocetes.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between ''stress'' (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficiently to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory Masking—Sound can disrupt behavior through masking or interfering with an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, significant masking could disrupt behavioral patterns, which in turn could affect fitness for survival and reproduction. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in predicting any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking may be less in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are few specific data on this. Because of the intermittent nature and low duty cycle of seismic pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in exceptional situations, reverberation occurs for much or all of the interval between pulses (*e.g.,* Simard *et al.* 2005; Clark and Gagnon 2006), which could mask calls. Situations with prolonged strong reverberation are infrequent. However, it is common for reverberation to cause some lesser degree of elevation of the background level between airgun pulses (*e.g.,* Gedamke 2011; Guerra *et al.,* 2011, 2016; Klinck *et al.,* 2012; Guan *et al.,* 2015), and this weaker reverberation presumably reduces the detection range of calls and other natural sounds to some degree. Guerra *et al.* (2016) reported that ambient noise levels between seismic pulses were elevated as a result of reverberation at ranges of 50 km from the seismic source.

The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking. In general, masking effects of seismic pulses are expected to be minor, given the normally intermittent nature of seismic pulses.

Vessel Noise

Vessel noise from the McCall could affect marine animals in the proposed survey areas. Houghton *et al.* (2015) proposed that vessel speed is the most important predictor of received noise levels, and Putland *et al.* (2017) also reported reduced sound levels with decreased vessel speed. Sounds produced by large vessels generally dominate ambient noise at frequencies from 20 to 300 Hz (Richardson *et al.,* 1995). However, some energy is also produced at higher frequencies (Hermannsen *et al.,* 2014); low levels of high-frequency sound from vessels has been shown to elicit responses in harbor porpoise (Dyndo *et al.,* 2015). Increased levels of vessel noise have been shown to affect foraging by porpoise (Teilmann *et al.,* 2015; Wisniewska *et al.,* 2018); Wisniewska *et al.* (2018) suggested that a decrease in foraging success could have long-term fitness consequences.

Vessel noise, through masking, can reduce the effective communication distance of a marine mammal if the frequency of the sound source is close to that used by the animal, and if the sound is present for a significant fraction of time (*e.g.,* Richardson *et al.* 1995; Clark *et al.,* 2009; Jensen *et al.,* 2009; Gervaise *et al.,* 2012; Hatch *et al.,* 2012; Rice *et al.,* 2014; Dunlop 2015; Erbe *et al.,* 2015; Jones *et al.,* 2017; Putland *et al.,* 2017). In addition to the frequency and duration of the masking sound, the strength, temporal pattern, and location of the introduced sound also play a role in the extent of the masking (Branstetter *et al.,* 2013, 2016; Finneran and Branstetter 2013; Sills *et al.,* 2017). Branstetter *et al.* (2013) reported that time-domain metrics are also important in describing and predicting masking. In order to compensate for increased ambient noise, some cetaceans are known to increase the source levels of their calls in the presence of elevated noise levels from shipping, shift their peak frequencies, or otherwise change their vocal behavior (*e.g.,* Martins *et al.,* 2016; O'Brien *et al.,* 2016; Tenessen and Parks 2016). Harp seals did not increase their call frequencies in environments with increased low-frequency sounds (Terhune and Bosker 2016). Holt *et al.* (2015) reported that changes in vocal modifications can have increased energetic costs for individual marine mammals. A negative correlation between the presence of some cetacean species and the number of vessels in an area has been demonstrated by several studies (*e.g.,* Campana *et al.,* 2015; Culloch *et al.,* 2016).

Many odontocetes show considerable tolerance of vessel traffic, although they sometimes react at long distances if confined by ice or shallow water, if previously harassed by vessels, or have had little or no recent exposure to vessels (Richardson *et al.,* 1995). Dolphins of many species tolerate and sometimes approach vessels (*e.g.,* Anderwald *et al.,* 2013). Some dolphin species approach moving vessels to ride the bow or stern waves (Williams *et al.,* 1992). Pirotta *et al.* (2015) noted that the physical presence of vessels, not just vessel noise, disturbed the foraging activity of bottlenose dolphins. Sightings of striped dolphin, Risso's dolphin, sperm whale, and Cuvier's beaked whale in the western Mediterranean were negatively correlated with the number of vessels in the area (Campana *et al.,* 2015).

Sounds emitted by the McCall are low frequency and continuous but would be widely dispersed in both space and time. Vessel traffic associated with the proposed survey is of low density compared to traffic associated with commercial shipping, industry support vessels, or commercial fishing vessels, and would therefore be expected to represent an insignificant incremental increase in the total amount of anthropogenic sound input to the marine environment, and the effects of vessel noise described above are not expected to occur as a result of this survey. In summary, project vessel sounds would not be at levels expected to cause anything more than possible localized and temporary behavioral changes in marine mammals, and would not be expected to result in significant negative effects on individuals or at the population level. In addition, in all oceans of the world, large vessel traffic is currently so prevalent that it is commonly considered a usual source of ambient sound (NSF–USGS 2011).

Vessel Strike

Vessel collisions with marine mammals, or vessel strikes, can result in death or serious injury of the animal. Wounds resulting from vessel strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface may be struck directly by a vessel, a surfacing animal may hit the bottom of a vessel, or an animal just below the surface may be cut by a vessel's propeller. Superficial strikes may not kill or result in the death of the animal. These interactions are typically associated with large whales (*e.g.,* fin whales), which are occasionally found draped across the bulbous bow of large commercial vessels upon arrival in port. Although smaller cetaceans are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel, with the probability of death or serious injury increasing as vessel speed increases (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011).

Pace and Silber (2005) also found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn (25.9 kmh), and exceeded 90 percent at 17 kn (31.5 kmh). Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death through increased likelihood of collision by pulling whales toward the vessel (Clyne 1999; Knowlton *et al.,* 1995). In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kn (15.9 and 27.8 kmh). The chances of a lethal injury decline from approximately 80 percent at 15 kn (27.8 kmh) to approximately 20 percent at 8.6 kn (15.9 kmh). At speeds below 11.8 kn (21.9 kmh), the chances of lethal injury drop below 50 percent, while the probability asymptotically increases toward one hundred percent above 15 kn (27.8 kmh).

The McCall will travel at a speed of 4–5 kn (7.4–9.3 kmh) while towing seismic survey gear. At this speed, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are discountable. At average transit speed, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again discountable. Vessel strikes, as analyzed in the studies cited above, generally involve commercial shipping, which is much more common in both space and time than is geophysical survey activity. Jensen and Silber (2004) summarized vessel strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). No such incidents were reported for geophysical survey vessels during that time period.

It is possible for vessel strikes to occur while traveling at slow speeds. For example, a hydrographic survey vessel traveling at low speed (5.5 kn; 10.2 kmh) while conducting mapping surveys off the central California coast struck and killed a blue whale in 2009. The State of California determined that the whale had suddenly and unexpectedly surfaced beneath the hull, with the result that the propeller severed the whale's vertebrae, and that this was an unavoidable event. This strike represents the only such incident in approximately 540,000 hours of similar coastal mapping activity ($p = 1.9 \times 10^{-6}$; 95% CI = 0–5.5×10^{-6}; NMFS, 2013b). In addition, a research vessel reported a fatal strike in 2011 of a dolphin in the Atlantic, demonstrating that it is possible for strikes involving smaller cetaceans to occur. In that case, the incident report indicated that an animal apparently was struck by the vessel's propeller as it was intentionally swimming near the vessel. While indicative of the type of unusual events that cannot be ruled out, neither of these instances represents a circumstance that would be considered reasonably foreseeable or that would be considered preventable.

Although the likelihood of the vessel striking a marine mammal is low, we propose a robust vessel strike avoidance protocol (see Proposed Mitigation), which we believe eliminates any foreseeable risk of vessel strike during transit. We anticipate that vessel collisions involving a seismic data acquisition vessel towing gear, while not impossible, represent unlikely, unpredictable events for which there are no preventive measures. Given the proposed mitigation measures, the relatively slow speed of the vessel towing gear, the presence of bridge crew watching for obstacles at all times (including marine mammals), and the presence of marine mammal observers, the possibility of vessel strike is discountable and, further, were a strike of a large whale to occur, it would be unlikely to result in serious injury or mortality. No incidental take resulting from vessel strike is anticipated, and this potential effect of the specified activity will not be discussed further in the following analysis.

Entanglement—Entanglements occur when marine mammals become wrapped around cables, lines, nets, or other objects suspended in the water column. During seismic operations, numerous cables, lines, and other objects primarily associated with the airgun array and hydrophone streamers will be towed behind the McCall near the water's surface. However, we are not aware of any cases of entanglement of marine mammals in seismic survey equipment. Although entanglement with the streamer is theoretically possible, it has not been documented during hundreds of thousands of miles of industrial seismic cruises. There are no meaningful entanglement risks posed by the proposed survey, and entanglement risks are not discussed further in this document.

Anticipated Effects on Marine Mammal Habitat

Effects to Prey—Marine mammal prey varies by species, season, and location and, for some, is not well documented. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. However, the reaction of fish to airguns depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Several studies have demonstrated that airgun sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017), though the bulk of studies indicate no or slight reaction to noise (*e.g.,* Miller and Cripps, 2013; Dalen and Knutsen, 1987; Pena *et al.,* 2013; Chapman and Hawkins, 1969; Wardle *et al.,* 2001; Sara *et al.,* 2007; Jorgenson and Gyselman, 2009; Blaxter *et al.,* 1981; Cott *et al.,* 2012; Boeger *et al.,* 2006), and that, most commonly, while there are likely to be

impacts to fish as a result of noise from nearby airguns, such effects will be temporary. For example, investigators reported significant, short-term declines in commercial fishing catch rate of gadid fishes during and for up to five days after seismic survey operations, but the catch rate subsequently returned to normal (Engas *et al.,* 1996; Engas and Lokkeborg, 2002). Other studies have reported similar findings (Hassel *et al.,* 2004). Skalski *et al.,* (1992) also found a reduction in catch rates—for rockfish (*Sebastes* spp.) in response to controlled airgun exposure—but suggested that the mechanism underlying the decline was not dispersal but rather decreased responsiveness to baited hooks associated with an alarm behavioral response. A companion study showed that alarm and startle responses were not sustained following the removal of the sound source (Pearson *et al.,* 1992). Therefore, Skalski *et al.* (1992) suggested that the effects on fish abundance may be transitory, primarily occurring during the sound exposure itself. In some cases, effects on catch rates are variable within a study, which may be more broadly representative of temporary displacement of fish in response to airgun noise (*i.e.,* catch rates may increase in some locations and decrease in others) than any long-term damage to the fish themselves (Streever *et al.,* 2016).

Sound pressure levels of sufficient strength have been known to cause injury to fish and fish mortality and, in some studies, fish auditory systems have been damaged by airgun noise (McCauley *et al.,* 2003; Popper *et al.,* 2005; Song *et al.,* 2008). However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012b) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long; both of which are conditions unlikely to occur for this survey that is necessarily transient in any given location and likely result in brief, infrequent noise exposure to prey species in any given area. For this survey, the sound source is constantly moving, and most fish would likely avoid the sound source prior to receiving sound of sufficient intensity to cause physiological or anatomical damage. In addition, ramp-up may allow certain fish species the opportunity to move further away from the sound source.

A recent comprehensive review (Carroll *et al.,* 2017) found that results are mixed as to the effects of airgun noise on the prey of marine mammals. While some studies suggest a change in prey distribution and/or a reduction in prey abundance following the use of seismic airguns, others suggest no effects or even positive effects in prey abundance. As one specific example, Paxton *et al.* (2017), which describes findings related to the effects of a 2014 seismic survey on a reef off of North Carolina, showed a 78 percent decrease in observed nighttime abundance for certain species. It is important to note that the evening hours during which the decline in fish habitat use was recorded (via video recording) occurred on the same day that the seismic survey passed, and no subsequent data is presented to support an inference that the response was long-lasting. Additionally, given that the finding is based on video images, the lack of recorded fish presence does not support a conclusion that the fish actually moved away from the site or suffered any serious impairment. In summary, this particular study corroborates prior studies indicating that a startle response or short-term displacement should be expected.

A recent review article concluded that, while laboratory results provide scientific evidence for high-intensity and low-frequency sound-induced physical trauma and other negative effects on some fish and invertebrates, the sound exposure scenarios in some cases are not realistic to those encountered by marine organisms during routine seismic operations (Carroll *et al.,* 2017). The review finds that there has been no evidence of reduced catch or abundance following seismic activities for invertebrates, and that there is conflicting evidence for fish with catch observed to increase, decrease, or remain the same. Further, where there is evidence for decreased catch rates in response to airgun noise, these findings provide no information about the underlying biological cause of catch rate reduction (Carroll *et al.,* 2017).

In summary, impacts of the specified activity on marine mammal prey species will likely be limited to behavioral responses, the majority of prey species will be capable of moving out of the area during the survey, a rapid return to normal recruitment, distribution, and behavior for prey species is anticipated, and, overall, impacts to prey species will be minor and temporary. Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. Mortality from decompression injuries is possible in close proximity to a sound, but only limited data on mortality in response to airgun noise exposure are available (Hawkins *et al.,* 2014). The most likely impacts for most prey species in the survey area would be temporary avoidance of the area. The proposed survey would move through an area relatively quickly, limiting exposure to multiple impulsive sounds. In all cases, sound levels would return to ambient once the survey moves out of the area or ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly (McCauley *et al.,* 2000b). The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. While the potential for disruption of spawning aggregations or schools of important prey species can be meaningful on a local scale, the mobile and temporary nature of this survey and the likelihood of temporary avoidance behavior suggest that impacts would be minor.

Acoustic Habitat—Acoustic habitat is the soundscape—which encompasses all of the sound present in a particular location and time, as a whole—when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic, or may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of airgun arrays). Anthropogenic noise varies widely in its frequency content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please see also the previous discussion on masking under ''Acoustic Effects''),

which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2010; Pijanowski *et al.,* 2011; Francis and Barber, 2013; Lillis *et al.,* 2014.

Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). Although the signals emitted by seismic airgun arrays are generally low frequency, they would also likely be of short duration and transient in any given area due to the nature of these surveys. As described previously, exploratory surveys such as these cover a large area but would be transient rather than focused in a given location over time and therefore would not be considered chronic in any given location.

Based on the information discussed herein, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to sound from low energy seismic airguns. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized. As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (re 1 μPa) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

UT's proposed survey includes the use of impulsive seismic sources (*e.g.,* GI-airgun) and therefore, the 160 dB re 1 μPa (rms) criteria is applicable for analysis of Level B harassment.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). UT's proposed survey includes the use of impulsive sources.

These thresholds are provided in the Table 3 and 4 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The proposed survey would entail the use of up to two 105 in^3 airguns with a maximum total discharge of 210 in^3 at a tow depth of 3–4 m. Lamont-Doherty Earth Observatory (L–DEO) model results were used to determine the 160 dB_{rms} radius for the two-airgun array in water depths >100 m. Received sound

levels were predicted by L–DEO's model (Diebold *et al.,* 2010) as a function of distance from the airguns for the two 105 in^3 airguns with a maximum total discharge of 210 in^3. This modeling approach uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogenous ocean layer, unbounded by a seafloor).

The proposed surveys would acquire data with up to two 105-in^3 GI guns (separated by up to 2.4 m) at a tow depth of ~3–4 m. The shallow-water radii are obtained by scaling the empirically derived measurements from the Gulf of Mexico calibration survey to account for the differences in volume and tow depth between the calibration survey (6,600 in^3 at 6 m tow depth) and the proposed survey (210 in^3 at 4 m tow depth). A simple scaling factor is calculated from the ratios of the isopleths calculated by the deep-water L–DEO model, which are essentially a measure of the energy radiated by the source array.

L–DEO's methodology is described in greater detail in UT's IHA application. The estimated distances to the Level B harassment isopleth for the proposed airgun configuration are shown in Table 3.

TABLE 3—PREDICTED RADIAL DISTANCES FROM THE R/V BROOKS MCCALL SEISMIC SOURCE TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Airgun configuration	Water depth (m)	Predicted distances (m) to 160 dB received sound level
Two 105-in GI guns	<100	[1] 1,750

[1] Distance is based on empirically derived measurements in the Gulf of Mexico with scaling applied to account for differences in tow depth.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional user spreadsheet tool to accompany the Technical Guidance (2018) that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. Table 4 presents the modeled PTS isopleths for mid-frequency cetaceans, the only hearing group for which takes are expected, based on L–DEO modeling incorporated in the companion User Spreadsheet (NMFS 2018).

TABLE 4—MODELED RADIAL DISTANCES TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

Hearing group	MF
PTS Peak	1.5
PTS SEL_{cum}	0

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L–DEO using the Nucleus software program and the NMFS User Spreadsheet, described below. The acoustic thresholds for impulsive sounds (*e.g.,* airguns) contained in the Technical Guidance (2018) were presented as dual metric acoustic thresholds using both SEL_{cum} and peak sound pressure metrics (NMFS 2016a). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL_{cum} thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The SEL_{cum} for the two-GI airgun array is derived from calculating the modified farfield signature. The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance (right) below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, it has been recognized that the source level from the theoretical farfield signature is never physically achieved at the source when the source is an array of multiple airguns separated in space (Tolstoy *et al.,* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.,* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the interactions of the two airguns that occur near the source center and is calculated as a point source (single airgun), the modified farfield signature is a more appropriate measure of the sound source level for large arrays. For this smaller array, the modified farfield changes will be correspondingly smaller as well, but this method is used for consistency across all array sizes.

Auditory injury for all species is unlikely to occur given the small modeled zones of injury (estimated zone less than 2 m for mid-frequency cetaceans). Additionally, animals are expected to have aversive/compensatory

behavior in response to the activity (Nachtigall *et al.,* 2018) further limiting the likelihood of auditory injury for all species. UT did not request authorization of take by Level A harassment, and no take by Level A harassment is proposed for authorization by NMFS.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

For the proposed survey area in the northwest Gulf of Mexico, UT determined that the best source of density data for marine mammal species that might be encountered in the project area was habitat-based density modeling conducted by Garrison *et al.* (2022). The Garrison *et al.* (2022) data provides abundance estimates for marine mammal species in the Gulf of Mexico within 40 km^2 hexagons (~3.9 km sides and ~7 km across from each side) on a monthly basis. To calculate expected densities specific to the survey area, UT created a 7-km perimeter around the survey area and used that perimeter to select the density hexagons for each species in each month. The 7-km distance was chosen for the perimeter to ensure that at least one full density hexagon outside the survey area in all directions was selected, providing a more robust sample for the calculations. They then calculated the mean of the predicted densities from the selected cells for each species and month. The highest mean monthly density was chosen for each species from the months of September to December (*i.e.,* the months within which the survey is expected to occur). NMFS concurred with this approach to calculate species density.

Rough-toothed dolphins were not modeled by Garrison *et al.* (2022) due to a lack of sightings, so habitat-based marine mammal density estimates from Roberts et al. (2016) were used. The Roberts et al. (2016) models consisted of 10 km x 10 km grid cells containing average annual densities for U.S. waters in the Gulf of Mexico. The same 7 km perimeter described above was used to select grid cells from the Roberts et al. (2016) dataset, and the mean of the selected grid cells for rough-toothed dolphins was calculated to estimate the annual average density of the species in the survey area. Estimated densities used and Level B harassment ensonified areas to inform take estimates are presented in Table 5.

TABLE 5—MARINE MAMMAL DENSITIES AND TOTAL ENSONIFIED AREA OF ACTIVITIES IN THE PROPOSED SURVEY AREA

Species	Estimated density (#/km^2)	Level B ensonified area (km^2)
Atlantic spotted dolphin	[b] 0.00082	7,866
Bottlenose dolphin [a]	[b] 0.34024	7,866
Rough-toothed dolphin	[c] 0.00362	7,866

[a] Bottlenose dolphin density estimate does not differentiate between coastal and shelf stocks.
[b] Density calculated from Garrison *et al.* (2022).
[c] Density calculated from Roberts *et al.* (2016).

Take Estimation

Here, we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level B harassment, radial distances from the airgun array to the predicted isopleth corresponding to the Level B harassment threshold was calculated, as described above. Those radial distances were then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the harassment thresholds. The area expected to be ensonified on 1 day was determined by multiplying the number of line km possible in 1 day by two times the 160-dB radius plus adding endcaps to the start and beginning of the line. The daily ensonified area was then multiplied by the number of survey days (10 days). The highest mean monthly density for each species was then multiplied by the total ensonified area to calculate the estimated takes of each species.

No takes by Level A harassment are expected or proposed for authorization. Estimated takes for the proposed survey are shown in Table 6.

TABLE 6—ESTIMATED TAKE PROPOSED FOR AUTHORIZATION

Species	Stock	Estimated take	Proposed authorized take	Stock abundance [1]	Percent of stock
		Level B	Level B		
Atlantic spotted dolphin	Gulf of Mexico	6	[2] 26	21,506	0.12
Bottlenose dolphin [3]	Gulf of Mexico Western Coastal	2,676	2,676	20,759	12.89
	Northern Gulf of Mexico Continental Shelf.			63,280	4.23
Rough-toothed dolphin	Gulf of Mexico	28	28	[2] 4,853	0.58

[1] Stock abundance for Atlantic spotted dolphins and bottlenose dolphins was taken from Garrison *et al.* (2022). Stock abundance for rough-toothed dolphins was taken from Roberts *et al.* (2016), as Garrison *et al.* (2022) did not create a model for this species.
[2] Proposed take increased to mean group size from Maze-Foley and Mullin (2006).
[3] Estimated take for bottlenose dolphins is not apportioned to stock, as density information does not differentiate between coastal and shelf dolphins. However, based on the proposed survey depths, we expect that most of the takes would be from the coastal stock, but some takes could be from the shelf stock. Percent of stock was calculated as if all takes proposed for authorization accrued to the single stock with the lowest population abundance.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Mitigation measures that would be adopted during the planned survey include, but are not limited to: (1) vessel speed or course alteration, provided that doing so would not compromise operation safety requirements; (2) monitoring a pre-start clearance zone; and (3) ramp-up procedures.

Vessel-Visual Based Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual protected species observers (PSOs)) to scan the ocean surface visually for the presence of marine mammals. PSOs shall establish and monitor a pre-start clearance zone and, to the extent practicable, a Level B harassment zone (Table 3). These zones shall be based upon the radial distance from the edges of the acoustic source (rather than being based on the center of the array or around the vessel itself). During pre-start clearance (*i.e.,* before ramp-up begins), the pre-start clearance zone is the area in which observations of marine mammals within the zone would prevent airgun operations from beginning (*i.e.,* ramp-up). The pre-start clearance zone encompasses the area at and below the sea surface out to a radius of 200 meters from the edges of the airgun array.

During survey operations (*e.g.,* any day on which use of the acoustic source is planned to occur, and whenever the acoustic source is in the water, whether activated or not), a minimum of two PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Visual monitoring must begin no less than 30 minutes prior to ramp-up and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. Visual PSOs must coordinate to ensure 360 degree visual coverage around the vessel from the most appropriate observation posts, and must conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs shall establish and monitor a pre-start clearance zone and to the extent practicable, a Level B harassment zone. These zones shall be based upon the radial distance from the edges of the acoustic source (rather than being based on the center of the array or around the vessel itself).

Any observations of marine mammals by crew members shall be relayed to the PSO team. During good conditions (*e.g.,* daylight hours, Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the acoustic source is not operating for comparison of sightings rates and behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable.

Visual PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 1 hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period.

Pre-Start Clearance and Ramp-Up

Ramp-up is the gradual and systematic increase of emitted sound levels from an acoustic source. Ramp-up would begin with one GI airgun 105 in^3 first being activated, followed by the second after 5 minutes. The intent of pre-clearance observation (30 minutes) is to ensure no marine mammals are observed within the pre-start clearance zone prior to the beginning of ramp-up. The intent of ramp-up is to warn marine mammals in the vicinity of survey activities and to allow sufficient time for those animals to leave the immediate vicinity. A ramp-up procedure, involving a stepwise increase in the number of airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source. All operators must adhere to the following pre-clearance and ramp-up requirements:

(1) The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow PSOs time to monitor the pre-start clearance zone for 30 minutes prior to the initiation of ramp-up (pre-start clearance);

- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated prior to reaching the designated run-in;
- One of the PSOs conducting pre-start clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed;
- Ramp-up may not be initiated if any marine mammal is within the pre-start clearance zone. If a marine mammal is observed within the pre-start clearance zone during the 30 minutes pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zone or until an additional time period has elapsed with no further sightings (15 minutes for small delphinids and 30 minutes for all other species);
- Ramp-up must begin by activating the first airgun for 5 minutes and then adding the second airgun; and
- PSOs must monitor the pre-start clearance zone during ramp-up, and ramp-up must cease and the source must be shut down upon detection of a marine mammal within the pre-start clearance zone. Once ramp-up has begun, observations of marine mammals for which take authorization is granted within the pre-start clearance zone does not require shutdown.

(2) If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs

have maintained constant observation and no detections of marine mammals have occurred within the pre-start clearance zone. For any longer shutdown, pre-start clearance observation and ramp-up are required. Ramp-up may occur at times of poor visibility (*e.g.,* BSS 4 or greater), including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at night where operational planning cannot reasonably avoid such circumstances.

- Testing of the acoustic source involving all elements requires ramp-up. Testing limited to individual source elements or strings does not require ramp-up but does require a 30 minute pre-start clearance period.

Shutdown Procedures

The shutdown requirement will be waived for small dolphins. As defined here, the small dolphin group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.,* bow riding). This exception to the shutdown requirement applies solely to specific genera of small dolphins—*Steno, Stenella,* and *Tursiops.* As Tursiops and Steno are the only species expected to potentially be encountered, there is no shutdown requirement included in the proposed IHA for species for which take is proposed to be authorized.

Vessel Strike Avoidance Measures

These measures apply to all vessels associated with the planned survey activity; however, we note that these requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply. These measures include the following:

(1) Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures should be exercised when an animal is observed. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (specific distances detailed below), to ensure the potential for strike is minimized. Visual observers monitoring the vessel strike avoidance zone can be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammals from other phenomena and (2) broadly to identify a marine mammal as a baleen whale, sperm whale, or other marine mammals;

(2) Vessel speeds must be reduced to 10 kn (18.5 kph) or less when mother and calf pairs, pods, or large assemblages of cetaceans are observed near a vessel;

(3) All vessels must maintain a minimum separation distance of 100 m from sperm whales;

(4) All vessels must maintain a minimum separation distance of 500 m baleen whales. If a baleen whale is sighted within the relevant separation distance, the vessel must steer a course away at 10 knots or less until the 500-m separation distance has been established. If a whale is observed but cannot be confirmed as a species other than a baleen whale, the vessel operator must assume that it is a baleen whale and take appropriate action.

(5) All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel); and

(6) When marine mammals are sighted while a vessel is underway, the vessel should take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Vessel-Based Visual Monitoring

As described above, PSO observations would take place during daytime airgun operations. Two visual PSOs would be on duty at all time during daytime hours. Monitoring shall be conducted in accordance with the following requirements:

(1) UT must work with the selected third-party observer provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals, and to ensure that PSOs are capable of calibrating equipment as

necessary for accurate distance estimates and species identification. See Condition 5(d) in the IHA for list of equipment.

PSOs must have the following requirements and qualifications:

(1) PSOs shall be independent, dedicated and trained and must be employed by a third-party observer provider;

(2) PSOs shall have no tasks other than to conduct visual observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards);

(3) PSOs shall have successfully completed an approved PSO training course appropriate for their designated task (visual);

(4) NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course;

(5) PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program;

(6) PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics; and

(7) The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Requests shall be granted or denied (with justification) by NMFS within one week of receipt of submitted information. Alternate experience that may be considered includes, but is not limited to:

- Secondary education and/or experience comparable to PSO duties;
- Previous work experience conducting academic, commercial, or government-sponsored protected species surveys; or
- Previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

At least one visual PSO must be unconditionally approved (*i.e.,* have a minimum of 90 days at-sea experience working in that role at the particular Tier level (1–3) with no more than 18 months elapsed since the conclusion of the at-sea experience). One PSO with such experience shall be designated as the lead for the entire PSO team. The lead PSO shall serve as primary point of contact for the vessel operator. To the maximum extent practicable, the duty schedule shall be planned such that unconditionally-approved PSOs are on duty with conditionally-approved PSOs.

PSOs must use standardized electronic data collection forms. At a minimum, the following information must be recorded:

- Vessel name, vessel size and type, maximum speed capability of vessel;
- Dates (MM/DD/YYYY format) of departures and returns to port with port name;
- PSO names and affiliations, PSO identification (ID; initials or other identifier);
- Date (MM/DD/YYYY) and participants of PSO briefings;
- Visual monitoring equipment used (description);
- PSO location on vessel and height (in meters) of observation location above water surface;
- Watch status (description);
- Dates (MM/DD/YYYY) and times (Greenwich mean time (GMT) or coordinated universal time (UTC)) of survey on/off effort and times (GMC/UTC) corresponding with PSO on/off effort;
- Vessel location (decimal degrees) when survey effort began and ended and vessel location at beginning and end of visual PSO duty shifts;
- Vessel location (decimal degrees) at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval;
- Vessel heading (compass heading) and speed (in knots) at beginning and end of visual PSO duty shifts and upon any change;
- Water depth (in meters) (if obtainable from data collection software);
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
- Factors that may have contributed to impaired observations during each PSO shift change or as needed as environmental conditions changed (description) (*e.g.,* vessel traffic, equipment malfunctions); and
- Vessel/Survey activity information (and changes thereof) (description), such as acoustic source power output while in operation, number and volume of acoustic source operating in the array, tow depth of the acoustic source, and any other notes of significance *(i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, *etc.*).

The following information should be recorded upon visual observation of any marine mammal:

- Sighting ID (numeric);
- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- Location of PSO/observer (description);
- Vessel activity at the time of the sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);
- PSO who sighted the animal/PSO ID;
- Time and date of sighting (GMT/UTC, MM/DD/YYYY);
- Initial detection method (description);
- Sighting cue (description);
- Vessel location at time of sighting (decimal degrees);
- Water depth (in meters);
- Direction of vessel's travel (compass direction);
- Speed (knots) of the vessel from which the observation was made;
- Direction of animal's travel relative to the vessel (description, compass heading);
- Bearing to sighting (degrees);
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;
- Species reliability (an indicator of confidence in identification) (1 = unsure/possible, 2 = probable, 3 = definite/sure, 9 = unknown/not recorded);
- Estimated distance to the animal (meters) and method of estimating distance;
- Estimated number of animals (high, low, and best) (numeric);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows/breaths, number of

surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);

- Animal's closest point of approach (in meters) and/or closest distance from any element of the acoustic source;
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.
- Photos (Yes or No);
- Photo Frame Numbers (List of numbers); and
- Conditions at time of sighting (Visibility; BSS).

Reporting

UT must submit a draft comprehensive report to NMFS on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report would describe the activities that were conducted and sightings of marine mammals. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report would summarize the dates and locations of survey operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities).

The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airguns were operating. Tracklines should include points recording any change in airgun status (*e.g.,* when the airguns began operating, when they were turned off, or when they changed from full array to single gun or vice versa). Geographic information system (GIS) files shall be provided in Environmental Systems Research Institute (ESRI) shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available to NMFS. A final report must be submitted within 30 days following resolution of any comments on the draft report.

Reporting Injured or Dead Marine Mammals

Sighting of injured or dead marine mammals—In the event that personnel involved in survey activities covered by the authorization discover an injured or dead marine mammal, UT shall report the incident to the OPR, NMFS, and the NMFS Southeast Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Vessel strike—In the event of a vessel strike of a marine mammal by any vessel involved in the activities covered by the authorization, UT shall report the incident to OPR, NMFS and to the NMFS Southeast Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measure were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, BSS, cloud cover, visibility) immediately preceding the strike;
- Species identification (if known) or description of the animal(s) involved;
- Estimated size and length of the animal that was struck;
- Description of the behavior of the animal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals present immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 1, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

NMFS does not anticipate that serious injury or mortality would occur as a result from low-energy survey, and no serious injury or mortality is proposed to be authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential take would be in the form of Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), responses that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007, 2021).

In addition to being temporary, the maximum expected Level B harassment

zone around the survey vessel is 1,750 m. Therefore, the ensonified area surrounding the vessel is relatively small compared to the overall distribution of animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the short duration (10 days) of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating, or calving grounds known to be biologically important to marine mammals within the planned survey area and there are no feeding areas known to be biologically important to marine mammals within the survey area. There is no designated critical habitat for any ESA-listed marine mammals within the project area.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

(1) No serious injury or mortality is anticipated or proposed to be authorized;

(2) No Level A harassment is anticipated, even in the absence of mitigation measures or proposed to be authorized;

(3) Take is anticipated to be by Level B harassment only consisting of temporary behavioral changes of small percentages of the affected species due to avoidance of the area around the survey vessel. The relatively short duration of the proposed survey (10 days) would further limit the potential impacts of any temporary behavioral changes that would occur;

(4) The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the proposed survey to avoid exposure to sounds from the activity;

(5) Foraging success is not likely to be significantly impacted as effects on prey species for marine mammals would be temporary and spatially limited; and

(6) The proposed mitigation measures, including visual monitoring, ramp-ups, and shutdowns are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under section 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS proposes to authorize incidental take by Level B harassment of 3 marine mammal species with four managed stocks. The total amount of takes proposed for authorization relative to the best available population abundance is less than 5 percent for 3 managed stocks and less than 13 percent for 1 managed stock (Gulf of Mexico Western Coastal stock of bottlenose dolphin assuming all takes by Level b harassment are of this stock; see Take Estimation subsection) (Table 6). The take numbers proposed for authorization are considered conservative estimates for purposes of the small numbers determination as they assume all takes represent different individual animals, which is unlikely to be the case.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization 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.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to UT for conducting marine geophysical surveys in the northwest Gulf of Mexico within Texas State waters during fall 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed marine geophysical survey. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

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

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

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

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

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

Dated: August 3, 2023.

Kimberly Damon-Randall,

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

[FR Doc. 2023–16945 Filed 8–7–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD200]

New England Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice of correction of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Risk Policy Working Group (RPWG) to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). This meeting will be held as a webinar. Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, August 22, 2023, at 9 a.m.

ADDRESSES: This meeting will be held as a webinar only. Webinar registration URL information: *https://attendee.gotowebinar.com/register/7355629868155270240.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on July 31, 2023 (88 FR 49451). The original notice announced that the meeting would be a hybrid in-person meeting as well as a webinar. This notice corrects the meeting to be a webinar meeting only. All other information previously published remains unchanged.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 3, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–16963 Filed 8–7–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of Final Management Plan and Final Environmental Assessment for Stellwagen Bank National Marine Sanctuary

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice; notice of availability of a final management plan and final environmental assessment.

SUMMARY: On February 13, 2020, NOAA initiated a review of the Stellwagen Bank National Marine Sanctuary (SBNMS or the sanctuary) management plan to evaluate substantive progress toward implementing the goals of the sanctuary and to make revisions to the management plan as necessary to fulfill the purposes and policies of the NMSA. NOAA anticipated that management plan changes would require preparation of environmental analysis under the National Environmental Policy Act (NEPA), and initiated public scoping meetings to gather information and other comments from individuals, organizations, tribes, and government agencies on the scope, types, and significance of issues related to the SBNMS management plan and the proper scope of environmental analysis for the management plan review. NOAA is providing notice of availability of a final management plan and a final environmental assessment (EA) for SBNMS.

DATES: The final management plan and final environmental assessment are now available.

ADDRESSES: To obtain a copy of the final management plan, final environmental assessment, and finding of no significant impact (FONSI), contact the Management Plan Review Coordinator at Stellwagen Bank National Marine Sanctuary, Alice Stratton, 175 Edward Foster Road, Scituate, MA 02066, 203–882–6515, *sbnmsmanagementplan@noaa.gov.* Copies can also be downloaded from the Stellwagen Bank National Marine Sanctuary website at *https://stellwagen.noaa.gov/management/.*

FOR FURTHER INFORMATION CONTACT: Alice Stratton, 203–882–6515, *sbnmsmanagementplan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

SBNMS was designated in October 1992. It spans 842-square-miles (638-square-nautical-mile) at the mouth of Massachusetts Bay. The sanctuary boundary is somewhat rectangular, stretching from three miles southeast of Cape Ann to three miles north of Cape Cod. The sanctuary is about 25 miles east of Boston, and lies totally within Federal waters. It encompasses all of Stellwagen and Tillies Banks, and the southern portion of Jeffreys Ledge. SBNMS is administered by NOAA, within the U.S. Department of Commerce, and was designated to conserve, protect, and enhance the biodiversity, ecological integrity, and cultural legacy of marine resources for current and future generations. Sanctuary programs in education, conservation, science, and stewardship help protect SBNMS and its nationally-significant resources, while promoting public use and enjoyment through compatible human activities.

In 2016, NOAA completed an internal assessment of progress toward implementation of the 2010 management plan. The assessment found that 66% (69 of 104 activities) of the management plan's activities had been fully or partially completed or were still being implemented as ongoing functions, while 35% (36 of 104 activities) were not yet started or had been placed on hold. Results of the 2016 internal assessment were discussed at a public meeting of the sanctuary advisory council in October, 2016.

II. Management Plan Revisions

On February 13, 2020, NOAA published a notice in the **Federal Register**, initiating a review of SBNMS management plan and providing a notice of intent to conduct scoping to prepare an environmental analysis under NEPA (85 FR 8213). Pursuant to the National Marine Sanctuaries Act (NMSA), the management plan review process provides an opportunity to evaluate substantive progress toward implementing the goals of the sanctuary, and to make revisions to the management plan as necessary to fulfill the purposes and policies of the NMSA. The scoping process yielded feedback that was largely aligned with the 2020 condition report findings. Comments focused on NOAA's need to monitor and address potential emerging issues such as climate change and changes to water quality, to continue and expand protections for sanctuary resources, and to maintain core sanctuary research. Scoping comments also called for enhanced education and outreach efforts and increased capacity to administer sanctuary programs. NOAA incorporated the issues identified during the public scoping process into the draft management plan.

On November 30, 2021, NOAA published a notice in the **Federal Register**, announcing the availability of a public comment period for the SBNMS Draft Management Plan and Environmental Assessment SBNMS management plan. NOAA held two virtual public comment meetings (January 11, 2022 and January 12, 2022) to receive public input. During public comment, NOAA heard concerns from the environmental NGO community that the proposed changes in the sanctuary management plan would not adequately address declining sanctuary conditions. NOAA also heard concerns that the management plan should include more direct management actions, including regulations for fisheries management and reducing sound. In preparing the final Management Plan, NOAA evaluated and considered all public and agency comments and made several changes to the management plan in response to those comments.

The revised management plan contains 15 Action Plans addressing priority issues under four primary goals: ensure a thriving sanctuary, increase support for the sanctuary, deepen our understanding of sanctuary resources, and ensure coordinated support for sanctuary infrastructure, staff, and field operations. The revised management plan supports continued protection of sanctuary resources through enforcement of existing sanctuary regulations, education and outreach strategies that promote ocean stewardship, and community engagement.

The revised SBNMS management plan will result in changes to existing programs and policies to address contemporary issues and challenges, and to better protect and manage the sanctuary's resources and qualities. The management plan review process was composed of four major stages: (1) information collection and characterization; (2) preparation and release of a draft management plan and environmental document under NEPA; (3) public review and comment; and (4) preparation and release of a final management plan and environmental document. NOAA has also addressed other statutory and regulatory requirements, including those contained in the Endangered Species Act (ESA), Marine Mammal Protection Act, Essential Fish Habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Coastal Zone Management Act (CZMA), National Historic Preservation Act (NHPA), and tribal consultation responsibilities under Executive Order 13175.

A. Action Plans

This draft management plan contains 15 action plans which address priority issues for SBNMS. These action plans fall under four primary goals: ensure a thriving sanctuary, increase support for SBNMS, deepen our understanding of sanctuary resources, and ensure coordinated support for sanctuary infrastructure, staff, and field operations. Each action plan is summarized below (refer to the draft for complete text).

1. Marine Mammal Protection: The sanctuary serves as the primary habitat for 22 species of marine mammals. The goal of this plan is to expand our understanding of the vulnerability of marine mammals to anthropogenic activity and develop and implement mitigation activities.

2. Seabird Research: Coastal development, predation by humans and other animals, removal of prey through fisheries activity, and marine environment pollution threaten the many seabirds in the sanctuary. The goal of this plan is to understand the abundance, distribution, habitat use, bycatch, contaminant load, and foraging ecology of seabirds, and how SBNMS relates to the wider Gulf of Maine and Atlantic ecosystems.

3. Vessel Traffic: SBNMS sits at the mouth of Massachusetts Bay, which experiences commercial vessel traffic traveling to and from the growing Port of Boston. Sanctuary staff work to mitigate the impacts of the large volume of vessel traffic through technology, reporting, and warnings. The goal of this plan is to monitor vessel traffic and mitigate negative effects on sanctuary resources.

4. Maritime Heritage and Cultural Landscapes: The sanctuary serves as an underwater museum to maritime history with numerous shipwrecks on the seafloor. The sanctuary's efforts in maritime cultural landscapes help us understand the relationships between the people and the sea in the past and present through research and management. The goal of this plan is to understand the broader context of past and present uses of the sanctuary while assessing and protecting maritime heritage resources in the sanctuary.

5. Compatible Uses: Evolving commercial and recreational uses of the sanctuary impact key elements of the sanctuary's landscape. The goal of this plan is to enhance transparency

regarding how current and emerging activities are assessed for compatibility while managing sanctuary resources.

6. Climate Change: The goal of this plan is to evaluate climate change impacts on sanctuary resources and incorporate changing conditions in management decisions. Various strategies and efforts for enhanced understanding of climate impacts and synergies will inform decisions on a wide range of sanctuary management, including resource protection, education, and operations.

7. Education and Outreach: A variety of education and outreach programs, tools, and techniques are employed to bring sanctuary information and research to the widest audiences. The goal of this plan is to increase public awareness and understanding of the sanctuary and encourage responsible use and stewardship of its resources.

8. Interagency/Intergovernmental Coordination: NOAA relies on partnerships with other Federal and State agencies as well as collaborations with non-profit, community, research/academic, and many others, for effective management. The goal of this plan is to promote improved management through coordinated partnering with local, State, regional, Tribal, and Federal partners.

9. Sanctuary Advisory Council: The Sanctuary Advisory Council addresses specific management issues and public involvement by developing sound advice for the sanctuary. The goal of this plan is to facilitate an active and engaged community of Sanctuary Advisory Council members to advise the superintendent in carrying out the sanctuary's mission.

10. Research and Monitoring: The sanctuary conducts a robust science program to provide vital information to support management needs. The goal of this plan is to support, promote, and coordinate scientific research, characterization, and long-term monitoring to enhance the understanding of the sanctuary environment and processes, and improve management decision-making for optimal resource management and protection.

11. Soundscape: The sanctuary has an extensive acoustics research program that provides opportunities for partnership and leadership in the development of regional, national, and international policies for managing noise impacts on marine life. The goal of this plan is to maintain the role of SBNMS as a sentinel site for passive acoustic monitoring in the Gulf of Maine, and as a testbed for applying these data to both long-term monitoring of ecosystems and the design of methods to reduce impacts from human activities.

12. Water Quality Monitoring: The exceptional diversity of marine life in the sanctuary depends on good water quality. This action plan addresses the need to collaborate on water quality monitoring and research in the sanctuary to determine whether it can continue to maintain healthy resources.

13. Habitat: Habitat quality in the sanctuary over the last decade has shown changes from both direct interactions, like bottom-contact fishing, and indirect interactions, such as trophic and competitive shifts in population. The goal of this plan is to develop an improved understanding of the condition of major habitat types within the sanctuary to understand their productivity and biodiversity.

14. Ecosystem Services: Sanctuary resources support nearby coastal communities in a variety of ways, and it is important to better understand and quantify the economic and intrinsic values of the sanctuary to natural and human systems. The goal of this plan is to explore the dynamic connections between sanctuary resources and ecosystem services to better inform management decisions.

15. Administration and Infrastructure Capacity: This action plan addresses the necessary operational and administrative activities required for implementing an effective program, including staffing, infrastructure needs, and operational improvements.

B. Regulatory and Boundary Changes

The management plan review process did not identify the need for any regulatory or boundary changes at this time.

C. National Environmental Policy Act Compliance

In accordance with NEPA, on February 13, 2020, NOAA published a notice of intent to prepare an environmental analysis in order to identify and analyze potential impacts associated with adopting and implementing a revised management plan and field activities for SBNMS (85 FR 8213). NOAA's analysis of the draft management plan indicated no significant impacts are expected. Accordingly, NOAA determined the preparation of an EIS would not be necessary, and instead prepared a draft EA, which was made available for public review on November 30, 2021 (86 FR 67923).

For this EA, NOAA evaluated the potential impacts on the human environment of the proposed action and alternatives in compliance with NEPA, as amended (42 U.S.C. 4321 *et seq.*), and its implementing regulations (40 CFR parts 1500 through 1508). NOAA analyzed two alternatives: the no action alternative and the preferred alternative. The no action alternative would be to continue operating under the existing management plan, without updating it to reflect current resource status or protection priorities. The preferred alternative is adopting and implementing a revised management plan and field activities, which would update strategies to better address resource protection and management needs. NOAA prepared the final EA and finding of no significant impact (FONSI) for this action using the 1978 Council on Environmental Quality (CEQ) regulations because this environmental review began before September 14, 2020, which was the effective date of the amendments to the CEQ regulations implementing NEPA (85 FR 43304, July 16, 2020).

In preparing the final EA, NOAA evaluated and considered all public and agency comments received on the draft management plan and draft EA, and made changes to the management plan and EA as appropriate. NOAA determined that these changes to the management plan did not result in any changes to the determinations of the draft EA with regard to the significance of the impacts. NOAA prepared a FONSI that concluded that implementing the preferred alternative (*i.e.,* adopt and implement a new management plan and field activities) would not have a significant impact on the quality of the human environment. Copies of the final EA and FONSI are available at the website listed in the **ADDRESSES** section of this notice of availability.

III. Public Comments

NOAA received 56 comments on the Draft Management Plan/Environmental Assessment during the public comment period. These are summarized into 61 topics. NOAA's summary of these comments and relevant responses are provided in Appendix E of the Final Management Plan.

Authority: 16 U.S.C. 1431 *et seq.*

John Armor,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–16551 Filed 8–7–23; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of New Jersey Coastal Management Program; Notice of Public Meeting; Request for Comments

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of public meeting and opportunity to comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management, will hold a virtual public meeting to solicit input on the performance evaluation of the New Jersey Coastal Management Program. NOAA also invites the public to submit written comments.

DATES: NOAA will hold a virtual public meeting on Tuesday, September 19, 2023, at 3 p.m. Eastern Daylight Time (EDT). NOAA may close the meeting 15 minutes after the conclusion of public testimony and after responding to any clarifying questions from hearing participants. NOAA will consider all relevant written comments received by Friday, September 29, 2023.

ADDRESSES: Comments may be submitted by one of the following methods:

- *Virtual Public Meeting:* Provide oral comments during the virtual public meeting on Tuesday, September 19, 2023, from 3 to 4 p.m. EDT, by registering as a speaker at *forms.gle/rfHwqDZRGHndPoia8.* Please register by Tuesday, September 19, 2023, at 2 p.m. EDT. Upon registration, NOAA will send a confirmation email. The lineup of speakers will be based on the date and time of registration. One hour prior to the start of the virtual meeting on September 19, 2023, NOAA will send an email to all registered speakers with a link to the public meeting and information about participating.
- *Email:* Send written comments to Michael Migliori, Evaluator, NOAA Office for Coastal Management, at *Michael.Migliori@noaa.gov.* Include ''Comments on Performance Evaluation of the New Jersey Coastal Management Program'' in the subject line of the message.

NOAA will accept anonymous comments; however, the written comments NOAA receives are considered part of the public record, and the entirety of the comment, including the name of the commenter, email address, attachments, and other supporting materials, will be publicly accessible. Sensitive personally identifiable information, such as account numbers and social security numbers, should not be included with the comment. Comments that are not related to the performance evaluation of the New Jersey Coastal Management Program, or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT: Michael Migliori, Evaluator, NOAA Office for Coastal Management, by email at *Michael.Migliori@noaa.gov* or by phone at (443) 332–8936. Copies of the previous evaluation findings and assessment and strategies may be viewed and downloaded at *coast.noaa.gov/czm/evaluations.* A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting Michael Migliori.

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved coastal management programs. The evaluation process includes holding one or more public meetings, considering public comments, and consulting with interested Federal, State, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the State of New Jersey has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is complete, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the final evaluation findings.

Authority: 16 U.S.C. 1458.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–16961 Filed 8–7–23; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Sanctuary System Business Advisory Council: Public Meeting

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of emergency open public meeting.

SUMMARY: Notice is hereby given of a meeting of the Sanctuary System Business Advisory Council (council). The meeting is open to the public, and an opportunity for oral and written comments will be provided.

DATES: The meeting will be held on Friday, August 25, 2023 from 12 p.m. to 1 p.m. ET, and an opportunity for public comment will be provided around 1:40 p.m. ET. Both times and agenda topics are subject to change.

ADDRESSES: The meeting will be held virtually using Google Meet. To participate, please use the weblink provided below. If you are unable to participate online, you can also connect to the public meeting using the phone number provided.

Weblink: meet.google.com/fsz-qnfn-mny.

Phone: +1 413–357–2090 PIN: 409 930 149#.

To provide an oral public comment during the virtual meeting, please sign up prior to or during the meeting by contacting Sage Riddick by phone (240–560–3365) or email (*sage.riddick@noaa.gov*). To provide written public comment, please send the comment to Sage Riddick prior to or during the meeting via email (*sage.riddick@noaa.gov*). Please note, the meeting will not be recorded. However, public comments, including any associated names, will be captured in the minutes of the meeting, will be maintained by the Office of National Marine Sanctuaries (ONMS) as part of its administrative record, and may be subject to release pursuant to the Freedom of Information Act. The entirety of the comment, including the name of the commenter, email address, attachments, and other supporting materials, will be publicly accessible. Sensitive personally identifiable information, such as account numbers and Social Security numbers, should not be included with the comment. By signing up to provide a public comment, you agree that these communications, including your name and comment, will be maintained as described here.

FOR FURTHER INFORMATION CONTACT: Sage Riddick, Office of National Marine Sanctuaries, 1305 East-West Highway, Silver Spring, Maryland 20910 (Phone: 240–560–3365; Email: *sage.riddick@noaa.gov*).

SUPPLEMENTARY INFORMATION: ONMS serves as the trustee for a network of underwater parks encompassing more

than 620,000 square miles (approximately 1,606,000 square km) of marine and Great Lakes waters from Washington State to the Florida Keys, and from Lake Huron to American Samoa. The network includes a system of 15 national marine sanctuaries and Papahānaumokuākea and Rose Atoll marine national monuments. National marine sanctuaries protect our Nation's most vital coastal and marine natural and cultural resources, and through active research, management, and public engagement, sustain healthy environments that are the foundation for thriving communities and stable economies.

One of the many ways ONMS ensures public participation in the designation and management of national marine sanctuaries is through the formation of advisory councils. The Sanctuary System Business Advisory Council (council) has been formed to provide advice and recommendations to the Director regarding the relationship of ONMS with the business community. Additional information on the council can be found at *https://sanctuaries.noaa.gov/management/bac/.*

Matters to be discussed: The meeting will include a discussion and vote on a letter from the council that would respond to a request for input on the development of a National Strategy for a Sustainable Ocean Economy from the Office of Science and Technology Policy and the Council on Environmental Quality, on behalf of the interagency Ocean Policy Committee (docket number OSTP–CE–2023–0009). This emergency meeting is called because, due to the deadline to submit comments on the request for input, the council's discussion and vote cannot wait until the next scheduled council meeting. For a complete agenda, including times and topics, please visit *http://sanctuaries.noaa.gov/management/bac/meetings.html.*

Authority: 16 U.S.C. 1431, *et seq.*

Matthew Stout,

Chief Of Staff, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–16965 Filed 8–7–23; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD224]

Endangered and Threatened Species; Take of Anadromous Fish.

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

ACTION: Notice; availability of a permit application and request for public comment.

SUMMARY: Notice is hereby given that NMFS has received an update to an application for a direct take permit, in the form of a Hatchery and Genetic Management Plan (HGMP) for hatchery plans rearing and releasing Sockeye salmon into the Snake River basin. The permits describe hatchery programs operated by the Idaho Department of Fish and Game (IDFG), Shoshone-Bannock Tribe (SBT), National Marine Fisheries Service's Northwest Fisheries Science Center (NWFSC) and Oregon Department of Fish and Wildlife (ODFW). This document serves to notify the public of the availability and opportunity to comment on a draft Environmental Assessment (EA) and an HGMP on the proposed hatchery program.

DATES: Comments must be received at the appropriate address (see **ADDRESSES**) no later than 5:00 p.m. Pacific time on September 7, 2023. Comments received after this date may not be considered.

ADDRESSES: Written comments should be addressed to the NMFS Sustainable Fisheries Division, 1201 NE Lloyd Blvd., Portland, OR 97232. Comments may be submitted by email. The mailbox address for providing email comments is: *Hatcheries.Public.Comment@noaa.gov.* Include in the subject line of the email comment the following identifier: Comments on the Snake River sockeye hatchery program.

FOR FURTHER INFORMATION CONTACT: Andreas Raisch at (503) 230–5405 or by email at *andreas.raisch@noaa.gov*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

- Snake River Sockeye (*O. nerka*): endangered, naturally and artificially propagated.
- Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally and artificially propagated;
  - Snake River Spring/Summer run: threatened, naturally and artificially propagated;
- Snake River Steelhead (*O. mykiss*): threatened, naturally and artificially propagated.

Background

Section 9 of the Endangered Species Act (ESA) and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may make exceptions to the take prohibitions in section 9 of the ESA for programs that are approved by NMFS under section 10(a)(1)(A) of the ESA (50 CFR 222.308).

The operators and funding agencies, including IDFG, SBT, ODFW, NMFS's NWFSC and Bonneville Power Administration (BPA), submitted an HGMP to NMFS pursuant to NMFS' ESA Section 10(a)(1)(A) for hatchery activities in the Snake River basin. An EA was also prepared pursuant to the National Environmental Policy Act (NEPA) by NMFS for the Snake River sockeye salmon hatchery program.

The programs are intended to contribute to the survival and recovery of Snake River Sockeye salmon in the Snake River basin. The proposed program would maintain the Snake River sockeye salmon captive broodstock, collect and spawn adult sockeye salmon returning to the Snake River basin, rear juveniles, and release eggs, juveniles, and adult fish in upper Salmon River basin lakes as well as into Tanner Creek. The proposed continuation of the program would indicate best management practices to minimize adverse effects on the ESU.

Authority

16 U.S.C. 1531 *et seq.;* 16 U.S.C. 742a *et seq.*

Dated: August 3, 2023.

Angela Somma,

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

[FR Doc. 2023–16962 Filed 8–7–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0145]

Agency Information Collection Activities; Comment Request; Income Driven Repayment Plan Request for the William D. Ford Federal Direct Loans and Federal Family Education Loan Programs

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is requesting the Office of Management and Budget (OMB) to conduct an emergency review of a revision to a previously approved information collection.

DATES: The Department requested emergency processing from OMB for this information collection request on July 26, 2023. As a result, the Department is providing the public with the opportunity to comment under the full comment period. Interested persons are invited to submit comments on or before October 10, 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–0145. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–708–8242.

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: Income Driven Repayment Plan (IDR) Request for the William D. Ford Federal Direct Loans and Federal Family Education Loan Programs.

OMB Control Number: 1845–0102.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 9,500,000.

Total Estimated Number of Annual Burden Hours: 3,135,000.

Abstract: The Department of Education (Department) requested emergency processing for this revised information collection, 1845–0102; and therefore, is requesting the 60-day public comment period for the full ICR. The Department updated the IDR Request Form that is used by a borrower to enroll, recertify, or change their IDR plan to support the provisions identified for early implementation in the final rule published July 10, 2023, and the provisions in the FUTURE ACT related to borrower consent to use tax information for IDR participation. Specifically, the form has been updated to include a new section related to the borrower's consent to use tax information for this application and on an ongoing basis and to reflect the name change of the REPAYE Plan to the SAVE Plan. The form has also been updated to remove the need for spousal income information in the situation where a borrower files taxes separately from their spouse. This removes the need to collect the signature of the spouse as the spouse's information is no longer necessary to participate in any IDR plan. Additional updates were made to improve readability and the borrower experience.

The Department received emergency clearance on June 28, 2023, since normal processing would not enable the Department to implement the required regulatory changes by July 30, 2023, that would have resulted in several months of delays in providing eligible borrowers financial relief and not meeting the requirements of the Master Calendar. Any delay in discharging loans for eligible borrowers would have increased the potential for public harm through delayed financial relief to borrowers who have been employed in public service, and the possibility of additional interest accrual and an increase in overall debt by affected borrowers being unable to receive the relief that is allowed to them under the new regulations, causing them further financial harm. This notice allows the public to comment on the full ICR under the 60-day comment period.

Dated: August 3, 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. 2023–16927 Filed 8–7–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Fusion Energy Sciences Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Fusion Energy Sciences Advisory Committee (FESAC) has been renewed for a two-year period.

FOR FURTHER INFORMATION CONTACT: Samuel J. Barish at (301) 903–2917 or email: *Sam.barish@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

The Committee will provide advice to the Director, Office of Science, Department of Energy (DOE), on long-

range plans, priorities, and strategies for advancing plasma science, fusion science, and fusion technology—the knowledge base needed for an economically and environmentally attractive fusion energy source.

Additionally, the renewal of the FESAC has been determined to be essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the DOE by law. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act, the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instruction issued in the implementation of those Acts.

Signing Authority

This document of the Department of Energy was signed on August 2, 2023, by Sarah E. Butler, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 2, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–16879 Filed 8–7–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF14–1–006]

Southwestern Power Administration; Notice of Filing

Take notice that on July 7, 2023, Southwestern Power Administration submits tariff filing: 013 IS Power Rate schedule Amendment P–13B to be effective 7/15/2023.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comment Date: 5:00 p.m. Eastern Time on August 7, 2023.

Dated: August 2, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–16937 Filed 8–7–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2540–000]

Energy Prepay II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Energy Prepay II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 22, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all

interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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Dated: August 2, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–16940 Filed 8–7–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF23–7–000]

Bonneville Power Administration; Notice of Filing

Take notice that on July 28, 2023, Bonneville Power Administration submits tariff filing: Proposed FY 2024–2025 Wholesale Power and Transmission Rates to be effective 10/1/2023.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comment Date: 5:00 p.m. Eastern Time on August 28, 2023.

Dated: August 2, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–16941 Filed 8–7–23; 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 and Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR23–63–000.

Applicants: Black Hills/Kansas Gas Utility Company, LLC.

Description: § 284.123 Rate Filing: BHKG Revised Statement of Rates to be effective 8/1/2023.

Filed Date: 8/1/23.

Accession Number: 20230801–5165.

Comment Date: 5 p.m. ET 8/22/23.

Docket Numbers: RP23–948–000.

Applicants: NEXUS Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 8–1–2023 to be effective 8/1/2023.

Filed Date: 8/1/23.

Accession Number: 20230801–5132.

Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: RP23–949–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Creditworthiness to be effective 9/1/2023.

Filed Date: 8/1/23.

Accession Number: 20230801–5133.

Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: RP23–950–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rates—Northern to Direct Energy 2924 eff 8–1–2023 to be effective 8/1/2023.

Filed Date: 8/1/23.

Accession Number: 20230801–5137.

Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: RP23–951–000.

Applicants: Adelphia Gateway, LLC.

Description: § 4(d) Rate Filing: Adelphia Gateway Annual Charge Adjustment Filing to be effective 10/1/2023.

Filed Date: 8/1/23.

Accession Number: 20230801–5172.

Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: RP23–952–000.

Applicants: Columbia Gulf Transmission, LLC.

Description: § 4(d) Rate Filing: Marubeni NR Amendment 177680–3—Cameron Access to be effective 8/1/2023.

Filed Date: 8/1/23.

Accession Number: 20230801–5174.

Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: RP23–953–000.

Applicants: Columbia Gulf Transmission, LLC.

Description: § 4(d) Rate Filing: Capacity Release—NR Agmts—MU Marketing, Mieco, Tenaska to be effective 8/1/2023.

Filed Date: 8/1/23.

Accession Number: 20230801–5180.

Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: RP23–954–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement—8/2/2023 to be effective 8/2/2023.

Filed Date: 8/2/23.

Accession Number: 20230802–5004.

Comment Date: 5 p.m. ET 8/14/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

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: August 2, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–16943 Filed 8–7–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2541–000]

Nevada Cogeneration Associates #2; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Nevada Cogeneration Associates #2's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 22, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: August 2, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–16939 Filed 8–7–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF14–1–005]

Southwestern Power Administration; Notice of Filing

Take notice that on July 7, 2023, Southwestern Power Administration submits tariff filing: 2013 IS NFTS Rate schedule Amendment P–13B to be effective 7/15/2023.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to

serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comment Date: 5:00 p.m. Eastern Time on August 2, 2023.

Dated: August 2, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–16938 Filed 8–7–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–243–000.
Applicants: 20SD 8me LLC.
Description: 20SD 8me LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 8/2/23.
Accession Number: 20230802–5154.
Comment Date: 5 p.m. ET 8/23/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–89–000.
Applicants: Brookfield Renewable Trading and Marketing LP v. *ISO New England Inc.*
Description: Complaint of Brookfield Renewable Trading and Marketing LP v. *ISO New England Inc.*
Filed Date: 8/2/23.
Accession Number: 20230802–5076.
Comment Date: 5 p.m. ET 8/22/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–2402–000.
Applicants: Montana-Dakota Utilities Co.
Description: Request for Approval of Transmission Rate Incentives of Montana-Dakota Utilities Co.
Filed Date: 7/14/23.
Accession Number: 20230714–5154.
Comment Date: 5 p.m. ET 8/16/23.

Docket Numbers: ER23–2542–000.
Applicants: Narragansett Electric Company d/b/a Rhode Island Energy.
Description: Petition For Limited Waiver of Tariff Provisions of The Narragansett Electric Company.
Filed Date: 7/31/23.
Accession Number: 20230731–5280.
Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2543–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Notice of Cancellation of Service Agreements of Duke Energy Carolinas, LLC.
Filed Date: 8/1/23.
Accession Number: 20230801–5222.
Comment Date: 5 p.m. ET 8/22/23.

Docket Numbers: ER23–2544–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3909R1 Rocking R Solar GIA to be effective 7/7/2023.
Filed Date: 8/2/23.
Accession Number: 20230802–5075.
Comment Date: 5 p.m. ET 8/23/23.

Docket Numbers: ER23–2545–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Centaurus Solar LGIA Filing to be effective 7/27/2023.
Filed Date: 8/2/23.
Accession Number: 20230802–5084.
Comment Date: 5 p.m. ET 8/23/23.

Docket Numbers: ER23–2546–000.
Applicants: Deer Creek Solar I LLC.
Description: Tariff Amendment: Notice of Termination to be effective 8/3/2023.
Filed Date: 8/2/23.
Accession Number: 20230802–5099.
Comment Date: 5 p.m. ET 8/23/23.

Docket Numbers: ER23–2547–000.
Applicants: Yellow Pine Energy Center I, LLC.
Description: Tariff Amendment: Notice of Cancellation of Market-Based Rate Tariff to be effective 8/3/2023.
Filed Date: 8/2/23.
Accession Number: 20230802–5106.
Comment Date: 5 p.m. ET 8/23/23.

Docket Numbers: ER23–2548–000.
Applicants: Yellow Pine Energy Center II, LLC.
Description: Tariff Amendment: Notice of Cancellation of Market-Based Rate Tariff to be effective 8/3/2023.
Filed Date: 8/2/23.
Accession Number: 20230802–5107.
Comment Date: 5 p.m. ET 8/23/23.

Docket Numbers: ER23–2549–000.
Applicants: NGP Blue Mountain I LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariffs to be effective 8/3/2023.
Filed Date: 8/2/23.
Accession Number: 20230802–5113.
Comment Date: 5 p.m. ET 8/23/23.

Docket Numbers: ER23–2550–000.
Applicants: Hudson Ranch Power I LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariffs to be effective 8/3/2023.
Filed Date: 8/2/23.
Accession Number: 20230802–5114.
Comment Date: 5 p.m. ET 8/23/23.

Docket Numbers: ER23–2551–000.
Applicants: Patua Acquisition Company, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariffs to be effective 8/3/2023.
Filed Date: 8/2/23.
Accession Number: 20230802–5117.
Comment Date: 5 p.m. ET 8/23/23.

Docket Numbers: ER23–2552–000.

Applicants: Clean Energy Future—Lordstown, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 8/3/2023.

Filed Date: 8/2/23.

Accession Number: 20230802–5121.

Comment Date: 5 p.m. ET 8/23/23.

Docket Numbers: ER23–2553–000.

Applicants: Cleco Cajun LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 8/3/2023.

Filed Date: 8/2/23.

Accession Number: 20230802–5123.

Comment Date: 5 p.m. ET 8/23/23.

Docket Numbers: ER23–2554–000.

Applicants: Midland Wind, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization, Request for Related Waivers to be effective 10/2/2023.

Filed Date: 8/2/23.

Accession Number: 20230802–5127.

Comment Date: 5 p.m. ET 8/23/23.

Docket Numbers: ER23–2555–000.

Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2023–08–02_SA 4147 ATC-Plymouth Utilities PCA to be effective 10/2/2023.

Filed Date: 8/2/23.

Accession Number: 20230802–5129.

Comment Date: 5 p.m. ET 8/23/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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: August 2, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–16944 Filed 8–7–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0269; FRL 11000–01–OAR]

Proposed Information Collection Request; Comment Request; Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects, EPA ICR No. 2130.07, OMB Control No. 2060–0561

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs, and Projects'' (EPA ICR No. 2130.07, OMB Control No. 2060–0561), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through February 29, 2024.

DATES: Comments must be submitted on or before October 10, 2023.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–0269 online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Aaron Letterly, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4340; email address: *letterly.aaron@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported transportation activities are consistent with (''conform to'') the purpose of the state air quality implementation plan (SIP). Transportation activities include transportation plans, transportation improvement programs (TIPs), and federally funded or approved highway or transit projects. Conformity to the purpose of the SIP means that transportation activities will not cause

or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS or ''standards'') or interim milestones.

Transportation conformity applies under EPA's conformity regulations at 40 CFR part 93, subpart A, to areas that are designated nonattainment, and those redesignated to attainment after 1990 (''maintenance areas'' with plans developed under Clean Air Act section 175A) for the following transportation-related criteria pollutants: ozone, particulate matter ($PM_{2.5}$ and PM_{10}), carbon monoxide (CO), and nitrogen dioxide (NO_2). EPA published the original transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published several revisions. EPA develops the conformity regulations in coordination with the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA).

Transportation conformity determinations are required before federal approval or funding is given to certain types of transportation planning documents as well as non-exempt highway and transit projects.[1]

EPA considered the following in renewing the existing ICR:

- Burden estimates for transportation conformity determinations (including both regional and project-level) in current nonattainment and maintenance areas for the ozone, $PM_{2.5,}$ PM_{10}, and CO NAAQS; [2]
- Federal burden associated with EPA's adequacy review process for submitted SIP motor vehicle emissions budgets that are to be used in conformity determinations;
- Efficiencies in areas making conformity determinations for multiple NAAQS;
- Differences in conformity resource needs in large and small metropolitan areas and isolated rural areas;
- Infrequency of conformity determinations in isolated rural areas;
- Reduced burden from certain areas no longer determining conformity for the 1997 annual $PM_{2.5}$ NAAQS due to revocation; [3]
- Reduced burden from areas completing 20 years of maintenance for PM_{10}, NO_2 and CO NAAQS, at which time transportation conformity is no longer required; and,
- The limited conformity requirements that apply in the 1997 ozone NAAQS areas that were not designated nonattainment for a later ozone NAAQS.

This ICR does not include burden associated with the general development of transportation planning and air quality planning documents for meeting other federal requirements.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are metropolitan planning organizations (MPOs), state departments of transportation, local transit agencies, and state and local air quality agencies. Federal agencies potentially affected by this action include FHWA, FTA, and EPA.

Respondent's obligation to respond: Mandatory pursuant to Clean Air Act section 176(c) (42 U.S.C. 7506(c)) and 40 CFR and Part 93 Subpart A.

Estimated number of respondents: EPA estimates that 102 MPOs will be subject to transportation conformity requirements during the period covered by this ICR and that EPA Regional Offices, FHWA, and FTA will be involved in interagency consultation, and review of MPO transportation-related conformity determinations during this process. EPA also estimates that similar consultation will occur for project-level conformity determinations in isolated rural areas. In addition, there are 46 MPOs that determine conformity only for the 1997 ozone NAAQS that are also accounted for, but their conformity-related requirements are estimated to be limited and less burdensome due to the circumstances with that NAAQS.

Frequency of response: The information collections described in this ICR must be completed before a transportation plan, TIP, or project conformity determination is made. The Clean Air Act requires conformity to be determined for transportation plans and TIPs every four years. Conformity determinations on projects in metropolitan and isolated rural areas are required on an as-needed basis.

Total estimated burden: 42,481 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,946,914 (per year), includes zero annualized capital or operation and maintenance costs.

Changes in Estimates: There is a decrease of 8,590 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to $PM_{10,}$ NO_2, and CO areas reaching the end of the 20-year maintenance period, beyond which transportation conformity is not required, as well as fewer transportation conformity determinations for areas previously designated nonattainment or maintenance for the 1997 annual $PM_{2.5}$ NAAQS and the 1997 ozone NAAQS. Additionally, EPA updated its assumptions about the frequency of conformity determinations in isolated rural areas, which reduced the number of actions and resulting burden hours compared to previous ICRs.

Michael Moltzen,

Deputy Director, Transportation and Climate Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2023–16873 Filed 8–7–23; 8:45 am]

BILLING CODE 6560–50–P

[1] Some projects are exempt from all or certain conformity requirements; see 40 CFR 93.126, 93.127, and 93.128.

[2] Currently there are no NO_2 nonattainment or maintenance areas that are required to make transportation conformity determinations.

[3] See 81 FR 58010 (published on August 24, 2016 and effective October 24, 2016) for a description of this revocation and implications for transportation conformity.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–SFUND–2023–0369; FRL–11170–01–R5]

Proposed Prospective Purchaser Agreement for the Delphi 1 Anderson Site in Anderson, Indiana

In notice document 2023–15215 beginning on page 46155 in the issue of Wednesday, July 19, 2023, make the following corrections:

1. On page 46155, in the third column, in the third line, ''[EPA–R05–INSERT; FRL–INSERT–Region 5]'' should read ''[EPA–R05–SFUND–2023–0369; FRL–11170–01–R5]''.

2. On page 46156, in the first column, in the twenty-third line, under **ADDRESSES**, ''[EPA–R05–INSERT; FRL–INSERT–Region 5]'' should read ''[EPA–R05–SFUND–2023–0369; FRL–11170–01–R5]''.

3. On page 46156, in the first column, in the eleventh line from the bottom, ''[EPA–R05–INSERT; FRL–INSERT–Region 5]'' should read ''[EPA–R05–SFUND–2023–0369; FRL–11170–01–R5]''.

[FR Doc. C1–2023–15215 Filed 8–7–23; 8:45 am]

BILLING CODE 0099–10–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2023–N–9]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: Federal Home Loan Bank Capital Stock—60-day notice of submission of information collection for

approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA) is seeking public comment concerning an information collection known as ''Federal Home Loan Bank Capital Stock,'' which has been assigned control number 2590–0002 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on November 30, 2023.

DATES: Interested persons may submit comments on or before October 10, 2023.

ADDRESSES: Submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'Federal Home Loan Bank Capital Stock, (No. 2023–N–9)' '' by any of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Office of General Counsel, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Federal Home Loan Bank Capital Stock, (No. 2023–N–9).''

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.*

Copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT: Lindsay Spadoni, Assistant General Counsel, *Lindsay.Spadoni@fhfa.gov,* (202) 649–3634 or Angela Supervielle, Senior Counsel, *Angela.Supervielle@fhfa.gov,* (202) 649–3973 (these are not toll-free numbers). For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that ten or more persons submit information to a third party.

Section 3506(c)(2)(A) of title 44 requires Federal agencies to provide a 60-day notice [1] in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection of information to OMB for approval. FHFA's collection of information set forth in this document is titled ''Federal Home Loan Bank Capital Stock'' (assigned control number 2590–0002 by OMB). To comply with the PRA requirement, FHFA is publishing notice of a proposed three-year extension of this collection of information and renewal of the control number, which is due to expire on November 30, 2023.

B. Background

The Federal Home Loan Bank System consists of eleven regional Federal Home Loan Banks (Banks) and the Office of Finance (a joint office that issues and services the Banks' debt securities). The Banks are wholesale financial institutions, organized under authority of the Federal Home Loan Bank Act (Bank Act) to serve the public interest by enhancing the availability of residential housing finance and community lending credit through their member institutions and, to a limited extent, through certain eligible nonmembers. Each Bank is structured as a regional cooperative that is owned and controlled by member institutions located within its district, which are also its primary customers. An institution that is eligible for membership in a particular Bank must purchase and hold a prescribed minimum amount of the Bank's capital stock in order to become and remain a member of that Bank. With limited exceptions, only an institution that is a member of a Bank may obtain access to low cost secured loans, known as advances, or other products provided by that Bank.

Section 6 of the Bank Act establishes capital requirements for the Banks and requires FHFA to issue regulations prescribing uniform capital standards applicable to all of the Banks.[2] Section 6 also establishes parameters relating to the Banks' capital structures and requires that each Bank adopt a ''capital structure plan'' (capital plan) to establish, within those statutory parameters, its own capital structure and to establish requirements for, and govern transactions in, the Bank's capital stock.[3] FHFA's regulations on Bank Capital Requirements, Capital Stock, and Capital Plans are located at 12 CFR part 1277.

C. Need For and Use of the Information Collection

Both the Bank Act and FHFA's regulations state that a Bank's capital plan must require its members to maintain a minimum investment in the Bank's capital stock, but both permit each Bank to determine for itself what that minimum investment is and how each member's required minimum investment is to be calculated.[4] Although each Bank's capital plan establishes a slightly different method for calculating the required minimum stock investment for its members, each Bank's method is tied to some degree to both the level of assets held by the member institution (typically referred to as a ''membership stock purchase requirement'') and the amount of advances or other business engaged in between the member and the Bank (typically referred to as an ''activity-based stock purchase requirement'').

A Bank must collect information from its members to determine the minimum capital stock investment each member is required to maintain at any point in time. Although the information needed to calculate a member's required minimum investment and the precise method through which it is collected differ somewhat from Bank to Bank, the Banks typically collect two types of information. First, in order to calculate and monitor compliance with its membership stock purchase requirement, a Bank typically requires each member to provide and/or confirm an annual report on the amount and types of assets held by that institution. Second, each time a Bank engages in a business transaction with a member, the Bank typically confirms with the member the amount of additional Bank capital stock, if any, the member must acquire in order to satisfy the Bank's activity-based stock purchase requirement and the method through which the member will acquire that stock.

The OMB number for the information collection is 2590–0002, which is due to

[1] Following the close of this notice's 60-day comment period, FHFA will publish a second notice with a 30-day comment period as required by 44 U.S.C. 3507(b) and 5 CFR 1320.10(a).

[2] *See* 12 U.S.C. 1426(a).

[3] *See* 12 U.S.C. 1426(b), (c).

[4] *See* 12 U.S.C. 1426(c)(1); 12 CFR 1277.22, 1277.28(a).

expire on November 30, 2023. The likely respondents include current and former Bank members and institutions applying for Bank membership.

D. Burden Estimate

FHFA has analyzed the time burden imposed on respondents by the two collections under this control number and estimates that the average total annual hour burden imposed on all respondents over the next three years will be 20,245 hours. The estimate for each collection was calculated as follows:

1. Membership Stock Purchase Requirement Submissions

FHFA estimates that the average annual number of current and former members and applicants for membership required to report information needed to calculate a membership stock purchase requirement will be 6,550, and that each institution will submit one report per year, resulting in an estimated total of 6,550 submissions annually. The estimate for the average time required to prepare, review, and submit each report is 0.7 hours. Accordingly, the estimate for the annual hour burden associated with membership stock purchase requirement submissions is (6,550 reports x 0.7 hours per report) = 4,585 hours.

2. Activity-Based Stock Purchase Requirement Submissions

FHFA estimates that the average number of daily transactions between Banks and members that will require the exchange of information to confirm the member's activity-based stock purchase requirement will be 300, and that there will be an average of 261 working days per year, resulting in an estimated 78,300 submissions annually. The estimate for the average preparation time per submission is 0.2 hours. Accordingly, the estimate for the annual hour burden associated with activity-based stock purchase requirement submissions is (78,300 submissions × 0.2 hours per submission) = 15,660 hours.

E. Comment Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Shawn Bucholtz,

Chief Data Officer, Federal Housing Finance Agency.

[FR Doc. 2023–16910 Filed 8–7–23; 8:45 am]

BILLING CODE 8070–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–P–2023–02; Docket No. 2023–0002; Sequence No. 25]

Notice of Intent To Prepare an Environmental Impact Statement and Public Scoping Meeting for the Expansion and Modernization of the Kenneth G Ward Land Port of Entry in Lynden, Washington and the Sumas Land Port of Entry in Sumas, Washington

AGENCY: Office of Public Buildings Service (PBS); General Services Administration, (GSA).

ACTION: Notice.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations, and the GSA/PBS NEPA Desk Guide, GSA intends to prepare an Environmental Impact Statement (EIS) to analyze the potential environmental impacts from the proposed expansion and modernization of the Kenneth G. Ward Land Port of Entry (LPOE) located in Lynden, Washington and the Sumas LPOE located in Sumas, Washington. GSA has initiated the required Section 106 consultation of the National Historic Preservation Act (NHPA) involving outreach efforts with the Washington State Historic Preservation Officer (SHPO) and Tribes.

DATES: A virtual public scoping meeting, in open house format, will be held on Wednesday, August 23, 2023, from 5:00 p.m. to 7:00 p.m. Pacific Daylight Time (PDT).

Interested parties should submit comments by Tuesday, September 12, 2023, to be considered in the formation of the Draft EIS. The views and comments of the public are necessary to help determine the scope and content of the environmental analysis. The meeting will be held on the Zoom platform where GSA will present and distribute project information and obtain input on the scope of the project. The link for the public scoping meeting can be found on the GSA project websites at: *https://www.gsa.gov/lynden* or *https://www.gsa.gov/sumas.*

All mail-in comments must be postmarked by September 12, 2023.

Deadlines for Requests of Special Accommodations: Persons needing special accommodations shall notify Emily Grimes at *LyndenLPOE@gsa.gov* or *SumasLPOE@gsa.gov* by 12:00 p.m. PDT, on August 16, 2023.

ADDRESSES: The public is encouraged to provide written comments regarding the scope of the EIS at the meeting and throughout the comment period. Submit comments identified by Notice–P–2023–02 by any of the following methods:

- *Email: LyndenLPOE@gsa.gov,* or *SumasLPOE@gsa.gov.* Include Notice Identifier in the subject line of the message.
- *Virtual Meeting:* Online comment forms will be available during the August 23rd open-house public meeting and at the GSA project websites listed below throughout the comment period: *https://www.gsa.gov/lynden* and *https://www.gsa.gov/sumas.*
- *Mail:* U.S. General Services Administration, Attention: Emily Grimes, Environmental Program Manager, 1301 A Street, Suite 610, Tacoma, WA 98402. Written comments must be postmarked by September 12, 2023.
- *Federal Register*: Submit comments in response to Notice–P–2023–02 via *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Notice–P–2023–02''. Select the link ''Comment'' that corresponds with Notice–P–2023–02.'' Follow the instructions provided at the screen. Please include your name, company name (if any), and ''Notice–P–2023–02'' on your attached document. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Emily Grimes, Environmental Program Manager, Facilities Management Division, GSA. Phone: (253) 394–4026. Email: *LyndenLPOE@gsa.gov* and *SumasLPOE@gsa.gov.*

For press inquiries only, please contact Christi Chidester Votisek, Public Affairs Officer, GSA. Phone: (253) 931–7127. Email: *christina.chidester@gsa.gov.*

SUPPLEMENTARY INFORMATION: The Kenneth G. Ward LPOE is located at 9949 WA–539, Lynden, WA 98264

(hereafter Lynden LPOE), approximately 10 miles west of the Sumas LPOE at the end of Route 539 at the U.S.-Canada border. The Lynden LPOE is an inspection facility where U.S. Customs and Border Protection (CBP) processes personal vehicles, buses, limited commercial vehicles (permit only), and pedestrian traffic. There are four primary non-commercial lanes, one of which can also process limited commercial traffic. The port was constructed in 1988 and operates 16 hours a day, seven days a week.

The Sumas LPOE is an inspection facility where CBP processes commercial vehicles, personal vehicles, and pedestrian traffic at the U.S.-Canada border at 103 Cherry St, Sumas, WA 98295. There are currently four primary non-commercial lanes, with three lanes that process personal vehicles and one that accommodates buses and oversized vehicles; and two primary commercial lanes with booths. Pedestrian traffic transits through indoor processing queues and spaces. The port was constructed in 1988 and operates 24 hours a day, seven days a week.

The current Lynden and Sumas LPOEs no longer function adequately and cannot meet current operational needs. At the Lynden LPOE, space limitations cause frequent congestion in the commercial lane and commercial vehicles often travel farther distances to other ports that offer more efficient processing. The Sumas LPOE does not have enough space for efficient traffic flow or safe and secure inspection areas, which impede the port's operations and cause traffic and safety concerns in the surrounding urban area.

Alternatives Under Consideration

The EIS will evaluate a total of four alternatives at each location—one ''no action'' or ''no build'' alternative and three ''action'' or ''build'' alternatives. Alternative 1 is the No Action Alternative, which assumes that any demolition of existing facilities, construction of new facilities, and expansion of LPOE operations would not occur. Both LPOEs would continue to operate under current conditions. The three action alternatives would improve the efficiency and effectiveness of the Lynden and Sumas LPOEs and would all include acquiring land, demolishing existing facilities, and constructing new facilities.

At the Lynden LPOE, Alternative 2 would include an east-west facility layout for commercial inspections. Alternative 3 would be identical to Alternative 2 other than the rotation of commercial inspection to a north-south orientation. Land acquisition under Alternatives 2 and 3 at the Lynden LPOE would be similar in acreage but would differ in location or orientation. Alternative 4 would consist of the same facility layout as either Alternative 2 or 3, but would alter construction phasing such that construction activities at the LPOEs occur sequentially. Under Alternative 4, the Lynden LPOE would close and construction activities at the Lynden LPOE would occur first. Once the Lynden LPOE is reopened, the Sumas LPOE would close and construction activities at the Sumas LPOE would occur.

At the Sumas LPOE, the layout of Alternative 2 is designed to optimize operational flow—especially for outbound non-commercial vehicles. The facility layout of Alternative 3 maximizes the vehicle maneuvering area (especially for larger vehicles like trucks). Alternative 4 consists of a multiple story construction in order to provide greater vehicle maneuvering area for transiting vehicles. Compared to Alternatives 2 and 3, Alternative 4 would not have a different number of commercial, outbound, or personal vehicle lanes, but it may consolidate some of the administrative buildings and have a slightly smaller overall footprint. Land acquisition at the Sumas LPOE would be identical under each alternative.

Demolition, construction, and renovation activities would be phased to maintain LPOE operations at both ports for the entirety of the construction period under all action alternatives—except for Alternative 4 at the Lynden LPOE, which would require closing operations at both LPOEs during their respective construction activities. During this time, traffic at the LPOE under construction would be directed to the operational LPOE.

Potential impacts from these three action alternatives will be compared against a first ''no action'' alternative wherein the current LPOE facilities would continue to operate under existing conditions. The EIS will address the potential environmental impacts of the proposed alternatives on resource areas including but not limited to land use, water resources (including floodplains), biological resources, geology and soils, transportation and traffic, noise, cultural and Tribal resources, socioeconomics, environmental justice and protection of children's health, hazardous waste and materials, air quality, climate change, and utilities.

Anamarie T. Crawley,

Director, GSA–PBS R10 Facilities Management Division.

[FR Doc. 2023–16957 Filed 8–7–23; 8:45 am]

BILLING CODE 6820–DL–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment for the American Physician Partners, LLC PSO

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of delisting.

SUMMARY: The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) authorizes AHRQ, on behalf of the Secretary of HHS, to list as a patient safety organization (PSO) an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ accepted a notification of proposed voluntary relinquishment from the American Physician Partners, LLC PSO, PSO number P0223, of its status as a PSO, and has delisted the PSO accordingly.

DATES: The delisting was effective at 12:00 Midnight ET (2400) on July 31, 2023.

ADDRESSES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. Both directories can be accessed electronically at the following HHS website: *http://www.pso.ahrq.gov/listed.*

FOR FURTHER INFORMATION CONTACT: Cathryn Bach, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, MS 06N66B, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act, 42 U.S.C. 299b–21 to 299b–26, and the related Patient Safety Rule, 42 CFR part 3, published in the **Federal Register** on November 21, 2008 (73 FR 70732–70814), establish a framework by which individuals and entities that meet the definition of provider in the Patient Safety Rule may voluntarily report information to PSOs listed by AHRQ, on a privileged and confidential basis, for the aggregation and analysis of patient safety work product.

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of PSOs.

AHRQ has accepted a notification of proposed voluntary relinquishment from the American Physician Partners, LLC PSO to voluntarily relinquish its status as a PSO. Accordingly, the American Physician Partners, LLC PSO, P0223, was delisted effective at 12:00 Midnight ET (2400) on July 31, 2023.

American Physician Partners, LLC PSO has patient safety work product (PSWP) in its possession. The PSO will meet the requirements of section 3.108(c)(2)(i) of the Patient Safety Rule regarding notification to providers that have reported to the PSO and of section 3.108(c)(2)(ii) regarding disposition of PSWP consistent with section 3.108(b)(3). According to section 3.108(b)(3) of the Patient Safety Rule, the PSO has 90 days from the effective date of delisting and revocation to complete the disposition of PSWP that is currently in the PSO's possession.

More information on PSOs can be obtained through AHRQ's PSO website at *http://www.pso.ahrq.gov.*

Dated: August 2, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–16895 Filed 8–7–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Docket No. ATSDR–2023–0003]

Nominations for Substances To Be Evaluated for Toxicological Profile Development

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR), within the Department of Health and Human Services (HHS), announces that it is soliciting nominations of substances to be evaluated for an upcoming set of toxicological profiles. ATSDR is opening a docket for the public to submit nominations and provide comment on which toxicological profiles are developed next. Members of the public, government agencies, or private organizations may comment on which substances they are concerned about so that ATSDR may take this information into consideration when developing future toxicological profiles.

DATES: Written nominations and comments must be received by September 7, 2023.

ADDRESSES: You may submit nominations, identified by Docket No. ATSDR–2023–0003, by either of the methods listed below. Do not submit comments by email. ATSDR does not accept comments by email.

- Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Agency for Toxic Substances and Disease Registry, Office of Innovation and Analytics, 4770 Buford Highway, Mail Stop S106–5, Atlanta, GA 30341–3717. Attn: Docket No. ATSDR–2023–0003.

Instructions: All submissions must include the agency name and docket number for this notice. All relevant comments will be posted without change to *http://www.regulations.gov,* including any personal information provided. Refer to the Submission of Nominations section (below) for the specific information required to be included in a nomination. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Farhana Rahman, Agency for Toxic Substances and Disease Registry, Office of Innovation and Analytics, 1600 Clifton Rd. NE, Mail Stop S106–5, Atlanta, GA 30329–4027; Email: *ATSDRToxProfileFRNs@cdc.gov;* Phone: 1–800–232–4636.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9601 *et seq.*] amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) [42 U.S.C. 9601 *et seq.*] by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) concerning hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the Priority List of Hazardous Substances, also known as the Substance Priority list (SPL). This list identifies 275 hazardous substances found at NPL sites that ATSDR has determined currently pose the most significant potential threat to human health. For more information on ATSDR's SPL, visit *http://www.atsdr.cdc.gov/SPL/.*

Substances to be Evaluated for Toxicological Profile Development

Each year, ATSDR develops a list of substances to be considered for toxicological profile development. The nomination process includes consideration of all substances on ATSDR's SPL, as well as other substances nominated by the public.

Submission of Nominations for Toxicological Profile Development

This notice invites public nominations of substances for toxicological profile development. If nominating a substance that is not on the SPL, please include the rationale for the nomination and any supporting data. ATSDR will evaluate data and information associated with nominated substances and will determine the final list of substances to be chosen for toxicological profile development.

Public Participation

Interested persons or organizations are invited to participate by submitting nominations for substances. These

submissions may include written views and data to support the nomination. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. ATSDR will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign related to substances being nominated. Do not submit comments by email. ATSDR does not accept comment by email.

Donata Green,

Acting Associate Director, Office of Policy, Planning and Partnerships, Agency for Toxic Substances and Disease Registry.

[FR Doc. 2023–16914 Filed 8–7–23; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3446–PN]

Medicare and Medicaid Programs; Application From the Community Health Accreditation Program (CHAP) for Continued Approval of Its Home Health Agency Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice with comment.

SUMMARY: This proposed notice acknowledges the receipt of an application from Community Health Accreditation Program (CHAP) for continued recognition as a national accrediting organization for home health agencies (HHAs) that wish to participate in the Medicare or Medicaid programs. The statute requires that within 60 days of receipt of an organization's complete application, the Centers for Medicare & Medicaid Services (CMS) publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by September 6, 2023.

ADDRESSES: In commenting, refer to file code CMS–3446–PN.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3446–PN, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3446–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Caecilia Blondiaux (410) 786–2190.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a Medicare-participating home health agency (HHA), provided certain requirements are met. Sections 1861(m) and (o), 1891 and 1895 of the Social Security Act (the Act) establish distinct criteria for an entity seeking designation as an HHA. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities and other entities are at 42 CFR part 488. The regulations at 42 CFR parts 409 and 484 specify the conditions that an HHA must meet to participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for home health care.

Generally, to enter into a provider agreement with the Medicare program, an HHA must first be certified by a state survey agency as complying with the conditions or requirements set forth in 42 CFR part 484 of our regulations. Thereafter, the HHA is subject to regular surveys by a state survey agency to determine whether it continues to meet these requirements.

However, there is an alternative to surveys by state agencies. Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary of Health and Human Services as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for CMS approval of their accreditation program under 42 CFR part 488, subpart A must provide CMS with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.5. The regulations at § 488.5(e)(2)(i) require accrediting organizations to reapply for continued approval of their accreditation program every 6 years or sooner as determined by CMS.

The Community Health Accreditation Program's (CHAP's) term of approval for their HHA accreditation program expires March 31, 2024.

II. Approval of Deeming Organization

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements

for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of CHAP's request for continued approval for its HHA accreditation program. This notice also solicits public comment on whether CHAP's requirements meet or exceed the Medicare conditions of participation (CoPs) for HHAs.

III. Evaluation of Deeming Authority Request

CHAP submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its HHA accreditation program. This application was determined to be complete on July 5, 2023. Under section 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national accrediting organizations), our review and evaluation of CHAP will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of CHAP's standards for HHAs as compared with CMS' HHA CoPs.
- CHAP's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of CHAP's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited HHAs.

++ CHAP's processes and procedures for monitoring HHAs found out of compliance with CHAP's program requirements. These monitoring procedures are used only when CHAP identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the state survey agency monitors corrections as specified at § 488.9(c).

++ CHAP's capacity to report deficiencies to the surveyed HHAs and respond to the HHA's plan of correction in a timely manner.

++ CHAP's capacity to provide us with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of CHAP's staff and other resources, and its financial viability.

++ CHAP's capacity to adequately fund required surveys.

++ CHAP's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ CHAP's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ CHAP's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Evell J. Barco Holland, who is the **Federal Register** Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: August 2, 2023.

Evell J. Barco Holland,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2023–16917 Filed 8–7–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–1716]

Registration and Listing of Cosmetic Product Facilities and Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a draft guidance for industry entitled ''Registration and Listing of Cosmetic Product Facilities and Products.'' This draft guidance, when finalized, will assist persons submitting cosmetic product facility registrations and product listing submissions to FDA under the Modernization of Cosmetics Regulation Act of 2022 (MoCRA). This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by September 7, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–D–1716 for ''Registration and Listing of Cosmetic Product Facilities and Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Office of Cosmetics and Colors, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Jennifer Ross, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 301–796–4880 (this is not a toll-free number), email: *QuestionsAboutMoCRA@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Registration and Listing of Cosmetic Product Facilities and Products.'' We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations.

On December 29, 2022, the President signed the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) into law, which included MoCRA. Among other provisions, MoCRA added section 607 to the Federal Food, Drug, and Cosmetic Act (FD&C Act), establishing requirements for cosmetic product facility registration and cosmetic product listing. Section 607(a) of the FD&C Act requires every person that owns or operates a facility that engages in the manufacturing or processing of a cosmetic product for distribution in the United States to register each facility with FDA no later than one year after the date of enactment. FDA previously had a voluntary cosmetics registration program (see 21 CFR parts 710 and 720). Because the information in the voluntary cosmetics registration program differs from the information required to be submitted under MoCRA, FDA does not consider previous submissions to the voluntary cosmetics registration program to satisfy the registration and listing mandated by MoCRA. Accordingly, FDA ended its voluntary registration program as of March 27, 2023, while we work toward establishing a new system, and information in the voluntary cosmetics registration program will not be transferred to this new system. In addition to the registration requirements, section 607(c) of the FD&C Act requires that for each cosmetic product, the responsible person submit to FDA ''a cosmetic product listing.'' Certain small businesses, as defined in section 612 of the FD&C Act, are exempt from the registration and listing requirements.

While electronic submission of registration and listing information is not required, FDA is strongly encouraging electronic submission to facilitate efficiency and timeliness of data submission and management by FDA. To that end, FDA will make an electronic portal available to streamline the data entry process for registration and product listing.

II. Paperwork Reduction Act of 1995

This draft guidance refers to collections of information subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). As required by the PRA, FDA published an analysis of burden associated with reporting provisions found in section 607 of the FD&C Act in the **Federal Register** of May 1, 2023 (88 FR 26564) and is currently inviting comment on the proposed collection of information. As required by the PRA, FDA will publish a subsequent notice announcing that the proposed collection of information has been submitted to OMB for review and approval, and provide an additional opportunity for public comment.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/CosmeticGuidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.* Use the FDA

websites listed in the previous sentence to find the most current version of the guidance.

Dated: August 2, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16771 Filed 8–7–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration
[Docket No. FDA–2023–N–2894]

Agency Information Collection Activities; Proposed Collection; Comment Request; Good Laboratory Practice Requirements for Nonclinical Laboratory Studies

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection applicable to the Good Laboratory Practice Requirements for Nonclinical Laboratory Studies established in Agency regulations.

DATES: Either electronic or written comments on the collection of information must be submitted by October 10, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 10, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–2894 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Good Laboratory Practice Requirements for Nonclinical Laboratory Studies.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical

utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Good Laboratory Practice Requirements for Nonclinical Laboratory Studies—21 CFR Part 58

OMB Control No. 0910–0119—Extension

Sections 409, 505, 512, and 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348, 355, 360b, and 360e) and related statutes require manufacturers of food additives, human drugs and biological products, animal drugs, and medical devices to demonstrate the safety and utility of their product by submitting applications to FDA for research or marketing permits. Such applications contain, among other important items, full reports of all studies done to demonstrate product safety in man and/or other animals. In order to ensure adequate quality control for these studies and to provide an adequate degree of consumer protection, the Agency issued good laboratory practice (GLP) regulations for nonclinical laboratory studies in part 58 (21 CFR part 58). The regulations specify minimum standards for the proper conduct of safety testing and contain sections on facilities, personnel, equipment, standard operating procedures (SOPs), test and control articles, quality assurance, protocol and conduct of a safety study, records and reports, and laboratory disqualification, and include information collection provisions.

Part 58 requires testing facilities engaged in conducting toxicological studies to retain, and make available to regulatory officials, records regarding compliance with GLPs. Records are maintained on file at each testing facility and examined there periodically by FDA inspectors. The GLP regulations require that, for each nonclinical laboratory study, a final report be prepared that documents the results of quality assurance unit inspections, test and control article characterization, testing of mixtures of test and control articles with carriers, and an overall interpretation of nonclinical laboratory studies. The GLP regulations also require written records pertaining to: (1) personnel job descriptions and summaries of training and experience; (2) master schedules, protocols and amendments thereto, inspection reports, and SOPs; (3) equipment inspection, maintenance, calibration, and testing records; (4) documentation of feed and water analyses and animal treatments; (5) test article accountability records; and (6) study documentation and raw data.

Description of Respondents: Respondents to the collection of information are sponsors of nonclinical laboratory studies that support or are intended to support applications for research or marketing permits for products regulated by FDA.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR part	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
58.35(b)(7); Quality assurance unit	300	60.25	18,075	1	18,075
58.185; Reporting of nonclinical laboratory study results	300	60.25	18,075	27.65	499,774
Total					517,849

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR part	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
58.29(b); Personnel	300	20	6,000	.21 (13 mins.)	1,260
58.35(b)(1)–(6), and (c); Quality assurance unit	300	270.76	81,228	3.36	272,926
58.63(b) and (c); Maintenance and calibration of equipment.	300	60	18,000	.09 (5 mins.)	1,620
58.81(a)–(c); SOPs	300	301.80	90,540	.14 (8 mins.)	12,676
58.90(c) and (g); Animal care	300	62.70	18,810	.13 (8 mins.)	2,445
58.105(a) and (b); Test and control article characterization.	300	5	1,500	11.8	17,700
58.107(d); Test and control article handling	300	1	300	4.25	1,275
58.113(a); Mixtures of articles with carriers	300	15.33	4,599	6.8	31,273
58.120; Protocol	300	15.38	4,614	32.7	150,878
58.195; Retention of records	300	251.50	75,450	3.9	294,255
Total					786,308

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on an evaluation of the information collection, we are retaining the currently approved estimates. Our assumptions made regarding the time needed for the respective activities is based on our experience with the information collection and informal communications with respondents.

Dated: August 3, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16925 Filed 8–7–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–5569]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Device Tracking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for the tracking of medical devices.

DATES: Either electronic or written comments on the collection of information must be submitted by October 10, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 10, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–5569 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Device Tracking.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices; Device Tracking—21 CFR Part 821

OMB Control Number 0910–0442—Extension

Section 519(e)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i(e)(1)) provides that FDA may require by order that a manufacturer adopt a method for tracking a class II or III medical device, if the device meets one of the three following criteria: (1) the failure of the device would be reasonably likely to have serious adverse health consequences, (2) the device is intended to be implanted in the human body for more than 1 year (referred to as a ''tracked implant''), or (3) the device is life-sustaining or life-supporting (referred to as a ''tracked l/s-l/s device'') and is used outside a device user facility. Tracked device information is collected to facilitate identifying the current location of medical devices and patients possessing those devices, to the extent that patients permit the collection of identifying information. Manufacturers and FDA (where necessary) use the data to: (1) expedite the recall of distributed medical devices that are dangerous or defective and (2) facilitate the timely notification of patients or licensed practitioners of the risks associated with the medical device.

In addition, applicable regulations in 21 CFR part 821 (21 CFR 821.1 through 821.60) include provisions for: (1) exemptions and variances; (2) system and content requirements for tracking; (3) obligations of persons other than device manufacturers, *e.g.,* distributors; (4) records and inspection requirements; (5) confidentiality; and (6) record retention requirements.

Respondents to the collection of information are medical device manufacturers, importers, and distributors of tracked implants or tracked l/s-l/s devices used outside a device user facility. Distributors include multiple and final distributors, including hospitals. We currently estimate 22,000 potential respondents.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity; 21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Discontinuation of business—821.1(d)	1	1	1	1	1
Exemption or variance—821.2 and 821.30(e)	1	1	1	1	1
Notification of failure to comply—821.25(d)	1	1	1	1	1
Multiple distributor data—821.30(c)(2)	1	1	1	1	1
Total					4

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity; 21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Tracking information—821.25(a)	12	1	12	76	912
Record of tracking data—821.25(b)	12	46,260	555,120	1	555,120
Standard operating procedures—821.25(c) [2]	12	1	12	63	756
Manufacturer data audit—821.25(c)(3)	12	1,124	13,488	1	13,488
Multiple distributor data and distributor tracking records—821.30(c)(2) and (d)	22,000	1	22,000	1	22,000
Total					592,276

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] One-time burden.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity; 21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Acquisition of tracked devices and final distributor data—821.30(a) and (b)	22,000	1	22,000	1	22,000
Multiple distributor data and distributor tracking records—821.30(c)(2) and (d)	1,100	1	1,100	1	1,100

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]—Continued

Activity; 21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Total	.....	.....	.....	.....	23,100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Upon evaluation of the information collection, we have made no adjustment to our currently approved burden estimate of 615,380 hours annually, based on 12 tracking orders. We attribute the attendant burden to the following activities:

Under § 821.25(a) (21 CFR 821.25(a)), device manufacturers subject to FDA tracking orders must adopt a tracking method that can provide certain device, patient, and distributor information to FDA within 3 to 10 working days. Assuming one occurrence per year, we estimate it would take a firm 20 hours to provide FDA with location data for all tracked devices and 56 hours to identify all patients and/or multiple distributors possessing tracked devices.

Under § 821.25(d) manufacturers must notify FDA of distributor noncompliance with reporting requirements. Based on the number of audits manufacturers conduct annually, we estimate no more than one notice will be received in any year, and that it would take 1 hour per incident.

Under § 821.30(c)(2) (21 CFR 821.30(c)(2)), multiple distributors must provide data on current users of tracked devices, current device locations, and other information, upon request from a manufacturer or FDA. Assuming one multiple distributor receives one request in a year from either a manufacturer or FDA, and that lists may be generated electronically, we estimate a burden of 1 hour to comply.

Under § 821.30(d) distributors must verify data or make required records available for auditing, if a manufacturer provides a written request. We assume 5 percent of tracked devices distributed for estimating burden. Each audited database entry prompts one distributor audit response. Because lists may be generated electronically, we estimate a burden of 1 hour to comply.

Dated: August 3, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16933 Filed 8–7–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1721]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Investigational New Drug Application Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by September 7, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0014. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Investigational New Drug Application Requirements

OMB Control Number 0910–0014—Revision

This information collection supports implementation of provisions of section 505 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355) and of the licensing provisions of the Public Health Service Act (42 U.S.C. 201 *et seq.*) that govern investigational new drugs and investigational new drug applications (INDs). Implementing regulations are found in part 312 (21 CFR part 312) and provide for the issuance of guidance documents under 21 CFR 10.115 to assist persons in complying with the applicable requirements (see § 312.145). The information collection applies to all clinical investigations subject to section 505 of the FD&C Act.

For efficiency of Agency operations, we are revising the information collection to include burden that may be associated with recommendations found in the guidance document entitled ''E6(R2) Good Clinical Practice: Integrated Addendum to ICH E6(R1) (March 2018),'' currently approved in OMB control number 0910–0843. The guidance document is intended to facilitate implementation of improved and efficient approaches to clinical trial design, including conduct, oversight, recording, and reporting. The recommendations in the guidance help us ensure that sponsors of clinical trials are adhering to requirements prescribed in FDA regulations regarding new drug applications (NDA) (part 312), INDs (21 CFR part 314), and biological licensing applications (BLA) (21 CFR part 601). The guidance document is available for download from our website at *https://www.fda.gov/media/93884/download.*

In the **Federal Register** of April 11, 2023 (88 FR 21682), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING [1]

§ 312.145: guidance documents; recommendations in ICH E6(R2) "good clinical practice"	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Section 5.0.7. Risk Reporting—Describing the Quality Management Approach Implemented in a Clinical Trial and Summarizing Important Deviations From the Predefined Quality Tolerance Limits and Remedial Actions Taken in the Clinical Study Report	1,880	3.9	7,362	3	22,082
Section 5 Quality Management (including sections 5.0.1 to 5.0.7)—Developing a Quality Management System	1,880	1	1,880	60	112,800
Total			9,242		134,882

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Respondents to the collection of information are sponsors of clinical trials of human drugs. Based on IND and NDA submission data, including submissions to both FDA's Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research, we estimate there are 1,880 respondents to the information collection. We assume the risk reporting recommendations and associated records discussed in section 5 of the guidance document requires 3 hours to complete, as reflected in table 1, row 1. In table 1, row 2, we account for burden associated with the development of a quality management system and associated recordkeeping also discussed in section 5 of the guidance document. We assume it will take respondents 60 hours to develop and implement each quality management system, as recommended. These estimates are based on our past experiences with INDs, BLAs, and NDAs submitted to FDA.

Since our last evaluation of the information collection burden we attribute to recommendations applicable to activities discussed in the guidance document, we have made no adjustments to our estimate.

Dated: August 3, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16923 Filed 8–7–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2851]

Agency Information Collection Activities; Proposed Collection; Comment Request; Time and Extent Applications for Nonprescription Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on time and extent applications for nonprescription drug products.

DATES: Either electronic or written comments on the collection of information must be submitted by October 10, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 10, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–2851 for ''Time and Extent Applications for Nonprescription Drug Products.'' Received comments, those

filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Time and Extent Applications for Nonprescription Drug Products

OMB Control Number 0910–0688—Extension

This information collection supports Agency regulations in 21 CFR part 330 regarding over-the-counter (OTC) human drugs and associated guidance. Specifically, FDA regulations in § 330.14 (21 CFR 330.14) establish additional criteria and procedures for classifying OTC drugs as generally recognized as safe and effective and not misbranded. These regulations provide that OTC drug products introduced into the U.S. market after the OTC drug review began in 1972 and OTC drug products without any marketing experience in the United States can be evaluated under the monograph process if the conditions (*e.g.,* active ingredients) meet certain ''time and extent'' criteria outlined in the regulations. The regulations allow a time and extent application (TEA) to be submitted to us by any party for our consideration to include new conditions in the OTC drug monograph system.

As explained in the guidance document entitled ''Time and Extent Applications for Nonprescription Drug Products,'' (September 2011), when submitting a TEA for FDA review, the submitter must provide evidence as described in § 330.14(c) demonstrating that the condition is eligible for inclusion in the monograph system. Section 330.14(d) specifies the number of copies and address for submission of a TEA. If we determine that a condition is eligible for inclusion in the OTC monograph, we will publish a notice of eligibility that requests the submission of data to demonstrate general recognition of the safety and effectiveness of the condition, and place the TEA on public display. The TEA submitter can then submit the safety and effectiveness information described in § 330.14(f).

The guidance document explains what information an applicant should submit to FDA to request that a drug product be included in the OTC drug monograph system. The guidance document also discusses format and content elements as well as the submission process, consistent with the applicable regulations.

Consistent with applicable statutory requirements, the information is required to be submitted electronically.

Description of Respondents: Any interested party may submit a TEA for a change to the OTC monograph.

We estimate the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
330.14(c) and (d); Time and extent application and submission of information.	7	~1.29	9	861.78 hours.	7,756

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
330.14(f) and (i); Submission of safety and effectiveness data, including data and information listed in 330.10(a)(2), a listing of all serious adverse drug experiences that may have occurred (330.14(f)(2)), and an official or proposed compendial monograph (330.14(i)).					
330.14(j) and (k); Submitter correspondence with FDA.					

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden reflects time needed for submitting applications, followup submissions of safety and efficacy data, and potential correspondence from submitters to FDA after a TEA has been submitted (*e.g.,* requests for an informal conference, signed statements that the submission is complete, requests for FDA to withdraw TEA consideration). The burden we attribute to reporting activities is assumed to be distributed among the individual elements and averaged among respondents.

Based on a recent review of the information collection and submissions of TEAs since our last request for OMB approval, we have made no adjustments to the currently approved burden estimates.

Dated: August 3, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16922 Filed 8–7–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–3107]

Pilot Program for Cosmetic Product Facility Registration and Listing Electronic Submissions User Acceptance Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Office of Cosmetics and Colors (OCAC) and the Office of the Chief Scientist (OCS) in the Food and Drug Administration (FDA, Agency, or we) are soliciting applications from members of the cosmetic product industry interested in participating in a voluntary pilot program to conduct user acceptance testing to help OCAC and OCS evaluate a potential new electronic submissions portal for cosmetic product facility registration and listing. This electronic submission portal is being implemented pursuant to the Modernization of Cosmetics Regulation Act of 2022 (MoCRA). OCAC and OCS plan to accept up to nine participants for the pilot program. The pilot program is intended to provide OCAC and OCS input to inform evaluation of this new electronic submission portal.

DATES: Interested parties should submit an electronic application to participate in this pilot program by August 22, 2023. We plan to conduct pilot testing beginning on or about September 15, 2023. See section III of this document for information on applying for participation.

ADDRESSES: If you are interested in participating in this pilot program, please submit an electronic application to *eRLC.testing@fda.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Ross, Office of the Chief Scientist, Food and Drug Administration, 301–796–4880 (this is not a toll-free number), email: *eRLC.testing@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 29, 2022, the President signed the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) into law, which included MoCRA. Among other provisions, MoCRA added section 607 to the Federal Food, Drug, and Cosmetic Act (FD&C Act), establishing requirements for cosmetic product facility registration and cosmetic product listing.

Section 607(a) of the FD&C Act requires every person that owns or operates a facility that engages in the manufacturing or processing of a cosmetic product for distribution in the United States to register each facility with FDA no later than 1 year after the date of enactment. In addition to the registration requirements, section 607(c) of the FD&C Act requires that for each cosmetic product, the responsible person submit to FDA ''a cosmetic product listing.'' Certain small businesses, as defined in section 612 of the FD&C Act, are exempt from the registration and listing requirements.

FDA previously had a voluntary cosmetics registration program (see 21 CFR parts 710 and 720). Because the information in the voluntary cosmetics registration program differs from the information required to be submitted under MoCRA, FDA does not consider previous submissions to the voluntary cosmetics registration program to satisfy the registration and listing mandated by MoCRA. Accordingly, FDA ended its voluntary registration program as of March 27, 2023, while we work toward establishing a new system, and information in the voluntary cosmetics registration program will not be transferred to this new system.

While electronic submission of registration and listing information is not required, FDA is strongly encouraging electronic submission to facilitate efficiency and timeliness of data submission and management by FDA. To that end, FDA will make an electronic portal available to streamline the data entry process for registration and product listing. Consequently, OCAC and OCS are announcing a pilot program to test the functionality and usability of the new electronic submission process.

II. Pilot Program Participation

The pilot program to evaluate the cosmetic product facility registration and listing electronic submission processes is to begin on or about September 15, 2023, and last approximately 2 weeks. FDA plans to select up to nine participants who represent a broad spectrum representation of the cosmetic product industry. Pilot program participants will receive training and may be asked to submit simulated regulatory submissions and/or information for their cosmetic products. During the pilot program, staff will be available to

address questions or concerns that may arise. Pilot program participants will also be asked to provide written and verbal feedback during their training and after they submit the simulated registration and listing information. This feedback will assist OCAC and OCS in ensuring the electronic submission portal is usable and functional to ensure industry will be able to meet its statutory obligations. OCAC and OCS estimate that each individual participant's involvement may require about 8 hours over the 2-week period. OCAC and OCS are soliciting applications from members of the cosmetic product industry who will be required to register their facilities and list their products, such as cosmetic product manufacturers, as well as entities that may act as authorized agents for manufacturers. At its discretion, OCAC and OCS may withdraw a participant from the pilot program for not completing the requested activities within requested timeframes.

None of the information submitted during the pilot will fulfill a participant's registration and listing responsibilities pursuant to MoCRA. Participants will need to submit their information in the electronic registration and listing system once it is available for submissions or through a paper form to fulfill their registration and listing responsibilities pursuant to MoCRA.

Entities that may be eligible to participate in this voluntary pilot program for cosmetic product facility registration and listing are limited to those firms following the procedures set out in section III. and that also meet the two selection criteria that follow:

1. required to submit cosmetic product facility registration and listing information to FDA pursuant to MoCRA by December 29, 2023; and,

2. willing to provide feedback on the cosmetic product facility registration and listing electronic submission process.

III. Applications for Participation

To be considered to participate in the pilot program, entities should submit a statement of interest for participation to *eRLC.testing@fda.hhs.gov.* The statement of interest should include the following information: company and contact name, contact phone number, and contact email address, size of the company (*i.e.,* number of personnel and the approximate amount of revenue per year), agreement to the selection criteria in section II of this document, as well as the number of cosmetic product(s) and a description of the cosmetic product(s) intended to be submitted in the pilot program in enough detail to verify that the cosmetic product(s) are not drug product(s). A firm can choose to submit information for a subset of their products rather than all their products in the pilot program.

Additionally, although not required for consideration, FDA is interested in whether you are a manufacturer or may act as an authorized agent, and whether you have previously submitted registration and listing information to the Agency for any regulated product. Once statements of interest for participation in the pilot are received, FDA will contact interested applicants to confirm selection for the pilot program. FDA will not notify interested applicants who are not selected for the pilot program. FDA will select no more than nine participants, who best meet the selection criteria and who reflect a broad spectrum of cosmetic product manufacturers and processors, including companies that range in size and develop a range of products, or are an authorized agent. In the event a large number of submissions are received, FDA may only review a small number of submissions in order to identify nine (or fewer) for the pilot program.

Dated: August 2, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16772 Filed 8–7–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1157]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Generic Clearance for Qualitative Data To Support Social and Behavioral Research for Food, Dietary Supplements, Cosmetics, and Animal Food and Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

DATES: Submit written comments (including recommendations) on the collection of information by September 7, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0891. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Generic Clearance for Qualitative Data To Support Social and Behavioral Research for Food, Dietary Supplements, Cosmetics, and Animal Food and Feed

OMB Control Number 0910–0891—Extension

OMB's Office of Information and Regulatory Affairs has issued memoranda that provides an overview of administrative flexibilities available to assist Agencies in complying with their statutory obligations under the PRA. Among these flexibilities is use of a generic clearance for certain information collection activities. A generic clearance may be appropriate when (1) the need for the data collection can be evaluated in advance, as part of the review of the proposed plan, but (2) the Agency cannot determine the details of the specific individual collections until a later time. Generic clearances cover collections that are voluntary, low-burden, and uncontroversial.

This generic clearance supports research intended to help the Center for Food Safety and Applied Nutrition understand stakeholders' perceptions, attitudes, motivations, and behaviors. To ensure that communications activities have the highest effect, we will conduct research and studies relating to the control and prevention of disease and the safety and health of the public. FDA is requesting OMB approval for the use of this generic collection of information that allows

FDA to use qualitative social/behavioral science data collection techniques (*i.e.,* individual indepth interviews, small group discussions, focus groups, and observations) to better understand stakeholders' perceptions, attitudes, motivations, and behaviors regarding various issues associated with food and cosmetic products, dietary supplements, and animal food and feed. Understanding these consumers', manufacturers', and producers' perceptions, attitudes, motivations, and behaviors plays an important role in improving FDA's communications that impact these various stakeholders and assists in the development of quantitative study proposals, complementing other important research efforts in the Agency.

To obtain approval for an individual generic submission collection that meets the conditions of this generic clearance, an abbreviated supporting statement will be submitted to OMB along with supporting documentation (*e.g.,* a copy of the interview or moderator guide, screening questionnaire).

Selection for potential respondents is done via a screening process to match the best possible respondent to each individual generic submission. Respondents to individual requests made under the generic clearance, once approved by OMB, may include a wide range of consumers and other FDA stakeholders, such as producers and manufacturers who are regulated under FDA-regulated food and cosmetic products, dietary supplements, and animal food and feed. Participation is voluntary.

In the **Federal Register** of April 10, 2023 (88 FR 21193), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment was received but was not responsive to the four collection of information topics solicited and therefore will not be discussed.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of interview	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Individual Indepth Interview Screening	4,800	1	4,800	0.08 (5 minutes)	384
Individual Indepth Interviews	400	1	400	1	400
Focus Group/Small Group Participant Screening	10,800	1	10,800	0.08 (5 minutes)	864
Focus Groups/Small Group Discussion	3,600	1	3,600	1.5	5,400
Observation Screening	720	1	720	0.08 (5 minutes)	58
Observations	144	1	144	2	288
Total			20,464		7,394

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Current estimates are based on both historical numbers of participants from past projects as well as estimates for projects to be conducted in the next 3 years. The collections we have conducted under this generic collection of information have informed and helped us better understand stakeholder perceptions, attitudes, motivations, and behaviors to help us improve our communications to them.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: August 2, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16924 Filed 8–7–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–2439]

QTc Information in Human Prescription Drug and Biological Product Labeling; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''QTc Information in Human Prescription Drug and Biological Product Labeling.'' This guidance is intended to assist applicants with incorporating corrected QT (QTc) interval prolongation-related information into the labeling of non-antiarrhythmic human prescription drug and biological products. The guidance provides recommendations on how and where to appropriately include the clinically relevant information on QTc interval prolongation in the labeling, in accordance with regulatory requirements for the content and format of human prescription drug labeling.

DATES: Submit either electronic or written comments on the draft guidance by October 10, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your

comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–D–2439 for ''QTc Information in Human Prescription Drug and Biological Product Labeling.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: William Pierce, Oncology Center of Excellence, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2159, Silver Spring, MD 20993, 301–796–0521; or Diane Maloney, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''QTc Information in Human Prescription Drug and Biological Product Labeling.'' This guidance is intended to assist applicants with incorporating corrected QT (QTc) interval prolongation-related information into the labeling of non-antiarrhythmic human prescription drug and biological products. An undesirable property of some non-antiarrhythmic drugs is their ability to delay cardiac repolarization. A delay in cardiac repolarization creates an electrophysiological environment that favors the development of torsade de pointes (TdP), which can degenerate into ventricular fibrillation, leading to sudden death. While the degree of QT prolongation is recognized as an imperfect biomarker for proarrhythmic risk, in general, there is a qualitative relationship between QT prolongation and the risk of TdP, especially for drugs that cause prolongation of the QT interval due to inhibition of the delayed rectifier potassium channel.

FDA and the International Council for Harmonisation recommend that applicants for most non-antiarrhythmic drugs with systemic bioavailability assess effect on cardiac repolarization early in clinical development including a clinical electrocardiographic evaluation. The QTc assessment in early clinical development may inform the intensity and continuation of electrocardiogram (ECG) monitoring in late phase clinical trials. A finding of QTc interval prolongation in early clinical development may support continuing ECG monitoring in subsequent clinical trials. The guidance provides recommendations and examples on how and where to appropriately include the clinically relevant information on QTc interval prolongation in labeling, in accordance with regulatory requirements for the content and format of human prescription drug labeling.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''QTc Information in Human Prescription Drug and Biological Product Labeling.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910–0572; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; and the collections

of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: August 3, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16930 Filed 8–7–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIEHS Videocast at the following link: *https://www.niehs.nih.gov/news/webcasts/index.cfm.*

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: September 12–13, 2023.

Open: September 12, 2023, 9:00 a.m. to 9:15 a.m.

Agenda: Call to Order and Opening Remarks, Review of Confidentiality and Conflict of Interest, and Consideration of June 2023 Meeting Minutes.

Open: September 12, 2023, 9:15 a.m. to 10:00 a.m.

Agenda: All of Us.

Open: September 12, 2023, 10:00 a.m. to 10:45 a.m.

Agenda: AI, NAM and Toxicology.

Open: September 12, 2023, 10:45 a.m. to 11:30 a.m.

Agenda: AI and multi-omic integration.

Open: September 12, 2023, 12:30 p.m. to 1:15 p.m.

Agenda: AI and the Exposome.

Open: September 12, 2023, 1:15 p.m. to 2:00 p.m.

Agenda: Ethical AI.

Open: September 12, 2023, 2:00 p.m. to 2:45 p.m.

Agenda: DTT Speaker ToxPipe: Semi-Autonomous AI Integration of Diverse Toxicological Data Streams.

Open: September 12, 2023, 2:45 p.m. to 3:45 p.m.

Agenda: Council Discussion.

Closed: September 12, 2023, 4:00 p.m. to 4:15 p.m.

Agenda: To review and evaluate review of Confidentiality and Conflict of Interest.

Closed: September 12, 2023, 4:15 p.m. to 5:00 p.m.

Agenda: To review and evaluate consideration of Grant Applications.

Date: September 13, 2023.

Open: September 13, 2023, 9:00 a.m. to 10:00 a.m.

Agenda: Report of the NIEHS Director.

Open: September 13, 2023, 10:00 a.m. to 10:45 a.m.

Agenda: Report of the DERT Director.

Open: September 13, 2023, 10:45 a.m. to 11:15 a.m.

Agenda: Report on Multi-Omics Program with HG.

Open: September 13, 2023, 11:15 a.m. to 12:00 p.m.

Agenda: EPCOT Concept.

Open: September 13, 2023, 12:00 p.m. to 12:45 p.m.

Agenda: Worker Training Program Concept.

Place: NIEHS, Building 101, Rodbell Auditorium, Research Triangle Park, NC.

Contact Person: David M. Balshaw, BA, Ph.D., Acting Director and Chief, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–27, Research Triangle Park, NC 27709–2233, 984–287–3234, *balshaw@niehs.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.niehs.nih.gov/dert/c-agenda.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 2, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–16854 Filed 8–7–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: September 8, 2023.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3172, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3172, Bethesda, MD 20892, (301) 402–8837, *barbara.thomas@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 2, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–16855 Filed 8–7–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group Kidney, Urologic and Hematologic Diseases D Study Section.

Date: October 17–19, 2023.

Time: 5:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jason D. Hoffert, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Boulevard, Room 7343, Bethesda, MD 20892–2542 (301) 594–8898 *hoffertj@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 2, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–16857 Filed 8–7–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Council of Councils.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Council of Councils.

Date: September 7, 2023.

Open: 10:00 a.m. to 3:15 p.m.

Agenda: Call to Order and Introductions; Announcements; NIH Program Updates; Strategic Plans; and Other Business of the Committee.

Place: National Institutes of Health, Building 1, 1 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Closed: 3:15 p.m. to 4:15 p.m.

Agenda: Review of Grant Applications.

Place: National Institutes of Health, Building 1, 1 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Franziska Grieder, D.V.M., Ph.D., Executive Secretary, Council of Councils, Director, Office of Research Infrastructure Programs, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, 6701 Democracy Boulevard, Room 948, Bethesda, MD 20892, *GriederF@mail.nih.gov*, 301–435–0744.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Council of Council's home page at *http://dpcpsi.nih.gov/council/* where an agenda will be posted before the meeting date.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: August 2, 2023.

David W Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–16853 Filed 8–7–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Epigenetics of Aging and Age-Associated Diseases.

Date: November 3, 2023.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joshua Jin-Hyouk Park, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 496–9666, *joshua.park4@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 2, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–16856 Filed 8–7–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[Docket No. ICEB–2022–0014]

RIN 1653–ZA34

Employment Authorization for Haitian F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Crisis in Haiti; Correction

AGENCY: U.S. Immigration and Customs Enforcement; Department of Homeland Security.

ACTION: Notice; correction.

SUMMARY: U.S. Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS), is making a correction to the notice titled ''Employment Authorization for Haitian F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Crisis in Haiti'' that published in the **Federal Register** on Thursday, January 26, 2023.

DATES: August 8, 2023.

FOR FURTHER INFORMATION CONTACT: Sharon Snyder, Unit Chief, Policy and Response Unit, Student and Exchange Visitor Program, MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536–5600; email: *sevp@ice.dhs.gov,* telephone: (703) 603–3400. This is not a toll-free number. Program information can be found at *https://www.ice.gov/sevis/.*

SUPPLEMENTARY INFORMATION: On Thursday, January 26, 2023, DHS published a notice in the **Federal Register** at 88 FR 5016. Due to typographical errors, ICE is replacing paragraphs within the following sections, so that the eligibility requirements are consistent with the correct F–1 Notice eligibility language: ''Who is covered by this notice?'' and ''Will the suspension of the applicability of the standard student employment requirements apply to an individual who receives an initial F–1 visa and makes an initial entry into the United States after the effective date of this notice in the **Federal Register**?''. ICE is also correcting an incorrect citation. The corrections are as follows:

(1) On pages 5016 and 5019, under the sections ''Who is covered by this notice?'' and ''Will the suspension of the applicability of the standard student employment requirements apply to an individual who receives an initial F–1 visa and makes an initial entry into the United States after the effective date of this notice in the **Federal Register**?'', ICE is replacing the paragraphs to correct the eligibility requirements consistent with the correct F–1 Notice eligibility language.

(2) On page 5020 and 5021, ICE is correcting both instances of the CFR citation to direct the public to the correct version of the 8 CFR 103.7(c) (Oct. 1, 2020).

Correction

In FR 2023–01593, **Federal Register** of January 26, 2023, ICE is correcting the following errors:

1. On page 5016, third column, the text following the heading ''Who is covered by this notice?'' is corrected to read as follows:

This notice applies exclusively to F–1 nonimmigrant students who meet all of the following conditions:

(1) Are a citizen of Haiti, regardless of country of birth (or an individual having no nationality who last habitually resided in Haiti);

(2) Were lawfully present in the United States on the date of publication of this notice in F–1 nonimmigrant status, under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment for F–1 nonimmigrant students;

(4) Are currently maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current crisis in Haiti.

This notice applies to F–1 nonimmigrant students in an approved private school in kindergarten through grade 12, public school grades 9 through 12, and undergraduate and graduate education. An F–1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institution remains eligible for the relief provided by means of this notice.

2. On page 5019, second column, the text following the heading ''Will the suspension of the applicability of the standard student employment requirements apply to an individual who receives an initial F–1 visa and makes an initial entry into the United States after the effective date of this notice in the **Federal Register**?'' is corrected to read as follows:

No. The suspension of the applicability of the standard regulatory requirements only applies to certain F–1 nonimmigrant students who meet the following conditions:

(1) Are a citizen of Haiti, regardless of country of birth (or an individual having no nationality who last habitually resided in Haiti);

(2) Were lawfully present in the United States on the date of publication of this notice in F–1 nonimmigrant status, under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment for F–1 nonimmigrant students;

(4) Are currently maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current crisis in Haiti.

This notice applies to F–1 nonimmigrant students in an approved private school in kindergarten through grade 12, public school grades 9 through 12, and undergraduate and graduate education. An F–1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institution remains eligible for the relief provided by means of this notice.

3. On page 5020, third column, under the heading ''How may an eligible F–1 nonimmigrant student obtain employment authorization for off-campus employment with a reduced course load under this notice?'', second paragraph, the reference ''8 CFR 103.7(c)'' is corrected to read ''8 CFR 103.7(c) (Oct. 1, 2020)'';

4. On page 5021, second column, item (a)(2) under ''Processing'', the reference ''8 CFR 103.7(c)'' is corrected to read ''8 CFR 103.7(c) (Oct. 1, 2020)''.

Alejandro Mayorkas,

Secretary, Department of Homeland Security.

[FR Doc. 2023–17042 Filed 8–7–23; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Opening of Opportunity for Shippers To Register as Certified Cargo Screening Facilities

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice.

SUMMARY: The Transportation Security Administration (TSA) is announcing an opportunity for qualified, interested shippers who agree to implement

certain security controls to join the Certified Cargo Screening Program (CCSP). This notice provides the procedures necessary to initiate the registration process.

DATES: Applicable August 8, 2023.

ADDRESSES: Interested persons can contact *aircargoprograms@tsa.dhs.gov* to obtain a copy of the information discussed in this notice.

FOR FURTHER INFORMATION CONTACT: Thomas Friedman, Industry Engagement Manager, Air Cargo Division, Policy Plans and Engagement, TSA; Telephone (571) 227–3555; email: *aircargoprograms@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

TSA is required by law to ensure the adequacy of security measures for the transportation of air cargo.[1] TSA developed the CCSP in 2009[2] to provide additional means of compliance with statutory requirements for screening 100 percent of cargo transported on passenger aircraft.[3] The program established a new regulatory framework to screen cargo to TSA standards, relieving the air carrier of the space, time, and cost pressures associated with screening cargo using technical means on airport grounds. Any cargo screening program that is compliant with the CCSP regulation meets all national and international standards required to transport cargo aboard any commercial aircraft, including passenger and all-cargo aircraft. Under 49 CFR part 1549, all registered CCSFs must operate under the Certified Cargo Screening Standard Security Program (CCSSSP).

Since establishment of the CCSP, TSA has recognized other capabilities under this regulatory structure. For example, in 2018, TSA announced an opportunity for canine providers to become Certified Cargo Screening Facilities-Canine (CCSF–K9).[4] The availability to use CCSF–K9s to screen cargo was a critical part of TSA's efforts to support implementation of a mandate for members of the International Civil Aviation Organization (ICAO) to screen 100 percent of air cargo transported on international aircraft, with no distinction for passenger versus all-cargo aircraft, beginning June 30, 2021. CCSF–K9s are required to comply with the security program issued under the authority of 49 CFR part 1549.

TSA has also historically recognized Shipper-CCSFs.[5] Shipper-CCSFs are manufacturers who apply the security controls required under the CCSP in the course of manufacturing or packaging their products, who can directly transfer their manufactured goods or products to an aircraft operator without a requirement for additional screening. Cargo tendered by a Shipper-CCSF may be transported on any commercial aircraft. Many medical device and pharmaceutical manufacturers operate today as Shipper CCSFs. The CCSP—including CCSFs, CCSFs-K9 and Shipper-CCSFs—is fully compliant with ICAO requirements for air cargo. TSA has approved Shipper-CCSFs when requested, but has never fully integrated these operations into the CCSSSP.

II. How To Become a Registered CCSF

TSA has decided to streamline its security programs by incorporating procedures for Shipper CCSFs into the CCSSSP and, through this notice, ensuring broad announcement of this opportunity for shippers to register to operate as CCSFs. To operate as a CCSF, a shipper must register with TSA's CCSSSP office and be approved as a holder of the CCSSSP. The security program includes the requirements to become a CCSF and, as applicable to shippers and manufacturers, the operational requirements for screening their own products during the course of manufacturing and packaging, and to screen other air cargo items to national and international security standards.

TSA is publishing this notice to ensure all interested persons are aware of the opportunity to become a CCSF. To initiate the registration process, shippers must send an email indicating their interest to the email address identified above under **FOR FURTHER INFORMATION CONTACT** and TSA will respond with additional information regarding the application requirements, including the required procedures to obtain access to Sensitive Security Information (SSI) pursuant to 49 CFR part 1520. Once TSA approves the applicant's access to SSI, TSA will provide a copy of the CCSSSP, which includes the detailed requirements for an application to become a CCSF. In general, each applicant must submit the information required by 49 CFR 1549.7(a)(1). Each applicant also must undergo an onsite corporate assessment performed by TSA. TSA will use this information to evaluate the applicant's qualifications and readiness to participate in the CCSP.

The shipper may commence operations as a CCSF under the security program after it receives written approval from TSA that all of TSA's requirements are met. As a CCSF, the shipper could directly transfer cargo to an aircraft operator without requiring additional screening. A new registration under the CCSP is effective for 36 months from the date of approval.

Dated: August 3, 2023.

Eddie D. Mayenschein,

Assistant Administrator, Policy, Plans, and Engagement.

[FR Doc. 2023–16928 Filed 8–7–23; 8:45 am]

BILLING CODE 9110–05–P

[1] 49 U.S.C. 44901.

[2] 76 FR 51848 (Aug. 18, 2011), codified at 49 CFR part 1549.

[3] *See* 49 U.S.C. 44901(g), added by section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53 (121 Stat. 266; Aug. 3, 2007).

[4] *See* 83 FR 60883 (Nov. 27, 2018).

[5] *See, e.g.,* 01 FR 26229 (May 13, 2021), 30-day notice for information collection under 49 CFR part 1548, ''the CCSP allows *shippers,* indirect air carriers, and other entities to voluntarily participate in a program through which TSA certifies entities to screen air cargo off-airport before it is tendered to air carriers for transport on passenger aircraft.'' (*emphasis* added)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–47]

30-Day Notice of Proposed Information Collection: Office of Housing Counseling—Agency Performance Review; OMB Control No.: 2502–0574

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* September 7, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of

Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 6, 2022 at 87 FR 74650.

A. Overview of Information Collection

Title of Information Collection: Office of Housing Counseling—Agency Performance Review.

OMB Approval Number: 2502–0574.

OMB Expiration Date: August 31, 2024.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–9910, Office of Housing Counseling—Agency Performance Review.

Description of the need for the information and proposed use: The revisions to the currently approved collection are needed to ensure the document complies with the requirements of an OIG audit that found the collection was not in compliance with 24 CFR 214.3 and 2 CFR 200.501, Audit requirements. The information is used to assist HUD in evaluating the managerial and financial capacity of organizations to sustain operations sufficient to implement HUD-approved housing counseling programs. The collection of information assists HUD in reducing its own risks from fraudulent activities or supporting inefficient or ineffective housing counseling programs. Since HUD publishes a web list of HUD-approved Housing Counseling Agencies and maintains a toll-free housing counseling hotline, performance reviews help HUD ensure that individuals seeking assistance from these approved agencies will receive high quality services.

HUD uses performance reviews to ascertain the professional and management capacity of HUD-approved housing counseling agencies to provide adequate housing counseling services necessary to comply with the requirements of the Housing and Urban Development Act and to ensure that grant-funded organizations comply with HUD and OMB administrative and financial regulations. If this information is not collected, HUD will be unable to effectively monitor the Housing Counseling Program to guard against waste, fraud, abuse, or inappropriate program practices. This collection provides the means to meet that obligation.

Respondents: Not-for-profit institutions; State, local or Tribal government.

Estimated Number of Respondents: 353.

Estimated Number of Responses: 353.

Frequency of Response: 1 per agency performance review.

Average Hours per Response: 9.5.

Total Estimated Burden: 3,354 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–16862 Filed 8–7–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7067–N–02]

60-Day Notice of Proposed Information Collection: Comment Request; "Report Housing Discrimination" Form HUD–903.1, HUD–903.1A, HUD–903.1B, HUD–903.1C, HUD–903.1F, HUD–903.1CAM, HUD–903.1KOR, HUD–903.1RUS, HUD–903–1_Somali; OMB Control No.: 2529–0011

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO), 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:* October 10, 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: Erik Heins, Director, Enforcement Support

Division, FHEO Office of Enforcement, Office of Fair Housing and Equal Opportunity (FHEO), U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington, DC, 20410–2000; telephone number (202) 402–5887 (this is not a toll-free number), or email at *ERIK.A.HEINS@hud.gov.* HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: HUD is requesting this proposed extension of approval for a currently approved information collection to the OMB for review, as required by the Paperwork Reduction Act of 1995 [44 U.S.C. chapter 35, as amended]. On June 8, 2023, OMB issued a Notice of Emergency Approval for Program-related revisions to HUD's previously approved Form HUD–903.1 Series information collection. The OMB Emergency Approval expires on December 31, 2023.

The ''Report Housing Discrimination'' Form (HUD–903.1) is used for the collection of pertinent information from persons or entities who wish to file housing discrimination complaints with HUD/FHEO under section 810(a) of the Fair Housing Act of 1968 (Act), as amended [42 U.S.C. 3601 *et seq.* and 24 CFR part 103, subparts A and B] and/or under other Federal civil rights laws administratively enforced by FHEO. Effective as of October 1, 2022, FHEO was also authorized to file and investigate complaints alleging violations of the 2022 reauthorization of the *Violence Against Women Act* (VAWA) [34 U.S.C. 12494(c)]. Accordingly, FHEO requested and received OMB's emergency approval to revise the previously approved ''Report Housing Discrimination'' Form by adding information necessary to inform the public, including potential VAWA complainants/survivors, about FHEO's new VAWA enforcement authority. On January 20, 2023, FHEO also published Notice FHEO–2023–01: ''*Notice to Public Regarding FHEO Enforcement Authority and Procedures: Violence Against Women Act 2022 (VAWA).*'' Notice FHEO–2023–01 describes FHEO's new procedures for conducting intake, filing, investigating, and resolving VAWA complaints. FHEO has also established a ''Your Rights Under the Violence Against Women Act (VAWA)'' web page that provides detailed guidance (including Notice FHEO–2023–01) for potential VAWA complainants/survivors, at: *https://www.hud.gov/program_offices/fair_housing_equal_opp/VAWA.*

HUD's Office of Fair Housing and Equal Opportunity (FHEO) staff uses the currently-approved Form HUD–903.1 Series information collection at the intake stage of case processing to verify that a person or entity has standing as an aggrieved person to file a complaint under the Act; that the respondent is covered by the requirements of the Act; that the subject dwelling and/or transaction is covered by the requirements of the Act; that the alleged discriminatory activity is prohibited under the Act (subject matter jurisdiction); and that the alleged discriminatory activity occurred within the Act's one-year statute of limitations for filing a complaint with HUD. The currently approved Form complies with the procedures described in HUD's Fair Housing Act regulation at 24 CFR part 103, subpart B, subsections 103.10, 103.15, 103.20, 103.25, 103.30, 103.35, and 103.40. The Form also provides a complete list of mailing addresses, email addresses, and fax numbers for HUD's ten (10) Regional FHEO Offices.

The currently approved Form HUD–903.1 Series will not increase the information collection burden for aggrieved persons. The Form asks an aggrieved person to provide their full name; address; phone and/or email contact information; and alternative contact information. The Form also asks the aggrieved person to answer five (5) preliminary questions that may establish HUD's authority (jurisdiction) to file and investigate a housing discrimination complaint.

The currently approved Form HUD–903.1 Series will not increase the total annual burden hours for aggrieved persons who submit the Form to HUD via the internet. Therefore, HUD does not believe that the time for completing the online version of the Form will exceed the current 45-minute time limit for internet submissions.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed extension of approval for a currently approved collection of information concerning alleged discriminatory housing practices under the Fair Housing Act [42 U.S.C. 3601 *et seq.*]. The Fair Housing Act prohibits discrimination in the sale, rental, occupancy, advertising, and insuring of residential dwellings; and in residential real estate-related transactions; and in the provision of brokerage services, based on race, color, religion, sex, handicap [disability], familial status, or national origin. The Fair Housing Act also makes it unlawful to coerce, intimidate, threaten, or interfere with any person who has (1) exercised their fair housing rights; or (2) aided or encouraged another person to exercise their fair housing rights.

Any person who claims to have been injured by a discriminatory housing practice, or any person who believes that they will be injured by a discriminatory housing practice that is about to occur, may file a complaint with HUD not later than one year after the alleged discriminatory housing practice(s) occurred or terminated. FHEO designed the ''Report Housing Discrimination'' Form HUD–903.1 Series to promote consistency in the documents that, by statute, must be provided to persons or entities against whom complaints are filed [''*respondents*''], and for the general public's information and convenience. Section 103.25 of HUD's Fair Housing Act regulation describes the jurisdictional information that must be included in each complaint filed with HUD. For purposes of meeting the Act's one-year time limitation for filing complaints with HUD, complaints need not be initially submitted on the Form that HUD provides. ''Report Housing Discrimination'' Form HUD–903.1 (English language), HUD–903.1A (Spanish language), HUD–903.1B (Chinese language), HUD–903.1C (Arabic language), HUD–903.1F (Vietnamese language), HUD–903.1CAM (Khmer/Cambodian language), HUD–903.1KOR (Korean language), HUD–903.1RUS (Russian language), and HUD–903–1_(Somali language) may be submitted to HUD in person, by mail, by fax, email, or via the internet. FHEO staff uses the information provided on the Form to verify HUD's authority to investigate the aggrieved person's allegations under the Fair Housing Act and/or under other Federal civil rights laws that FHEO administratively enforces.

A. Overview of Information Collection

Proposed Revised Title of Information Collection: Report Housing Discrimination.

OMB Control Number: 2529–0011.

Type of Request: Proposed extension of approval for a previously approved information collection.

Form Number: HUD–903.1.

Description of the need for the information and proposed use: FHEO uses the ''Report Housing Discrimination'' Form HUD–903.1 Series to collect pertinent information from persons wishing to file housing

discrimination complaints with HUD under the Fair Housing Act. The Fair Housing Act makes it unlawful to discriminate in the sale, rental, occupancy, advertising, or insuring of residential dwellings; or to discriminate in residential real estate-related transactions; or in the provision of brokerage services, based on race, color, religion, sex, handicap [disability], familial status, or national origin. The Fair Housing Act also makes it unlawful to coerce, intimidate, threaten, or interfere with any person who has (1) exercised their fair housing rights; or (2) aided or encouraged another person to exercise their fair housing rights.

The ''Report Housing Discrimination'' Form HUD–903.1 Series facilitates the collection of pertinent information from persons or entities who wish to file housing discrimination complaints with HUD under section 810(a) of the Fair Housing Act of 1968 (Act), as amended [42 U.S.C. 3601 *et seq.* and 24 CFR part 103, subparts A and B]. Any person who claims to have been injured by a discriminatory housing practice, or any person who believes that they will be injured by a discriminatory housing practice that is about to occur, may file a complaint with HUD not later than one year after the alleged discriminatory housing practice occurs or terminates. FHEO staff uses the information to verify that the person or entity has standing as an aggrieved person to file a complaint under the Act; that the respondent is covered by the requirements of the Act; that the subject dwelling and/or transaction is covered by the requirements of the Act; that the alleged discriminatory activity is prohibited under the Act (subject matter jurisdiction); and that the alleged discriminatory activity occurred within the Act's one-year statute of limitations for filing a complaint with HUD. This information is subsequently used to notify persons or entities that have been accused of engaging in discriminatory housing practices [''*respondents*''], as required under 42 U.S.C. 3610(1)(B)(ii) of the Act, and under 24 CFR 103.202(a) of HUD's Fair Housing Act regulation. FHEO also uses this Form to establish HUD's authority to conduct investigations under other Federal civil rights authorities, including, but not limited to, title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d-1]; section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794]; title II of the Americans with Disabilities Act of 1990 [42 U.S.C. 12131–12134]; section 109 of title I of the Housing & Community Development Act of 1974 [42 U.S.C. 5309]; the Age Discrimination Act of 1975 [42 U.S.C. 6101–6107]; title X of the Education Amendments Act of 1972 [20 U.S.C. 1681–83, 85–88]; and under the 2022 reauthorization of the Violence Against Women Act (VAWA) [34 U.S.C. 12494(c)].

To further public education about unlawful housing discrimination, the Form also contains a non-exhaustive list of activities that are prohibited under the Fair Housing Act and under VAWA. Electronic versions of the Form are currently available on FHEO's ''REPORT HOUSING DISCRIMINATION'' web page in English, Spanish, Chinese, Vietnamese, Korean, Arabic, Khmer/Cambodian, Russian, and Somali language texts at: *https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint.*

The Form may be submitted to HUD by mail, email, fax, electronically via the internet, or presented in person to HUD's Regional and/or Field FHEO Offices. HUD/FHEO staff uses this information collection as a source of pertinent data for the HUD Enforcement Management System [''HEMS''], HUD's electronic Fair Housing Act complaint processing database. FHEO uses the HEMS database to conduct intake/assessment of housing discrimination claims; to perfect and generate jurisdictional complaints; to develop investigative plans; to store factual evidence obtained during complaint investigations; to document conciliation efforts under section 810(b) of the Act and voluntary compliance efforts under other Federal civil rights authorities; to generate Final Investigative Reports and Determinations of Reasonable Cause and Determinations of No Reasonable Cause under sections 810(b) and 810(g) of the Act; and to generate digital case files for administrative enforcement actions.

Agency form numbers, if applicable: Form HUD–903.1 (English), Form HUD–903.1A (Spanish), Form HUD–903.1B (Chinese), Form HUD–903.1C (Arabic), Form HUD–903.1F (Vietnamese), Form HUD–903.1CAM (Khmer/Cambodian), Form HUD–903.1KOR (Korean), Form HUD–903.1RUS (Russian), and Form HUD–903–1_(Somali).

Members of affected public: Individuals or households; businesses or other for-profit, not-for-profit institutions; State, Local, or Tribal Governments.

Estimation of the total number of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of responses: During FY 2022, HUD/FHEO staff received approximately 29,791 information submissions from persons wishing to file housing discrimination complaints with HUD. Telephone contacts accounted for 1,529 of the total FY 2022 submissions. The remaining 28,262 submissions of potential complaint information were transmitted to HUD by mail, in-person, by email, and via the internet. HUD estimates that an aggrieved person takes approximately 45 minutes to complete the HUD 903.1 Form. HUD/FHEO staff uses the information collected from the Form HUD–903.1 Series to generate a formal housing discrimination complaint in the HEMS database. This formal complaint is subsequently signed by the aggrieved person(s) under penalty of perjury and is served on the respondent(s) by personal service or by certified mail, as required under 24 CFR 103.202(a) of HUD's Fair Housing Act regulation.

Each aggrieved person will complete the HUD 903.1 Form on a one-time basis. Therefore, HUD estimated the annual burden hours for this information collection at 21,196 hours.

$28{,}262 \times 1$ (frequency) $\times .45$ minutes (.75 hours.) = 21,196 hours.

Annualized cost burden to complainants: HUD does not provide postage-paid mailers for this information collection. Accordingly, persons who choose to submit the HUD–903.1 Form to HUD by regular mail must pay the United States Postal Service's (USPS's) prevailing First-Class Postage rate. At the time of this Notice, the annualized cost burden per person, based on a one-time submission of this Form to HUD via the USPS's First-Class Postage rate is Sixty-Three Cents ($0.63) per person. Aggrieved persons may also submit the Form to HUD in person, by fax, by email, or electronically via the internet.

There are no additional annualized cost burdens to aggrieved persons or record keepers resulting from this information collection.

Status of the proposed information collection: Proposed extension of a currently approved information collection of pertinent information from aggrieved persons wishing to file housing discrimination complaints with HUD.

B. Solicitation of Public Comments

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 information collection is necessary for the performance of the agency's functions;

(2) Whether the agency's estimate of burdens imposed by the information collection is accurate;

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

(4) Ways to minimize the burdens of the information collection on aggrieved persons, including 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, as amended.

Erik Heins,

Director, Enforcement Support Division, FHEO.

[FR Doc. 2023–16916 Filed 8–7–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R7–ES–2022–0155; FF07CAMM00–FXES111607MWA07]

Marine Mammal Protection Act; Stock Assessment Reports for the Pacific Walrus Stock and Three Northern Sea Otter Stocks in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the Marine Mammal Protection Act and its implementing regulations, we, the U.S. Fish and Wildlife Service, after consideration of comments received from the public have revised the marine mammal stock assessment reports (SARs) for the Pacific walrus (*Odobenus rosmarus divergens*) and for each of the three northern sea otter (*Enhydra lutris kenyoni*) stocks in Alaska. We now make these four final revised SARs available to the public.

ADDRESSES: *Obtaining Documents:* You may view the final revised stock assessment reports at *https://www.regulations.gov* in Docket No. FWS–R7–ES–2022–0155, or you may request copies from the contact in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Charles Hamilton, Marine Mammals Management, by telephone at 907–786–3804; by email at *charles_hamilton@fws.gov;* or by mail at U.S. Fish and Wildlife Service, MS–341, 1011 East Tudor Road, Anchorage, AK, 99503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and its implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 18, we, the U.S. Fish and Wildlife Service (Service), have developed four final revised marine mammal stock assessment reports (SARs) for species in Alaska. These revised SARs are for the Pacific walrus (*Odobenus rosmarus divergens*) and for each of the three stocks of the northern sea otter (*Enhydra lutris kenyoni*) in Alaska—the Southwest, Southcentral, and Southeast stocks.

Background

Under the MMPA and its implementing regulations, we regulate the taking, possession, transportation, purchasing, selling, offering for sale, exporting, and importing of marine mammals. One of the goals of the MMPA is to ensure that each stock of marine mammals occurring in waters under U.S. jurisdiction does not experience a level of human-caused mortality and serious injury (M/SI) that is likely to cause the stock to be reduced below its optimum sustainable population level (OSP). The MMPA defines the OSP as ''the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element'' (16 U.S.C. 1362(9)).

To help accomplish the goal of maintaining marine mammal stocks at their OSPs, Section 117 of the MMPA requires the Service and the National Marine Fisheries Service (NMFS) to prepare a SAR for each marine mammal stock that occurs in waters under U.S. jurisdiction. A SAR must be based on the best scientific information available; therefore, we prepare it in consultation with the regional scientific review groups established under section 117(d) of the MMPA. Each SAR must include: (1) a description of the stock and its geographic range; (2) a minimum population estimate, maximum net productivity rate, and current population trend; (3) an estimate of the annual human-caused M/SI by source and, for a strategic stock, other factors that may be causing a decline or impeding recovery of the stock; (4) a description of commercial fishery interactions; (5) a categorization of the status of the stock; and (6) an estimate of the potential biological removal (PBR) level.

The MMPA defines the PBR level as ''the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population.'' (16 U.S.C. 1362(20)). The PBR is the product of the minimum population estimate of the stock (N_{min}); one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size (R_{max}); and a recovery factor (F_r) of between 0.1 and 1.0, which is intended to compensate for uncertainty and unknown estimation errors. This can be written as: PBR = (N_{min})(½ of the R_{max})(F_R).

Section 117 of the MMPA also requires the Service and NMFS to review the SARs (a) at least annually for stocks that are specified as strategic stocks; (b) at least annually for stocks for which significant new information is available; and (c) at least once every 3 years for all other stocks. If our review of the status of a stock indicates that it has changed or may be more accurately determined, then the SAR must be revised accordingly.

A strategic stock is defined in the MMPA as a marine mammal stock ''(A) for which the level of direct human-caused mortality exceeds the PBR level; (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973, [as amended] (16 U.S.C. 1531 *et seq.*) [ESA], within the foreseeable future; or (C) which is listed as a threatened or endangered species under the ESA, or is designated as depleted under the MMPA'' (16 U.S.C. 1362(19)).

Summary of Revised Stock Assessment Reports

In accordance with Section 117(c) of the MMPA, the Service reviews the stock assessments for the Pacific walrus and Southwest stock of the northern sea otter annually (strategic stocks) and at least once every 3 years for the Southcentral and Southeast stocks of the northern sea otter (non-strategic stocks). If we determine that new information (such as new abundance estimates) indicates that a revision is warranted, we will propose a revision. In 2021,

based on new information that had become available, the Service initiated revisions of these SARs, and once completed, presented them to the Alaska Regional Scientific Review Group (SRG) for their comment and review.

The Service also published a notice in the **Federal Register** informing the public of the availability of these draft revised SARs and seeking public comment (88 FR 7992, February 7, 2023). These final revised SARs incorporate the comments and suggestions provided to the Service by the SRG and the public, as appropriate.

The following table summarizes the final revised SARs for the Pacific walrus and the Southwest, Southcentral, and Southeast stocks of the northern sea otter, listing each stock's N_{min}, R_{max}, F_r, PBR, annual estimated human-caused mortality and serious injury, and status.

SUMMARY OF FINAL REVISED STOCK ASSESSMENT REPORTS FOR THE PACIFIC WALRUS AND FOR THE SOUTHWEST, SOUTHCENTRAL, AND SOUTHEAST STOCKS OF THE NORTHERN SEA OTTER

Stock	N_{min}	R_{max}	F_r	PBR	M/SI		Stock status
					Fishery/other	Subsistence	
Pacific Walrus	214,008	0.06	0.5	3,210	<1	4,210	Strategic.
Northern Sea Otter (NSO) Southwest Stock	41,666	0.29	0.38	2,296	<1	176	Strategic.
NSO Southcentral Stock	19,854	0.29	0.75	2,159	<1	389	Nonstrategic.
NSO Southeast Stock	21,187	0.29	0.75	2,304	<1	851	Nonstrategic.

Revisions to Northern Sea Otter, Southeast Stock SAR

On March 31, 2023, the Service released a technical report, ''*Northern Sea Otter (Enhydra lutris kenyoni) Population Abundance and Distribution across the Southeast Alaska Stock Summer 2022.*'' This report provides details of a stock-wide sea otter population survey that was conducted May through June 2022. The collected data was combined with all available prior population survey data from the Southeast stock in an integrated population model, which provided updated assessments of sea otter population abundance, trends through time, and carrying capacity. We have incorporated the results from this technical report into this final revised SAR and included the updates to N_{MIN} and PBR in the chart above. Although these values slightly decreased, the status of the stock has not changed and remains non-strategic.

Our Response to Comments

In addition to comments from the SRG, the Service also received comments on the draft SARs from the Marine Mammal Commission, the Eskimo Walrus Commission, and two members of the public. We present substantive issues raised in those comments that are pertinent to all four SARs first, and then comments pertinent to the Pacific walrus, and then the three stocks of northern sea otters in Alaska, along with our responses below.

Comments Pertinent to All Four Stock Assessment Reports

Comment 1: Final SARs for these four stocks were last published on April 21, 2014 (79 FR 22154). The Service should take all steps necessary to adhere to the schedule set forth in Section 117(c) of the MMPA for revising SARs.

Service Response to Comment 1: The Service conducts timely reviews of the stock assessment reports in accordance with Section 117(c)(1) of the MMPA, which directs the Service to review SARs on an annual basis for ''strategic'' stocks, an annual basis for stocks ''for which significant new information is available,'' and every three years for all other stocks. The Service is required to revise SARs only if such review indicates that ''the status of the stock has changed or can be more accurately determined.'' (16 U.S.C. 1386(c)(2). If, as a result of its review, the Service determines that the status of the stock has changed or can be more accurately determined, then the Service will propose a revision.

Comments Pertinent to the Pacific Walrus

Comment 2: Given the future uncertainty of the Pacific walrus' viability due to the effects of climate change, the Fish and Wildlife Service should be required to enforce the PBR number for the Pacific walrus and allow no more than that number to be taken.

Service Response to Comment 2: The most recent population information suggests that subsistence walrus harvests are occurring at sustainable levels. We acknowledge that climate change is impacting walrus sea ice habitats, which could lead to a future population decline. If the population starts to decline due to environmental conditions, managers and subsistence users will need to work closely together to ensure that harvest levels remain sustainable. The Service is in the process of developing a projection model based on the best available estimates of population size, growth rate, and carrying capacity to help inform harvest management decisions under an array of potential climate change and anthropogenic disturbance scenarios. Section 119(a) of the MMPA provides for the development of co-management agreements with Alaska Natives for the subsistence use of marine mammals, and tribally based hunting ordinances provide a potential mechanism for self-regulation of harvest.

Comment 3: The draft SAR states: ''By the 1980s, walrus researchers were concerned that the population had exceeded its natural carrying capacity . . .''. The draft SAR also notes that ''in 1980 the population was estimated to be 254,890 with a 95% confidence level for 184,000–344,000''. The latest estimate in 2017 has very similar numbers, 257,193 and 171,138–366,366. Is there a similar concern that the natural carrying capacity has been reached or exceeded?

Service Response to Comment 3: Fluctuations in density-dependent vital rates over the past several decades suggest that the carrying capacity of the ecosystem has likely shifted over time. Declining reproductive and calf survival rates in the 1980s suggest that the population may have approached or exceeded carrying capacity. Population models suggest a decline in abundance may have occurred through the 1980s and 1990s, which lessened over time as reproductive and calf survival rates rose in a density-dependent manner. The most recent information on walrus vital rates does not indicate that the population is in a food limited status at the present time.

Comment 4: The harvest reporting correction factor for Pacific walrus is over 30 years old and the struck and lost

is based on data collected over 50 years ago; these are not reliable for calculating current harvest data. These should be studied with the cooperation of the Eskimo Walrus Commission and its communities.

Service Response to Comment 4: We agree that the harvest reporting correction factor and the struck and lost rates should be studied with the cooperation of the Eskimo Walrus Commissions and its communities. Imperfect harvest reporting and unknown struck and lost rates associated with modern hunting practices create uncertainty with respect to true harvest removal levels. For the purpose of the SAR, we use the best available information to account for these factors. We have also applied a conservative (0.5) recovery factor in our PBR calculation to account for these uncertainties. Improving harvest removal estimates is a top management priority for this species that can only be addressed through a collaborative effort with subsistence hunters and leaders.

Comment 5: There is considerable overlap between commercial fisheries and walrus as their use of terrestrial haulouts and foraging by swimming longer distances increase. Commercial fisheries and shipping disturbances in both U.S. and Russian waters must be considered more carefully.

Service Response to Comment 5: While direct mortality or injury associated with interactions with commercial fishing gear is rare, marine (and air) traffic occurring near coastal walrus haulouts is an emerging conservation and management concern. Disturbances associated with marine vessels and other human activities can disrupt resting and foraging patterns and lead to trampling related injuries and mortalities. The Service and partners conduct annual outreach and education campaigns to raise awareness about the sensitivity of walruses to disturbances and distribute guidance to commercial fishermen, mariners and aircraft pilots about how to avoid disturbances to walruses. The Service has provided clarifying language in the final revised SAR for the Pacific walrus recognizing the potential future impacts of commercial fisheries and shipping on the stock.

Comment 6: The statement that ''Although subsistence harvest rates are declining and appear to be within a sustainable range at present'' should be explained because it exceeds the PBR.

Service Response to Comment 6: Indigenous harvest rates are declining and harvest rates have not prohibited the Pacific walrus population from being ''at or near its OSP range.'' The language in the final revised SAR has been edited to explain that harvest sustainability was determined by other analyses rather than the PBR formula, based on a Bayesian Belief Network model by MacCraken et al. (2017). We also note that the PBR formula includes a conservative correction factor (F_R value) due to uncertainty associated with estimates of human caused mortality.

Comment 7: Please provide a clearer explanation of how the value of the recovery factor (F_R) was selected when calculating Potential Biological Removal (PBR).

Service Response to Comment 7: The final revised SAR includes additional language explaining that a conservative F_R value of 0.5 has been adopted in consideration of uncertainty associated with estimates of human caused removals and a petition to consider listing walruses under the ESA.

Comment 8: Incomplete harvest reporting and potentially high rates of strike-and-loss during subsistence harvest of Pacific Walrus should be addressed in more detail.

Service Response to Comment 8: The final revised SAR includes additional language acknowledging the issue of under-reporting of harvest and tentative plans to engage in a collaborative effort in key walrus harvest communities to refine harvest estimates.

Comments Pertinent to Northern Sea Otter Stocks

Comment 9: The Service used a recovery factor (F_R) for the Southwest stock that was reduced by 20% (reduced from 0.5 to 0.4) to account for uncertainty around human-caused removals. However, the F_R for the Southeast and Southcentral stocks was reduced by 25% (reduced from 1 to 0.75). Are there differences in uncertainty surrounding human-caused removals across the three stocks are or are they similar? If similar, the Service should use the same F_R across the stocks for standardization.

Service Response to Comment 9: The uncertainty in human-caused mortality is similar across all three stocks. In the final revised SAR, we have updated the Southwest SAR to reduce the F_R value in the Southwest stock to match the reduction in the Southcentral and Southeast stocks by 25%. The updated Southwest stock F_R is 0.38. We have updated the Potential Biological Removal (PBR) calculation based on this change, which resulted in an updated PBR of 2,296 sea otters for the Southwest stock.

Comment 10: The Service makes statements about sea otter population trends in the five management units (MU) of the Southwest stock, but this is problematic given the relatively limited historical data, overlapping confidence intervals for population estimates, and differences in the frequency, methods, and timing of population surveys within each MU. Additionally, in many of the surveys listed, the Service does not clearly indicate if the survey was aerial or boat-based, the time of year the survey was conducted. We recommend the Service add more survey details in each MU section, limit conclusions about stock abundance and status, and add statements of how the Service plans to address these concerns to provide more consistency across the five MUs in the Southwest stock.

Service Response to Comment 10: We have edited each of the sections summarizing population surveys for the five Management Units (MU) to provide additional details on the season, month the survey was conducted, survey platform, and analytical approach. We provide additional details about differences in methodology and how this affects our ability to accurately describe the magnitude of increases or decreases in each MU. The Service plans to develop integrated population models to incorporate the various population surveys across the five MUs in a single analytical framework, following a similar approach developed for the Southeast stock of northern sea otters (Eisaguirre et al. 2021, 2023, Schuette et al. 2023). This approach will allow the Service to better account for methodological differences across the five MUs to provide a more comprehensive view of sea otter population abundance, distribution, and trends through time.

Comment 11: The estimates of human-caused mortality and serious injury (M/SI) in the SARs for the Southwest, Southcentral, and Southeast Alaska stocks of northern sea otters are based almost entirely on subsistence harvest data collected by FWS's marking, tagging, reporting program (MTRP). However, it is unclear whether or not all subsistence harvests are reported, and some M/SI of sea otters from other sources (*e.g.,* illegal and unreported hunting) likely occurs. We recommend the Service develop a method for quantifying unreported harvest and include that information in the SARs.

Service Response to Comment 11: The Service acknowledges there is an information gap pertaining to unreported harvest of sea otters. MTRP harvest reporting data collection was initiated in 1989 and is ongoing. MTRP data is the most comprehensive data set

available for legal harvest. The Service is considering options for accounting for unreported harvest in future population models. The Service has little empirical data to quantify the amount of illegal take associated with fisheries conflict. The Service is considering options for accounting for illegal takes in future population models.

Comment 12: FWS discusses ''illegal'' takes of sea otters (including possession, transport, and sale of sea otter hides) in the SARs for the Southeast and Southwest stocks in the subsections on ''Alaska Native Subsistence Harvest Information.'' However, referencing illegal takes of sea otters and illegal handling of sea otter hides in that subsection is inappropriate, given that taking of sea otters and other marine mammals by Alaska Natives for subsistence purposes and to create and sell authentic articles of handicrafts and clothing is not illegal as long as the taking is not conducted in a wasteful manner. We suggest the Service move the discussion of illegal takes of sea otters to a separate subsection within the ''Annual Human-Caused Mortality and Serious Injury'' section of the SARs (*i.e.,* not the subsection on ''Alaska Native Subsistence Harvest Information'').

Service Response to Comment 12: We agree that these statements do not belong in this section. We have moved the statements related to illegal take to a new heading, 'Illegal Take' under 'Annual Human-Caused Mortality and Serious Injury' in all of the northern sea otters SARs to make it clearer that there is a difference between legal take by Alaska Native peoples and the various forms of illegal take.

Comment 13: In the ''Fisheries Information'' subsections, the draft SARs note that the National Marine Fisheries Service (NMFS) maintains an observer program to detect and estimate M/SI of marine mammals. The Alaska Marine Mammal Observer Program was designed specifically to collect data on marine mammal M/SI in nearshore salmon drift gillnet and set gillnet fisheries, where sea otters are at relatively high risk of entanglement. However, that program has not operated since 2013 and, when it was operating, observer coverage was low. As such, although the Service concludes that M/SI from fisheries is likely low, there are actually no reliable estimates of sea otter M/SI in the commercial fisheries that pose the highest entanglement risk to sea otters. We recommend that the Service coordinate with NMFS to ensure sufficient levels of observer coverage in all nearshore fisheries that may pose a significant entanglement risk to any of the three stocks of sea otters in Alaska. Observer coverage should be sufficient to (1) generate reliable estimates of serious injury and mortality, as required under section 118 of the MMPA, and (2) provide a basis for introducing measures to reduce sea otter bycatch if and as necessary.

Service Response to Comment 13: As we state in the final revised SARs, the reported level of incidental take of sea otters from fisheries is very low, and it is difficult to state the total combined effect of fisheries, including whether the total fishery mortality and serious injury rate is insignificant and approaching a zero mortality and serious injury rate. The Service obtains fisheries related information from NMFS. The Service is supportive of initiatives to obtain more reliable information on incidental take from fisheries managed by NMFS, the State of Alaska, and local stakeholders. This will include strategies to gather information associated with State managed shellfisheries and mariculture activities, which are increasing across the State of Alaska.

Comment 14: In the draft SARs, the discussion of Flannery et al. 2021 suggests genetic information could be important for stock differentiation. Does Flannery et al. 2021 suggest a stock delineation different than that of the three stocks currently used by FWS?

Service Response to Comment 14: No, this study does not suggest a different delineation, rather it recognizes that the inclusion of genetic variation among sea otter populations is important to define stock delineations and indicates that genetic differentiation among northern sea otters is clinal across their range (Larson et al. 2021, Flannery et al. 2021).

Comment 15: In the draft SARs, a few different R_{max} values from the scientific literature are described; the reports should clearly state which value for R_{max} was selected and why.

Service Response to Comment 15: We agree, the Service added language to all three final revised sea otter SARs to clarify that we used 0.29 as the value for $R_{max,}$ which is the maximum intrinsic rate of growth achievable by northern sea otters.

Comment 16: Why is unknown subsistence harvest considered to be negatively biased when there are similar unknown mortalities associated with oil spills, boating, and mariculture?

Service Response to Comment 16: The Service agrees with this comment, and we have removed this statement from all three final revised sea otter SARs.

Comment 17: The draft SARs mention that there is uncertainty in the rate of human-caused mortality associated with increased development in the mariculture industry. Is there conflict between the northern sea otter stocks and the mariculture industry?

Service Response to Comment 17: A recent report (Rehberg and Goodglick 2023) to the Service provides information on potential conflicts between sea otters and certain types of mariculture; however, negative interactions have only been reported in Kachemak Bay. The Service revised all three final sea otter SARs to reflect this information and promote awareness of mariculture as another source of uncertainty and potential conflict.

Comment 18: Figures 2 and 3 in the Southcentral SAR should be revised to add clarity in the following ways: (1) remove the point-to-point trend lines because abundance estimates with lines implies that we know for a fact what the population trajectory is between the points, and if a trend line is drawn, typically it should be a regression trend line. Although the trend lines would not be different from what is already there, this is more problematic in Figure 3, especially for Western Prince William Sound, because it seems to suggest that the ups and down of the abundance in the time series are real when, given the confidence intervals, they are most likely sampling variance; (2) clearly identify the name of the regions illustrated so that it is easier to match with previous tables and figures; and (3) do not use the same blue and green colors in Figures 2 and 3 because they do not represent the same regions, and it is confusing.

Service Response to Comment 18: We agree with all of the comments made about Figures 2 and 3 in the Southcentral SAR. We have created a single, revised figure that illustrates the same data originally presented in Figures 2 and 3, but in a simpler and easier to follow format. This new figure (Figure 2) now presents the three sub-regions as a series of independent estimates (not a line plot) from each survey area. This figure is in black and white (rather than in color) and now more closely matches the figure style used in the Southwest and Southeast Sea Otter SARs.

Comment 19: The description of the contours of the critical habitat designated for the Southwest stock under the ESA is confusing because it is not clear which marine waters are included in the critical habitat designation.

Service Response to Comment 19: The Service has revised this SAR by adding the following clarification: ''As part of the ESA listing decision, the Service designated 15,164 km^2 (5,855 mi^2) of

nearshore waters as Southwest stock critical habitat, which occurs in nearshore marine waters ranging from the mean high tide line seaward for a distance of 100 meters or to a water depth of 20 meters (65.6 ft) (74 FR 51988).''

Comment 20: In the Southwest SAR, consider whether there was an actual decline and then increase in the Bristol Bay MU because although the coefficients of variation (CVs) overlap across all three Southwest stock surveys, there are also differences among the survey methods.

Service Response to Comment 20: The Service agrees that there may not have been an initial decline, and we have revised our discussion regarding this MU in the final revised SAR.

Comment 21: The Southwest stock SAR states that: ''The best available information indicates that the Southwest stock in the Aleutian archipelago declined by up to 90 percent in the 1990s.'' What is the citation for the scientific literature that support this statement?

Service Response to Comment 21: The Service has added the citation Doroff et al. 2003 as reference to support this statement in the final revised SAR.

Comment 22: In the Southwest stock SAR, the Service should add a description of how mortality is distributed across the management units (MUs) (*e.g.,* ~90% of the human-caused M/SI occurred around Kodiak, the MU with the largest abundance), or a qualitative sentence saying that distribution of mortality across MUs is something that the Service considered but that it does not seem to be a concern.

Service Response to Comment 22: The Service added language to this final revised SAR to explain that 96% of the harvest occurs in the Kodiak, Kamishak, Alaska Peninsula MUs, where most people and sea otters are located.

References

The complete list of references used for each of these revised SARs is available at *https://www.regulations.gov* under Docket No. FWS–R7–ES–2022–0155 and upon request from the Alaska Marine Mammals Management Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–16935 Filed 8–7–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2023–0150; FXES11140400000–234–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink; Lake County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Helen Crittenden et al. (Helen Crittenden, Alexander van den Berg, and Nancy van den Berg; applicants) for an incidental take permit (ITP) under the Endangered Species Act. The applicants request the ITP to take the federally listed sand skink incidental to the construction of a residential development in Lake County, Florida. We request public comment on the application, which includes the applicants' proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before September 7, 2023.

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents online in Docket No. FWS–R4–ES–2023–0150 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2023–0150; or
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2023–0150; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin Gawera, by telephone at 904–731–3121 or via email at *erin_gawera@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Helen Crittenden et al. (Helen Crittenden, Alexander van den Berg, and Nancy van den Berg) (applicants) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicants request the ITP to take federally listed sand skinks (*Neoseps reynoldsi*) (skink) incidental to the construction and operation of a commercial and residential development in Lake County, Florida. We request public comment on the application, which includes the applicants' habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as ''low effect,'' and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The applicants request a 5-year ITP to take skinks via the conversion of approximately 0.63 acres (ac) of occupied nesting, foraging, and sheltering skink habitat incidental to the construction and operation of a commercial and residential development on 111.53-ac on parcel numbers 22–21–25–0003–0000–1800, 22–21–25–0003–0000–1000, 22–21–25–0003–0000–1901, 22–21–25–0003–0000–1902, and 22–21–25–0003–0000–1700 in Sections 21, 22, 27 and 28, Township 21 South, Range 25 East, Lake County, Florida. The applicants propose to mitigate for take of the skinks by purchasing credits equivalent to 1.26 ac

of skink-occupied habitat within the Lake Wales Ridge Conservation Bank or another Service-approved conservation bank. The Service would require the applicants to purchase the credits prior to engaging in any construction phase of the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicants' proposed project, including the construction of commercial and residential buildings and associated infrastructure (*e.g.,* electric, water, and sewer lines), would individually and cumulatively have a minor effect on the sand skink and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a low-effect ITP that individually or cumulatively would have a minor effect on the sand skink and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A low-effect incidental take permit is one that would result in (1) minor or nonsignificant effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonably foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested ITP. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER0549463 to the applicants.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Robert L. Carey,

Division Manager, Environmental Review, Florida Ecological Services Office.

[FR Doc. 2023–16936 Filed 8–7–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2023–0149; FXES11140400000–234–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Florida Scrub-Jay; Brevard County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from CenterPoint Integrated Solutions, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally threatened Florida scrub-jay (*Aphelocoma coerulescens*) incidental to the construction and operation of a commercial development in Brevard County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before September 7, 2023.

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents online in Docket No. FWS–R4–ES–2023–0149, at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2023–0149; or
- *U.S. mail:* Public Comments Processing; Attn: Docket No. FWS–R4–ES–2023–0149; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Alfredo Begazo, by telephone at 772–469–4234, or via email at *alfredo_begazo@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from CenterPoint Integrated Solutions, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed Florida scrub-jay (*Aphelocoma coerulescens;* scrub-jay) incidental to the construction and operation of a commercial development in Brevard County, Florida. We request public comment on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as low effect, and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low effect screening form, both of which are also available for public review.

Proposed Project

The applicant requests a 5-year ITP to take scrub-jays via the conversion of

approximately 3.4 acre (ac) of occupied nesting, foraging, and sheltering scrub-jay habitat incidental to the construction of a commercial development on a 11.87-ac parcel in Section 20, Township 28 South, Range 37 East, Brevard County, Florida. The applicant proposes to mitigate for take of the scrub-jays by purchasing credits equivalent to 6.8 ac of scrub-jay-occupied habitat from a Service-approved conservation bank. The Service would require the applicant to purchase the credits prior to engaging in any construction phase of the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's proposed project, including the construction of a commercial building, driveway, parking space, green areas, stormwater pond, and associated infrastructure (*e.g.,* electric, water, and sewer lines), would individually and cumulatively have a minor effect on the scrub-jay and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a low-effect ITP that individually or cumulatively would have a minor effect on the scrub-jay and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A low-effect ITP is one that would result in (1) minor or nonsignificant effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonable foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested ITP. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER2768044 to CenterPoint Integrated Solutions, LLC.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Robert L. Carey,

Division Manager, Environmental Review, Florida Ecological Services Office.

[FR Doc. 2023–16913 Filed 8–7–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AZ_FRN_MO#4500169746 AZA–38417]

Public Land Order No. 7927; Withdrawal, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This Order withdraws 1,464 acres of Federal surface/subsurface public lands from appropriation under the public land laws, including location and entry under the United States mining laws, but not from leasing under the mineral and geothermal leasing laws, and 1,134 acres of Federal surface public lands from appropriation under the public land laws, and reserves the land for 100 years for management as part of the Bill Williams River National Wildlife Refuge (NWR) located in La Paz and Mohave Counties, Arizona, subject to valid existing rights.

DATES: This Public Land Order takes effect on August 8, 2023.

FOR FURTHER INFORMATION CONTACT: Michael Ouellett, Realty Specialist, BLM Arizona State Office, 1 North Central Avenue, Suite 800, Phoenix, AZ 85004, telephone: (602) 417–9561, email at *mouellett@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: This withdrawal and reservation places these lands under the management of the Department of the Interior, U.S. Fish and Wildlife Service, pursuant to the National Wildlife Refuge System Administration Act (NWRSAA) at 16 U.S.C. 668dd, as part of Bill Williams River NWR. These lands were previously withdrawn and reserved as part of the refuge for a 40-year term under Public Land Order No. 6044, which expired on October 7, 2021. Under the NWRSAA at 16 U.S.C. 668dd(a)(6), once land is reserved for management as part of the Refuge System, they remain part of the System until otherwise specified by Act of Congress. This Order reflects the reservation and withdraws the land from the laws specified to protect the land from uses incompatible with Refuge purposes.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described Federal surface/subsurface public lands are hereby withdrawn from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, but not from leasing under the mineral and geothermal leasing laws, and reserved for wildlife refuge purposes as part of the Bill Williams River NWR;

Gila and Salt River Meridian, Arizona

(Surface and Subsurface Estate Land)

T. 11 N., R. 17 W.,
Sec. 20, E½, E½NW¼, NE¼SW¼, S½SW¼;
Sec. 25, S½SE¼;
Sec. 26, SE¼SW¼, S½SE¼;
Sec. 28, N½, N½SW¼, SE¼SW¼, SE¼SE¼;
Sec. 34, N½NE¼, SE¼NE¼, N½NW¼;
Sec. 36, N½SE¼NE¼.
T. 11 N., R. 18 W.,
Sec. 12, SW¼SW¼ that portion lying northerly of the Havasu Lake National Wildlife Refuge boundary, as described in Executive Order 8647 of January 22, 1941, and southwesterly of the southwesterly right-of-way line of State Highway 95; sec. 24, NE¼NE¼.

The areas described aggregate 1,464 acres.

2. Subject to valid existing rights, the following described Federal surface public lands are hereby withdrawn from all forms of appropriation under the public land laws and reserved for wildlife refuge purposes as part of the Bill Williams River NWR;

Gila and Salt River Meridian, Arizona

(Surface Estate Land)

T. 11 N., R. 17 W.,
Sec. 19, lot 2, NE¼SW¼, S½SE¼;
Sec. 21, SW¼SW¼;
Sec. 25, S½SW¼;
Sec. 27, SW¼NE¼, S½NW¼;
Sec. 29, E½NW¼;
Sec. 33, S½NE¼, SE¼NW¼;
Sec. 35, N½NE¼, S½NE¼SW¼, NW¼SW¼, S½NW¼SE¼.
T. 11 N., R. 18 W.,
Sec. 11, those portions of the SW¼NE¼, W½NW¼, SE¼NW¼, NE¼SW¼, N½NW¼SW¼, N½SE¼SW¼, NE¼SE¼, W½SE¼, SE¼SE¼ lying northerly of the Havasu Lake National Wildlife Refuge boundary, as described in Executive Order 8647 of January 22, 1941, and southerly of the southwesterly right-of-way line of State Route 95.
Sec. 13, those portions of the W½NE¼SW¼, NW¼SW¼, SE¼SW¼, S½SW¼SE¼, SW¼SE¼SE¼ lying southerly of the Havasu Lake National Wildlife Refuge boundary, as described in Executive Order 8647 of January 22, 1941.

The areas described aggregate 1,134 acres.

3. This withdrawal will expire 100 years from the effective date of this order, unless, as a result of a review conducted pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C 1714(f), the Secretary determines that the withdrawal shall be extended.

Tommy P. Beaudreau,

Deputy Secretary of the Interior.

[FR Doc. 2023–16982 Filed 8–7–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO4500169446]

Notice of Realty Action: Classification for Recreation and Public Purposes Lease and Conveyance (N–101539) for a Public Park in Las Vegas Valley, Clark County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM), Las Vegas Field Office, has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 10 acres of public land in the Las Vegas Valley, Clark County, Nevada. Clark County Real Property Management proposes to add the land to the existing Desert Breeze public park for use as public park and appurtenant facilities.

DATES: Interested parties may submit written comments regarding the proposed change in classification for lease and conveyance of the land until September 22, 2023.

ADDRESSES: Mail written comments to the Bureau of Land Management (BLM) Las Vegas Field Office, Assistant Field Manager, Division of Lands, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130, or fax to (775) 515–5010.

FOR FURTHER INFORMATION CONTACT: Lisa Moody, Realty Specialist, Major Projects for the Las Vegas Field Office, at the above address, by telephone at (702) 515–5084, or by email at *emoody@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The parcel is located north of Flamingo Road and west of S Cimarron Road in Las Vegas and is legally described as:

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 16, NE¼NE¼SW¼.

The area described contains approximately 10 acres, according to the official plats of the surveys of said land on file with the BLM.

In accordance with the R&PP Act, Clark County Real Property Management has filed an application to lease and purchase the above-described land to develop as a park site that will consist of Little League Baseball fields, a warmup area, restrooms, a maintenance yard, turf areas, landscaping, irrigation, utilities, and off-site improvements to integrate the new facilities into the existing Desert Breeze Park that is adjacent to the proposed 10-acre project. Additional detailed information pertaining to the BLM's proposed lease and conveyance, the County's plan of development, and the site plan is available in case file N–101539, which is available for review at the BLM Las Vegas Field Office at the above address. Clark County Real Property Management is a political subdivision of the State of Nevada, and is, therefore, a qualified applicant under the R&PP Act.

Subject to limitations prescribed by law and regulation, prior to patent issuance, the holder of any right-of-way grant from the BLM within the lease area would be given the opportunity to amend the right-of-way grant for conversion to a new term, including perpetuity, if applicable.

The land identified is not needed for any Federal purpose. The lease and conveyance is consistent with the BLM Las Vegas Resource Management Plan dated October 5, 1998, and would be in the public interest. Clark County Real Property Management has not applied for more than the 640-acre annual limitation for public purpose uses and has submitted a statement that their application is for a definite project as required by regulations at 43 CFR 2741.4(b).

The lease and conveyance, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and any patent issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits for the same under applicable law and such regulations as the Secretary of the Interior may prescribe; and

Any lease and conveyance will also be subject to valid existing rights, will contain any terms or conditions required by law (including, but not limited to, any terms or conditions required by 43 CFR 2741.4), and will contain an appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or operations on the leased/patented lands. It will also contain any other terms and conditions deemed necessary and appropriate by the Authorized Officer.

Under the Southern Nevada Public Land Management Act of 1998 (Pub. L. 105–263) as amended, lands identified for disposal within the Las Vegas Valley are already withdrawn from location and entry under the U.S. mining laws and from operation of the mineral and geothermal leasing laws. Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all other forms of appropriation under the public land laws, except for lease and conveyance under the R&PP Act.

Interested parties may also submit written comments regarding the specific use proposed in the application and plan of development, and whether the BLM followed proper administrative procedures in reaching the decision to

lease and convey under the R&PP Act. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Before including your address, phone number, email, address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Only written comments submitted to the Assistant Field Manager, BLM Las Vegas Field Office, will be considered properly filed. Any adverse comments on the classification will be reviewed as protests by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action.

In the absence of any adverse comments, the decision will become effective on October 10, 2023. The lands will not be available for lease and conveyance until after the decision becomes effective.

Authority: 43 CFR 2741.5.

Bruce Sillitoe,

Field Manager, Las Vegas Field Office.

[FR Doc. 2023–16946 Filed 8–7–23; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CO_FRN_MO4500169571]

Notice of New Recreation Fees on Public Lands in the Colorado River Valley Field Office, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of new fees.

SUMMARY: Pursuant to the Federal Lands Recreation Enhancement Act (FLREA), the Bureau of Land Management (BLM), Colorado River Valley Field Office (CRVFO) has established expanded (overnight/specialized use) amenity fees at the Gypsum, Catamount, Pinball, Lyon's Gulch, and Upper and Lower Prince Creek Campgrounds. The CRVFO has also established a standard amenity fee (day-use) at the Wolcott Day-Use Site.

DATES: New fees will take effect on February 8, 2024.

ADDRESSES: Documents concerning these new fees may be reviewed at the Colorado River Valley Field Office, 2300 River Frontage Road, CO 81652; phone: (970) 876–9000; and online at: *https://www.blm.gov/office/colorado-river-valley-field-office.* The recreation fee business plan is available at: *https://www.blm.gov/sites/blm.gov/files/Business%20Plan%20FINAL_12-16-19.pdf.*

FOR FURTHER INFORMATION CONTACT: Hilary Boyd, Assistant Field Manager, telephone: (970) 876–9003, email: *hboyd@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting the BLM. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: This notice provides public notice that the BLM CRVFO has established recreation fees at campgrounds and the Wolcott Day-Use Site as follows: expanded amenity campground fees of $20 per campsite per night will be charged at the Catamount, Pinball, Lyon's Gulch, and Upper and Lower Prince Creek Campgrounds. Individual campsites can have up to nine people, two vehicles, and two tents per site.

A $4 per person per night fee will be charged for use of group campsites at the Gypsum, Lyon's Gulch, and Upper and Lower Prince Creek Campgrounds. A $40 minimum fee, covering up to 10 people, is established to reserve a group site. The minimum group site fee will apply toward the total amount due. The maximum occupancy of a group site is 25 people.

A $5 per vehicle per day standard amenity fee will be charged at the Wolcott Day-Use Site.

Campground and day-use fee information will be posted at each recreation site, available at the CRVFO, and available online through BLM websites.

To keep up with rising management and maintenance costs, the CRVFO will implement the new fee structure and the following year will begin using the average annual Western U.S. Consumer Price Index (CPI) to make future fee adjustments. The BLM will use the CPI the year after the collection of fees is implemented. When the increase or decrease reaches a $1 increment for per person fees or a $2 increment for campsite fees, the fees would be adjusted accordingly. For example, with a $20 fee for individual campsites, a 10 percent increase in the Western U.S. CPI would lead to a $2 increase in fees to $22. Typically, the Western U.S. CPI increases approximately 3 percent a year. Thus, it would likely take 4 years to increase the fees by $2. For group sites, a 25 percent increase in the Western U.S. CPI would lead to a $1 increase. The BLM would return to the BLM Northwest Resource Advisory Council (RAC) before each fee increase to update the RAC on successes and challenges in using the Western U.S. CPI.

All visitors holding an America the Beautiful—National Parks and Federal Recreational Lands pass (Annual, Senior, Access, Military, Fourth Grade, etc.) will be entitled to free standard amenity fees at locations charging these fees. People holding the America the Beautiful—National Parks and Federal Recreational Lands ''Annual Senior Pass,'' ''Senior Lifetime Pass,'' or ''Access Pass'' (or Golden Age or Access passes) may be provided a 50 percent discount on some expanded amenity fees, except those associated with group reservations.

FLREA provides authority for the Secretaries of the Interior and Agriculture to establish, modify, charge, and collect recreation fees for use of some Federal recreation lands and waters, and contains specific provisions addressing public involvement in the establishment of recreation fees. FLREA also directs the Secretaries of the Interior and Agriculture to publish 6 months' advance notice in the **Federal Register** whenever recreation fee areas are established under their respective jurisdictions.

Under section 803(g)(2)(A) and (C) of FLREA, developed campgrounds and rental cabins qualify as sites wherein visitors can be charged an ''Expanded Amenity Recreation Fee.'' Pursuant to FLREA and implementing regulations at 43 CFR 2933, fees may be charged for overnight camping, rental of cabins, and group use reservations where specific amenities and services are provided. Specific visitor fees will be identified and posted at each campground, day-use site, or rental cabin.

Under section 803(f)(4) of FLREA, all day-use sites in this notice qualify as areas wherein visitors can be charged a ''Standard Amenity Recreation Fee.'' Pursuant to FLREA and implementing regulations at 43 CFR 2933, fees may be charged for an area where there are significant opportunities for outdoor recreation, that has substantial Federal investments, where fees can be efficiently collected, and that contains specific amenities and services. Specific

visitor fees will be identified and posted at each day-use site.

In response to increasing recreation demands and visitation on BLM lands, the CRVFO developed a recreation fee business plan. The business plan reviewed campgrounds and day-use sites where new Standard and Expanded Amenity Recreation Fees are needed to maintain visitor facilities and visitor services, replace aging infrastructure, and improve access to recreational opportunities. The business plan explains: (1) consistency with the BLM recreation fee program policy; (2) the CRVFO recreation management direction; (3) the need for fee collection; (4) how the fees will be used at the sites; (5) Resource Advisory Council coordination; and (6) guidance on future fee increases. As analyzed in the business plan, the recreation use fees are consistent with other nearby Federal land management agency fees and are lower than the fees charged at privately owned campgrounds. The business plan is available upon request to the CRVFO and at the CRVFO website (see **ADDRESSES**).

The BLM notified and involved the public at each stage of this process. A public comment period on the draft business plan, announced via news release, ran from December 11, 2018, to January 25, 2019. The final business plan was signed on December 16, 2019. Public notices were posted at each recreation site during the 2019 use season. The CRVFO contacted local special recreation permit holders who might be affected. Local governments were contacted and both Eagle and Pitkin counties provided letters of support for the fee increases. Following FLREA guidelines, the BLM Northwest Resource Advisory Council approved the proposed fee structure on June 13, 2019.

Authority: 16 U.S.C. 6803 and 43 CFR 2933.

Douglas J. Vilsack,

BLM Colorado State Director.

[FR Doc. 2023–16864 Filed 8–7–23; 8:45 am]

BILLING CODE 4331–16–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 231S180110; S2D2S SS08011000 SX064A000 23XS501520; OMB Control Number 1029–0107]

Submission to the Office of Management and Budget for Review and Approval; Subsidence Insurance Program Grants

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 10, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0107 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at 202–208–2716. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: States and Indian tribes having an approved reclamation plan may establish, administer and operate self-sustaining State and Indian Tribe-administered programs to insure private property against damages caused by land subsidence resulting from underground mining. States and Indian tribes interested in requesting monies for their insurance programs would apply to the Director of OSMRE.

Title of Collection: Subsidence insurance program grants.

OMB Control Number: 1029–0107.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments.

Total Estimated Number of Annual Respondents: 1.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: 8 hours.

Total Estimated Number of Annual Burden Hours: 8.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to

respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2023–16868 Filed 8–7–23; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 231S180110; S2D2S SS08011000 SX064A000 23XS501520; OMB Control Number 1029–0055]

Agency Information Collection Activities; Rights of Entry

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before September 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. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0055 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at (202) 208–2716. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 7, 2023 (88 FR 20906). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

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

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

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This regulation establishes procedures for non-consensual entry upon private lands for the purpose of abandoned mine land reclamation activities or exploratory studies when the landowner refuses consent or is not available .

Title of Collection: Rights of Entry.

OMB Control Number: 1029–0055.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State governments.

Total Estimated Number of Annual Respondents: 23.

Total Estimated Number of Annual Responses: 388.

Estimated Completion Time per Response: 4.5 hours.

Total Estimated Number of Annual Burden Hours: 1,746.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: $3,000.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2023–16863 Filed 8–7–23; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Defense Electronics Consortium

Notice is hereby given that, on April 12, 2023, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Defense Electronics Consortium (''DEC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Aerocyonics, Inc., East Greenwich, RI; Auburn University, Auburn, AL; Averatek Corp., Santa Clara, CA; Calumet Electronics Corp., Calumet, MI; CPS Technologies Corp., Norton, MA; Idaho Scientific, Boise, ID; Integra Technologies LLC, Wichita, KS; ISOLA USA Corp., Chandler, AZ; Mattrix Technologies, Gainesville, FL; Purdue University, West Lafayette, IN; Rogers Corp., Chandler, AZ; ScanCAD International, Inc., Conifer, CO; STI Electronics, Inc., Madison, AL; Streamline Circuits dba Summit Interconnect, Santa Clara, CA; and TTM Technologies, Stafford Springs, CO. The general area of DEC's planned activity is to bolster the security and resiliency of the defense electronics supply chain. The mission of the DEC is to strengthen the economic and force posture of the U.S. defense electronics industrial base and provide the DoD with deeper insights and connections to the U.S. electronics industry while providing industry with greater access to DoD opportunities.

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–16911 Filed 8–7–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection; Crime Victims' Rights Act Complaint Form

AGENCY: Executive Office for United States Attorneys, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Office of the Victims' Rights Ombuds, Executive Office for United States Attorneys, Department of Justice (DOJ), 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 October 10, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ellen Fitzgerald, Victims' Rights Ombudsman, Executive Office for United States Attorneys, 202–252–1010, 950 Pennsylvania Avenue NW, Room 2261, Washington, DC 20530 (Email: *USAEO.RegulatoryComments@usdoj.gov*).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

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

Abstract: The Crime Victims' Rights Act of 2004, 18 U.S.C. 3771 (CVRA), sets forth the rights of a federal crime victim to file a complaint against any Department of Justice employee who violated or failed to provide rights established under the CVRA. The Department of Justice has created the Office of the Victims' Rights Ombudsman to receive and investigate complaints filed by federal crime victims against its employees and has implemented ''Procedures to Promote Compliance with Crime Victims' Rights Obligations,'' 28 CFR 45.10. The complaint process is not designed for the correction of specific victims' rights violations but is instead used to request corrective or disciplinary action against Department of Justice employees who may have failed to provide rights to crime victims. The Department of Justice will investigate the allegations in the complaint to determine whether the employee used his or her ''best efforts'' to provide crime victim rights. The Office of the Crime Victims Rights Ombudsman does not administer crime victim funds or provide services.

Overview of this information collection:

1. *Type of Information Collection:* New information collection request.

2. *The Title of the Form/Collection:* Crime Victims' Rights Act Complain Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Not applicable.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* The affected public are individuals. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 100 respondents will complete the form annually. The time to complete the form is approximately 45 minutes.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual burden hours for this collection is 75 hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:*

8.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min)	Total annual burden (hours)
Complaint Form (completed by individuals)	100	Annually	100	45	75
Unduplicated Totals	100		100		75

If additional information is required contact: Darwin Arceo, 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: July 10, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–14886 Filed 8–7–23; 8:45 am]

BILLING CODE 4410–07–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act and Clean Water Act

On August 2, 2023, the Department of Justice lodged a proposed consent decree with the United States District Court for the Northern District of New York in the lawsuit entitled *United States and State of New York* v. *FrieslandCampina Ingredients North America, Inc.,* Civil Action No. 3:23–cv–00937–TJM–ML.

The United States and the State of New York filed this civil enforcement action for injunctive relief and civil penalties pursuant to section 113 of the Clean Air Act (''CAA''), 42 U.S.C. 7413, section 309 of the Clean Water Act (''CWA''), 33 U.S.C. 1319, and article 19 of the New York Environmental Conservation Law (''ECL''), and regulations promulgated thereto, against FrieslandCampina Ingredients North America, Inc. (''Friesland'' or ''Defendant''), as owner and operator of a hydrolyzed protein powder facility (''Facility'') located at 40196 State Highway 10, Delhi, New York.

The complaint alleges that Friesland violated the CAA by failing to: obtain a modification of its title V CAA permit before its Facility became a major source of volatile organic compound (''VOC'') emissions; perform a Reasonably Available Control Technology (''RACT'') demonstration and implement RACT before commencing operation of a major source of VOC emissions; obtain a permit before constructing a new, modified, or existing air contamination source at the Facility; and report and maintain annual reports of its VOC (toluene) emissions. The complaint also alleges that Friesland violated the CWA by: failing to comply with the New York State Department of Environmental Conservation (''NYSDEC'') State Pollutant Discharge Elimination System (''SPDES'') Permit No. NY262838; discharging non-contact cooling water to the Delaware River at temperatures that exceeded the Facility's permit limit of 70 degrees Fahrenheit; introducing total suspended solids into the Village of Delhi's publicly owned treatment works in quantities that caused pass through and/or interference with the treatment works; and failing to comply with its New York SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (GP–0–17–004—No. NYR00F872) No Exposure Certification.

The settlement, set forth in a consent decree lodged with the court, would resolve violations of the CAA, CWA, and the ECL, and would require Friesland to reduce harmful toluene emissions through the installation and operation of pollution controls and comply with its permits. Friesland would also pay a civil penalty of $2,880,000 ($1,440,000 of which will be directed to New York State, exclusively to fund projects to prevent, abate, restore, mitigate, or control any identifiable instance of prior or ongoing water, land, or air pollution, as authorized by New York State Finance Law section 4(11) and New York Executive Law section 63(16)), and implement a Supplemental Environmental Project (''SEP'') at the Facility to reduce the adverse impacts of its thermal discharges and overall environmental risk to the Delaware River, by installing a closed-loop cooling tower system to replace its once-through, non-contact cooling water process that discharges excess heat into the adjacent watershed. The SEP would reduce groundwater withdrawals needed for Friesland's operations and the volume of discharges of heated water to the Delaware River, which would enhance trout habitat.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of New York* v. *FrieslandCampina Ingredients North America, Inc.,* D.J. Ref. No. 90–5–2–1–12387. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $10.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–16919 Filed 8–7–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0329]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; OJP Solicitation Template

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Office of Justice Programs (OJP), Department of Justice (DOJ), 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 October 10, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jennifer Tyson, Office of Audit, Assessment, and Management, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW, Washington, DC 20531 or

Jennifer.Tyson@usdoj.gov or (202) 598–0386.

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 purpose of the solicitation template is to provide a framework to develop program-specific announcements soliciting applications for funding. A program solicitation outlines the specifics of the funding program; describes requirements for eligibility; instructs an applicant on the necessary components of an application under a specific program (*e.g.,* project activities, project abstract, project timeline, proposed budget, etc.); outlines program evaluation and performance measures; explains selection criteria and the review process; and provides registration dates, deadlines, and instructions on how to apply within the designated application systems. The approved solicitation template collection also includes the OJP Budget Detail Worksheet; the Coordinated Tribal Assistance Solicitation (CTAS) Tribal Community and Justice Profile, Budget Detail Worksheet, and Demographic Form; and the Financial Management and System of Internal Controls Questionnaire (FCQ).

The solicitation template collection was previously streamlined to move static instructions and guidance that do not frequently change from year to year to a Grant Application Resource Guide web page. The result is a more concise, user-friendly solicitation document that draws closer attention to the program-specific details and requirements in order to lessen confusion for the applicant. Additionally, it enables the agency to revise static guidance on the web page as necessary, reducing the need to re-issue program solicitations already released to the public.

Overview of This Information Collection

1. *Type of Information Collection*: Revision of a previously approved collection.

2. *The Title of the Form/Collection:* OJP Solicitation Template.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* No form number available. Office of Justice Programs, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond: Affected Public:* State, Local and Tribal Governments (state agencies, tribal governments, local governments, colleges and universities, non-profit organizations, for-profit organizations, and faith-based organizations). The obligation to respond is required to obtain/retain a benefit.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that information will be collected annually from approximately 10,000 applicants. Annual cost to the respondents is based on the number of hours involved in preparing and submitting a complete application package. Mandatory requirements for an application under the OJP and CTAS Standard Solicitation Template include a program narrative; budget details and narrative, via the OJP standard BDW; Applicant Disclosure of Duplication in Cost Items; Applicant Disclosure and Justification—DOJ High Risk Grantees; and the FCQ. With the exception of the Tribal Narrative Profile and added Demographic form, the mandatory requirements for an application under the CTAS Solicitation Template are the same as those for OJP. Optional requirements can be made mandatory depending on the type of program to include, but not limited to: documentation related to Administration priority areas of consideration (*e.g.,* Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), project abstract, indirect cost rate agreement, tribal authorizing resolution, timelines, logic models, memoranda of understanding, letters of support, resumes, and research and evaluation independence and integrity. The estimated public reporting burden for this collection of information is now 32 hours per application. The 32-hour estimate is based on the amount of time to prepare a research and evaluation proposal, one of the most time intensive types of application solicited by OJP.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated public burden associated with this application is 320,000 hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
OJP Template	10,000	1/annually	10,000	32	20
Unduplicated Totals	10,000		10,000		320,000

If additional information is required contact: Darwin Arceo, 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: August 1, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–16872 Filed 8–7–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On August 1, 2023, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of California in the lawsuit entitled *United States* v. *Sinister Manufacturing Company, Inc.,* Civil Action No. 2:23–cv–01580–JDP.

The United States filed this lawsuit under the Clean Air Act (CAA). The United States' complaint names Sinister Manufacturing Company, Inc. (Sinister) as the defendant. The complaint requests civil penalties and injunctive relief for Sinister's alleged unlawful manufacture, sale, and offer for sale of aftermarket automotive devices that bypass, defeat or render inoperative emissions controls. Sinister signed the Consent Decree, under which it agrees to pay a $500,000 civil penalty based on its limited financial ability to pay. The Consent Decree also prohibits Sinister from making, selling or offering to sell defeat products, including delete tuners, and prevents Sinister from transferring intellectual property that would allow others to make such products. To ensure compliance with these requirements, Sinister will implement an internal training program and notify its distributors and former customers about the Consent Decree.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Sinister Manufacturing Company, Inc.,* D.J. Ref. No. 90–5–2–1–12092. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $12.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Kathryn C. Macdonald,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–16883 Filed 8–7–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Summary Plan Description Requirements Under the Employee Retirement Income Security Act of 1974, as Amended

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-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 September 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 Department's regulations contain information collections that constitute mandatory third-party disclosure requirements applicable to the majority of Employee Retirement Income Security Act (ERISA)-covered pension and welfare benefit plans. The Department has determined that these information collections are necessary in order to ensure the participants and beneficiaries in employee benefit plans covered under ERISA receive adequate information about the benefits due to them and their rights under the plans. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 8, 2023 (88 FR 8317).

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–EBSA.

Title of Collection: Summary Plan Description Requirements Under the Employee Retirement Income Security Act of 1974, as Amended.

OMB Control Number: 1210–0039.

Affected Public: Private Sector—Businesses or other for-profits; not-for-profit institutions.

Total Estimated Number of Respondents: 3,214,973.

Total Estimated Number of Responses: 117,968,000.

Total Estimated Annual Time Burden: 1,397,000 hours.

Total Estimated Annual Other Costs Burden: $88,872,000.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Nicole Bouchet,

Acting Departmental Clearance Officer.

[FR Doc. 2023–16888 Filed 8–7–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Voluntary Demographic Form (CM–411); (OMB Control No. 1240–0New)

AGENCY: Division of Coal Mine Workers' Compensation, (OWCP/DCMWC), Labor.

ACTION: Request public comments.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning the authority to conduct the information collection request (ICR) titled ''Voluntary Demographic Form (CM–411).'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by October 10, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered.

Electronic Submissions: Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for (DCMWC 1240–0New). [Request docket ID from your agency FDMS.gov docket manager]. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket with no changes. Because your comment will be made public, you are responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as your or anyone else's Social Security number or confidential business information.
- If your comment includes confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–OWCP/DCMWC, Office of Workers' Compensation Programs, Division of Coal Mine Workers' Compensation, U.S. Department of Labor, 200 Constitution Ave. NW, Room S–S3323, Washington, DC 20210.
- OWCP/DCMWC will post your comment as well as any attachments, except for information submitted and marked as confidential by the submitting party, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs, Office of Workers' Compensation Programs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Historically, the Black Lung Program application forms and other claims processing forms have not collected demographic information. The use of this voluntary demographic form will help identify underserved communities and guide language and outreach strategies, thereby strengthening the customer service experience.

Collecting and analyzing demographic data aligns with the following executive orders Executive Orders: *Executive Order 13985,* Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, signed by President Biden in January 2021; *Executive Order 14075,* Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals, also signed by President Biden in January 2021; *Executive Order 14031,* Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders, signed in May 2021; and *Executive Order 14058,* Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government, signed in December 2021.

II. Desired Focus of Comments

OWCP/DCMWC is soliciting comments concerning the proposed information collection related to the Voluntary Demographic Form. This request helps to ensure that requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. OWCP/DCMWC is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of OWCP/DCMWC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Background documents related to this information collection request are available at *https://regulations.gov* and at DOL–OWCP/DCMWC located at 200 Constitution Ave. NW, Room S3323, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns Voluntary Demographic Form. OWCP/DCMWC is providing the following estimates with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: New collection 1240–0New.

Agency: Office of Workers' Compensation Programs, Division of Coal Mine Workers' Compensation (OWCP/DCMWC).

OMB Number: 1240–0New.

Form: CM–411 Voluntary Demographic Form, Conducted by The U.S. Department of Labor, 1240–0New.

Affected Public: Individuals or households.

Number of Respondents: 18,077.

Frequency: On Occasion.

Number of Responses: 18,077.

Estimated Average Time per Response: 5 minutes.

Annual Burden Hours: 1,507.

Annual Respondent or Recordkeeper Cost: $2,991.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection. They will become a matter of public record and will be available at *https://www.reginfo.gov.*

Dated: August 2, 2023.

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2023–16887 Filed 8–7–23; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23–085]

Privacy Act of 1974; System of Records

AGENCY: National Aeronautics and Space Administration (NASA)

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the National Aeronautics and Space Administration is providing public notice of a modification to a previously announced system of records, Aircraft Crewmembers' Qualifications and Performance Records, NASA 10ACMQ. This notice incorporates updated NASA Standard Routine Uses.

DATES: Submit comments within 30 calendar days from the date of this publication. The changes will take effect at the end of that period, if no adverse comments are received.

ADDRESSES: Bill Edwards-Bodmer, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (757) 864–7998, *NASA-PAOfficer@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer, Bill Edwards-Bodmer, (757) 864–7998, *NASA-PAOfficer@nasa.gov.*

SUPPLEMENTARY INFORMATION: This system notice includes minor textual updates to NASA Standard Routine Uses and updates to system and subsystem manager titles.

William Edwards-Bodmer,

NASA Privacy Act Officer.

SYSTEM NAME AND NUMBER:

Aircraft Crewmembers' Qualifications and Performance Records, NASA 10ACMQ.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

- Mary W. Jackson NASA Headquarters, National Aeronautics and Space Administration (NASA), Washington, DC 20546–0001.
- Ames Research Center (NASA), Moffett Field, CA 94035–1000.
- Armstrong Flight Research Center (NASA), P.O. Box 273, Edwards, CA 93523–0273.
- John H. Glenn Research Center at Lewis Field (NASA), 21000 Brookpark Road, Cleveland, OH 44135–3191.
- Goddard Space Flight Center (NASA), Greenbelt, MD 20771–0001.
- Lyndon B. Johnson Space Center (NASA), Houston, TX 77058–3696.
- John F. Kennedy Space Center (NASA), Kennedy Space Center, FL 32899–0001.
- Langley Research Center (NASA), Hampton, VA 23681–2199.
- Marshall Space Flight Center (NASA), Huntsville, AL 35808
- Stennis Space Center (NASA), Bay Saint Louis, MS 39529.

SYSTEM MANAGER(S):

- Director, Aircraft Capability Management Office, and Director, Institutional Safety Management Division, at NASA Headquarters, Mary W. Jackson NASA Headquarters, National Aeronautics and Space Administration (NASA) Washington, DC 20546–0001.

Subsystem Managers:

- Deputy Chief, Flight Control and Cockpit Integration Branch at NASA Ames Research Center (see System Location above for address).
- Chief, Armstrong Research Aircraft Operations Division at NASA Armstrong Flight Research Center (see System Location above for address).
- Head, Aeronautical Programs Branch at NASA Goddard Space Flight Center (see System Location above for address).
- Chief, Aircraft Office at NASA Wallops Flight Facility Center (see System Location above for address).
- Chief, Aircraft Operations Division at NASA Johnson Space Center (see System Location above for address).
- Chief, Aircraft Operations Office at NASA Kennedy Space Center (see System Location above for address).
- Chief, Flight Operations and Engineering Branch at NASA Langley Research Center (see System Location above for address).
- Manager, Aviation Operations Office in Safety and Mission Assurance at Marshall Space Flight Center (see System Location above for address).
- Manager, Range and Aviation Operations Management Office at Stennis Space Center (see System Location above for address).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

- 51 U.S.C. 20113(a)—Powers of the Administration in performance of functions to make and promulgate rules and regulations.
- 44 U.S.C. 3101—Records management by agency heads; general duties.
- 41 CFR 102.33—Management of Government Aircraft.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used to document flight crew, including UAS operators, experience and currency as well as itineraries and passenger manifests in case of accidents or requests.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on Crewmembers of NASA aircraft, including (1) NASA employees; (2) employees from other agencies and military detailees working at NASA; (3) active or retired astronauts; (4) contractor personnel; and (5) other space flight personnel on temporary or extended duty at NASA.

CATEGORIES OF RECORDS IN THE SYSTEM:

This System contains: (1) Records of experience, and currency (*e.g.,* flight hours day, night, and instrument), types of approaches and landings, crew position, type of aircraft, flight check ratings and related examination results, and training performed; and (2) flight itineraries and passenger manifests.

RECORD SOURCE CATEGORIES:

Individuals, training schools or instructors, medical units or doctors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORES OF USERS AND PURPOSES OF SUCH USES:

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. Under the following routine uses that are unique to this system of records, information in this system may be disclosed:

1. To this system of records may be granted to Federal, State, or local agencies or to foreign governments in cases of accident investigations, including mishap and collateral investigations.

2. To Federal, State, or local agencies, companies, or governments requesting qualifications of crewmembers prior to authorization to participate in their flight programs, or to Federal, State, or local agencies, companies, or governments whose crewmembers may participate in NASA's flight programs.

3. To the public or in press releases either by prior approval of the individual, or in the case of public release of information from mishap or collateral investigation reports, pursuant to NASA regulations at 14 CFR part 1213.

In addition, information may be disclosed under the following NASA Standard Routine Uses:

1. *Law Enforcement*—When a record on its face, or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order, if NASA determines by careful review that the records or information are both relevant and necessary to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

2. *Certain Disclosures to Other Agencies*—A record from this SOR may be disclosed to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an NASA decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. *Certain Disclosures to Other Federal Agencies*—A record from this SOR may be disclosed to a Federal agency, in response to its request, for a matter concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. *Department of Justice*—A record from this SOR may be disclosed to the Department of Justice when a) NASA, or any component thereof; or b) any employee of NASA in his or her official capacity; or c) any employee of NASA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or d) the United States, where NASA determines that litigation is likely to affect NASA or any of its components, is a party to litigation or has an interest in such litigation, and by careful review, the use of such records by the Department of Justice is deemed by NASA to be relevant and necessary to the litigation.

5. *Courts*—A record from this SOR may be disclosed in an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when NASA determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant and necessary to the proceeding.

6. *Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information*—A record from this SOR may be disclosed to appropriate agencies, entities, and persons when (1) NASA suspects or has confirmed that there has been a breach of the system of records; (2) NASA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NASA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NASA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

7. *Contractors*—A record from this SOR may be disclosed to contractors, grantees, experts, consultants, students, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish a NASA function related to this SOR. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to NASA employees.

8. *Members of Congress*—A record from this SOR may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

9. *Disclosures to Other Federal Agencies in Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information*—A record from this SOR may be disclosed to another Federal agency or Federal entity, when NASA 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.

10. *National Archives and Records Administration*—A record from this SOR may be disclosed as a routine use to the officers and employees of the National Archives and Records Administration (NARA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

11. *Audit*—A record from this SOR may be disclosed to another agency, or organization for purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are maintained as hard-copy documents and on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved from the system by aircrew identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records for other than astronauts are maintained in Agency files and destroyed 5 years after crewmember separates from NASA in accordance with NASA Records Retention Schedules (NRRS), Schedule 8 Item 32. Records of crewmembers who are astronauts are permanent and will be transferred to the National Archives in accordance with NRRS, Schedule 8 Item 34.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are maintained on secure NASA servers and protected in accordance with all Federal standards and those established in NASA regulations at 14 CFR 1212.605. Additionally, server and data management environments employ infrastructure encryption technologies both in data transmission and at rest on servers. Electronic messages sent within and outside of the Agency that convey sensitive data are encrypted and transmitted by staff via pre-approved electronic encryption systems as required by NASA policy. Approved security plans are in place for information systems containing the records in accordance with the Federal Information Security Management Act of 2002 (FISMA) and OMB Circular A–130, Management of Federal Information Resources. Only authorized

personnel requiring information in the official discharge of their duties are authorized access to records through approved access or authentication methods. Access to electronic records is achieved only from workstations within the NASA Intranet or via a secure Virtual Private Network (VPN) connection that requires two-factor hardware token authentication or via employee PIV badge authentication from NASA-issued computers. Non-electronic records are secured in locked rooms or locked file cabinets.

RECORD ACCESS PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

CONTESTING RECORD PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

NOTIFICATION PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

80 FR 79937.
74 FR 50247.
72 FR 55817.
64 FR 69556.
63 FR 4290.

[FR Doc. 2023–16899 Filed 8–7–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23–086]

Privacy Act of 1974; System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, the National Aeronautics and Space Administration is issuing public notice of its proposal to modify an existing system of records Security Records System/NASA 10SECR. Modifications are described below under the caption **SUPPLEMENTARY INFORMATION**.

DATES: Submit comments within 30 calendar days from the date of this publication. The changes will take effect at the end of that period, if no adverse comments are received.

ADDRESSES: Bill Edwards-Bodmer, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (757) 864–7998, *NASA-PAOfficer@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer, Bill Edwards-Bodmer, (757) 864–7998, *NASA-PAOfficer@nasa.gov.*

SUPPLEMENTARY INFORMATION: The AUTHORITY FOR MAINTENANCE OF THE SYSTEM section has been updated to remove reference to Executive Order 10450 and add reference to Executive Orders 13764 and 13467. This also notice incorporates minor textual edits to NASA Standard Routine Uses and minor formatting revisions to align with OMB guidance.

William Edwards-Bodmer,

NASA Privacy Act Officer.

SYSTEM NAME AND NUMBER:

Security Records System, NASA 10SECR.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The centralized data system is located at George C. Marshall Space Flight Center (NASA), Marshall Space Flight Center, AL 35812–0001.

Records are also located at:

- Mary W. Jackson NASA Headquarters (NASA), Washington, DC 20546–0001;
- Ames Research Center (NASA), Moffett Field, CA 94035–1000;
- Armstrong Flight Research Center (NASA), PO Box 273, Edwards, CA 93523–0273;
- John H. Glenn Research Center at Lewis Field (NASA), 21000 Brookpark Road, Cleveland, OH 44135–3191;
- Goddard Space Flight Center (NASA), Greenbelt, MD 20771–0001;
- Lyndon B. Johnson Space Center (NASA), Houston, TX 77058–3696;
- John F. Kennedy Space Center (NASA), Kennedy Space Center, FL 32899–0001;
- Langley Research Center (NASA), Hampton, VA 23681–2199;
- George C. Marshall Space Flight Center (NASA), Marshall Space Flight Center, AL 35812–0001;
- John C. Stennis Space Center (NASA), Stennis Space Center, MS 39529–6000;
- Michoud Assembly Facility (NASA), PO Box 29300, New Orleans, LA 70189; and
- White Sands Test Facility (NASA), PO Drawer MM, Las Cruces, NM 88004–0020.

SYSTEM MANAGER(S):

System Manager: Deputy Assistant Administrator of the Office of Protective Services, NASA Headquarters (see System Location above for address).

Subsystem Managers: Chief of Security/Protective Services at each subsystem location at:

- NASA Headquarters (see System Location above for address);
- NASA Ames Research Center (see System Location above for address);
- NASA Armstrong Flight Research Center (see System Location above for address);
- NASA Glenn Research Center (see System Location above for address);
- NASA Goddard Space Flight Center (see System Location above for address);
- NASA Johnson Space Center (see System Location above for address);
- NASA Kennedy Space Center (see System Location above for address);
- NASA Langley Research Center (see System Location above for address);
- NASA Marshall Space Flight Center (see System Location above for address);
- NASA Stennis Space Center (see System Location above for address); and
- Michoud Assembly Facility (see System Location above for address);

• White Sands Test Facility (see System Location above for address).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

• 18 U.S.C. 202–208—Bribery, graft, and conflicts of interest;
• 18 U.S.C. 371—Conspiracy to commit offense or to defraud United States;
• 18 U.S.C. 793–799—Espionage and Information Control Statutes;
• 18 U.S.C. 2151–2157—Sabotage statutes;
• 18 U.S.C. 3056—Powers, authorities, and duties of United States Secret Service;
• 40 U.S.C. 1441—Responsibilities regarding efficiency, security, and privacy of Federal computer systems;
• 42 U.S.C. 2011 *et seq.*—Development and control of atomic energy; congressional declaration of policy;
• 44 U.S.C. 3101—Records management by agency heads; general duties;
• 50 U.S.C.—McCarran Internal Security Act;
• 51 U.S.C. 20101—National and commercial space programs; short title;
• Exec. Order No. 9397, as amended—Numbering system for Federal accounts relating to individual persons;
• Executive Order 13764—Amending the Civil Service Rules, Executive Order 13488, and Executive Order 13467 To Modernize the Executive Branch-Wide Governance Structure and Processes for Security Clearances, Suitability and Fitness for Employment, and Credentialing, and Related Matters;
• Exec. Order No. 10865—Safeguarding classified information within industry;
• Exec. Order No. 12968, as amended—Access to classified information;
• Exec. Order No. 13526, as amended—Classified national security information;
• Executive Order 13587, Structural Reform to Improve the Security of Classified Networks and Responsible Sharing and Safeguarding of Classified Information;
• Pub. L. 81–733—Summary suspension of employment of civilian officers and employees;
• Pub. L. 107–347—Federal Information Security Management Act 2002;
• HSPD 12—Policy for a common identification standard for Federal employees and contractors;
• 14 CFR 1203(b)—National Aeronautics and Space Administration; information security program;
• 14 CFR 1213—Release of information to news and information media;
• 15 CFR pt. 744—Export administration regulations; control policy: end-user and end-use based;
• 22 CFR pt. 62—Department of State; exchange visitor program;
• 22 CFR 120–130—Foreign Relations Export Control;
• 41 CFR pt. 101—Federal property management regulations.

PURPOSE(S) OF THE SYSTEM:

The maintenance of these records supports NASA protective services and security operations as well as the establishment of identities, processing of access requests, and issuance of credentials in NASA's authoritative identity source.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on NASA (1) civil servant employees and applicants; (2) committee members; (3) consultants; (4) experts; (5) Resident Research Associates; (6) guest workers; (7) contractor employees; (8) detailees; (9) visitors; (10) correspondents (written and telephonic); (11) Faculty Fellows; (12) Intergovernmental Personnel Mobility Act (IPA) Employees, interns, Grantees, and Cooperative Employees; and (13) Remote Users of NASA Non-Public Information Technology Resources. This system also maintains information on all non-U.S. citizens, to include Lawful Permanent Residents seeking access to NASA facilities, resources, laboratories, contractor sites, Federally Funded Research and Development Centers or NASA sponsored events for unclassified purposes to include employees of NASA or NASA contractors; prospective NASA or NASA contractor employees; employees of other U.S. Government agencies or their contractors; foreign students at U.S. institutions; officials or other persons employed by foreign governments or other foreign institutions who may or may not be involved in cooperation with NASA under international agreements; foreign media representatives; and representatives or agents of foreign national governments seeking access to NASA facilities, to include high-level protocol visits; or international relations. While not considered 'individuals' under The Privacy Act, this system maintains records on international individuals when applicable.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel Security Records, Personal Identity Records including NASA visitor files, Emergency Data Records, Criminal Matters, Traffic Management Records, and Access Management Records. Specific records fields include, but are not limited to: Name, former names, date of birth, place of birth, social security number, home address, phone numbers, email address, citizenship, duty Center, traffic infraction, security violation, security incident, security violation discipline status, action taken, access permissions, area accessed, and date accessed.

RECORD SOURCE CATEGORIES:

Information is obtained from a variety of sources including from the employee, contractor, or applicant directly or via use of the Standard Form (SF) SF–85, SF–85P, or SF–86 and personal interviews; employers' and former employers' records; FBI criminal history records and other databases; financial institutions and credit reports; medical records and health care providers; educational institutions; interviews of witnesses such as neighbors, friends, coworkers, business associates, teachers, landlords, or family members; tax records; and other public records. Security violation information is obtained from a variety of sources, such as guard reports, security inspections, witnesses, supervisor's reports, audit reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. Under the following routine uses that are unique to this system of records, information in this system may be disclosed:

1. to the Department of Justice (DOJ) when: (a) The agency or any component thereof; (b) any employee of the agency in his or her official capacity; (c) any employee of the agency in his or her individual capacity where agency or the DOJ has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by DOJ is therefore deemed by the agency to be for a purpose compatible with the purpose for which the agency collected the records.

2. to a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; (b) any employee of the agency in his or her official capacity; (c) any employee of the agency in his or her individual capacity

where agency or the Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

3. to an Agency in order to provide a basis for determining preliminary visa eligibility.

4. to a staff member of the Executive Office of the President in response to an inquiry from the White House.

5. to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

6. to agency contractors, grantees, or volunteers who have been engaged to assist the agency in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

7. to other Federal agencies and relevant contractor facilities to determine eligibility of individuals to access classified National Security information.

8. to any official investigative or judicial source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

9. to the news media or the general public, factual information the disclosure of which would be in the public interest and which would not constitute an unwarranted invasion of personal privacy, consistent with Freedom of Information Act standards.

10. to a Federal, State, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947 as amended, the CIA Act of 1949 as amended, Executive Order 12333 or any successor order, applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders or directives.

11. in order to notify an employee's next-of-kin or contractor in the event of a mishap involving that employee or contractor.

12. to notify another Federal agency when, or verify whether, a PIV card is valid.

13. to provide relevant information to an internal or external organization or element thereof conducting audit activities of a NASA contractor or subcontractor.

14. to a NASA contractor, subcontractor, grantee, or other Government organization information developed in an investigation or administrative inquiry concerning a violation of a Federal or state statute or regulation on the part of an officer or employee of the contractor, subcontractor, grantee, or other Government organization.

15. to foreign governments or international organizations if required by treaties, international conventions, or executive agreements.

16. to members of a NASA Advisory Committee or Committees and interagency boards charged with responsibilities pertaining to international visits and assignments and/or national security when authorized by the individual or to the extent the committee(s) is so authorized and such disclosure is required by law.

17. to the following individuals for the purpose of providing information on traffic accidents, personal injuries, or the loss or damage of property: (a) Individuals involved in such incidents; (b) persons injured in such incidents; (c) owners of property damaged, lost or stolen in such incidents; and/or (d) these individuals' duly verified insurance companies, personal representatives, employers, and/or attorneys. The release of information under these circumstances should only occur when it will not: (a) interfere with ongoing law enforcement proceedings, (b) risk the health or safety of an individual, or (c) reveal the identity of an informant or witness that has received an explicit assurance of confidentiality. Social security numbers should not be released under these circumstances unless the social security number belongs to the individual requester. The intent of this use is to facilitate information flow to parties who need the information to adjudicate a claim.

18. to the Transportation Security Administration, with consent of the individual on whom the records are maintained, to establish eligibility for the TSA Pre✓ program.

In addition, information may be disclosed under the following NASA Standard Routine Uses:

1. *Law Enforcement*—When a record on its face, or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order, if NASA determines by careful review that the records or information are both relevant and necessary to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

2. *Certain Disclosures to Other Agencies*—A record from this SOR may be disclosed to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an NASA decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. *Certain Disclosures to Other Federal Agencies*—A record from this SOR may be disclosed to a Federal agency, in response to its request, for a matter concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. *Department of Justice*—A record from this SOR may be disclosed to the Department of Justice when (a) NASA, or any component thereof; or (b) any employee of NASA in his or her official capacity; or (c) any employee of NASA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where NASA determines that litigation is likely to affect NASA or any of its components, is a party to litigation or has an interest in such litigation, and by careful review, the use of such records by the Department of Justice is deemed by NASA to be relevant and necessary to the litigation.

5. *Courts*—A record from this SOR may be disclosed in an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when NASA determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant and necessary to the proceeding.

6. *Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information*—A record from this SOR may be disclosed to appropriate agencies, entities, and persons when (1) NASA suspects or has confirmed that there has been a breach of the system of records; (2) NASA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NASA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NASA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

7. *Contractors*—A record from this SOR may be disclosed to contractors, grantees, experts, consultants, students, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish a NASA function related to this SOR. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to NASA employees.

8. *Members of Congress*—A record from this SOR may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

9. *Disclosures to Other Federal Agencies in Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information*—A record from this SOR may be disclosed to another Federal agency or Federal entity, when NASA 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.

10. *National Archives and Records Administration*—A record from this SOR may be disclosed as a routine use to the officers and employees of the National Archives and Records Administration (NARA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

11. *Audit*—A record from this SOR may be disclosed to another agency, or organization for purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are maintained electronically and in hard-copy documents.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved from the system by individual's name, file number, badge number, decal number, payroll number, Agency-specific unique personal identification code, and/or Social Security Number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Personnel Security Records are maintained in Agency files and destroyed in accordance with NASA Records Retention Schedules (NRRS), Schedule 1 Item 103. Foreign national files are maintained and destroyed in accordance with NRRS, Schedule 1 Item 35.

Personal Identity Records are maintained in Agency files and destroyed in accordance with NRRS, Schedule 1 Item 103. Visitor files are maintained and destroyed in accordance with NRRS, Schedule 1 Item 114.

Emergency Data Records are maintained and destroyed in accordance with NRRS 1, Item 100B.

Criminal Matter Records are maintained and destroyed in accordance with NRRS 1, Schedule 97.5, Items A and B.

Traffic Management Records are maintained and destroyed in accordance with NRRS 1, Schedule 97.5, Item C.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are maintained on secure NASA servers and protected in accordance with all Federal standards and those established in NASA regulations at 14 CFR 1212.605. Additionally, server and data management environments employ infrastructure encryption technologies both in data transmission and at rest on servers. Approved security plans are in place for information systems containing the records in accordance with the Federal Information Security Management Act of 2002 (FISMA) and OMB Circular A–130, Management of Federal Information Resources (OA–9999–M–MSF–2712, OA–9999–M–MSF–2707, IE–999–M–MSF–1654). Only authorized personnel requiring information in the official discharge of their duties are authorized access to records through approved access or authentication methods. Access to electronic records is achieved only by utilizing NASA agency managed authentication mechanisms. Non-electronic records are secured in access-controlled rooms with electronic security countermeasures and agency managed, PIV enabled, physical authentication mechanisms.

RECORD ACCESS PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

Personnel Security Records compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information have been exempted by the Administrator under 5 U.S.C. 552a(k)(5) from the access provisions of the Act.

Personal Identity Records: Requests from individuals should be addressed to the cognizant system or subsystem manager listed above.

Emergency Data Records: Requests from individuals should be addressed to the cognizant system or subsystem manager listed above.

Criminal Matter Records compiled for civil or criminal law enforcement purposes have been exempted by the Administrator under 5 U.S.C. 552a(k)(2) from the access provision of the Act.

Traffic Management Records: Requests from individuals should be addressed to the cognizant system or subsystem manager listed above.

CONTESTING RECORD PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

NOTIFICATION PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Personnel Security Records compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a confidential source, are exempt from the following sections of the Privacy Act of 1974, 5 U.S.C. 552a(c)(3) relating to access to the disclosure accounting; (d) relating to access to the records; (e)(1) relating to the type of information maintained in the records; (e)(4)(G), (H) and (I) relating to publishing in the annual system notice information as to agency procedures for access and correction and information as to the categories of sources of records; and (f) relating to developing agency rules for gaining access and making corrections. The determination to exempt the Personnel Security Records portion of the Security Records System has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a(k)(5) and Subpart 5 of the NASA regulations appearing in 14 CFR part 1212.

Criminal Matter Records to the extent they constitute investigatory material compiled for law enforcement purposes are exempt from the following sections of the Privacy Act of 1974, 5 U.S.C. 552a(c)(3) relating to access to the disclosure accounting; (d) relating to access to the records; (e)(1) relating to the type of information maintained in the records; (e)(4)(G), (H) and (I) relating to publishing in the annual system notice information as to agency procedures for access and correction and information as to the categories of sources of records; and (f) relating to developing agency rules for gaining access and making corrections. The determination to exempt the Criminal Matter Records portion of the Security Records System has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a(k)(2) and subpart 5 of the NASA regulations appearing in 14 CFR part 1212.

Records subject to the provisions of 5 U.S.C. 552(b)(1) required by Executive Order to be kept secret in the interest of national defense or foreign policy are exempt from the following sections of the Privacy Act of 1974, 5 U.S.C. 552a:(c)(3) relating to access to the disclosure accounting; (d) relating to the access to the records; (e)(1) relating to the type of information maintained in the records; (e)(4)(G), (H) and (I) relating to publishing in the annual system notice information as to agency procedures for access and correction and information as to the categories of sources of records; and (f) relating to developing agency rules for gaining access and making corrections.

The determination to exempt this portion of the Security Records System has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a(k)(1) and subpart 5 of the NASA regulations appearing in 14 CFR part 1212.

HISTORY:

88 FR 30166
86 FR 71093
80 FR 79937
80 FR 72745
76 FR 78050
74 FR 50247
72 FR 55817
71 FR 45859
64 FR 69556
63 FR 4298

[FR Doc. 2023–16900 Filed 8–7–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23–084]

Information Collection: NASA Small Business Mentor Protégé Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Reinstatement of expired information collection.

SUMMARY: NASA is proposing to amend the NASA Federal Acquisition Regulation Supplement (NFS) to reflect updates to NASA's Mentor Protégé Program (MPP) including: the requirement of Small Business Specialists' concurrence on the signed letter of endorsement; requirements associated with credit received towards subcontracting goals; the change of the MPP reporting requirement from semi-annually to annually; identified the NASA Mentor Protégé Program Office; and clerical, semantic improvements. NASA also proposes to amend the NFS language to reflect the annual negotiation of its small business percentage goals. Lastly, the NFS will be amended to emphasize collaboration amongst representatives from the Office of Small Business Programs, Office of Procurement, and Program Offices to reduce barriers to entry and to opportunities for all small business concerns and Historically Black Colleges and Universities or Minority Institutions.

DATES: Comments are due by September 7, 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:

1. Abstract

NASA is proposing to revise the NFS to add new text that: requires concurrence of the Small Business Specialist on the signed letter of endorsement for the MPP; adds requirements associated with credit received towards subcontracting goals; changes the reporting requirement from semi-annually to annually; and makes clerical and other semantic improvements. This proposed rule contains information collection requirements requiring the approval of the Office of Management and Budget

(OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35). As part of this proposed rule, NASA is also requesting comments on the reinstatement with change of a collection, OMB 2700–0078, *NASA Mentor-Protégé Program Small Business and Small Disadvantaged Business Concerns Report.*

NASA, in coordination with its Office of Small Business Programs, initiated this proposed rule and is proposing to reinstate this collection to decrease the collection requirement from semi-annual to annual. NASA conducts semi-annual Mentor Protégé performance reviews, which are more effective in tracking milestones over the life of the agreement than the submission of semi-annual reports. This change will reduce the reporting requirement on small businesses from semi-annual to annual and still capture necessary information from the semi-annual performance reviews.

7. Methods of Collection

NASA uses electronic methods to collect information from collection respondents.

8. Data

Title: NASA Mentor-Protégé Program.

OMB Number: 2700–0078.

Type of review: Reinstatement.

Affected Public: Small businesses.

Estimated Annual Number of Activities: 1.

Estimated Number of Respondents per Activity: 10.

Annual Responses: 10.

Estimated Time per Response: 1.5 hrs.

Estimated Total Annual Burden Hours: 15.

9. 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. 2023–16901 Filed 8–7–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 23–087]

Privacy Act of 1974; System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, the National Aeronautics and Space Administration is issuing public notice of its proposal to make minor modifications to the previously noticed system of records, Reasonable Accommodation (RA) Records/NASA 10RAR. Further details are set forth below under the caption **SUPPLEMENTARY INFORMATION**.

DATES: Submit comments within 30 calendar days from the date of this publication. The changes will take effect at the end of that period if no adverse comments are received.

ADDRESSES: Bill Edwards-Bodmer, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (757) 864–7998, *NASA-PAOfficer@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer, Bill Edwards-Bodmer, (757) 864–7998, *NASA-PAOfficer@nasa.gov.*

SUPPLEMENTARY INFORMATION:

This notice incorporates minor textual edits to NASA Standard Routine Uses and minor formatting revisions to align with OMB guidance.

William Edwards-Bodmer,

NASA Privacy Act Officer.

SYSTEM NAME AND NUMBER:

Reasonable Accommodation (RA) Records, NASA 10RAR.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Amazon Web Services, 410 Terry Avenue North, Seattle, WA 98109,

Mary W. Jackson NASA Headquarters, Washington, DC 20546–0001;

Ames Research Center (NASA), Moffett Field, CA 94035–1000;

Armstrong Flight Research Center (NASA), PO Box 273, Edwards, CA 93523–0273;

John H. Glenn Research Center at Lewis Field (NASA), 21000 Brookpark Road, Cleveland, OH 44135–3191;

Goddard Space Flight Center (NASA), Greenbelt, MD 20771–0001;

Lyndon B. Johnson Space Center (NASA), Houston, TX 77058–3696;

John F. Kennedy Space Center (NASA), Kennedy Space Center, FL 32899–0001;

Langley Research Center (NASA), Hampton, VA 23681–2199;

George C. Marshall Space Flight Center (NASA), Marshall Space Flight Center, AL 35812–0001;

John C. Stennis Space Center (NASA), Stennis Space Center, MS 39529–6000; NASA Shared Services Center (NSSC), Building 5100, Stennis Space Center, MS 39529–6000; and Wallops Flight Facility (NASA), Wallops Island, VA 23337.

SYSTEM MANAGER(S):

Associate Administrator, Office of Diversity and Equal Opportunity (ODEO), NASA Headquarters (see System Location above for address).

Subsystem Managers: ODEO Director, Diversity and Data Analytics Division; and Agency Disability Program Manager at NASA Headquarters (see System Location above for address);

Center ODEO Directors and Center Disability Program Managers, at:

NASA Ames Research Center (see System Location above for address);

NASA Armstrong Flight Research Center (see System Location above for address);

NASA Glenn Research Center (see System Location above for address);

NASA Goddard Space Flight Center (see System Location above for address);

NASA Headquarters (see System Location above for address);

NASA Johnson Space Center (see System Location above for address);

NASA Kennedy Space Center (see System Location above for address);

NASA Langley Research Center (see System Location above for address);

NASA Marshall Space Flight Center (see System Location above for address);

NASA Stennis Space Center (see System Location above for address);

NASA Shared Services Center (NSSC) (see System Location above for address); and Wallops Flight Facility (see System Location above for address).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 791 *et seq.;* 42 U.S.C. 12101 *et seq.;* 42 U.S.C. 2000e *et seq.;* 44 U.S.C. 3101; 51 U.S.C. 20113(a); E.O. 11478; E.O. 13164; 29 CFR part 1605; 29 CFR part 1614; 29 CFR part 1630.

PURPOSE(S) OF THE SYSTEM:

This system is maintained for the purpose of considering, deciding and implementing requests for reasonable accommodation made by NASA employees and applicants for employment.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains records of requests by (1) NASA employees; or (2) applicants for employment who are seeking reasonable accommodation and also contains the disposition of such requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include, but are not limited to: requests for reasonable accommodation including supporting documents for such requests; information concerning the nature of the disability or religious belief, practice, or observance and the need for accommodation; medical records or other substantiating documentation; notes or records made during evaluation of such requests; requests for reconsideration or internal Agency appeals; and disposition all requests and appeals.

RECORD SOURCE CATEGORIES:

Individuals themselves; Associate Administrator for Diversity and Equal Opportunity, and all designees, including NASA Center E.O. Directors and Center Disability Program Managers; EEOC officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. Under the following routine uses that are unique to this system of records, information in this system may be disclosed:

(1) to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee or applicant; (2) to first aid and safety personnel, when appropriate, if the disability might require emergency treatment; (3) to Federal Government officials or any of their assignees charged with the responsibility of investigating NASA's compliance with The Rehabilitation Act of 1973, as amended, or the Genetic Information Nondiscrimination Act of 2008 (GINA), or Title VII of the Civil Rights Act; and (4) to the Office of Management and Budget (OMB), Department of Labor (DOL), Office of Personnel Management (OPM), Equal Employment Opportunity Commission (EEOC), or Office of Special Counsel (OSC) to obtain advice regarding statutory, regulatory, policy, and other requirements related to reasonable accommodation.

In addition, the following Standard Routine Uses of information contained in Systems of Records (SORs), subject to the Privacy Act of 1974, are standard for many NASA systems. Any disclosures of information will be compatible with the purpose for which NASA collected the information.

1. *Law Enforcement*—When a record on its face, or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order, if NASA determines by careful review that the records or information are both relevant and necessary to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

2. *Certain Disclosures to Other Agencies*—A record from this SOR may be disclosed to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to a NASA decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. *Certain Disclosures to Other Federal Agencies*—A record from this SOR may be disclosed to a Federal agency, in response to its request, for a matter concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. *Department of Justice*—A record from this SOR may be disclosed to the Department of Justice when a) NASA, or any component thereof; or b) any employee of NASA in his or her official capacity; or c) any employee of NASA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or d) the United States, where NASA determines that litigation is likely to affect NASA or any of its components, is a party to litigation or has an interest in such litigation, and by careful review, the use of such records by the Department of Justice is deemed by NASA to be relevant and necessary to the litigation.

5. *Courts*—A record from this SOR may be disclosed in an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when NASA determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant and necessary to the proceeding.

6. *Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information*—A record from this SOR may be disclosed to appropriate agencies, entities, and persons when (1) NASA suspects or has confirmed that there has been a breach of the system of records; (2) NASA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NASA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NASA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

7. *Contractors*—A record from this SOR may be disclosed to contractors, grantees, experts, consultants, students, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish a NASA function related to this SOR. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to NASA employees.

8. *Members of Congress*—A record from this SOR may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

9. *Disclosures to Other Federal Agencies in Response to an Actual or*

Suspected Compromise or Breach of Personally Identifiable Information—A record from this SOR may be disclosed to another Federal agency or Federal entity, when NASA 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.

10. *National Archives and Records Administration*—A record from this SOR may be disclosed as a routine use to the officers and employees of the National Archives and Records Administration (NARA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

11. *Audit*—A record from this SOR may be disclosed to another agency, or organization for purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are maintained in hard-copy and electronically, and within Agency-wide Intranet database and tracking system.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in the system are retrieved by name of the employee or applicant requesting accommodation, case identification number, or NASA Center from which the request originated.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with NPR 1441.1 NASA Records Retention Schedules, Schedule 3 Item 2.6.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are maintained on secure NASA servers and protected in accordance with all Federal standards and those established in NASA regulations at 14 CFR 1212.605. Additionally, server and data management environments employ infrastructure encryption technologies both in data transmission and at rest on servers. Electronic messages sent within and outside of the Agency are encrypted and transmitted by staff via pre-approved electronic encryption systems as required by NASA policy. Approved security plans are in place for information systems containing the records in accordance with the Federal Information Security Management Act of 2002 (FISMA) and OMB Circular A–130, Management of Federal Information Resources. Only authorized personnel requiring information in the official discharge of their duties are authorized access to records through approved access or authentication methods. Access to electronic records is achieved only from workstations within the NASA Intranet or via a secure Virtual Private Network (VPN) connection that requires two-factor hardware token authentication. Non-electronic records are secured in locked rooms or locked file cabinets.

RECORD ACCESS PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle, and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

CONTESTING RECORD PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

NOTIFICATION PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle, and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

(21–072, 86 FR 217, pp. 63073–63076)
(15–117, 80 FR 246, pp. 79947–79949)
(15–068, 80 FR 193, pp. 60410–60411)
(11–091, 76 FR 200, pp. 64112–64114)

[FR Doc. 2023–16902 Filed 8–7–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board hereby gives notice of the scheduling of a teleconference of the National Science Board/National Science Foundation Commission on Merit Review (MRX) for the transaction of National Science Board business pursuant to the NSF Act and the Government in the Sunshine Act.

TIME AND DATE: Wednesday, August 9, 2023, from 12–1 p.m. EDT.

PLACE: This meeting will be via videoconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The agenda is: Committee Chair's opening remarks regarding the agenda; Discussion of topical areas of inquiry.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. Meeting information and updates may be found at *www.nsf.gov/nsb.*

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2023–17118 Filed 8–4–23; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under

the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 6, 2023 . This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671, as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2024–001

1. *Applicant:* Ron Naveen, Oceanites, Inc., P.O. Box 15259, Chevy Chase, MD 20825

Activity for Which Permit Is Requested

Take, Harmful Interference, Enter Antarctic Specially Protected Areas. The applicant proposes to continue data collections activities conducted to support the Antarctic Site Inventory which, since, 1994, has been censusing/surveying visitor sites and penguin/seabird breeding locations in the Antarctic Peninsula. Visitor site surveys may include censusing penguin and seabird colonies throughout the Antarctic Peninsula. There is the potential for slight disturbance of the birds during surveying and censusing. This permit would address the potential for infrequent, minimal take or harmful interference of the following species: Adelie penguin (*Pygoselis adeliae*), chinstrap penguin (*P. antarctica*), gentoo penguin, (*P. papua*), southern giant petrel (*Macronectes giganteus*), southern fulmar (*Fulmarus glacialoides*), cape petrel (*Daption capense*), Antarctic blue-eyed shag (*Phalacrocorax atriceps*), Antarctic brown skua (*Catharacta antarctica*), south polar skua (*C. maccormicki*), kelp gull (*Larus dominicanus*), and Antarctic tern (*Sterna vittata*). While conducting visitor site surveys and censuses, the applicant would potentially enter a number of Antarctic Specially Protected Areas (ASPAs) in the Antarctic Peninsula region.

Location

Antarctica Peninsula Region, including ASPA 107, Emperor Island, Dion Islands, Marguerite Bay, Antarctic Peninsula; ASPA 108, Green Island, Berthelot Islands, Antarctic Peninsula; ASPA 109, Moe Island, South Orkney Islands; APSA 110, Lynch Island, South Orkney Islands; ASPA 111, Southern Powell Island and adjacent islands, South Orkney Islands; ASPA 112, Coppermine Peninsula, Robert Island, South Shetland Islands; ASPA 113, Litchfield Island, Arthur Harbor, Anvers Island, Palmer Archipelago; ASPA 115, Lagotellerie Island, Marguerite Bay, Graham Land; ASPA 117, Avian Island, Marguerite Bay, Antarctic Peninsula; ASPA 125, Fildes Peninsula, King George Island (25 de Mayo); ASPA 126, Byers Peninsula, Livingston Island, South Shetland Islands; ASPA 128, Western shore of Admiralty Bay, King George Island, South Shetland Islands; ASPA 129, Rothera Point, Adelaide Island; ASPA 132, Potter Peninsula, King George Island (Isla 25 de Mayo), South Shetland Islands; ASPA 133, Harmony Point, Nelson Island, South Shetland Islands; ASPA 134, Cierva Point and offshore islands, Danco Coast, Antarctic Peninsula; ASPA 139, Biscoe Point, Anvers Island, Palmer Archipelago; ASPA 140, Parts of Deception Island, South Shetland Islands; ASPA 144, Chile Bay (Discovery Bay), Greenwich Island, South Shetland Islands; ASPA 145, Port Foster, Deception Island, South Shetland Islands; ASPA 146, South Bay, Doumer Island, Palmer Archipelago; ASPA 148, Mount Flora, Hope Bay, Antarctic Peninsula; ASPA 149, Cape Shirreff and San Telmo Island, Livingston Island, South Shetland Islands; ASPA 150, Ardley Island, Maxwell Bay, King George Island (25 de Mayo); ASPA 151, Lions Rump, King George Island, South Shetland Islands; ASPA 152, Western Bransfield Strait; and ASPA 153, Eastern Dallmann Bay.

Dates of Permitted Activities

September 1, 2023–August 31, 2028.

Permit Application: 2024–002

2. *Applicant:* Dr. Heather Lynch, Stony Brook University, IACS 163, Stony Brook, NY 11794

Activity for Which Permit Is Requested

Harmful Interference, Enter Antarctic Specially Protected Areas. The applicant would survey chinstrap penguin (*Pygoscelis antarctica*) colonies in the South Shetland Islands including multiple sites on Low Island. The outcomes of the surveys would be useful in determining population abundance and distribution of chinstrap penguins, important consumers of Antarctic krill. Surveys would be completed using direct manual counts (on foot) and by operating small, remotely piloted aircraft systems (RPAS) over colonies. RPAS would be operated by experienced pilots at altitudes of at least 30 meters above wildlife. Although no significant disturbance is expected, both manual counts and RPAS overflights have the potential to disturb chinstrap penguins as well as Adelie penguins (*Pygoscelis adeliae*), Gentoo penguins (*Pygoscelis papua*), the Southern giant petrel (*Macronectes giganteus*), Southern fulmar (*Fulmarus glacialoides*), Cape petrel (Deption capense), Antarctic blue-eyed shag (*Phalacrocorax atriceps*), Antarctic brown skua (*Catharacta antarctica*), South polar skua (*Catharacta maccormicki*), Kelp gull (*Larus dominicanus*), and the Antarctic tern (*Sterna vittata*) based on the location of the surveys. While conducting visitor site surveys and censuses, the applicant would potentially enter a number of Antarctic Specially Protected Areas (ASPAs) in the Antarctic Peninsula region.

Location

King George Island, South Shetland Islands Robert Island, Livingston Island; Western Antarctic

Peninsula; ASPA 112, Coppermine Peninsula, Robert Island, South Shetland Islands; ASPA 125, Fildes Peninsula, King George Island (25 de Mayo); ASPA 126 Byers Peninsula, Livingston Island, South Shetland Islands; ASPA 128, Western shore of Admiralty Bay, King George Island, South Shetland Islands; ASPA 132, Potter Peninsula, King George Island (Isla 25 de Mayo, South Shetland Islands; ASPA 133, Harmony Point, Nelson Island, South Shetland Islands; ASPA 134, Cierva Point and offshore islands, Danco Coast, Antarctic Peninsula; ASPA 139, Biscoe Point, Anvers Island, Palmer Archipelago; ASPA 150, Ardley Island, Maxwell Bay,

King George Island (25 de Mayo); ASPA 151, Lions Rump, King George Island, South Shetland Islands; ASPA 152, Bransfield Strait; ASPA 153, Eastern Dallman Bay; ASPA 171, Narebski Point, Barton Peninsula, King George Island;.

Dates of Permitted Activities

December 1, 2023–February 15, 2024

Kimiko S. Bowens-Knox,

Program Analyst, Office of Polar Programs.

[FR Doc. 2023–16903 Filed 8–7–23; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of August 7, 14, 21, 28, September 4, 11, 2023. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of August 7, 2023

There are no meetings scheduled for the week of August 7, 2023.

Week of August 14, 2023—Tentative

Monday, August 14, 2023

2:00 p.m. Affirmation Session (Public Meeting) (Tentative)

Final Rule: Emergency Preparedness for Small Modular Reactors and Other New Technologies (RIN 3150–AJ68; NRC–2015–0225) (Tentative) (Contact: Wesley Held: 301–287–3591).

Additional Information: The public is invited to attend the Commission's meeting live; via teleconference. Details for joining the teleconference in listen only mode can be found at *https://www.nrc.gov/pmns/mtg.*

Week of August 21, 2023—Tentative

There are no meetings scheduled for the week of August 21, 2023.

Week of August 28, 2023—Tentative

There are no meetings scheduled for the week of August 28, 2023.

Week of September 4, 2023—Tentative

There are no meetings scheduled for the week of September 4, 2023.

Week of September 11, 2023—Tentative

Tuesday, September 12, 2023

10:00 a.m. All Employees Meeting (Public Meeting); (Contact: Anthony de Jesus: 301–287–9219; Adrienne Brown: 301–415–3764)

Additional Information: The meeting will be held in the Two White Flint North auditorium, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/.*

Thursday, September 14, 2023

10:00 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: August 4, 2023.

For the Nuclear Regulatory Commission.

Monika G. Coflin,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2023–17094 Filed 8–4–23; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0134]

Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Monthly notice.

SUMMARY: Pursuant to section 189.a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person.

DATES: Comments must be filed by September 7, 2023. A request for a hearing or petitions for leave to intervene must be filed by October 10, 2023. This monthly notice includes all amendments issued, or proposed to be issued, from June 23, 2023, to July 20, 2023. The last monthly notice was published on July 11, 2023.

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

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0134. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the ''For Further Information Contact'' section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

FOR FURTHER INFORMATION CONTACT: Karen Zeleznock, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1118; email: *Karen.Zeleznock@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0134, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0134.
- *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, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* 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.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0134, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

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

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

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown in this notice, the Commission finds that the licensees' analyses provided, consistent with section 50.91 of title 10 of *the Code of Federal Regulations* (10 CFR) ''Notice for public comment; State consultation,'' are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit

a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)-(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT REQUEST(S)

Constellation Energy Generation, LLC; Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Calvert County, MD	
Docket Nos	50–317, 50–318.
Application date	June 13, 2023.
ADAMS Accession No	ML23164A170.
Location in Application of NSHC	Pages 2–4 of Attachment 1.

LICENSE AMENDMENT REQUEST(S)—Continued

Brief Description of Amendment	The proposed amendments adopt the NRC-approved Technical Specification Task Force (TSTF) Improved Standard Technical Specifications Change Traveler TSTF–59–A, ''Incorporate [Combustion Engineering] NPSD–994 Recommendations into the [Safety Injection Tank] Specification,'' Revision 1 which would modify Technical Specification 3.5.1 Condition A to add the condition where one safety injection tank is inoperable due to the inability to verify level or pressure. The changes also extend the Condition B allowed outage time from 1 hour to 24 hours when one safety injection tank is inoperable for reasons other than Condition A.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Jason Zorn, Associate General Counsel, Constellation Energy Generation, 101 Constitution Ave. NW, Suite 400 East, Washington, DC 20001.
NRC Project Manager, Telephone Number.	Sujata Goetz, 301–415–8004.

Constellation Energy Generation, LLC; Quad Cities Nuclear Power Station, Units 1 and 2; Rock Island County, IL

Docket Nos	50–254, 50–265.
Application date	June 8, 2023.
ADAMS Accession No	ML23159A249.
Location in Application of NSHC	Pages 7–8 of Attachment 1.
Brief Description of Amendment	The proposed amendments request would modify the Quad Cities Nuclear Power Station, Units 1 and 2, technical specification requirements to permit the use of risk informed completion times in accordance with Technical Specification Task Force (TSTF) Traveler TSTF–505, Revision 2, ''Provide Risk-Informed Extended Completion Times—RITSTF Initiative 4b.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Jason Zorn, Associate General Counsel, Constellation Energy Generation, 4300 Winfield Road, Warrenville, IL 60555.
NRC Project Manager, Telephone Number.	Robert Kuntz, 301–415–3733.

Constellation Energy Generation, LLC; Quad Cities Nuclear Power Station, Units 1 and 2; Rock Island County, IL

Docket Nos	50–254, 50–265.
Application date	June 8, 2023.
ADAMS Accession No	ML23159A253.
Location in Application of NSHC	Pages 23–25 of the Enclosure.
Brief Description of Amendment	The proposed amendments would modify the Quad Cities Nuclear Power Station, Units 1 and 2, licensing basis by the addition of a License Condition to implement the provisions of 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Jason Zorn, Associate General Counsel, Constellation Energy Generation, 4300 Winfield Road, Warrenville, IL 60555.
NRC Project Manager, Telephone Number.	Robert Kuntz, 301–415–3733.

Duke Energy Carolinas, LLC; Catawba Nuclear Station, Units 1 and 2; York County, SC

Docket Nos	50–413, 50–414.
Application date	June 19, 2023.
ADAMS Accession No	ML23170A015.
Location in Application of NSHC	Pages 9–10 of the Enclosure.
Brief Description of Amendment	The proposed amendments would revise Technical Specification (TS) 3.7.11, ''Control Room Area Chilled Water System (CRACWS),'' to modify the TS Actions for two inoperable CRACWS trains. The proposed change provides 24 hours to restore one CRACWS train to operable status provided mitigating actions ensure the control room temperature is controlled.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Tracey Mitchell LeRoy, Deputy General Counsel, Duke Energy Corporation, 4720 Piedmont Row Dr., Charlotte, NC 28210.
NRC Project Manager, Telephone Number.	Shawn Williams, 301–415–1009.

Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Perry Nuclear Power Plant, Unit 1; Lake County, OH

Docket No	50–440.
Application date	June 5, 2023.
ADAMS Accession No	ML23156A550.
Location in Application of NSHC	Pages 7–9 of Attachment 1.
Brief Description of Amendment	The proposed amendment would adopt Technical Specifications Task Force (TSTF) Traveler TSTF–276–A, Revision 2, ''Revise DG [Diesel Generator] full load rejection test.'' The proposed change would modify the notes to Technical Specification (TS) Surveillance Requirements (SR) 3.8.1.9, DG single largest load rejection test, 3.8.1.10, DG full load rejection test, and 3.8.1.14, DG endurance and margin test, to require that these SRs be performed at a specified power factor of less than or equal to 0.9 with clarifications addressing situations when the power factor cannot be achieved.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Rick Giannantonio, General Counsel, Energy Harbor Nuclear Corp., 168 E Market Street, Akron, OH 44308–2014.

LICENSE AMENDMENT REQUEST(S)—Continued

NRC Project Manager, Telephone Number.	Scott Wall, 301–415–2855.

Entergy Operations, Inc., System Energy Resources, Inc., Cooperative Energy, A Mississippi Electric Cooperative, and Entergy Mississippi, LLC; Grand Gulf Nuclear Station, Unit 1; Claiborne County, MS

Docket No	50–416.
Application date	June 6, 2023.
ADAMS Accession No	ML23158A043.
Location in Application of NSHC	Pages 7–9 of Attachment 1.
Brief Description of Amendment	The proposed amendment would modify technical specifications to adopt Technical Specifications Task Force (TSTF) Traveler TSTF–505, Revision 2, ''Provide Risk-Informed Extended Completion Times—RITSTF [Risk-Informed TSTF] Initiative 4b'' (ML18183A493) for Grand Gulf Nuclear Station, Unit 1. The NRC staff provided a model safety evaluation for this TSTF on November 21, 2018 (ADAMS Accession No. ML18267A259).
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Anna Vinson Jones, Assistant General Counsel/Legal Department, Entergy Operations, Inc., 101 Constitution Avenue NW, Washington, DC 20001.
NRC Project Manager, Telephone Number.	Siva Lingam, 301–415–1564.

Entergy Operations, Inc., System Energy Resources, Inc., Cooperative Energy, A Mississippi Electric Cooperative, and Entergy Mississippi, LLC; Grand Gulf Nuclear Station, Unit 1; Claiborne County, MS

Docket No	50–416
Application date	June 6, 2023.
ADAMS Accession No	ML23158A044
Location in Application of NSHC	Pages 23–25 of the Enclosure.
Brief Description of Amendment	The proposed amendment would modify the licensing basis for Grand Gulf Nuclear Station, Unit 1. The proposed change would add a license condition to allow the implementation of the provisions of 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors.'' The provisions of 10 CFR 50.69 allow adjustment of the scope of equipment subject to special treatment controls such as quality assurance, testing, inspection, condition monitoring, assessment, and evaluation. For equipment determined to be of low safety significance, alternative treatment requirements can be implemented in accordance with this regulation. For equipment determined to be of high safety significance, requirements will not be changed or will be enhanced. This allows improved focus on equipment that has high safety significance resulting in improved plant safety.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Anna Vinson Jones, Assistant General Counsel/Legal Department, Entergy Operations, Inc., 101 Constitution Avenue NW, Washington, DC 20001.
NRC Project Manager, Telephone Number.	Siva Lingam, 301–415–1564.

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Unit 3; Burke County, GA

Docket No	52–025.
Application date	May 25, 2023.
ADAMS Accession No	ML23145A265.
Location in Application of NSHC	Pages 9–10 of the Enclosure.
Brief Description of Amendment	The requested amendment proposes an exception to Regulatory Guide 1.163 that would allow the specified frequency for the first periodic Type A integrated leak rate test to be performed prior to the earlier of initial Mode 4 entry for Unit 3 Cycle 2 and midnight on May 31, 2025.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Stanford Blanton, Balch & Bingham LLP, P.O. Box 306, Birmingham, AL 35201.
NRC Project Manager, Telephone Number.	Cayetano Santos, 301–415–7270.

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN

Docket Nos	50–390, 50–391.
Application date	June 28, 2023.
ADAMS Accession No	ML23179A086.
Location in Application of NSHC	Pages E4–E6 of the Enclosure.

LICENSE AMENDMENT REQUEST(S)—Continued

Brief Description of Amendments ...	The proposed amendments would revise Watts Bar Nuclear Plant, Units 1 and 2, Technical Specification (TS) 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' by relocating the current stored diesel fuel oil and lube oil numerical volume requirements from the TS to the TS Bases so that it may be modified under licensee control. Technical Specification 3.8.3, Conditions A and B would be modified so that they are entered when the stored diesel fuel oil and lube oil inventory. respectively, is less than a 7-day supply, but greater than a 6-day supply for one or more diesel generators. Additionally, Surveillance Requirements 3.8.3.1 and 3.8.3.2 would be revised so they verify the stored diesel fuel oil and lube oil inventory, respectively, are greater than or equal to a 7-day supply for each diesel generator. The requested changes are in accordance with Technical Specification Task Force (TSTF) Traveler TSTF–501–A, Revision 1, ''Relocate Stored Fuel Oil and Lube Oil Volume Values to Licensee Control.'' The proposed amendments would also make editorial changes to TS 3.8.3 to be consistent with the Westinghouse Standard Technical Specifications and TSTF–501–A, Revision 1. Lastly, the proposed amendments would revise TS 3.8.1, ''AC Sources—Operating,'' Surveillance Requirement 3.8.1.4 by relocating the skid-mounted day tank specific numerical volume requirement from the TS to the TS Bases and replacing it with a requirement to maintain a minimum 1-hour supply of fuel oil.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 6A West Tower, 400 West Summit Hill Drive, Knoxville, TN 37902.
NRC Project Manager, Telephone Number.	Kimberly Green, 301–415–1627.

Vistra Operations Company LLC; Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2; Somervell County, TX

Docket Nos	50–445, 50–446.
Application date	April 19, 2023, as supplemented by letter dated June 8, 2023.
ADAMS Accession No	ML23109A333, ML23159A200.
Location in Application of NSHC	Pages 18–20 of the Enclosure.
Brief Description of Amendments ...	The proposed amendments would add a license condition to allow for the implementation of the provisions of 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Timothy P. Matthews, Esq., Morgan, Lewis and Bockius, 1111 Pennsylvania Avenue NW, Washington, DC 20004.
NRC Project Manager, Telephone Number.	Dennis Galvin, 301–415–6256.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, were published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession numbers for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT ISSUANCE(S)

Constellation Energy Generation, LLC; Braidwood Station, Units 1 and 2; Will County, IL

Docket Nos	50–456, 50–457.
Amendment Date	July 13, 2023.
ADAMS Accession No	ML23087A076.
Amendment No(s)	232 (Unit 1) and 232 (Unit 2).
Brief Description of Amendments ...	The amendments revised Technical Specifications Surveillance Requirement 3.7.9.2 to allow an ultimate heat sink temperature of less than or equal to 102.8 degrees Fahrenheit (°F) until September 30, 2023.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

LICENSE AMENDMENT ISSUANCE(S)—Continued

Constellation Energy Generation, LLC; Dresden Nuclear Power Station, Units 2 and 3; Grundy County, IL	
Docket Nos	50–237, 50–249.
Amendment Date	July 6, 2023.
ADAMS Accession No	ML23144A314.
Amendment Nos	281 (Unit 2) and 274 (Unit 3).
Brief Description of Amendments	The amendments support the transition from Framatome ATRIUM 10XM fuel to Global Nuclear Fuel—Americas, LLC (GNF) GNF3 fuel at Dresden Nuclear Power Station. Specifically, the amendments revised Technical Specification 5.6.5, ''Core Operating Limits Report (COLR),'' paragraph b, to remove eight Westinghouse topical reports that will no longer be used and add two reports that support the General Electric Standard Application for Reactor Fuel analysis methodology to the list of approved methods to be used in determining the core operating limits in the COLR. The amendments approved the use of Framatome RODEX2A methodology with an additional thermal conductivity degradation penalty in mixed core thermal-mechanical calculations.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
DTE Electric Company; Fermi, Unit 2; Monroe County, MI	
Docket No	50–341.
Amendment Date	June 26, 2023.
ADAMS Accession No	ML23122A233.
Amendment No	223.
Brief Description of Amendment(s)	The amendment adopted Technical Specifications Task Force (TSTF) Traveler TSTF–582, Revision 0, RPV [Reactor Pressure Vessel] WIC [Water Inventory Control] Enhancements. The technical specifications related to RPV WIC are revised to incorporate operating experience and to correct errors and omissions in TSTF–542, Revision 2.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Entergy Operations, Inc.; Arkansas Nuclear One, Units 1 and 2; Pope County, AR	
Docket Nos	50–313, 50–368.
Amendment Date	June 29, 2023.
ADAMS Accession No	ML23142A202.
Amendment Nos	279 (Unit 1) and 332 (Unit 2).
Brief Description of Amendments	The amendments revised the required number of qualified onsite dose assessors for the on-shift emergency response organization (ERO) in the Arkansas Nuclear One Emergency Plan utilizing the minimum staff ERO guidance specified in NUREG–0654/FEMA–REP–1, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,'' Revision 2.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Nine Mile Point Nuclear Station, LLC and Constellation Energy Generation, LLC; Nine Mile Point Nuclear Station, Unit 1; Oswego County, NY	
Docket No	50–220.
Amendment Date	June 23, 2023.
ADAMS Accession No	ML23131A424.
Amendment No	249.
Brief Description of Amendment	The amendment revised Technical Specification (TS) 3.3.1, ''Oxygen Concentration,'' to adopt the inerting/de-inerting requirements of Technical Specifications Task Force (TSTF) Traveler TSTF–568, Revision 2, ''Revise Applicability of BWR [Boiling Water Reactor]/4 TS 3.6.2.5 and TS 3.6.3.2,'' which require inerting the primary containment to less than 4 percent by volume oxygen concentration within 72 hours while in the power operating condition.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Southern Nuclear Operating Company, Inc.; Joseph M. Farley Nuclear Plant, Units 1 and 2; Houston County, AL	
Docket Nos	50–348, 50–364.
Amendment Date	July 3, 2023.
ADAMS Accession No	ML23136B154.
Amendment Nos	246 (Unit 1) and 243 (Unit 2).

LICENSE AMENDMENT ISSUANCE(S)—Continued

Brief Description of Amendments ...	By letter dated September 21, 2022, Southern Nuclear Operating Company, Inc. requested changes to the technical specifications (TSs) for Renewed Facility Operating License Nos. NPF–2 and NPF–8 for Joseph M. Farley Nuclear Plant (Farley), Units 1 and 2, respectively. The NRC issued Amendment Nos. 229 and 226, dated October 6, 2020, for Farley, Units 1 and 2, respectively. Those amendments set the values in the Farley, Units 1 and 2, TSs Tables 4.3–1 through 4.3–5. Those values were determined in WCAP–18414–P, Revision 0, ''J. M. Farley Units 1 and 2 Spent Fuel Pool Criticality Safety Analysis.'' Amendments Nos. 229 and 226 set WCAP–18414–P, Revision 0, as the Analysis of Record (AoR) for both Farley, Units 1 and 2, spent fuel pool (SFP) criticality. Subsequently, SNC found errors in WCAP–18414–P that necessitate changes to Farley, Units 1 and 2, TSs Table 4.3–3 and Table 4.3–4. This amendment makes those changes and will make WCAP–18414–P, Revision 3, the AoR for both Farley, Units 1 and 2, SFP criticality.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Virginia Electric and Power Company; Surry Power Station, Unit Nos. 1 and 2; Surry County, VA

Docket Nos	50–280, 50–281.
Amendment Date	June 29, 2023.
ADAMS Accession No	ML23136B139.
Amendment No(s)	313 (Unit 1) and 313 (Unit 2).
Brief Description of Amendments ...	The proposed amendments would revise the Surry subsequent renewed facility operating license and technical specification (TS) to make a number of editorial changes and corrections, including removal of the TS and license conditions associated with a one-time plant modification.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Dated: July 31, 2023.

For the Nuclear Regulatory Commission.

Bo M. Pham,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–16552 Filed 8–7–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0096]

Draft NUREG: Revision to Subsequent License Renewal Guidance Documents, and Supplement to Associated Technical Bases Document; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft report; request for comment; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** (FR) on July 11, 2023, requesting public comment on three draft NUREGs that provide revised guidance for subsequent license renewal and the associated technical bases for the revised guidance documents. This action is necessary to correct tables within the Draft NUREG–2192, ''Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants, Draft Report for Comment,'' Revision 1.

DATES: The correction takes effect on August 8, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0096 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0096. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* Draft NUREG–2192, ''Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants, Draft Report for Comment,'' Revision 1, Corrected Tables 3.1–1 and Table 3.2–1, are available in ADAMS under Accession No. ML23213A036.
- *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.

FOR FURTHER INFORMATION CONTACT: Emmanuel Sayoc, telephone: 301–415–4084; email: *Emmanuel.Sayoc@nrc.gov* and Carol Moyer, telephone: 301–415–2153; email: *Carol.Moyer@nrc.gov.* Both are staff of the Office of Nuclear Reactor Regulation at the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: In the FR on July 11, 2023, in FR Doc. 2023–14577, in the referenced draft NUREG–2192, ''Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants, Draft Report for Comment,'' Revision 1,'' ADAMS Accession No. ML23180A191, Table 3.1–1 and Table 3.2–1 were published with editorial errors. The corrected tables are available in ADAMS under Accession No. ML23213A036.

Dated: August 3, 2023.

For the Nuclear Regulatory Commission.

Michelle W. Hayes,

Chief, Licensing and Regulatory Infrastructure Branch, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–16953 Filed 8–7–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting

The U.S. NUCLEAR WASTE TECHNICAL REVIEW BOARD will hold a hybrid (in-person/virtual) workshop on August 29, 2023.

Board workshop: August 29, 2023—*The U.S. Nuclear Waste Technical Review Board will hold a hybrid (in-person/virtual) workshop in Idaho Falls, ID, to update its understanding of the lessons learned from the siting of radioactive waste management facilities, domestically and in other countries.*

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the U.S. Nuclear Waste Technical Review Board (Board) will hold a hybrid (in-person/virtual) workshop in Idaho Falls, ID, on Tuesday, August 29, 2023, to update its understanding of the lessons learned from the siting of radioactive waste management facilities, domestically and in other countries.

The hybrid (in-person/virtual) workshop will be held at Snake River Event Center, 780 Lindsay Blvd., Idaho Falls, ID 83402, which is located at the Shilo Inns Idaho Falls. The event center telephone number is (208) 497–0611 and the hotel telephone number is (208) 523–0088. The workshop will begin at 8:00 a.m. Mountain Daylight Time (MDT) and is scheduled to adjourn at 5:00 p.m. MDT. The workshop will include introductory comments by the Board and the Department of Energy (DOE). Planned presentations include descriptions of the siting experiences regarding geologic repositories and a monitored retrievable storage facility in the United States and geologic repositories in Canada, Switzerland, and Sweden. These presentations will be followed by a facilitated panel discussion. DOE will describe how it is incorporating best practices and lessons learned from international and domestic siting efforts, and from environmental justice efforts in its consent-based siting activities. The workshop will close with a facilitated panel discussion on all the workshop topics. After the workshop is adjourned there will be an open house to enable discussions among all participants and attendees. A detailed agenda will be available on the Board's website at *www.nwtrb.gov* approximately one week before the workshop.

The workshop will be open to the public and there will be an opportunity for public comment prior to workshop adjournment. Those attending the workshop in person and wanting to provide oral comments are encouraged to sign the Public Comment Register at the check-in table near the entrance to the meeting room. Oral commenters will be taken in the order in which they signed in. Public comments can also be submitted during the workshop via the online workshop viewing platform, using the ''Comment for the Record'' form. Comments submitted online during the day of the workshop will be posted to the Board's website the following day. Depending on the number of speakers and online comments, a time limit on individual remarks may be set. However, written comments of any length may be submitted to the Board staff by mail or electronic mail. All comments received in writing will be included in the workshop record, which will be posted on the Board's website after the workshop. An archived recording of the workshop will be available on the Board's website following the workshop, and a transcript of the workshop will be available on the website by October 30, 2023.

The in-person workshop will follow the COVID–19 precautions mandated by the local jurisdiction. Attendees should observe community guidelines in place at the time of the workshop. The Board will post an update on its website if the workshop changes to a virtual-only workshop. Attendees also are encouraged to pre-register, by providing name and affiliation to *SitingWorkshop@nwtrb.gov,* to reduce their time signing in at the check-in table. If the workshop changes to a virtual-only format, those who pre-registered will be notified of the change.

The Board was established in the Nuclear Waste Policy Amendments Act of 1987 as an independent federal agency in the Executive Branch to perform an ongoing evaluation of the technical and scientific validity of activities undertaken by DOE related to implementing the NWPA. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences. The Board is required to report its findings, conclusions, and recommendations to Congress and the Secretary of Energy. Board reports, correspondence, congressional testimony, and meeting transcripts and related materials are posted on the Board's website.

For information on the workshop, contact Bret Leslie at *leslie@nwtrb.gov* or Yoonjo Lee at *lee@nwtrb.gov.* For information on logistics or to request copies of the agenda or transcript, contact Davonya Barnes at *barnes@nwtrb.gov.* All three may be reached by mail at 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201–3367; by telephone at 703–235–4473; or by fax at 703–235–4495.

Dated: August 3, 2023.

Daniel G. Ogg,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2023–16906 Filed 8–7–23; 8:45 am]

BILLING CODE 6820–AM–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting

The U.S. Nuclear Waste Technical Review Board will hold a hybrid (in-person/virtual) public meeting on August 30, 2023.

Board meeting: August 30, 2023—*The U.S. Nuclear Waste Technical Review Board will hold a hybrid (in-person/virtual) public meeting in Idaho Falls, ID, to discuss the U.S. Department of Energy consent-based siting process activities related to its mission of developing one or more federal interim storage facilities for commercial spent nuclear fuel as soon as practicable, and its research and development activities related to high burnup spent nuclear fuel and advanced reactor waste disposition.*

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the U.S. Nuclear Waste Technical Review Board (Board) will hold a hybrid (in-person/virtual) meeting in Idaho Falls, ID, on Wednesday, August 30, 2023, to discuss the U.S. Department of Energy (DOE) consent-based siting process activities related to its mission of developing one or more federal interim storage facilities for commercial spent nuclear fuel (SNF) as soon as practicable, and its research and development (R&D) activities related to high burnup SNF and advanced reactor waste disposition.

The hybrid (in-person/virtual) meeting will be held at Snake River Event Center, 780 Lindsay Blvd., Idaho Falls, ID 83402, which is located at the Shilo Inns Idaho Falls. The event center telephone number is (208) 497–0611 and the hotel telephone number is (208) 523–0088. The workshop will begin at 8:00 a.m. Mountain Daylight Time (MDT) and is scheduled to adjourn at 4:00 p.m. MDT. DOE will provide an update on its consent-based siting activities, give an overview of environmental justice in consent-based

siting, and describe how it is incorporating social science and digital tools during the consent-based siting process. DOE will present an update on its R&D activities related to high burnup SNF. DOE also will describe its advanced reactor waste disposition R&D efforts both in terms of determining from a technical perspective how it can accept the SNF and high-level radioactive waste (HLW) for transportation and disposal and in developing and implementing an R&D plan to address technical gaps related to storage, transportation, and disposal of advanced reactor SNF and HLW. A detailed meeting agenda will be available on the Board's website at *www.nwtrb.gov* approximately one week before the meeting.

The meeting will be open to the public and there will be an opportunity for public comment at the end of the consent-based siting portion of the program and again, prior to meeting adjournment. Those attending the meeting in person and wanting to provide oral comments are encouraged to sign the Public Comment Register at the check-in table near the entrance to the meeting room. Oral commenters will be taken in the order in which they signed in. Depending on the number of speakers and online comments, a time limit on individual remarks may be set. Public comments can also be submitted during the meeting via the online meeting viewing platform, using the ''Comment for the Record'' form. Comments submitted online during the day of the meeting will be posted to the Board's website the following day. However, written comments of any length may be submitted to the Board staff by mail or electronic mail. All comments received in writing will be included in the meeting record, which will be posted on the Board's website after the meeting. An archived recording of the meeting will be available on the Board's website following the meeting, and a transcript of the meeting will be available on the website by October 30, 2023.

The in-person meeting will follow the COVID–19 precautions mandated by the local jurisdiction. Meeting attendees should observe community guidelines in place at the time of the meeting. The Board will post an update on its website if the meeting changes to a virtual-only meeting. Attendees also are encouraged to pre-register, by providing name and affiliation to *SitingWorkshop@nwtrb.gov,* to reduce their time signing in at the check-in table. If the meeting changes to a virtual-only format, those who pre-registered will be notified of the change.

The Board was established in the Nuclear Waste Policy Amendments Act of 1987 as an independent federal agency in the Executive Branch to perform an ongoing evaluation of the technical and scientific validity of activities undertaken by DOE related to implementing the NWPA. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences. The Board is required to report its findings, conclusions, and recommendations to Congress and the Secretary of Energy. Board reports, correspondence, congressional testimony, and meeting transcripts and related materials are posted on the Board's website.

For information on the meeting, contact Bret Leslie at *leslie@nwtrb.gov* or Yoonjo Lee at *lee@nwtrb.gov.* For information on logistics or to request copies of the meeting agenda or transcript, contact Davonya Barnes at *barnes@nwtrb.gov.* All three may be reached by mail at 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201–3367; by telephone at 703–235–4473; or by fax at 703–235–4495.

Dated: August 3, 2023.

Daniel G. Ogg,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2023–16907 Filed 8–7–23; 8:45 am]

BILLING CODE 6820–AM–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–202 and CP2023–206; MC2023–203 and CP2023–207; MC2023–204 and CP2023–208; MC2023–205 and CP2023–209]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 9, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–202 and CP2023–206; *Filing Title:* USPS Request

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

to Add Priority Mail & USPS Ground Advantage Contract 10 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 1, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 9, 2023.

2. *Docket No(s).:* MC2023–203 and CP2023–207; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 2 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 1, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 9, 2023.

3. *Docket No(s).:* MC2023–204 and CP2023–208; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 11 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 1, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 9, 2023.

4. *Docket No(s).:* MC2023–205 and CP2023–209; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 12 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 1, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 9, 2023.

This Notice will be published in the **Federal Register**.

Mallory Richards,

Attorney-Advisor.

[FR Doc. 2023–16866 Filed 8–7–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–206 and CP2023–210; MC2023–207 and CP2023–211; MC2023–208 and CP2023–212; MC2023–209 and CP2023–213]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 10, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–206 and CP2023–210; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 3 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 2, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory Stanton; *Comments Due:* August 10, 2023.

2. *Docket No(s).:* MC2023–207 and CP2023–211; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 13 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 2, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory Stanton; *Comments Due:* August 10, 2023.

3. *Docket No(s).:* MC2023–208 and CP2023–212; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 14 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 2, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 10, 2023.

4. *Docket No(s).:* MC2023–209 and CP2023–213; *Filing Title:* USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 40 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 2, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 10, 2023.

This Notice will be published in the **Federal Register**.

Mallory Richards,

Attorney-Advisor.

[FR Doc. 2023–16912 Filed 8–7–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 10 a.m., August 16, 2023.

PLACE: Members of the public wishing to attend the meeting must submit a written request at least 24 hours prior to the meeting to receive dial-in information. All requests must be sent to *SecretarytotheBoard@rrb.gov.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

- Office of Legislative Affairs—Recent Briefings and Appropriations

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Stephanie Hillyard,

Secretary to the Board.

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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow Certain Flexible Exchange Equity Options To Be Cash Settled

August 2, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2023, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 4.21 and 8.35 related to Flexible Exchange (''FLEX'') Options. The text of the proposed rule change is available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rules 4.21 and 8.35 related to FLEX Options. FLEX Options are customized equity or index contracts that allow investors to tailor contract terms for exchange-listed equity and index options. The Exchange proposes to amend Rule 4.21 to allow for cash settlement of certain FLEX Equity Options.[3] Generally, FLEX Equity Options are settled by physical delivery of the underlying security,[4] while all FLEX Index Options are currently settled by delivery in cash.[5] As proposed, FLEX Equity Options where the underlying security is an Exchange-Traded Fund (''ETF'') would be permitted to be settled by delivery in cash if the underlying security meets prescribed criteria. The Exchange notes that cash-settled FLEX ETF Options will be subject to the same trading rules and procedures that currently govern the trading of other FLEX Options on the Exchange, with the exception of the rules to accommodate the cash-settlement feature proposed in this rule filing.

To permit cash settlement of certain FLEX ETF Options, the Exchange proposes new subparagraph (ii) to Rule 4.21(b)(5)(A). Proposed Rule 4.21(b)(5)(A)(ii) would provide that the exercise settlement for a FLEX ETF Option may be by physical delivery of the underlying ETF or by delivery in cash if the underlying security, measured over the prior six-month period, has an average daily notional value of $500 million or more and a national average daily volume (''ADV'') of at least 4,680,000 shares.[6]

The Exchange also proposes in the introductory paragraph of Rule 4.21(b) that a FLEX Equity Option overlying an ETF (cash- or physically settled) may not be the same type (put or call) and may not have the same exercise style, expiration date, and exercise price as a non-FLEX Equity Option overlying the same ETF.[7] In other words, regardless of whether a FLEX Equity Option overlying an ETF is cash- or physically settled, at least one of the exercise style (*i.e.,* American-style or European-style), expiration date, and exercise price of that FLEX Option must differ from those terms of a non-FLEX Option overlying the same ETF in order to list such a FLEX Equity Option. For example, suppose a non-FLEX SPY option (which is physically settled, p.m.-settled and American-style) with a September expiration and exercise price of 475 is listed for trading. A FLEX Trader could not submit an order to trade a FLEX SPY option (which is p.m.-settled) that is cash-settled (or physically settled) and American-style with a September expiration and exercise price of 475.

In addition, the Exchange proposes new subparagraph (a) to Rule 4.21(b)(5)(A)(ii), which would provide that the Exchange will determine bi-annually the underlying ETFs that satisfy the notional value and trading volume requirements in proposed Rule 4.21(b)(5)(A)(ii) by using trading statistics for the previous six-months.[8] The proposed rule would further provide that the Exchange will permit cash settlement as a contract term on no

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''FLEX Equity Option'' is an option on a specified underlying equity security. *See* Cboe Options Rule 1.1.

[4] *See* Rule 4.21(b)(5)(A)(i).

[5] *See* Rule 4.21(b)(5)(B). As discussed below, cash settlement is also permitted in the over-the-counter (''OTC'') market.

[6] *See* proposed Rule 4.21(b)(5)(A)(ii). The Exchange also proposes a corresponding nonsubstantive amendment to Rule 4.21(b)(5)(A)(i) and a nonsubstantive amendment to Rule 4.21 to renumber current Rule 4.21(b)(5)(A)(ii) as new Rule 4.21(b)(5)(A)(iii).

[7] All non-FLEX Equity Options (including on ETFs) are physically settled. Note all FLEX and non-FLEX Equity Options (including ETFs) are p.m.-settled.

[8] *See* proposed Rule 4.21(b)(5)(A)(ii)(a). The Exchange will announce the implementation date of the proposed rule change via Exchange Notice. The Exchange plans to conduct the bi-annual review on January 1 and July 1 of each year. The results of the bi-annual review will be announced via Exchange Notice and any new securities that qualify would be permitted to have cash settlement as a contract term beginning on February 1 and August 1 of each year. If the Exchange initially begins listing cash-settled FLEX Options on a different date (*e.g.,* September 1), it would initially list securities that qualified as of the last bi-annual review (*e.g.,* the one conducted on July 1).

more than 50 underlying ETFs that meet the criteria in Rule 4.21(b)(5)(A)(ii), and that if more than 50 underlying ETFs satisfy the notional value and trading volume requirements, then the Exchange would select the top 50 ETFs that have the highest average daily volume.[9]

Proposed new subparagraph (b) to Rule 4.21(b)(5)(A)(ii) would further provide that if the Exchange determines pursuant to the bi-annual review that an underlying ETF ceases to satisfy the requirements under Rule 4.21(b)(5)(A)(ii), any new position overlying such ETF entered into will be required to have exercise settlement by physical delivery, and any open cash-settled FLEX ETF Option positions may be traded only to close the position.[10]

The Exchange believes it is appropriate to introduce cash settlement as an alternative contract term to the select group of ETFs because they are among the most highly liquid and actively traded securities. As described more fully below, the Exchange believes that the deep liquidity and robust trading activity in the ETFs identified by the Exchange as meeting the criteria mitigate against historic concerns regarding susceptibility to manipulation.

Characteristics of ETFs

ETFs are funds that have their value derived from assets owned. The net asset value (''NAV'') of an ETF is a daily calculation that is based off the most recent closing prices of the assets in the fund and an actual accounting of the total cash in the fund at the time of calculation. The NAV of an ETF is calculated by taking the sum of the assets in the fund, including any securities and cash, subtracting out any liabilities, and dividing that by the number of shares outstanding.

Additionally, each ETF is subject to a creation and redemption mechanism to ensure the price of the ETF does not fluctuate too far away from its NAV, which mechanisms reduce the potential for manipulative activity. Each business day, ETFs are required to make publicly available a portfolio composition file that describes the makeup of their creation and redemption ''baskets'' (*i.e.,* a specific list of names and quantities of securities or other assets designed to track the performance of the portfolio as a whole). ETF shares are created when an Authorized Participant, typically a market maker or other large institutional investor, deposits the daily creation basket or cash with the ETF issuer. In return for the creation basket or cash (or both), the ETF issues to the Authorized Participant a ''creation unit'' that consists of a specified number of ETF shares. For instance, IWM is designed to track the performance of the Russell 2000 Index. An Authorized Participant will purchase all the Russell 2000 constituent securities in the exact same weight as the index prescribes, then deliver those shares to the ETF issuer. In exchange, the ETF issuer gives the Authorized Participant a block of equally valued ETF shares, on a one-for-one fair value basis. This process can also work in reverse. A redemption is achieved when the Authorized Participant accumulates a sufficient number of shares of the ETF to constitute a creation unit and then exchanges these ETF shares with the ETF issuer, thereby decreasing the supply of ETF shares in the market.

The principal, and perhaps most important, feature of ETFs is their reliance on an ''arbitrage function'' performed by market participants that influences the supply and demand of ETF shares and, thus, trading prices relative to NAV. As noted above, new ETF shares can be created and existing shares redeemed based on investor demand; thus, ETF supply is open-ended. This arbitrage function helps to keep an ETF's price in line with the value of its underlying portfolio, *i.e.,* it minimizes deviation from NAV. Generally, in the Exchange's view, the higher the liquidity and trading volume of an ETF, the more likely the price of the ETF will not deviate from the value of its underlying portfolio, making such ETFs less susceptible to price manipulation.

Trading Data for the ETFs Proposed for Cash Settlement

The Exchange believes that average daily notional value is an appropriate proxy for selecting underlying securities that are not readily susceptible to manipulation for purposes of establishing a settlement price. Average daily notional value considers both the trading activity and the price of an underlying security. As a general matter, the more expensive an underlying security's price, the less cost-effective manipulation could become. Further, manipulation of the price of a security encounters greater difficulty the more volume that is traded. To calculate average daily notional value (provided in the table below), the Exchange summed the notional value of each trade for each symbol (*i.e.,* the number of shares times the price for each execution in the security) and divided that total by the number of trading days in the six-month period (from January 1, 2023 through June 30, 2023) reviewed by the Exchange.

Further, the Exchange proposes that qualifying ETFs also meet an ADV standard. The purpose for this second criteria is to prevent unusually expensive underlying securities from qualifying under the average daily notional value standard while not being one of the most actively traded securities. The Exchange believes an ADV requirement of 4,680,000 shares a day is appropriate because it represents average trading in the underlying ETF of 200 shares per second. While no security is immune from all manipulation, the Exchange believes that the combination of average daily notional value and ADV as prerequisite requirements would limit cash settlement of FLEX ETF Options to those underlying ETFs that would be less susceptible to manipulation in order to establish a settlement price.

The Exchange believes that the proposed objective criteria would ensure that only the most robustly traded and deeply liquid ETFs would qualify to have cash settlement as a contract term. As provided in the table below, as of June 30, 2023, the Exchange would be able to provide cash settlement as a contract term for FLEX ETF Options on 39 underlying ETFs, as only this group of securities would currently meet the requirement of 500 Million or more average daily notional value and a minimum ADV of 4,680,000 shares. The table below provides the list of the 39 ETFs that, as of June 30, 2023, would be eligible to have cash settlement as a contract term.

[9] *See* proposed Rule 4.21(b)(5)(A)(ii)(a).

[10] *See* proposed Rule 4.21(b)(5)(A)(ii)(b). A TPH that is acting as a Market Maker may enter into an opening transaction in order to accommodate closing transactions of other market participants in option series that are restricted to closing-only transactions. *See* Cboe Options Rule 4.4; *see also* Cboe Options Rule 8.46 (which authorizes the Exchange to impose, from time to time in its discretion, such restrictions on Exchange option transactions or the exercise of option contracts in one or more series of options of any class dealt on the Exchange as it deems advisable in the interests of maintaining a fair and orderly market). Consistent with a Market Maker's duty to maintain fair and orderly markets under Rule 5.51, the Exchange will provide guidance to reflect that a TPH acting as a Market Maker in cash-settled FLEX ETF Options can enter into an opening transaction to facilitate closing only transactions of another market participant in cash-settled FLEX ETF Option series that are restricted to closing-only transactions.

Symbol	Security name	Average daily notional value (in dollars) (1/1/23–6/30/23)	Average daily volume (in shares) (1/1/23–6/30/23)
AGG	ISHARES TR CORE US AGGBD ET	$703,126,857	7,116,525
ARKK	ARK ETF TR INNOVATION ETF	858,537,852	22,026,750
BIL	SPDR SER TR BLOOMBERG 1–3 MO	691,090,219	7,543,846
EEM	ISHARES TR MSCI EMG MKT ETF	1,284,326,169	32,458,368
EFA	ISHARES TR MSCI EAFE ETF	1,308,724,046	18,457,234
EMB	ISHARES TR JPMORGAN USD EMG	559,160,916	6,510,071
EWZ	ISHARES INC MSCI BRAZIL ETF	756,467,915	26,179,000
FXI	ISHARES TR CHINA LG–CAP ETF	953,344,257	32,659,170
GDX	VANECK ETF TRUST GOLD MINERS ETF	717,525,246	22,888,829
GLD	SPDR GOLD TR GOLD SHS	1,373,373,829	7,600,698
HYG	ISHARES TR IBOXX HI YD ETF	3,038,710,673	40,690,044
IEF	ISHARES TR 7–10 YR TRSY BD	833,776,310	8,506,605
IEFA	ISHARES CORE MSCI EAFE ETF	640,740,104	9,645,504
IEMG	ISHARES INC CORE MSCI EMKT	610,571,206	12,458,329
IWM	ISHARES TR RUSSELL 2000 ETF	5,402,906,722	29,985,329
IYR	ISHARES TR U.S. REAL ES ETF	575,694,782	6,749,049
JNK	SPDR SER TR BLOOMBERG HIGH Y	809,645,750	8,834,914
KRE	SPDR S&P REGIONAL BANKING ETF	1,020,754,439	22,996,273
KWEB	KRANESHARES TR CSI CHI INTERNET	556,570,098	18,594,683
LQD	ISHARES TR IBOXX INV CP ETF	2,209,277,519	20,444,446
QQQ	INVESCO QQQ TR UNIT SER 1	17,517,678,522	55,508,283
SMH	VANECK SEMICONDUCTOR ETF	954,728,520	4,827,785
SOXL	DIREXION SHS ETF TR DLY SCOND 3XBU	1,240,910,219	76,587,443
SOXS	DIREXION SHS ETF TR DLY SEMICNDTR BR	832,524,309	45,142,015
SPXL	DIREXION SHS ETF TR DRX S&P500BULL	946,357,247	13,134,890
SPY	SPDR S&P 500 ETF TR TR UNIT	34,975,824,706	85,701,074
SQQQ	PROSHARES TR ULTRAPRO SHT QQQ	4,273,866,273	130,095,374
TLT	ISHARES TR 20 YR TR BD ETF	2,246,375,199	21,559,136
TQQQ	PROSHARES TR ULTRAPRO QQQ	3,902,736,049	149,675,087
XBI	SPDR SER TR S&P BIOTECH	709,508,423	8,539,337
XLE	SELECT SECTOR SPDR TR ENERGY	1,648,556,002	19,872,930
XLF	SELECT SECTOR SPDR TR FINANCIAL	1,699,571,786	51,002,077
XLI	SELECT SECTOR SPDR TR SBI INT–INDS	1,190,848,482	11,870,935
XLK	SELECT SECTOR SPDR TR TECHNOLOGY	1,006,555,659	6,839,312
XLP	SELECT SECTOR SPDR TR SBI CONS STPLS	855,296,387	11,569,373
XLU	SELECT SECTOR SPDR TR SBI INT–UTILS	879,471,277	13,077,264
XLV	SELECT SECTOR SPDR TR SBI HEALTHCARE	1,187,391,938	9,085,631
XLY	SELECT SECTOR SPDR TR SBI CONS DISCR	742,561,935	5,018,636
XOP	SPDR SER TR S&P OILGAS EXP	619,413,460	4,826,441

The Exchange believes that permitting cash settlement as a contract term for FLEX ETF Options for the ETFs in the above table would broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the over-the-counter (''OTC'') market for customized options, where settlement restrictions do not apply.

Today, equity options are settled physically at The Options Clearing Corporation (''OCC''), *i.e.,* upon exercise, shares of the underlying security must be assumed or delivered. Physical settlement may possess certain risks with respect to volatility and movement of the underlying security at expiration against which market participants may need to hedge. The Exchange believes cash settlement may be preferable to physical delivery in some circumstances as it does not present the same risk. If an issue with the delivery of the underlying security arises, it may become more expensive (and time consuming) to reverse the delivery because the price of the underlying security would almost certainly have changed. Reversing a cash payment, on the other hand, would not involve any such issue because reversing a cash delivery would simply involve the exchange of cash. Additionally, with physical settlement, market participants that have a need to generate cash would have to sell the underlying security while incurring the costs associated with liquidating their position as well as the risk of an adverse movement in the price of the underlying security.

The Exchange notes that the Securities and Exchange Commission (the ''Commission'') has previously approved a rule filing of another exchange that allowed for the trading of cash-settled options [11] and, specifically, cash-settled FLEX ETF Options (which the Exchange proposes to list in the same manner as that exchange).[12]

[11] *See, e.g.,* PHLX FX Options traded on Nasdaq PHLX and S&P 500® Index Options traded on Cboe Options Exchange. The Commission approved, on a pilot basis, the listing and trading of RealDay™ Options on the SPDR S&P 500 Trust on the BOX Options Exchange LLC (''BOX''). *See* Securities Exchange Act Release No. 79936 (February 2, 2017), 82 FR 9886 (February 8, 2017) (''RealDay Pilot Program''). The RealDay Pilot Program was extended until February 2, 2019. *See* Securities Exchange Act Release No. 82414 (December 28, 2017), 83 FR 577 (January 4, 2018) (SR–BOX–2017–38). The RealDay Pilot Program was never implemented by BOX. *See* also Securities Exchange Act Release Nos. 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007) (SR–Amex–2004–27) (Order approving listing of cash-settled Fixed Return Options (''FROs'')); and 71957 (April 16, 2014), 79 FR 22563 (April 22, 2014) (SR–NYSEMKT–2014–06) (Order approving name change from FROs to ByRDs and re-launch of these products, with certain modifications).

[12] *See* Securities Exchange Act Release Nos. 88131 (February 5, 2020), 85 FR 7806 (February 11, 2020) (SR–NYSEAMER–2019–38) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Allow Certain Flexible Equity Options To Be Cash Settled); and 97231 (March 31, 2023), 88 FR 20587 (April 6, 2023) (SR–NYSEAMER–2023–22) (Notice of Filing and Immediate Effectiveness of Proposed Change to

With respect to position and exercise limits, cash-settled FLEX ETF Options would be subject to the position limits set forth in Rule 8.35. Accordingly, the Exchange proposes new Rule 8.35(c)(1)(B), which would provide that a position in FLEX Equity Options where the underlying security is an ETF and that is settled in cash pursuant to Rule 4.21(b)(5)(A)(ii) would be subject to the position limits set forth in Rule 8.30, and subject to the exercise limits set forth in Rule 8.42.[13] The proposed rule further states that positions in such cash-settled FLEX Equity Options shall be aggregated with positions in physically settled options on the same underlying ETF for the purpose of calculating the position limits set forth in Rule 8.30, and the exercise limits set forth in Rule 8.42.[14] Given that each of the underlying ETFs that would currently be eligible to have cash-settlement as a contract term have established position and exercise limits applicable to physically settled options, the Exchange believes it is appropriate for the same position and exercise limits to also apply to cash-settled options. Accordingly, of the 39 underlying securities that would currently be eligible to have cash settlement as a FLEX contract term, 25 would have a position limit of 250,000 contracts pursuant to Rule 8.30, Interpretation and Policy .02.[15] Further, pursuant to Rule 8.30, Interpretation and Policy .07, eight would have a position limit of 500,000 contracts; four (EEM, FXI, IWM, and EFA) would have a position limit of 1,000,000 contracts; one (QQQ) would have a position limit of 1,800,000 contracts; and one (SPY) would have a position limit of 3,600,000.[16]

The Exchange understands that cash-settled ETF options are currently traded in the OTC market by a variety of market participants, *e.g.,* hedge funds, proprietary trading firms, and pension funds.[17] These options are not fungible with the exchange listed options. The Exchange believes some of these market participants would prefer to trade comparable instruments on an exchange, where they would be cleared and settled through a regulated clearing agency. The Exchange expects that users of these OTC products would be among the primary users of exchange-traded cash-settled FLEX ETF Options. The Exchange also believes that the trading of cash-settled FLEX ETF Options would allow these same market participants to better manage the risk associated with the volatility of underlying equity positions given the enhanced liquidity that an exchange-traded product would bring.

In the Exchange's view, cash-settled FLEX ETF Options traded on the Exchange would have three important advantages over the contracts that are traded in the OTC market. First, as a result of greater standardization of contract terms, exchange-traded contracts should develop more liquidity. Second, counter-party credit risk would be mitigated by the fact that the contracts are issued and guaranteed by OCC. Finally, the price discovery and dissemination provided by the Exchange and its members would lead to more transparent markets. The Exchange believes that its ability to offer cash-settled FLEX ETF Options would aid it in competing with the OTC market and at the same time expand the universe of products available to interested market participants. The Exchange believes that an exchange-traded alternative may provide a useful risk management and trading vehicle for market participants and their customers. Further, the Exchange believes listing cash-settled FLEX ETF Options would provide investors with competition on an exchange platform, as another exchange as received Commission approval to list the same options.[18]

The Exchange notes that OCC has received approval from the Commission for rule changes that will accommodate the clearance and settlement of cash-settled ETF Options.[19] The Exchange has also analyzed its capacity and represents that it and The Options Price Reporting Authority (OPRA) have the necessary systems capacity to handle the additional traffic associated with the listing of cash-settled FLEX ETF Options. The Exchange believes any additional traffic that would be generated from the introduction of cash-settled FLEX ETF Options would be manageable. The Exchange expects that Trading Permit Holders (''TPHs'') will not have a capacity issue as a result of this proposed rule change. The Exchange also does not believe this proposed rule change will cause fragmentation of liquidity. The Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposed rule change and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.

The Exchange does not believe that allowing cash settlement as a contract term would render the marketplace for equity options more susceptible to manipulative practices. The Exchange believes that manipulating the settlement price of cash-settled FLEX ETF Options would be difficult based on the size of the market for the underlying ETFs that are the subject of this proposed rule change. The Exchange notes that each underlying ETF in the table above is sufficiently active to alleviate concerns about potential manipulative activity. Further, in the Exchange's view, the vast liquidity in the 39 underlying ETFs that would currently be eligible to be traded as cash-settled FLEX options under the proposal ensures a multitude of market participants at any given time. Moreover, given the high level of participation among market participants that enter quotes and/or orders in physically settled options on these ETFs, the Exchange believes it would be very difficult for a single participant to alter the price of the underlying ETF or options overlying such ETF in any significant way without exposing the would-be manipulator to regulatory scrutiny. The Exchange further believes any attempt to manipulate the price of

Make a Clarifying Change to the Term Settlement Style Applicable to Flexible Exchange Options).

[13] The Exchange proposes to add to proposed Rule 8.35(c)(1)(A) a cross-reference to paragraph (d) of Rule 8.35, as Rule 8.35(d) also contains provisions about position limits for FLEX Equity Options that would be exceptions to the statement in Rule 8.35(c) that FLEX Equity Options have no position limits (in addition to the language in proposed Rule 8.35(c)(1)(B)). The Exchange also proposes to add to Rule 8.35(d) a cross-reference to proposed Rule 8.35(c)(1)(B), as the proposed rule adds language regarding aggregation of positions for purposes of position limits, which is currently covered in paragraph (d). Further, the Exchange proposes other nonsubstantive changes to Rule 8.35(c) to add a corresponding change to proposed Rule 8.35(c)(1)(A) and to add paragraph numbering and lettering, add subheadings, and delete certain introductory words that are, as a result of the paragraph reorganization, no longer necessary.

[14] *See* proposed Rule 8.35(c)(1)(B). The aggregation of position and exercise limits would include all positions on physically settled FLEX and non-FLEX options on the same underlying ETFs.

[15] Rule 8.30, Interpretation and Policy .02(e) provides that the position limit shall be 250,000 contracts for options: (i) on an underlying security that had trading volume of at least 100,000,000 shares during the most recent six-month trading period; or (ii) on an underlying security that had trading volume of at least 75,000,000 shares during the most recent six-month trading period and has at least 300,000,000 shares currently outstanding. Twenty-five of the thirty-nine underlying ETFs currently meet the requirements under Interpretation and Policy .02(e).

[16] These were based on position limits as of July 28, 2023. Position limits are available on at OCC—Position Limits (*theocc.com*). Position limits for ETFs are always determined in accordance with the Exchange's Rules regarding position limits.

[17] As noted above, another option exchange received approval to list certain cash-settled FLEX ETF Options. *See supra* note 12.

[18] *See supra* note 12.

[19] *See* Securities Exchange Act Release No. 34–94910 (May 13, 2022), 87 FR 30531 (May 19, 2022) (SR–OCC–2022–003).

the underlying ETF or options overlying such ETF would also be cost prohibitive. As a result, the Exchange believes there is significant participation among market participants to prevent manipulation of cash-settled FLEX ETF Options.

Still, the Exchange believes it has an adequate surveillance program in place and intends to apply the same program procedures to cash-settled FLEX ETF Options that it applies to the Exchange's other options products.[20] FLEX options products and their respective symbols are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange believes that the existing surveillance procedures at the Exchange are capable of properly identifying unusual and/or illegal trading activity, which procedures the Exchange would utilize to surveil for aberrant trading in cash-settled FLEX ETF Options.

With respect to regulatory scrutiny, the Exchange believes its existing surveillance technologies and procedures adequately address potential concerns regarding possible manipulation of the settlement value at or near the close of the market. The Exchange notes that the regulatory program operated by and overseen by the Cboe Global Markets, the Exchange's parent company (''Cboe''), Regulatory Division (which regulates the Exchange and its affiliated national securities exchanges) [21] includes cross-market surveillance designed to identify manipulative and other improper trading, including spoofing, algorithm gaming, marking the close and open, as well as more general, abusive behavior related to front running, wash sales, quoting/routing, and Reg SHO violations, that may occur on the Exchange or other markets. These cross-market patterns incorporate relevant data from various markets beyond the Exchange and its affiliates and from markets not affiliated with the Exchange. The Exchange represents that its existing trading surveillances and those of its affiliated markets are adequate to monitor trading in the underlying ETFs and subsequent trading of options on those securities on the Exchange, including cash-settled FLEX ETF Options.[22]

Additionally, for options, the Exchange utilizes an array of patterns that monitor manipulation of options, or manipulation of equity securities (regardless of venue) for the purpose of impacting options prices on the Exchange (*i.e.,* mini-manipulation strategies). That surveillance coverage is initiated once options begin trading on the Exchange. Accordingly, the Exchange believes that the cross-market surveillance performed by the Exchange or FINRA, on behalf of the Exchange, coupled with the Cboe Regulatory Division's own monitoring for violative activity on the Exchange comprise a comprehensive surveillance program that is adequate to monitor for manipulation of the underlying ETF and overlying option. Furthermore, the Exchange believes that the existing surveillance procedures at the Exchange are capable of properly identifying unusual and/or illegal trading activity, which the Exchange would utilize to surveil for aberrant trading in cash-settled FLEX ETF Options.

In addition to the surveillance procedures and processes described above, improvements in audit trails (*i.e.,* the Consolidated Audit Trail), recordkeeping practices, and inter-exchange cooperation over the last two decades have greatly increased the Exchange's ability to detect and punish attempted manipulative activities. In addition, the Exchange is a member of the Intermarket Surveillance Group (''ISG''). The ISG members work together to coordinate surveillance and investigative information sharing in the stock and options markets.[23] For surveillance purposes, the Exchange would therefore have access to information regarding trading activity in the pertinent underlying securities.

The proposed rule change is designed to allow investors seeking to effect cash-settled FLEX ETF Options with the opportunity for a different method of settling option contracts at expiration if they choose to do so. As noted above, market participants may choose cash settlement because physical settlement possesses certain risks with respect to volatility and movement of the underlying security at expiration that market participants may need to hedge against. The Exchange believes that offering innovative products flows to the benefit of the investing public. A robust and competitive market requires that exchanges respond to members' evolving needs by constantly improving their offerings. Such efforts would be stymied if exchanges were prohibited from offering innovative products for reasons that are generally debated in academic literature. The Exchange believes that introducing cash-settled FLEX ETF Options would further broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options, where settlement restrictions do not apply. The proposed rule change is also designed to encourage market makers to shift liquidity from the OTC market onto the Exchange, which, it believes, would enhance the process of price discovery conducted on the Exchange through increased order flow. The Exchange also believes that this may open up cash-settled FLEX ETF Options to more retail investors. The Exchange does not believe that this proposed rule change raises any unique regulatory concerns because existing safeguards—such as position limits (and the aggregation of cash-settled positions with physically-settled positions), exercise limits (and the aggregation of cash-settled positions with physically-settled positions), and reporting requirements—would continue to apply. The Exchange believes the proposed position and exercise limits may further help mitigate the concerns that the limits are designed to address about the potential for manipulation and market disruption in the options and the underlying securities.[24]

Given the novel characteristics of cash-settled FLEX ETF Options, the Exchange will conduct a review of the trading in cash-settled FLEX ETF Options over an initial five-year period. The Exchange will furnish five reports to the Commission based on this review, the first of which would be provided within 60 days after the first anniversary of the initial listing date of the first cash-settled FLEX ETF Option under the proposed rule and each subsequent annual report to be provided within 60 days after the second, third, fourth and fifth anniversary of such initial listing. At a minimum, each report will provide a comparison between the trading volume of all cash-settled FLEX ETF Options listed under the proposed rule and physically settled options on the

[20] For example, the regulatory program for the Exchange includes surveillance designed to identify manipulative and other improper options trading, including, spoofing, marking the close, front running, wash sales, etc.

[21] Cboe and its affiliated securities exchanges maintain regulatory services agreements with Financial Industry Regulatory Authority, Inc. (''FINRA'') whereby FINRA provides certain regulatory services to the exchanges, including cross-market surveillance, investigation, and enforcement services.

[22] Such surveillance procedures generally focus on detecting securities trading subject to opening price manipulation, closing price manipulation, layering, spoofing or other unlawful activity impacting an underlying security, the option, or both. The Exchange has price movement alerts, unusual market activity and order book alerts active for all trading symbols.

[23] *See, e.g.,* Cboe Regulatory Circular 20–028, *Establishment of the CMRWG.* (April 8, 2020)

[24] *See supra* note 16.

same underlying security, the liquidity of the market for such options products and the underlying ETF, and any manipulation concerns arising in connection with the trading of cash-settled FLEX ETF Options under the proposed rule. The Exchange will also provide additional data as requested by the Commission during this five-year period. The reports will also discuss any recommendations the Exchange may have for enhancements to the listing standards based on its review. The Exchange believes these reports will allow the Commission and the Exchange to evaluate, among other things, the impact such options have, and any potential adverse effects, on price volatility and the market for the underlying ETFs, the component securities underlying the ETFs, and the options on the same underlying ETFs and make appropriate recommendations, if any, in response to the reports.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[25] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[26] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that introducing cash-settled FLEX ETF Options will increase order flow to the Exchange, increase the variety of options products available for trading, and provide a valuable tool for investors to manage risk.

The Exchange believes that the proposal to permit cash settlement as a contract term for options on the specified group of equity securities would remove impediments to and perfect the mechanism of a free and open market as cash-settled FLEX ETF Options would enable market participants to receive cash in lieu of shares of the underlying security, which would, in turn, provide greater opportunities for market participants to manage risk through the use of a cash-settled product to the benefit of investors and the public interest. The Exchange does not believe that allowing cash settlement as a contract term for options on the specified group of equity securities would render the marketplace for equity options more susceptible to manipulative practices. As illustrated in the table above, each of the qualifying underlying securities is actively traded and highly liquid and thus would not be susceptible to manipulation because, over a six-month period, each security had an average daily notional value of at least $500 million and an ADV of at least 4,680,000 shares, which indicates that there is substantial liquidity present in the trading of these securities, and that there is significant depth and breadth of market participants providing liquidity and of investor interest. The Exchange believes the proposed bi-annual review to determine eligibility for an underlying ETF to have cash settlement as a contract term would remove impediments to and perfect the mechanism of a free and open market as it would permit the Exchange to select only those underlying ETFs that are actively traded and have robust liquidity as each qualifying ETF would be required to meet the average daily notional value and average daily volume requirements, as well as to select the same underlying ETFs on which another exchange may list cash-settled FLEX ETF Options.[27]

The Exchange believes the proposed change that, for FLEX ETF Options, at least one of exercise style, expiration date, and exercise price must differ from options in the non-FLEX market will provide clarity and eliminate confusion regarding permissible terms of FLEX ETF Options, including the proposed cash-settled FLEX ETF Options.

The Exchange believes that the data provided by the Exchange supports the supposition that permitting cash settlement as a FLEX term for the 39 underlying ETFs that would currently qualify to have cash settlement as a contract term would broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options, where settlement restrictions do not apply.

The Exchange believes that the proposal to permit cash settlement for certain FLEX ETF options would remove impediments to and perfect the mechanism of a free and open market because the proposed rule change would provide TPHs with enhanced methods to manage risk by receiving cash if they choose to do so instead of the underlying security. In addition, this proposal would promote just and equitable principles of trade and protect investors and the general public because cash settlement would provide investors with an additional tool to manage their risk. Further, the Exchange notes that other exchanges have previously received approval that allow for the trading of cash-settled options[28] and, specifically, cash-settled FLEX ETF Options in an identical manner as the Exchange proposes to list them pursuant to this rule filing.[29] The proposed rule change therefore should not raise issues for the Commission that it has not previously addressed.

The proposed rule change to permit cash settlement as a contract term for options on up to 50 ETFs is designed to promote just and equitable principles of trade in that the availability of cash settlement as a contract term would give market participants an alternative to trading similar products in the OTC market. By trading a product in an exchange-traded environment (that is currently traded in the OTC market), the Exchange would be able to compete more effectively with the OTC market. The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that it would lead to the migration of options currently trading in the OTC market to trading on the Exchange. Also, any migration to the Exchange from the OTC market would result in increased market transparency. Additionally, the Exchange believes the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it should create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of the proposed cash-settled options. Further, the proposed rule change would result in increased competition by permitting the Exchange to offer products that are currently available for trading only in the OTC market and are approved to trade on another options exchange.

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] *See supra* note 12.

[28] *See supra* note 11.

[29] *See supra* note 12.

The Exchange believes that establishing position limits for cash-settled FLEX ETF Options to be the same as physically settled options on the same underlying security, and aggregating positions in cash-settled FLEX ETF Options with physically settled options on the same underlying security for purposes of calculating position limits is reasonable and consistent with the Act. By establishing the same position limits for cash-settled FLEX ETF Options as for physically settled options on the same underlying security and, importantly, aggregating such positions, the Exchange believes that the position limit requirements for cash-settled FLEX ETF Options should help to ensure that the trading of cash-settled FLEX ETF Options would not increase the potential for manipulation or market disruption and could help to minimize such incentives. For the same reasons, the Exchange believes the proposed exercise limits are reasonable and consistent with the Act.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in cash-settled FLEX ETF Options and the underlying ETFs. Regarding the proposed cash settlement, the Exchange would use the same surveillance procedures currently utilized for the Exchange's other FLEX Options. For surveillance purposes, the Exchange would have access to information regarding trading activity in the pertinent underlying ETFs. The Exchange believes that limiting cash settlement to no more than 50 underlying ETFs (currently, 39 ETFs would be eligible to have cash-settlement as a contract term) would minimize the possibility of manipulation due to the robust liquidity in both the equities and options markets.

As a self-regulatory organization, the Exchange recognizes the importance of surveillance, among other things, to detect and deter fraudulent and manipulative trading activity as well as other violations of Exchange rules and the federal securities laws. As discussed above, the Cboe Regulatory Division has adequate surveillance procedures in place to monitor trading in cash-settled FLEX ETF Options and the underlying securities, including to detect manipulative trading activity in both the options and the underlying ETF.[30] The Exchange further notes the liquidity and active markets in the underlying ETFs, and the high number of market participants in both the underlying ETFs and existing options on the ETFs, helps to minimize the possibility of manipulation. The Exchange further notes that under Section 19(g) of the Act, the Exchange, as a self-regulatory organization, is required to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the Exchange.[31] The Exchange believes its surveillance, along with the liquidity criteria and position and exercise limits requirements, are reasonably designed to mitigate manipulation and market disruption concerns and will permit it to enforce compliance with the proposed rules and other Exchange rules in accordance with Section 19(g) of the Act. The Exchange performs ongoing evaluations of its surveillance program to ensure its continued effectiveness and will continue to review its surveillance procedures on an ongoing basis and make any necessary enhancements and/or modifications that may be needed for the cash settlement of FLEX ETF Options.

Additionally, the Exchange will monitor any effect additional options series listed under the proposed rule change will have on market fragmentation and the capacity of the Exchange's automated systems. The Exchange will take prompt action, including timely communication with the Commission and with other self-regulatory organizations responsible for oversight of trading in options, the underlying ETFs, and the ETFs' component securities, should any unanticipated adverse market effects develop.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as all TPHs that are registered as FLEX Traders in accordance with the Exchange's Rules will be able to trade cash-settled FLEX ETF Options in the same manner. This includes the proposed change that, for FLEX ETF Options, at least one of exercise style, expiration date, and exercise price must differ from options in the non-FLEX market, which will provide clarity and eliminate confusion regarding permissible terms of FLEX ETF Options, including the proposed cash-settled FLEX ETF Options, with which all FLEX Traders must comply. Additionally, positions in cash-settled FLEX ETF Options of all FLEX Traders will be subject to the same position limits, and such positions will be aggregated with positions in physically settled options on the same underlying in the same manner.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposal is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors because it is designed to provide investors seeking to transact in FLEX ETF Options with the opportunity for an alternative method of settling their option contracts at expiration. The Exchange believes the proposed rule change will encourage competition, as it may broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options, where settlement restrictions do not apply. The proposed rule change would give market participants an alternative to trading similar products in the OTC market. By trading a product in an exchange-traded environment (that is currently traded in the OTC market), the Exchange would be able to compete more effectively with the OTC market. The Exchange believes the proposed rule change may increase competition as it may lead to the migration of options currently trading in the OTC market to trading on the Exchange. Also, any migration to the Exchange from the OTC market would result in increased market transparency and thus increased price competition.

The Exchange further notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes the proposed rule change encourages competition amongst market participants to provide tailored cash-settled FLEX ETF Option contracts, as another exchange has received approval to list these contracts (subject to the same position and

[30] Among other things, the Cboe Regulatory Division's regulatory program include cross-market surveillance designed to identify manipulative and other improper trading, including spoofing, algorithm gaming, marking the close and open, as well as more general abusive behavior related to front running, wash sales, quoting/routing, and Reg SHO violations, that may occur on the Exchange and other markets. Furthermore, the Exchange stated that it has access to information regarding trading activity in the pertinent underlying securities as a member of ISG.

[31] 15 U.S.C. 78s(g).

exercise limits as proposed).[32] Therefore, the Exchange believes the proposed rule change will enhance intermarket competition by providing investors with a choice of exchange venues on which to trade cash-settled FLEX ETF Options.

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 Act[33] and Rule 19b–4(f)(6)(iii) thereunder.[34]

A proposed rule change filed under Rule 19b–4(f)(6)[35] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[36] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states, among other things, that waiver of the 30-day operative delay will protect investors by providing them with an immediate choice and an additional venue where they can trade cash-settled FLEX ETF Options. The Commission approved a substantially similar proposal by another exchange that was subject to notice and comment and found consistent with the Act.[37] For these reasons, and because the proposed rule change does not raise any novel regulatory issues that have not been addressed, the Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[38]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CBOE–2023–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CBOE–2023–036. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2023–036 and should be submitted on or before August 29, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Sherry R. Haywood,

Assistant Secretary.

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[32] *See supra* note 12.

[33] 15 U.S.C. 78s(b)(3)(A).

[34] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[35] 17 CFR 240.19b–4(f)(6).

[36] 17 CFR 240.19b–4(f)(6)(iii).

[37] *See supra* note 12.

[38] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98045; File No. SR–MIAX–2023–19]

Self-Regulatory Organizations; MIAX International Securities Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend MIAX Rule 307, Position Limits

August 2, 2023.

I. Introduction

On April 21, 2023, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 307, Position Limits, to establish a process for adjusting option position limits following a stock split or reverse stock split in the underlying security. The proposed rule change was published for comment in the **Federal Register** on May 8, 2023.[3] On June 14, 2023, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97421 (May 2, 2023), 88 FR 29725 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] The Commission has received one comment regarding the proposal.[6] This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

Currently, Exchange Rule 307(d) establishes option position limits of 25,000 contracts, 50,000 contracts, 75,000 contracts, 200,000 contracts, or 250,000 contracts on the same side of the market for the same underlying security or such other number of option contracts as may be fixed from time to time by the Exchange. The position limit applicable to an option is based on the trading volume and outstanding shares of the underlying security.[8] Exchange Rule 307(e) states that the Exchange will review the status of underlying securities every six months to determine which position limit should apply. A higher limit will be effective on the date set by the Exchange, and any change to a lower limit will take effect after the last expiration then trading, unless the requirement for the same or a higher limit is met at the time of the intervening six month review.[9] If, subsequent to a six month review, an increase in volume and/or outstanding shares would make a stock eligible for a higher position limit prior to the next review, the Exchange in its discretion may immediately increase such position limit.[10]

The Exchange proposes to amend Exchange Rule 307 to make permanent the position limit changes that currently occur when an underlying security undergoes a corporate stock split.[11] The Exchange states that following a stock split, the Options Clearing Corporation (''OCC'') adjusts the position limit for options on the underlying security by the factor of the split.[12] The Exchange states, for example, that when a stock underlying an option with a position limit of 250,000 contracts undergoes a four-for-one stock split, the option will have a new position limit of 1,000,000 contracts.[13] The Exchange further states that although the stock split is a permanent corporate action in the underlying stock, the position limit adjustment is temporary and lasts only until the time of expiration of the last option listed at the time of the stock split.[14]

Proposed Exchange Rule 307(g) would apply the split adjustment factor to the current position limit to establish a new option position limit following a stock split in the underlying security.[15] Specifically, proposed Exchange Rule 307(g)(1) states that the position limit that was in effect at the time of the stock split shall be adjusted by multiplying the current position limit value in effect for the underlying by the stock split ratio.[16] (For example, if the current position limit is 250,000 contracts and there is a four-for-one (4:1) stock split in the underlying, the new position limit would be 1,000,000 contracts (4 × 250,000)). Proposed Exchange Rule 3071(g)(2) further states that the position limit that was in effect at the time of a reverse stock split shall be adjusted by dividing the current position limit value in effect for the underlying by the reverse stock split ratio. For example, if the current position limit is 250,000 contracts and there is a one-for-two (1:2) reverse stock split in the underlying, the new position limit would be 125,000 contracts (250,000/2). Further, for reverse stock splits, the new position limit would be the greater of the adjusted position limit or the lowest position limit defined in Exchange Rule 307(d).[17]

The Exchange states that its proposal presents a logical approach to addressing stock splits in underlying securities because it maintains the integrity of the position limit to shares outstanding ratio pre- and post-split, and promotes consistency and stability in the marketplace.[18] The Exchange states, by way of example, that a position limit of 250,000 contracts on an underlying security that has 4,000,000,000 shares outstanding represents control of 25,000,000 shares or 0.625% of the total shares outstanding.[19] If the underlying security has a four-for-one stock split, the number of shares outstanding would increase to 16,000,000,000.[20] The Exchange states that to maintain the same position limit to shares outstanding ratio, the option position limit should increase fourfold to 1,000,000 contracts, where control of 100,000,000 shares would represent control of 0.625% of the total shares outstanding.[21]

The Exchange states that, today, when the last option listed at the time of the stock split expires, the position limit is re-evaluated according to the criteria in Exchange Rule 307(d)(1)–(5), (where the maximum contract limit is 250,000 contracts), and the position limit is permanently readjusted in accordance with that criteria.[22] The Exchange states that the reversion of the position limit, even to the maximum limit of 250,000 contracts, unnecessarily restricts trading by imposing a stricter position limit relative to the number of shares outstanding post-stock split than existed pre-stock split.[23] The Exchange states that its proposal will maintain the position limit to shares outstanding ratio so that the pre-split ratio and post-split ratio are identical, and will eliminate any market disruptions that may occur as a result of the current process for handling stock splits.[24]

The Exchange also proposes to amend Exchange Rule 307(e) to apply the split

[5] *See* Securities Exchange Act Release No. 97727 (June 14, 2023), 88 FR 40366 (June 21, 2023). The Commission designated August 6, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] *See* letter from Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA, to Vanessa Countryman, Secretary, Commission, dated July 5, 2023 (''SIFMA Letter'').

[7] 15 U.S.C. 78s(b)(2)(B).

[8] Exchange Rule 307(d) establishes the following position limits: 25,000 contracts for an option on an underlying security that does not meet the requirements for a higher option contract limit; 50,000 contracts for an option on an underlying security that has either a most recent six month trading volume of at least 20 million shares, or a most recent six month trading volume of at least 15 million shares and at least 40 million shares outstanding; 75,000 contracts for an option on an underlying security that has either a most recent six month trading volume of at least 40 million shares, or a most recent six month trading volume of at least 30 million shares and at least 120 million shares outstanding; 200,000 contracts for an option on an underlying security that has either a most recent six month trading volume of at least 80 million shares or a most recent six month trading volume of at least 60 million shares and at least 240 million shares outstanding; and 250,000 contracts for an option on an underlying security that has either a most recent six month trading volume of at least 100 million shares, or a most recent six month trading volume of at least 75 million shares and at least 300 million shares outstanding. In addition, Exchange Rule 307, Interpretation and Policy .01 establishes position limits over 250,000 contracts for options on certain underlying exchange-traded funds. *See* Notice, 88 FR at 29726.

[9] *See* Exchange Rule 307(e).

[10] *Id.*

[11] *See* Notice, 88 FR at 29726–7.

[12] *See* Notice, 88 FR at 29727. The Exchange does not believe that the OCC immediately adjusts position limits for reverse stock splits. *See id.* at n.8.

[13] *See* Notice, 88 FR at 29727.

[14] *Id.*

[15] *Id.*

[16] Proposed Exchange Rule 307(g)(3) states that for purposes of Exchange Rule 307(g), the term ''stock'' shall pertain solely to equity securities and not be inclusive of exchange-traded funds.

[17] *See* proposed Exchange Rule 307(g)(2).

[18] *See* Notice, 88 FR at 29727.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

factor to the reevaluation process provided in that rule. The Exchange proposes to amend Exchange Rule 307(e) to provide that for underlying securities whose position limit has been adjusted pursuant to paragraph (g), the split factor shall be used for analysis under paragraph (d). For example, paragraph (d)(5) establishes the position limit based on either the most recent six-month trading volume of the underlying security totaling at least 100 million shares, or the most recent six-month trading volume of the underlying security totaling at least 75 million shares and the underlying security having at least 300 million share outstanding. Therefore, to be eligible for the 250,000-contract limit, an underlying stock that underwent a four-for-one stock split would be required to have either most-recent six-month trading volume of at least 400 million shares (100,000,000 × 4), or most-recent six-month trading volume of at least 300 million shares (75,000,000 × 4) with at least 1,200,000,000 shares outstanding (300,000,000 × 4). For reverse stock splits, the split factor would be similarly applied and used as a divisor in the calculations rather than as a multiplier.

The Exchange states that the proposal provides a uniform and consistent approach for reevaluating position limits for underlying securities that were subject to a stock split because the split factor is properly applied (multiplied for share splits and divided for reverse share splits) to each threshold value under Exchange Rule 307(d) to establish the proper position limit.[25] The Exchange states that the current reversion process, in which position limits are adjusted at the time of the stock split but revert back to the original position limit when the last listed option at the time of the split expires, does not benefit investors or the public interest because the original position limit is no longer meaningfully related to the current shares outstanding.[26] The Exchange states that the proposal maintains the established position limit relative to shares outstanding pre- and post-stock split and provides a defined calculation in the Exchange's rule to account for stock splits in underlying securities.[27] In addition, the Exchange states that the proposal provides a corollary method for handling reverse stock splits that employs similar logic.[28]

The Exchange states that in August 2020 the industry experienced an issue with a four-for-one stock split in Apple Inc. (''AAPL'') that the proposal is tangentially designed to address.[29] The Exchange states that prior to the stock split, there were approximately 4,000,000,000 shares of AAPL outstanding and the position limit for AAPL was 250,000 contracts (25,000,000 shares).[30] The Exchange states that on August 28, 2020, the OCC indicated that that effective August 31, 2020, a contract multiplier of four and a strike divisor of four would be applied to AAPL contracts and strikes.[31] The Exchange states that the OCC also adjusted the position limit for AAPL by the same factor, setting the position limit to 100,000,000 shares (1,000,000 contracts).[32] The Exchange states that when the last AAPL option listed at the time of the stock split in 2020 expired in 2022, the OCC reverted back to the original position limit for AAPL of 25,000,000 shares (250,000 contracts).[33] The Exchange states that although this position limit technically adheres to the Exchange's rules, it is more restrictive than the original position limit.[34] The Exchange states that prior to the stock split, AAPL had approximately 4,000,000,000 shares outstanding and the position limit of 250,000 contracts represented control of 25,000,000 shares or 0.625% of the outstanding shares.[35] The Exchange further states that, after the stock split, AAPL had approximately 16,000,000,000 shares outstanding.[36] The Exchange states that the immediate adjustment of the position limit from 250,000 contracts to 1,000,000 contracts reflects control of 100,000,000 shares or 0.625% of the shares outstanding, which retains the pre-stock split ratio.[37] The Exchange states that readjusting the position limit back to 25,000,000 shares (250,000 contracts) when there are 16,000,000,000 shares outstanding reduces the position limit to 0.156% of the shares outstanding, making the post-stock split position limit more restrictive than the pre-stock split position limit.[38]

The Exchange states that the reversion to the pre-stock split position limit disrupts the market in a number of ways.[39] The Exchange states that the reversion to the pre-split position limit prevents market participants from effectively pursuing their trading and investment strategies because the position limit relative to shares outstanding has become more restrictive.[40] In addition, the Exchange states that the reversion to the pre-stock split position limit introduces an element of risk because market participants must unwind their post-split positions to remain compliant with position limit rules.[41] The Exchange also states that the reversion to the pre-split position limit may negatively impact trading volumes because market participants that use option contracts to hedge their risks will not be able to maintain the same levels of market exposure.[42]

Using AAPL as an example, the Exchange states that pre-split, a market participant could have had an options position of 250,000 contracts that represented 0.0625% [sic] of the total shares outstanding and that, post-split, the market participant could have had an options position of 1,000,000 contracts, which would still represent 0.0625% [sic] of the total shares outstanding.[43] The Exchange states that after the reversion to the pre-split position limit (250,000 contracts), the market participant would be forced to reduce its trading activity because the maximum position limit would then represent 0.1563% of the total shares outstanding.[44] The Exchange states that this reduction in trading volume also represents a reduction in available liquidity.[45] The Exchange further states that robust liquidity facilitates price discovery and benefits competition by improving bid/ask spreads, and that tighter bid/ask spreads lead to better execution prices.[46] The Exchange states that the reversion to the pre-split position limit negatively impacts liquidity, trading volume, and possibly execution prices.[47]

The Exchange states that other options exchanges could adopt similar rules to harmonize position limit adjustments as a result of stock splits in

[25] *Id.*

[26] *See* Notice, 88 FR at 29728.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *See* Notice, 88 FR at 29728, citing OCC Memo #47509, Apple Inc.—4 for 1 Stock Split (August 28, 2020) available on its public website at *https://infomemo.theocc.com/infomemos?number=47509.*

[32] *See* Notice, 88 FR at 29728. The Exchange states that the OCC publishes position limits each day on its website.

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.* The Commission understands the percentage figure referenced by the Exchange in this example should be 0.625%, not 0.0625%.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

the underlying securities.[48] The Exchange states that all market participants are able to determine position limits on a daily basis because the OCC publishes a Position Limit file and a Position Limit Change file, which reflects position limit adjustments and provides the Start Date and Starting Position Limit coupled with the End Date and Ending Position Limit.[49]

III. Proceedings To Determine Whether To Approve or Disapprove SR–MIAX–2023–19 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[50] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[51] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposed rule change with the Act and, in particular, Section 6(b)(5) of the Act,[52] which requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [53] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[54] and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[55]

As discussed above, the Exchange proposes to adopt new rule provisions that would automatically adjust an option's position limit proportional to and following a stock split or reverse stock split in the underlying security. Specifically, proposed Exchange Rule 307(g)(1) would provide that, following a stock split, the new position limit for options on the stock would be a value equal to the option position limit in effect at the time of the split multiplied by the stock split ratio. For a reverse stock split, the position limit in effect at the time of the reverse stock split would be adjusted by dividing the position limit value by the reverse stock split ratio. In addition, the Exchange proposes to amend Exchange Rule 307(e) to provide that, for an option with a position limit that has been adjusted pursuant to proposed Exchange Rule 307(g), the split factor would be used for the position limit analysis in Exchange Rule 307(d).

The Exchange states that the current reversion to the pre-stock split position limit following the expiration of the last option listed at the time of the split prevents market participants from effectively pursuing their trading and investment strategies because the option position limit relative to shares outstanding becomes more restrictive.[56] The Exchange also states that the reversion to the pre-stock split position limit introduces an element of risk because market participants must unwind their post-split positions prior to the reversion to the pre-split position limit level to remain compliant with position limit rules.[57] Further, the Exchange states that the reversion to the pre-split position limit may negatively impact trading volumes because market participants that use option contracts to hedge their risks would not be able to maintain the same levels of market exposure.[58]

The Commission has received one comment regarding the proposal.[59] The commenter expressed broad support for the proposal, reiterating many of the statements made by the Exchange. According to the commenter, the reversion to the original position limit when the last listed option at the time of a split expires renders the limit no longer meaningfully related to the current shares outstanding, and unnecessarily restricts trading by imposing a stricter position limit relative to the number of shares outstanding post-stock split.[60] The commenter stated that the proposal would eliminate this disparate treatment between the underlying stock split and the options position limit because both adjustments would be permanent.[61] The commenter also stated that the proposal maintains the integrity of the position limit to shares outstanding ratio both pre- and post-split, provides a consistent and uniform approach for reevaluating position limits on underlying securities that were subject to a stock split, and creates stability in the marketplace by preserving the expectations of market participants who are trading and hedging in the options contracts subject to the position limit changes.[62] In addition, the commenter stated that, besides AAPL, several other companies with significant market capitalization have undergone recent stock splits, including Tesla Inc., Alphabet Inc. and Nvidia Corporation (''NVDA'').[63] The commenter stated that NVDA shares underwent a four-for-one stock split, increasing the option position limit from 250,000 contracts to 1,000,000 contracts until the last contract expired in June 2023, at which point the limit reverted to 250,000 contracts.[64] The commenter stated that allowing the position limit to remain at 1,000,000 contracts would allow investors who are trading and hedging in the options contracts to manage their positions consistent with the new amount of shares outstanding.[65]

Position and exercise limits serve as a regulatory tool designed to address manipulative schemes and adverse market impact surrounding the use of options.[66] Currently, the maximum stock option position limits permitted

[48] *Id.*

[49] *See* Notice, 88 FR at 29728–9.

[50] 15 U.S.C. 78s(b)(2)(B).

[51] *Id.*

[52] 15 U.S.C. 78f(b)(5).

[53] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[54] *See id.*

[55] *See id.*

[56] *See* Notice, 88 FR at 29728.

[57] *Id.*

[58] *Id.*

[59] *See* SIFMA Letter.

[60] *Id.* at 1–2.

[61] *Id.* at 2.

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *See, e.g.,* Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR–CBOE–2012–066).

under exchange rules are 250,000 contracts. Although OCC provides a temporary adjustment to option position limits following a stock split, exchange rules currently do not provide for the automatic adjustment of an option's position limit proportional to splits in the underlying stock. The proposal is novel because it would amend the Exchange's rules to permit such automatic position limit adjustments, including adjustments that could result in increases in stock option position limits to levels that exceed 250,000 contracts. For example, in 2022, Amazon.com, Inc. (''Amazon'') underwent a 20:1 stock split.[67] Under the proposal, the position limit for options on a stock that undergoes a 20:1 split would increase by a factor of 20—for example, from 250,000 contracts to 5,000,000 contracts—regardless of the most recent six-month trading volume or number of shares outstanding of the underlying stock. Even a more modest position limit increase, such as a fourfold increase for an option on a stock that undergoes a 4:1 stock split, would be a substantial increase from current levels. The proposed automatic increase in position limits for options on stocks that undergo a stock split raises the potential for adverse impacts in the market for the underlying stocks.

As discussed above, the Exchange and the commenter state that increasing the option position limit by the stock split factor will allow a market participant to continue to maintain an options position representing the same percentage of outstanding shares of the underlying stock following a stock split. However, the trading volume in the underlying stock—not the ability to establish an options position representing a consistent percentage of the outstanding shares pre- and post-split—is one of the relevant metrics for determining the position limit for options on stocks.[68] Neither the Exchange nor the commenter have provided data indicating that trading volume in a stock generally increases following a stock split, or that any such increases, to the extent that they exist, generally are sufficient to support an increase in the option position limit by an amount equal to the stock split factor. For example, neither the Exchange nor the commenter present data demonstrating that, in general, the trading volume in a stock that undergoes a 4:1 stock split increases to such an extent that the position limit for options on that stock should increase fourfold over the pre-split option position limit. On the contrary, the Commission understands that some data suggest that trading volume in a stock may be unchanged or decrease following a stock split.[69]

Further, the proposal does not explain why it would be appropriate for a stock option potentially to have a split-factor-adjusted position limit that is higher than what is allowed by Exchange Rule 307(d) for corresponding underlying stock-volume-traded measures. For example, under Exchange Rule 307(d), a most recent six-month trading volume in the underlying security of at least 20 million shares qualifies the option for a 50,000-contract position limit, and a most recent six-month trading volume in the underlying security of at least 40 million shares qualifies the option for a 75,000-contract position limit. Under the proposal, if an option at the 50,000-contract limit had a most recent six-month trading volume in its underlying stock of 20 million shares and the stock split two-for-one, the option's position limit would increase to 100,000 contracts and could remain there so long as the underlying stock's most recent six-month trading volume was at least 40 million shares. Under Exchange Rule 307(d), however, a most recent six-month trading volume of 40 million shares in the underlying security qualifies an option for a 75,000-contract limit, not a 100,000-contract limit. The proposal does not explain why this and other potential discrepancies with position limits currently allowed by Exchange Rule 307(d) are appropriate for options with stock-split adjusted position limits.

In addition, although the Exchange states that the reversion to pre-split option position limits prevents market participants from effectively pursuing their trading, hedging, and investment strategies following a stock split, the proposal provides no details to support these assertions, such as the number of customers affected or the trading, hedging, or investment strategies that these customers are unable to execute because of lower post-split position limits. Similarly, although the Exchange states that the reversion to pre-split position limits negatively impacts liquidity, trading volume, and possibly execution prices,[70] the proposal provides no data to support these assertions.

The proposal also does not describe how the Exchange would implement the proposed split-factor adjusted position limit increases or the proposed review of their appropriateness. The proposal does not specify, for example, whether the Exchange intends to follow the OCC's policy of increasing the option position limit immediately after a stock split and allowing the new limit to remain in effect until the last option listed at the time of the stock split expires, regardless of the trading volume or shares outstanding of the underlying stock. Similarly, the proposal does not specify the timing for the proposed split-factor adjusted reviews in Exchange Rule 307(e). Exchange Rule 307(e) currently provides for a six-month review of option position limits. However, the proposal does not specify, for example, whether the review for purposes of determining the appropriateness of a split-factor adjusted position limit would occur six months after the stock split, six months following the expiration of the last option listed at the time of the stock split, or at some other point in time following the stock split.

Finally, the Exchange does not propose a corresponding change to the option exercise limits in Exchange Rule 309. Apart from the exemptions in Exchange Rule 308, Exchange Rule 309(a)(1) generally prohibits members from exercising within any five consecutive business days aggregate long positions in any class of options traded on the Exchange in excess of 25,000 or 50,000 or 75,000 or 200,000 or 250,000 option contracts or such other number of option contracts as may be fixed from time to time by the Exchange as the exercise limit for that class of options. It is not clear whether the

[67] *See* Amazon.com, Inc. Current Report (Form 8–K) (March 9, 2022), available at *https://www.sec.gov/Archives/edgar/data/1018724/000101872422000009/amzn-20220309.htm.*

[68] *See, e.g.,* Exchange Rule 307(d).

[69] A Cboe study on the impact of stock splits on trading activities finds that split-adjusted median executed share volume in mega-capitalization stocks increased slightly one-week post-split but, in the two-week to six-month period post-split, the median executed share volume decreased about 48%, compared to volume a week pre-split. *See* Cboe study on the impact of stock split on trading activities at: *https://www.cboe.com/insights/posts/stock-splits-lead-to-split-results-in-trading/.* This study also finds that the median number of options contracts traded in mega-capitalization stocks decreased approximately 49% one week post-split and remained down through the six-month period post-split. Further, this study finds that split-adjusted median executed share volume in large-capitalization stocks increased slightly two weeks post-split but then decreased in the one to six-month period post-split, and that split-adjusted median executed share volume in mid- and small-cap stocks decreased in the one-week to six-month period post-split. In addition, the Commission understands that some evidence suggests that, as a general matter, share trading volume may be unchanged or decrease after a stock split. *See, e.g.,* Patrick Dennis, *Stock Splits and Liquidity: the Case of the Nasdaq–100 Index Tracking Stock,* the Financial Review, 38, 2003, 415–433; Thomas E. Copeland, *Liquidity Changes Following Stock Splits,* the Journal of Finance, 34, 1, 1979, 115–141.

[70] *See* Notice, 88 FR at 29728.

proposed change to option position limits would accomplish the goals of the proposal without a corresponding change to Exchange Rule 309(a)(1).[71]

Accordingly, the proposal does not provide an adequate basis for the Commission to conclude that the proposal would be consistent with Section 6(b)(5) of the Act.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,[72] any request for an opportunity to make an oral presentation.[73]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on its concerns expressed above regarding the proposal's consistency with the Act, and seeks commenters' views as to whether the proposal could have an adverse market impact.

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by August 29, 2023. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 12, 2023. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–MIAX–2023–19 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–MIAX–2023–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2023–19 and should be submitted on or before August 29, 2023. Rebuttal comments should be submitted September 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[74]

Sherry R. Haywood.

Assistant Secretary.

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[71] Although Exchange Rule 309(c) states that ''limits shall be determined in the manner described in Rule 307,'' Exchange Rule 309(a)(1) establishes a maximum exercise limit of 250,000 contracts.

[72] 17 CFR 240.19b–4.

[73] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[74] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98047; File No. SR–FINRA–2022–031]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Adopt FINRA Rules 6151 (Disclosure of Order Routing Information for NMS Securities) and 6470 (Disclosure of Order Routing Information for OTC Equity Securities)

August 2, 2023.

I. Introduction

On November 16, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to require members to (i) publish order routing reports for orders in OTC Equity Securities,[3] and (ii) submit their order routing reports for both OTC Equity Securities and NMS securities [4] to FINRA for publication on the FINRA website. The proposed rule change was published for comment in the **Federal Register** on December 6, 2022.[5] On January 18, 2023, pursuant to Section 19(b)(2) of the Exchange Act,[6] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[7] On March 3, 2023, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[8] On May 31,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FINRA Rule 6420(f) defines an ''OTC Equity Security'' as any equity security that is not an NMS stock, other than a Restricted Equity Security. FINRA Rule 6420(k) defines a ''Restricted Equity Security'' as any equity security that meets the definition of ''restricted security'' as contained in Rule 144(a)(3) under the Securities Act of 1933. ''NMS stock'' means any NMS security other than an option. *See* 17 CFR 242.600(b)(55).

[4] ''NMS securities'' include any security or class of securities for which transaction reports are collected, processed, and made available to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options. *See* 17 CFR 242.600(b)(54).

[5] *See* Securities Exchange Act Release No. 96415 (November 30, 2022), 87 FR 74672 (''Notice'').

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 96699, 88 FR 4260 (January 24, 2023).

[8] *See* Securities Exchange Act Release No. 97039, 88 FR 14653 (March 9, 2023).

2023, the Commission designated a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.[9] The Commission received comment letters on the proposed rule change and responses from FINRA.[10] This order approves the proposed rule change.

II. Summary of the Proposed Rule Change

As FINRA states in the Notice, Rule 606(a) of Regulation National Market System (''Regulation NMS'') requires broker-dealers to publicly disclose specified information about their order routing practices for NMS securities.[11] In 2018, the Commission amended SEC Rule 606(a) to enhance required disclosures from broker-dealers about their order routing practices for NMS securities, including enhanced disclosures for non-directed orders in NMS stocks that are submitted on a ''held'' basis in order to better allow ''customers—and retail investors in particular—that submit orders to their broker-dealers [to] be better able to assess the quality of order handling services provided by their broker-dealers'' and to allow customers to determine ''whether their broker-dealers are effectively managing potential conflicts of interest.'' [12]

As described below and in more detail in the Notice, FINRA proposes to adopt FINRA Rule 6470 (Disclosure of Order Routing Information for OTC Equity Securities), which imposes disclosure requirements for OTC Equity Securities that are generally aligned with the requirements of SEC Rule 606(a) disclosures but with modifications to account for differences between the over-the-counter (''OTC'') markets and the market for NMS securities. In addition, to improve the accessibility of these new disclosures, as well as SEC Rule 606(a) reports, FINRA proposes to adopt FINRA Rule 6470(d) and FINRA Rule 6151 (Disclosure of Order Routing Information for NMS Securities) to require members to send both disclosures to FINRA for centralized publication on the FINRA website.

Proposed FINRA Rule 6470 would require the publication of order routing disclosures for OTC Equity Securities.[13] Specifically, proposed FINRA Rule 6470(a) would require every member to make publicly available for each calendar quarter a report on its routing of non-directed orders in OTC Equity Securities that are submitted on a held basis during that quarter, broken down by calendar month, and keep such report posted on an internet website that is free and readily accessible to the public for a period of three years from the initial date of posting on the internet website (''OTC Equity Security reports'').[14] These reports would be required to be separated into three sections: (i) domestic OTC Equity Securities; (ii) American Depository Receipts and foreign ordinaries that are OTC Equity Securities; and (iii) Canadian-listed securities trading in the United States as OTC Equity Securities.[15] In addition, proposed FINRA Rule 6470(a) would specify that the new OTC Equity Security reports must be made available using the most recent versions of the XML schema and associated PDF renderer as published on the FINRA website,[16] and proposed FINRA Rule 6470(d) would require the reports to be made publicly available within one month after the end of the quarter addressed in the report.[17]

Pursuant to proposed FINRA Rule 6470(a), the new OTC Equity Security reports would be required to include the information specified in paragraphs (a)(1) through (4) of proposed FINRA Rule 6470, specifically:

- the percentage of total orders [18] for the section that were not held orders and held orders, and the percentage of held orders for the section that were non-directed orders; [19]
- the identity of the ten venues to which the largest number of total non-directed held orders for the section were

[9] *See* Securities Exchange Act Release No. 97629, 88 FR 37112 (June 6, 2023).

[10] All comments received by the Commission on the proposed rule change are available at: *https://www.sec.gov/comments/sr-finra-2022-031/srfinra2022031.htm.*

[11] 17 CFR 242.606(a) (''SEC Rule 606(a)''). *See also* Notice, *supra* note 5, at 74672.

[12] *See* Securities Exchange Act Release No. 84528 (November 2, 2018), 83 FR 58338 (November 19, 2018) (''SEC Rule 606 Adopting Release''). A broker-dealer must attempt to execute a ''held'' order immediately, while a ''not held'' order instead provides a broker-dealer with price and time discretion. *Id.* at 58344. *See also* Notice, *supra* note 5, at 74672 n.5.

[13] *See* Notice, *supra* note 3, at 74672 n.8.

[14] Proposed FINRA Rule 6470 would apply to ''every member,'' but FINRA notes that the focus of the proposed disclosures is held orders from customers in OTC Equity Securities, and some members may not engage in any activities involving held orders from customers in OTC Equity Securities. *See* Notice, *supra* note 5 at 74673 n.9. If a member does not accept any orders in OTC Equity Securities from customers during a given calendar quarter (whether held or not held), such member would not be required to publish a report under Rule 6470 for that quarter. *Id.* Similarly, a member that accepted only not held orders in OTC Equity Securities from customers—but no held orders in OTC Equity Securities from customers—during a given calendar quarter would not be required to publish a report for that quarter. *Id.* Further, FINRA states that if a member accepted orders in OTC Equity Securities (whether held, not held, or both) only from other broker-dealers, but not from customers, during a given calendar quarter, such member would not be required to publish a report for that quarter. *Id.*

[15] FINRA states that to provide for consistency across member reports, FINRA will publish a list of the OTC Equity Security symbols that fall under each category, and members would be required to publish reports in a manner consistent with such list. *See* Notice, *supra* note 5, at 74673. FINRA states that it will provide information in the *Regulatory Notice* announcing the effective date regarding where members may access the list of OTC Equity Security symbols that FINRA will maintain on its website. *Id.* at 74674 n.11. FINRA also notes that these categories differ from the NMS securities categories required to be reported for SEC Rule 606(a) reports, which it believes are not relevant to the OTC market. *Id.*

[16] FINRA states that it will publish the technical specifications for the XML schema and associated PDF renderer on its website for member use in generating the new reports. *See* Notice, *supra* note 5, at 74673 n.12. FINRA expects that, subject to the differences between the SEC Rule 606(a) reports and the OTC Equity Security reports, the XML schema and associated PDF renderer published by FINRA would be substantially similar to those published by the SEC for the SEC Rule 606(a) reports. *Id.* FINRA believes this requirement would ensure that reports are generated and published in standardized machine-readable and human-readable forms, which would benefit investors by permitting the public to more easily analyze and compare the OTC Equity Security reports across members, as well as to more easily perform combined analysis of both SEC Rule 606(a) and OTC Equity Security reports. *Id.* at 74763.

[17] FINRA states that it understands that some introducing firms route all of their orders in OTC Equity Securities to one or more clearing firms for further routing to other venues for execution. *See* Notice, *supra* note 5 at 74673 n.10. FINRA states that the Commission has provided guidance that, where an introducing firm routes all of its covered orders to one or more clearing firms for further routing and execution and the clearing firm in fact makes the routing decision, the introducing firm generally may comply with the SEC Rule 606(a) order routing disclosure requirements by: (i) disclosing its relationship with the clearing firm(s) on its website that includes any payment for order flow received by the introducing firm, and (ii) adopting the clearing firm's disclosures by reference, provided that the introducing firm has examined the report and does not have reason to believe it materially misrepresents the order routing practices. *Id.* FINRA states that it intends to provide parallel guidance with respect to proposed FINRA Rule 6470. *Id.*

[18] FINRA states that ''total orders'' would include all orders from customers for the section, including both directed and non-directed orders from customers. *See* Notice, *supra* note 5, at 74673 n.14.

[19] FINRA states that for purposes of the proposed disclosures, a ''non-directed order'' would mean any order from a customer other than a directed order. *See* Notice, *supra* note 5, at 74673–74 n.15. FINRA further states that consistent with the definition of ''directed order'' under Regulation NMS, a ''directed order'' would mean an order from a customer that the customer specifically instructed the member to route to a particular venue for execution. *See id.;* 17 CFR 242.600(b). FINRA notes that, similar to the definition of ''customer'' under SEC Rule 600(b)(23) of Regulation NMS, a ''customer'' is defined under FINRA rules to exclude a broker or dealer. *See* FINRA Rule 0160(b)(4). Orders from other broker-dealers would therefore be excluded from the proposed disclosures. *See* Notice, *supra* note 5, at 74673–74 n.15.

routed for execution [20] and of any venue to which five percent or more of non-directed held orders for the section were routed for execution, and the percentage of total non-directed held orders for the section routed to the venue; [21]

- for each identified venue, the net aggregate amount of any payment for order flow received, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received, both as a total dollar amount and per order, for all non-directed held orders for the section; and
- a discussion of the material aspects of the member's relationship with each identified venue, including, without limitation, a description of any arrangement for payment for order flow and any profit-sharing relationship and a description of any terms of such arrangements, written or oral, that may influence a member's order routing decision including, among other things: (i) incentives for equaling or exceeding an agreed upon order flow volume threshold, such as additional payments or a higher rate of payment; disincentives for failing to meet an agreed upon minimum order flow threshold, such as lower payments or the requirement to pay a fee; (ii) volume-based tiered payment schedules; and (iii) agreements regarding the minimum amount of order flow that the member would send to a venue.[22]

To make both the existing SEC Rule 606(a) reports and the new OTC Equity Security reports more accessible for regulators, investors and others seeking to analyze and compare the data, FINRA is proposing to require that members provide the reports to FINRA for central publication on the FINRA website. Proposed FINRA Rule 6151 would require every member that is required to publish a SEC Rule 606(a) report to provide the report to FINRA, in a manner prescribed by FINRA, within the same time and in the same formats that such report is required to be made publicly available pursuant to SEC Rule 606(a). In combination with proposed FINRA Rule 6470(d), which would require members to provide the OTC Equity Security report to FINRA within one month after the end of the quarter addressed in the report in such a manner as may be prescribed by FINRA, FINRA would be able to publish both SEC Rule 606(a) and OTC Equity Security reports on its public website, free of charge and without usage restrictions.[23]

FINRA states that it undertook an ''economic impact assessment'' to analyze the potential economic impacts of the proposed rule change, including potential costs, benefits, and distributional and competitive effects, relative to the current baseline.[24] In this analysis, FINRA analyzed the number of firms quoting, executing trades and routing orders in OTC Equity Securities over specific time periods, as well as the number of symbols traded per firm and average dollar volume of trading per symbol and per firm. In addition, FINRA published the proposed rule change in *Regulatory Notice* 21–35 (October 2021) and received five comments in response.[25] FINRA provided these comments, as well as a summary of these comments and its responses in its filing with the Commission.[26]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.[27] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,[28] which requires, among other things, that the association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission received two comment letters that were broadly supportive of the proposed rule change and greater transparency regarding the routing of orders in OTC Equity Securities in general.[29] Another commenter submitted three comment letters, and was supportive of some aspects of the proposal, but expressed concerns about and opposed other aspects of the proposal, as discussed below.[30]

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[20] FINRA states that, consistent with the Commission's approach to SEC Rule 606(a), a ''venue'' would be defined broadly to cover any market center or any other person or entity to which a member routes orders for execution. *See* Notice, *supra* note 5, at 74674 n.16. Accordingly, for purposes of proposed FINRA Rule 6470, where an alternative trading system (''ATS'') offers both automatic order execution and order delivery functionality, the ATS should be identified as the venue only when the ATS provides order execution. Conversely, for purposes of proposed FINRA Rule 6470, in cases where the ATS instead provides order delivery, the separate market center to which the orders are delivered—*e.g.,* a market maker or other ATS—should be identified as the venue where the order was routed for execution. *Id.*

[21] Proposed FINRA Rule 6470(b) would provide that a member is not required to identify execution venues that received less than 5% of non-directed held orders for a section of the member's OTC Equity Security report, provided that the member has identified the top execution venues that in the aggregate received at least 90% of the member's total non-directed held orders for the section. FINRA states that this provision is consistent with exemptive relief that the Commission has provided with respect to SEC Rule 606(a) reports. *See* Notice, *supra* note 5, at 74674 n.17.

[22] FINRA states that the types of arrangements referenced above are not an exhaustive list of terms of payment for order flow arrangements or profit-sharing relationships that may influence a broker-dealer's order routing decision that would be required to be disclosed. *See* Notice, *supra* note 5, at 74674 n.18. For example, if a broker-dealer receives a discount on executions in other securities or some other advantage in directing order flow in a specific security to a venue, or if a broker-dealer receives equity rights in a venue in exchange for directing order flow there, then all terms of those arrangements would also be required to be disclosed. *Id.* Similarly, if a broker-dealer receives variable payments or discounts based on order types and the number of orders sent to a venue, such arrangements would be required to be disclosed. *Id.* However, FINRA notes that these are only examples, and a member would be required to disclose any other material aspects of its relationship with each identified venue regardless of whether a particular example is listed in the proposed rule text or otherwise discussed in this proposed rule change. *Id.*

[23] *See* Notice, *supra* note 5, at 74674–75. FINRA states that the SEC has provided guidance that introducing firms may comply with SEC Rule 606(a) by incorporating their clearing firm(s)'s reports in specified circumstances, and FINRA intends to provide similar guidance with respect to the OTC Equity Security reports required under proposed FINRA Rule 6470. *Id.* at 74675 n.25. To facilitate centralized access to the reports, such introducing firms must provide FINRA with a list of their clearing firm(s) and the hyperlink to the web page where they disclose their clearing firm relationship(s) and adopt the clearing firm(s)'s reports by reference. *Id.* Each introducing firm relying on this guidance would be required to provide this information to FINRA upon implementation of the proposed rule change and to update FINRA if the information previously provided changes. *Id.* This information will enable FINRA to provide investors with relevant information for all firms, including introducing firms incorporating clearing firm reports by reference, on FINRA's website. *Id.*

[24] *See* Notice, *supra* note 5, at 74675–78.

[25] Comments received by FINRA are available on FINRA's website at *https://www.finra.org/rules-guidance/notices/21-35#comments.*

[26] *See* Notice, *supra* note 5, at 74678–80.

[27] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78*o*–3(b)(6).

[29] *See* letters to Vanessa Countryman, Secretary, Commission, from G.P., dated November 30, 2022; and from Daniel Lambden, dated December 5, 2022.

[30] *See* letters to Vanessa Countryman, Secretary, Commission, from Howard Meyerson, Managing Director, Financial Information Forum, dated December 20, 2022 (''FIF Letter''), dated February 3, 2023 (''FIF Letter II''), and dated April 13, 2023 (''FIF Letter III''). The commenter is supportive of some aspects of the proposal, including: FINRA's proposal to maintain the same quarterly reporting

A. Disclosure in the Routing Firm Scenario

Among other things, proposed FINRA Rule 6470(a) requires a member to disclose the identity of the ten venues to which the largest number of total non-directed held orders for the section were routed for execution and of any venue to which five percent or more of non-directed held orders for the section were routed for execution.[31] The commenter states that it opposes this aspect of the proposal because the proposed FINRA rule, like SEC Rule 606(a), would require a reporting firm that receives and routes customer orders to a second firm (''routing firm'') that does not execute customer orders but routes those orders to other venues for execution (''routing firm scenario''), to disclose the venue to which the routing firm routes the customer orders for execution.[32] The commenter states that this requires the reporting firm to report the net fees paid and rebates received between the routing firm and the execution venue in the OTC Equity Security report tables (*i.e.,* the disclosures required by proposed FINRA Rule 6470(a)(3)) and material aspects disclosures (*i.e.,* the disclosures required by proposed FINRA Rule 6470(a)(4)).[33] The commenter states that the proposed FINRA rule, like SEC Rule 606(a), does not require the reporting of the net fees paid or rebates received between the reporting firm and the routing firm in the OTC Equity Security report tables.[34]

The commenter states that this approach obscures relevant information from retail customers because, to understand the financial inducements faced by a reporting firm, the relevant information is the payment between the reporting firm and the routing firm. The commenter also states that this results in reported data that is not comparable across broker-dealers.[35] In addition, the commenter states that the approach results in reporting of arrangements that are not relevant to investors and results in relevant and important information being excluded from the reports.[36] The commenter also states that this approach requires firms to report on financial arrangements to which they might not be a party, that the rules do not impose any obligation on the routing firm to provide data to the reporting firm, and a reporting firm cannot effectively validate the data received from routing firms, particularly in situations where a foreign routing firm routes to a foreign execution venue.[37] The commenter further states that the rule filing does not explicitly discuss the costs for this reporting.[38] The commenter also suggests that if FINRA adopts this reporting, then proposed FINRA Rule 6470 should be revised to address the routing firm scenario, because the proposed rule does not accurately describe what firms are required to report.[39]

FINRA believes that the proposal is clear concerning the execution venue reporting requirement.[40] FINRA states that, as is the case with SEC Rule 606(a), the plain language of proposed Rule 6470(a)(2) requires disclosure of venues to which orders ''were routed for execution.''[41] FINRA highlights that, consistent with SEC Rule 606(a), the purpose of its proposed disclosures is to provide information about members' order routing practices and potential conflicts of interest related to execution venues and, therefore, FINRA believes that the same types of venues should be covered by its new OTC Equity Security reports as are covered by SEC Rule 606(a) reports.[42] FINRA also states that members already have experience with SEC Rule 606(a) and may be able to utilize existing systems and arrangements with routing firms to provide the disclosures, and that aligning the scope of the SEC Rule 606(a) and OTC Equity Security reports may also reduce potential investor confusion that could arise with similar reports that do not provide information about the same types of venues.[43]

FINRA states that it is appropriate to require reporting firms to provide information on the routing firm's arrangements with execution venues because reporting firms are responsible for their order handling choices, and FINRA believes that it is reasonable to require reporting firms to obtain and disclose the required information from broker-dealers they choose to use as their routing firms, including where a routing firm or an execution venue is located abroad.[44] In addition, FINRA states that ''requiring disclosure of execution venues would make the reports more easily comparable across reporting firms, as the reports would all include information about the financial inducements that may influence a member's decision to route to

timeframe for OTC Equity Security reports as applies for SEC Rule 606(a) reporting; FINRA's chosen OTC Equity Security reporting categories; FINRA's assertion that it will publish and maintain a file of which symbols are included in each OTC Equity Security category and make this file accessible to all industry members without charge; FINRA's approach of not requiring the OTC Equity Security reports to be broken out by order type; FINRA's proposal to require reporting of payments per executed order rather than per share; FINRA's decision to limit the OTC Equity Security reports to non-directed held orders; and proposed FINRA Rule 6470(b) which would provide a limited exception to venue reporting requirements in proposed FINRA Rule 6470(a)(2). *See* FIF Letter at 7–9. The commenter and FINRA both state that the proposal to require reporting of payments per executed order rather than per share is consistent with current industry practice for OTC Equity Securities. *See id.;* Notice, *supra* note 5, at 74674.

[31] *See* proposed FINRA Rule 6470(a)(2).

[32] *See* FIF Letter at 2. The commenter describes what it believes is a ''highly problematic 'look-through' approach'' used by the Commission in its application of SEC Rule 606(a) and its predecessor rule, Rule 11Ac1–6, to the routing firm scenario. *See id.* at 2; and FIF Letter III at 4–5. The commenter states that this ''look-through'' approach was not included in the text of Rule 606(a) nor discussed in the 2018 amendments to Rule 606(a) reporting. The Commission highlights that the requirement in SEC Rule 606(a) to report the venues to which orders were routed ''for execution'' has been in place since Rule 11Ac1–6 was originally adopted in 2000. In the Rule 11Ac1–6 adopting release, the Commission stated that ''[t]he term 'venue' is intended to be interpreted broadly to cover 'market centers' within the meaning of Rule 11Ac1–5(a)(14), as well as any other person or entity to which a broker routes non-directed orders *for execution.* Consequently, the term excludes an entity that is used merely as a vehicle to route an order to a venue selected by the broker-dealer.'' (emphasis in the original). *See* Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414, 75427 n.63 (December 1, 2000).

[33] *See* FIF Letter at 2. *See also* proposed FINRA Rule 6470(a)(3) and (4).

[34] *See* FIF Letter at 2. *See also* proposed FINRA Rule 6470(a)(3).

[35] *See id.* at 3–4.

[36] *See* FIF Letter III at 3–5. In FIF Letter III, the commenter sets forth a scenario of order routing reporting under SEC Rule 606(a) that inaccurately reflects the requirements of such rule. In the scenario, FIF incorrectly assumes reporting is based on the number of orders routed by the reporting broker-dealer instead of the number of orders received by the reporting broker-dealer from the customer as required by SEC Rule 606(a). *See id.* at 4–5; *see also* letter to Vanessa Countryman, Secretary, Commission, from Robert McNamee, Vice President & Associate General Counsel, FINRA, dated June 23, 2023 (''FINRA Letter II'') at 3 n.12.

[37] *See* FIF Letter at 5.

[38] *See id.* at 5.

[39] *See id.* at 6; FIF Letter III at 6.

[40] *See* letter to Vanessa Countryman, Secretary, Commission, from Robert McNamee, Associate General Counsel, FINRA, dated March 29, 2023 (''FINRA Letter'') at 5 and FINRA Letter II at 2–4.

[41] *See* FINRA Letter at 5. FINRA also states that, if a member routes to another broker-dealer that does not itself execute orders, that receiving broker-dealer would not be an execution venue under the text of the proposed rule. *See id.* Additionally, FINRA has undertaken an economic impact assessment that analyzed, among other things, the potential costs and benefits of the proposal as described in the filing, which clearly contemplates disclosure of execution venues rather than routing brokers. *See id.* FINRA's assessment of costs is based on its experience with order routing reporting and adequately describes the costs of producing the report.

[42] *See* FINRA Letter at 4.

[43] *See id.*

[44] *See id.*

destinations where the order may be executed by the recipient venue.''[45]

Proposed FINRA Rule 6470, like SEC Rule 606(a), requires the routing report to cover venues to which orders are ''routed for execution.''[46] If a routing firm does not execute orders, then it cannot be the venue to which orders were ''routed for execution,'' and thus the obligation of the reporting firm is to report the relevant information for the execution venues to which the routing firm routes orders to for execution.[47] In response to comments challenging reporting based on the venue to which orders are routed for execution, specifically that the proposed rule is not clear and does not result in comparable data, the Commission agrees with FINRA that requiring the OTC Equity Security report to cover venues to which orders are ''routed for execution'' would ensure that the reports include information about the financial inducements that may influence a member's decision to route to destinations where the order may be executed by the recipient venue (whether routing orders itself or through an agent routing firm).[48] It is reasonable and appropriate that the scope of disclosures required by proposed FINRA Rule 6470(a) aligns with the scope of the requirements of SEC Rule 606(a) by requiring the reports to include information for venues to which orders are ''routed for execution,'' which would ensure consistency across such reports. In addition, proposed FINRA Rule 6470 clearly and adequately addresses the application of the rule to the routing firm scenario raised by the commenter. The Commission also agrees with FINRA that requiring disclosure of execution venues would make the reports more easily comparable across reporting firms, as the reports would all include information about the financial inducements that may influence a member's decision to route to destinations where the order may be executed by the recipient venue. In response to comments raising cost concerns, FINRA has undertaken an economic impact assessment that analyzed, among other things, the potential costs and benefits of the proposal that was based on its experience with order routing reporting.

B. OTC Equities With a Limited Number of Available Execution Venues

The commenter states that there are a significant number of OTC stocks that have a limited number of available execution venues (in many cases, only one or two market centers), and states that there is a potential risk that investors viewing the report for these stocks would see a high percentage of order flow being routed to one or two venues without appropriate context of the limited choices available to the reporting firm and that some firms with lower trading volume in OTC Equity Securities could have routing relationships with a limited number of market makers.[49] The commenter suggests that FINRA should identify this as a factor for investors to consider when reviewing a member's OTC Equity Security report.[50] FINRA responds that, while the OTC Equity Securities market differs from the NMS securities market in the number of available execution venues, it intends to, as appropriate, provide members, investors, and others with information and otherwise engage in investor education efforts about the purpose, content, and potential limitation of the reports.[51] In addition, FINRA states that members could also provide additional explanatory context regarding their OTC Equity Security reports, provided that such information is accurate, not misleading, and otherwise complies with other applicable SEC and FINRA requirements.[52]

The Commission believes that the proposed OTC Equity Security reports are appropriately designed to provide valuable information to customers and others regarding a FINRA member's order routing practices in OTC Equity Securities, which may elicit questions regarding such practices, including when a high percentage of order flow is being routed to a small number of venues. Among other things, the proposed OTC Equity Security reports should help facilitate and inform customer dialogues with their broker-dealers about the broker-dealers' order routing practices in OTC Equity Securities. For example, if a customer has questions about the number of execution venues or frequency of use of an execution venue, the customer should discuss those questions with their reporting broker. In those conversations, or through other means, the reporting broker could also provide additional explanatory context regarding their OTC Equity Security reports, provided that such information is accurate, not misleading, and otherwise complies with other applicable SEC and FINRA requirements.[53]

C. Use of Consolidated Audit Trail (''CAT'') Data

The commenter also states that FINRA should consider whether certain categories of data that firms are required to report in the OTC Equity Security reports could be obtained by FINRA from the CAT.[54] In the filing, FINRA states that it is not proposing to use CAT data because of restrictions on the use of CAT data, and because FINRA believes the most efficient and comprehensive means of providing the data included in the OTC Equity Security order routing disclosures is for members to generate the reports directly.[55] FINRA also states that not all of the data required in the reports is also reported to CAT.[56] The Commission agrees with FINRA that the most efficient and comprehensive means of obtaining the data included in the OTC Equity Security report is from members directly. The CAT does not contain all of the data required on the OTC Equity Security reports, while FINRA members with reporting obligations under the new rule will have the means of collecting and reporting the required data.

D. Implementation and Comment Period

The commenter also raises concerns about implementation of the proposal, stating that it is important to ensure that industry members will have sufficient time to properly implement the planned

[45] *See id.* While the financial inducements between a reporting firm and a routing firm are not disclosed pursuant to proposed FINRA Rule 6470(a)(3), FINRA states that, consistent with SEC Rule 606(a), such information may be disclosed in the report's discussion of the material aspects of the member's relationship with an execution venue pursuant to proposed FINRA Rule 6470(a)(4). *See id.* at 4–5 n.14; *see also* FINRA Letter II at 4.

[46] 17 CFR 242.606(a)(2); proposed FINRA Rule 6470(a)(2).

[47] *See supra* notes 20–21 and accompanying text.

[48] The Commission disagrees with commenter concerns that this approach obscures relevant information from retail customers, because, to the extent that a reporting firm receives financial inducements from a routing firm when routing orders to an execution venue, such financial inducements may be reported pursuant to FINRA Rule 6470(a) as material aspects of the routing firm's relationship with the execution venue. *See* Notice, *supra* note 5, at 74674 n.18.

[49] *See* FIF Letter at 8.

[50] *See id.*

[51] *See* FINRA Letter at 6.

[52] *See id.*

[53] *See id.* In addition, as described above, FINRA has stated that as appropriate, it intends to provide members, investors, and others with information and otherwise engage in investor education efforts about the purpose, content, and potential limitation of the reports. *See id.*

[54] FIF Letter at 6. The CAT is operated pursuant a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

[55] *See* Notice, *supra* note 5, at 74678–79.

[56] *See* FINRA Letter at 3.

reporting changes.[57] The commenter also states that the rule filing does not provide clear guidance on reporting scenarios relating to trading on OTC Link ATS and raises several hypothetical situations where it believes OTC Link ATS should be reported as the execution venue, as opposed to where the execution actually took place.[58] In the proposal, FINRA states that it intends to engage with members and other interested parties prior to implementation of the proposed rule change, including specifically to discuss order routing disclosures in scenarios involving OTC Link ATS, as well as provide guidance as appropriate on other interpretative questions.[59] FINRA also provided responses to the specific scenarios the commenter provided demonstrating why the execution venue and not OTC Link ATS should be reported under the proposed rules.[60] FINRA reiterates that, for purposes of the proposed disclosures for OTC Equity Securities, a ''venue'' would be defined broadly to cover any market center or any other person or entity to which a member routes for execution, and consequently would exclude an entity that is used merely as a vehicle to route an order to a venue selected by the broker-dealer.[61] Thus, FINRA states that, for purposes of proposed Rule 6470, where an alternative trading system (''ATS'') offers both automatic order execution and order delivery functionality, the ATS should be identified as the venue only when the ATS provides order execution.[62] FINRA believes identification of the ATS in these circumstances is appropriate because the ATS is the venue where the order was routed ''for execution,'' consistent with SEC Rule 606(a).[63] FINRA also believes that, for purposes of proposed Rule 6470, in cases where the ATS instead provides order delivery, the separate market center to which the orders are delivered—*e.g.,* a market maker or other ATS—should be identified as the venue where the order was routed for execution.[64]

The Commission believes that FINRA's statements with respect to implementation are reasonable and appropriate. As stated above, FINRA recognizes that members will require sufficient time to implement the new disclosure requirements, intends to provide an appropriate amount of time for implementation of the proposal, will work with the industry to publish technical specifications appropriately in advance of the implementation date, and will also publish interpretive guidance to the extent needed—including on routing scenarios unique to certain platforms in the OTC Equity Security market—with sufficient time allowed for implementation. In addition, FINRA has stated that it will announce the effective date of the proposed rule change in a *Regulatory Notice* and the effective date will be no later than 365 days following publication of the *Regulatory Notice*.[65] Also, some broker-dealers will have familiarity and the ability to more easily produce OTC Equity Security reports due to experience in producing SEC Rule 606(a) reports for NMS securities, making the implementation reasonable and appropriate.

Moreover, the commenter expresses concern that there was not sufficient time to comment on this proposal.[66] The Commission, however, published the proposal for comment; designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings; instituted proceedings; and extended its time to act on the proposal,[67] during which time the commenter submitted three comment letters. Accordingly, there has been sufficient opportunity for comment on the proposal.

E. Centralized Hosting of Order Routing Disclosures

The commenter states that its members support centralized publication of SEC Rule 606(a) reports and the OTC Equity Security reports by FINRA, but states that if FINRA will publish these reports that firms should no longer be required to separately publish these reports on their own websites, and instead firms should be required to provide a link from its public website to the applicable section of the FINRA website.[68] The commenter also suggests that FINRA create a database with structured firm routing report data that can be accessed through automated queries.[69] FINRA confirms that a member would satisfy the proposed requirement to publish the new OTC Equity Security reports on the member's website by including a link from its own website to the FINRA web page hosting centralized publication of OTC Equity Security reports.[70] With respect to the commenter's recommendation that FINRA create a structured database that users may query, FINRA states that it is not contemplating such a database currently but will continue to consider ways to facilitate investor access to, and the usefulness of, the OTC Equity Security reports.[71] In addition, FINRA states in the proposal that it intends to engage in investor education efforts regarding the purpose, content, and potential limitations of the disclosures.[72]

SEC Rule 606(a) reports are required to be made publicly available within one month after the end of the quarter addressed in the report pursuant to Commission rule and such requirement is not affected by this proposal.[73] With respect to OTC Equity Security reports required by proposed FINRA Rule 6470, it is reasonable for the OTC Equity Security reports to be required to be disclosed publicly in a similar manner to SEC Rule 606(a) reports. These proposed changes are reasonably designed to make order routing disclosures more accessible to investors and other relevant stakeholders. Consolidating order routing reports onto a single website could assist market participants, investors and the public to more easily compare order routing disclosures and practices across different firms and observe changes in routing behaviors over time.[74]

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[57] FIF Letter at 9–10. The commenter specifically requests that any implementation timetable should run from the date that FINRA publishes technical specifications, schemas, interpretive FAQs and other applicable documentation. *Id.* at 9.

[58] FIF Letter at 6 and FIF Letter II at 2–4.

[59] *See* Notice, *supra* note 5, at 74680. *See also* FINRA Letter at 7–8, stating that FINRA recognizes that members will require sufficient time to implement the new disclosure requirements, intends to provide an appropriate amount of time for implementation of the proposal, will work with the industry to publish technical specifications appropriately in advance of the implementation date, and will also publish interpretive guidance to the extent needed—including on routing scenarios unique to certain platforms in the OTC Equity Security market—with sufficient time allowed for implementation.

[60] *See* FINRA Letter II at 6–8.

[61] *See id.* at 6.

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] *See* Notice, *supra* note 5, at 74675.

[66] *See* FIF Letter at 10.

[67] *See supra* notes 7–9 and accompanying text.

[68] FIF Letter at 7.

[69] *Id.*

[70] *See* FINRA Letter at 2.

[71] *Id.*

[72] *See* Notice, *supra* note 5, at 74675 n.23.

[73] 17 CFR 242.606(a).

[74] At the time it adopted amendments to SEC Rule 606 in 2018, the Commission declined to require a centralized repository for SEC Rule 606(a) reports, although it stated that a centralized repository could help facilitate the goal of enabling customers to more readily and meaningfully assess broker-dealers' order handling practices. *See* SEC Rule 606 Adopting Release, *supra* note 12, at 58377–78 for the Commission's rationale for not adopting that requirement. Here, FINRA has determined that it is appropriate to centralize its members' SEC Rule 606(a) and OTC Equity Security reports to make the reports more accessible for regulators, investors, and others seeking to analyze and compare the data.

F. Symbol Categorization File

The commenter supports FINRA's proposal to publish and maintain a file of which symbols are included in each OTC Equity Security category without charge, but recommends making this file available prior to the first day of each quarter for use in the upcoming quarter.[75] The commenter states that requiring daily updates to the list would significantly increase the reporting burden without material impact on aggregating data for the quarter.[76] Consistent with the commenter's request, FINRA confirms that it will make the symbol categorization file available prior to the first day of each calendar quarter for use during the entirety of the following quarter.[77] The Commission believes that publishing and maintaining a symbol categorization file, which will be available prior to the first day of each quarter, is appropriate and would ease members' reporting burden.

G. Categorization of Held and Not Held Orders

The commenter supports FINRA's proposal to limit the OTC Equity Security disclosures to non-directed held orders, but requests guidance on the proposed requirement to report the percentage of not held and held orders as a percentage of all orders.[78] FINRA responds that it believes that all orders are either held or not held because a firm either has price and time discretion to execute the order, or it does not.[79] The Commission agrees with FINRA, and has discussed the difference between held and not held orders and their separate reporting requirements under Rule 606 of Regulation NMS.[80]

Overall, the proposed requirements relating to the disclosure of order routing information for OTC Equity Securities are reasonably designed to assist customers in evaluating the quality of the order routing services of their broker-dealers and how well their broker-dealers manage potential conflicts of interest with execution venues. Customers would be better able to assess indirect and previously unobservable costs of trading OTC Equity Securities, including, among other things, payment for order flow and transaction fees paid less rebates, which should allow customers to assess the performance of its broker-dealer(s) and be better informed in making choices among firms. The similarities in reporting requirements between proposed FINRA Rule 6470(a) and SEC Rule 606(a) should reduce the burden of reporting for broker-dealers that already produce SEC Rule 606(a) reports, and the proposed differences in reporting requirements for OTC Equity Securities under proposed FINRA Rule 6470(a) and SEC Rule 606(a) reports for NMS securities are reasonable and appropriate due to differences in the nature of OTC Equity Securities and the markets in which they trade.[81]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6)[82] of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[83] that the proposed rule change (SR–FINRA–2022–031) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[84]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16886 Filed 8–7–23; 8:45 am]

BILLING CODE 8011–01–P

[75] FIF Letter at 7.

[76] *See id.*

[77] FINRA Letter at 2.

[78] *See* FIF Letter at 8.

[79] *See* FINRA Letter at 6, also stating that consistent with SEC guidance regarding the categorization of held and not held orders for purposes of SEC Rule 606(a), orders should be categorized as held or not held for purposes of the OTC Equity Security disclosures based on whether the customer reasonably expects the firm to attempt to execute its order immediately or instead reasonably expects the firm to use its price and time discretion to execute the order. FINRA Letter at 6 n.19, *citing* SEC Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 606 of Regulation NMS, Questions 15.01 through 15.04. The Commission notes that these FAQs represent the views of the staff of the Division of Trading and Markets. They are not a rule, regulation, or statement of Commission. The Commission has neither approved nor disapproved their content. These FAQs, like all staff statements, have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person.

[80] *See* SEC Rule 606 Adopting Release, *supra* note 12, at 58340–41 and 58372.

[81] *See* Notice, *supra* note 5, at 74674 (describing the differences in reporting requirements for OTC Equity Securities under proposed FINRA Rule 6470(a) and SEC Rule 606(a) reports for NMS securities).

[82] 15 U.S.C. 78*o*-3(b)(6).

[83] 15 U.S.C. 78s(b)(2).

[84] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98043; File No. SR–NYSEARCA–2023–51]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

August 2, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 31, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding the Limit of Fees on Options Strategy Executions (the ''Strategy Cap''). The Exchange proposes to implement the fee change effective August 1, 2023. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add dividend strategies to the list of strategy executions eligible for the Strategy Cap. The Exchange proposes to implement the rule change on August 1, 2023.

Currently, the Strategy Cap provides for a $1,000 cap on transaction fees for strategy executions involving (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls.[4] The Strategy Cap applies to each strategy execution executed in standard option contracts on the same trading day. In addition, the cap is reduced to $200 on transactions fees for qualifying strategies traded on the same trading day for those OTP Holders that trade at least 25,000 monthly billable contract sides in qualifying strategy executions.

The Exchange now proposes to modify the Strategy Cap to add dividend strategies as item (f) in the list of strategy executions eligible for the cap (and to make non-substantive conforming changes to include an item (f) in such list). The Exchange also proposes that dividend strategies would be included among the strategies that contribute to an OTP Holder's qualification for the lower cap of $200. Finally, the Exchange proposes to modify Endnote 10 of the Fee Schedule to add subparagraph (f) defining a dividend strategy as transactions done to achieve a dividend arbitrage involving the purchase, sale, and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend.

The Exchange notes that other options exchanges currently offer similar caps on strategy trades that include dividend strategies.[5] Although the Exchange cannot predict with certainty whether the proposed change would encourage OTP Holders to increase their dividend strategy executions, the proposed change is intended to encourage additional dividend strategy executions on the Exchange by including them in the strategies eligible for the Strategy Cap (including the lower cap for qualifying OTP Holders).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [8]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[9] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in June 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[10]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, modifications to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes the proposed change is reasonable because it is designed to encourage OTP Holders to increase their dividend strategies executed on the Exchange by including dividend strategies among the strategy executions eligible for the Strategy Cap. The Exchange also believes the proposed change could incent OTP Holders to execute and aggregate dividend strategy orders as well as other types of strategy orders at NYSE Arca as a primary execution venue.

To the extent the proposed change attracts greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the 16 options exchanges, including those with similar caps on strategy executions, including dividend strategies.[11] Thus, OTP Holders have a choice of where they direct their order flow, including their strategy executions. The proposed rule change is designed to incent OTP Holders to direct liquidity, and specifically dividend strategies, to the Exchange, thereby promoting market depth and enhancing order execution opportunities for market participants.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposed change is based on the amount and type of business transacted on the Exchange, and OTP Holders can opt to avail themselves of the Strategy Cap or not. In addition, the modified Strategy Cap, as proposed, would continue to be available to all OTP Holders that direct strategy executions, including dividend strategies, to the Exchange. Moreover,

[4] *See* Fee Schedule, LIMIT OF FEES ON OPTIONS STRATEGY EXECUTIONS and Endnote 10 (defining strategies eligible for the Strategy Cap).

[5] *See, e.g.,* BOX Options Fee Schedule, Section V.D. (Strategy QOO Order Fee Cap and Rebate), available at: *https://boxexchange.com/assets/BOX-Fee-Schedule-as-of-July-3-2023.pdf;* Nasdaq PHLX LLC Options 7, Section 4, available at: *https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[9] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[10] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.,* the Exchange's market share in equity-based options remained the same at 12.23% for the month of June 2022 and 12.23% for the month of June 2023.

[11] *See* note 5, *supra.*

the proposal is designed to continue to encourage OTP Holders to aggregate strategy executions at the Exchange as a primary execution venue. To the extent that the proposed change attracts more dividend strategies to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving marked-wide quality and price discovery.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes the proposed change is not unfairly discriminatory because the proposed modification of the Strategy Cap would apply to all similarly-situated market participants on an equal and non-discriminatory basis. The proposal is based on the amount and type of business transacted on the Exchange, and OTP Holders are not obligated to try to achieve the Strategy Cap, nor are they obligated to execute any dividend strategies. Rather, the proposal is designed to encourage OTP Holders to increase their dividend strategy executions and to utilize the Exchange as a primary trading venue for all strategy executions (if they have not done so previously). To the extent that the proposed change attracts more strategy executions (and, in particular, dividend strategy executions) to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [12]

Intramarket Competition

The Exchange does not believe the proposed change would impose any burden on intramarket competition that is not necessary or appropriate. The proposed change is designed to incent OTP Holders to direct their dividend strategy orders to the Exchange and could also encourage OTP Holders to continue to aggregate all strategy executions on the Exchange to qualify for the Strategy Cap. Greater liquidity benefits all market participants on the Exchange, and order flow from increased strategy executions could improve market quality for all market participants on the Exchange. In addition, the Strategy Cap, modified as proposed to include dividend strategies, would continue to be available to all similarly situated market participants and thus would not impose a disparate burden on competition.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[13] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in June 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[14]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent OTP Holders to direct trading interest (in particular, dividend strategy executions) to the Exchange, to provide liquidity and to attract order flow. To the extent OTP Holders continue to be incentivized to aggregate strategy executions on the Exchange as a primary trading venue, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for order execution. The Exchange also believes that the proposed change could promote competition between the Exchange and other execution venues, as other competing options exchanges currently offer a similar fee cap for strategy orders, including dividend strategies.[15]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the

[12] *See* Reg NMS Adopting Release, *supra* note 8, at 37499.

[13] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[14] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.,* the Exchange's market share in equity-based options was 12.23% for the month of June 2022 and 12.23% for the month of June 2023.

[15] *See* note 5, *supra.*

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2023–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2023–51. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2023–51 and should be submitted on or before August 29, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16882 Filed 8–7–23; 8:45 am]

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[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98040; File No. SR–ISE–2023–11]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend the Short Term Option Series Program in Supplementary Material .03 of Options 4, Section 5

August 2, 2023.

On May 31, 2023, Nasdaq ISE, LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Short Term Option Series Program in Supplementary Material .03 of Options 4, Section 5. The proposed rule change was published for comment in the **Federal Register** on June 20, 2023.[3]

Section 19(b)(2) of the Act [4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is August 4, 2023.

The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates September 18, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–ISE–2023–11).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16880 Filed 8–7–23; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97719 (June 13, 2023), 88 FR 39876.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98046; File No. SR–FINRA–2023–007]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Supplementary Material .18 (Remote Inspections Pilot Program) Under FINRA Rule 3110 (Supervision)

August 2, 2023.

I. Introduction

On April 14, 2023, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–FINRA–2023–007 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder, to adopt a voluntary, three-year remote inspections pilot program to allow eligible broker-dealers to elect to fulfill their obligation under paragraph (c) (Internal Inspections) of FINRA Rule 3110 (Supervision) by conducting inspections of eligible branch offices and non-branch locations remotely without an on-site visit to such office or location, subject to specified safeguards and limitations (the ''Pilot'').[3] The proposed rule change was published for public comment in the **Federal Register**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* note 4.

on May 4, 2023.[4] The Commission received thirteen comment letters related to this filing.[5] On June 7, 2023, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to August 2, 2023.[6] On August 1, 2023, FINRA filed an amendment to modify the proposed rule change (''Amendment No. 1''), and stated it anticipates submitting a response to comments by separate letter.[7]

The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act [8] to solicit comments on the proposed rule change, as modified by Amendment No. 1, and to institute proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1 (hereinafter referred to as the ''proposed rule change'' unless otherwise specified).

II. Description of the Proposed Rule Change

A. Background

FINRA Rule 3110(c)(1) requires a broker-dealer to inspect its locations with a frequency that depends on the location's classification as an office of supervisory jurisdiction (''OSJ''), branch office, or non-branch location.[9] Rule 3110(c)(2) imposes various documentation requirements for inspections, including maintaining a written record of the date upon which each inspection is conducted.

As part of its response to the COVID–19 pandemic, FINRA adopted temporary Rule 3110.17, effective since November 2020, to provide member firms the option to conduct inspections of their OSJs, branch offices, and non-branch locations remotely, subject to specified terms.[10] Absent further regulatory action, once this temporary rule expires, FINRA rules would require member firms to perform only in-person inspections. FINRA believes it is appropriate to assess possible longer-term rule changes regarding its inspection program and is, therefore, proposing a voluntary, three-year Pilot.[11]

B. The Proposed Rule Change

Proposed Rule 3110.18(a) would permit broker-dealers to perform remotely required inspections of OSJs, branch offices, and non-branch locations under the applicable provisions of Rule 3110(c)(1), subject to specified safeguards and limitations. The proposed supplementary material would automatically sunset on a date that is three years after the effective date.[12]

1. Controls and Safeguards

a. Risk Assessment (Proposed Rule 3110.18(b))

As originally proposed, proposed Rule 3110.18(b)(1) would require that prior to selecting any office or location for remote inspection, rather than an on-site inspection, the broker-dealer must develop a reasonable risk-based approach to using remote inspections and conduct and document a risk assessment for that office or location.[13] Proposed Rule 3110.18(b)(2) also sets forth a non-exhaustive list of factors that the broker-dealer must consider and document as part of the risk assessment for each office, including: (1) the volume and nature of customer complaints; (2) the volume and nature of outside business activities, particularly investment-related; (3) the volume and complexity of products offered; (4) the nature of the customer base, including vulnerable adult investors; (5) whether associated persons are subject to heightened supervision; (6) failures by associated persons to comply with the member's written supervisory procedures; and (7) any recordkeeping violations.[14] Amendment No. 1 modified proposed Rule 3110.18(b)(2) to add that, consistent with Rule 3110(a), the member's supervisory system must take into consideration any red flags when determining whether to conduct a remote inspection of an office or location.[15]

b. Written Supervisory Procedures for Remote Inspections (Proposed Rule 3110.18(c))

As originally proposed, proposed Rule 3110.18(c) would require a broker-dealer electing to participate in the Pilot (''participating broker-dealer'') to adopt written supervisory procedures regarding remote inspections that are reasonably designed to detect and prevent violations of, and achieve compliance with, applicable securities laws and regulations, and with applicable FINRA rules. Under the proposed provision, reasonably designed procedures for conducting remote inspections of offices or locations must address, among other things: (1) the methodology, including technology, that may be used to conduct remote inspections; (2) the factors considered in the risk assessment made for each applicable office or location; (3) the procedures specified in the data and information collection section of the proposed rule; and (4) the use of other risk-based systems employed generally by the member to identify and prioritize for review those areas that pose the greatest risk of potential violations of applicable securities laws and regulations, and of applicable FINRA rules.[16] Amendment No. 1 modified proposed Rule 3110.18(c) to replace the word ''adopt'' with ''establish, maintain, and enforce.'' [17]

c. Effective Supervisory System (Proposed Rule 3110.18(d))

Proposed Rule 3110.18(d) states that the requirement to conduct inspections of offices and locations is one part of the member's overall obligation to have an effective supervisory system, and therefore a member must maintain its ongoing review of the activities and functions occurring at all offices and locations, whether or not the member conducts inspections remotely.

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[4] Exchange Act Release No. 97398 (Apr. 28, 2023), 88 FR 28620 (May 4, 2023) (File No. SR–FINRA–2023–007) (''Notice'').

[5] The comment letters are available at *https://www.sec.gov/comments/sr-finra-2023-007/srfinra2023007.htm*.

[6] *See* letter from Sarah Kwak, Associate General Counsel, Office of General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated June 7, 2023, *https://www.finra.org/sites/default/files/2023-06/sr-finra-2023-007-extension-no-1.pdf*.

[7] *See* Amendment No. 1, *https://www.finra.org/sites/default/files/2023-08/SR-FINRA-2023-007-Amendment-1.pdf*.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See also* SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (SEC guidance on remote office supervision), *https://www.sec.gov/interps/legal/mrslb17.htm;* and *Regulatory Notice* 11–54 (November 2011) (joint SEC and FINRA guidance on effective policies and procedures for broker-dealer branch inspections, interpreting the inspection rule to require that inspections take place on-site).

[10] *See* Exchange Act Release No. 90454 (Nov. 18, 2020), 85 FR 75097 (Nov. 24, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–040). *See also* Exchange Act Release No. 93002 (Sept. 15, 2021), 86 FR 52508 (Sept. 21, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–023); Exchange Act Release No. 94018 (Jan. 20, 2022), 87 FR 4072 (Jan. 26, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2022–001); Exchange Act Release No. 96241 (Nov. 4, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2022–030). *See also infra* note 12.

[11] *See* Notice at 28624–25.

[12] If Rule 3110.17 has not already expired by its own terms, Rule 3110.17 will automatically sunset on the effective date of the Pilot. *See* proposed Rule 3110.18(m); *see also* Notice at 28634.

[13] *See* proposed Rule 3110.18(b)(1).

[14] *See* proposed Rule 3110.18(b)(2).

[15] *See* Amendment No. 1.

[16] *See* proposed Rule 3110.18(c).

[17] *See* Amendment No. 1.

Proposed Rule 3110.18(d) further states that a member's use of a remote inspection of an office or location would be held to the same standards for review as set forth in FINRA Rule 3110.12 (Supervision; Standards for Reasonable Review). Furthermore, proposed Rule 3110.18(d) provides that where a participating broker-dealer's remote inspection of an office or location identifies any indicators of irregularities or misconduct (*i.e.,* ''red flags''), the participating broker-dealer may need to impose additional supervisory procedures for that office or location, or may need to provide for more frequent monitoring or oversight of that office or location, or both, including potentially a subsequent physical, on-site visit on an announced or unannounced basis.[18]

d. Documentation Requirement (Proposed Rule 3110.18(e))

Proposed Rule 3110.18(e) would require a participating broker-dealer to maintain and preserve a centralized record for each Pilot Year[19] in which it participates that separately identifies: (1) all offices or locations that were inspected remotely; and (2) any offices or locations for which the member determined to impose additional supervisory procedures or more frequent monitoring, as provided in proposed rule 3110.18(d) (Effective Supervisory System). Further, proposed Rule 3110.18(e) would require a participating broker-dealers's documentation of the results of a remote inspection for an office or location to identify any additional supervisory procedures or more frequent monitoring for that office or location that were imposed as a result of the remote inspection, including whether an on-site inspection was conducted at such office or location.[20]

2. Firm Level Requirements (Proposed Rule 3110.18(f))

Proposed Rule 3110.18(f) includes a list of conditions to which a broker-dealer must adhere in order to participate in the Pilot, as well as a list of criteria that would render firms ineligible to participate in the Pilot.[21]

a. Firm Level Ineligibility Criteria (Proposed Rule 3110.18(f)(1))

Under proposed Rule 3110.18(f)(1), a broker-dealer would be ineligible to conduct remote inspections of any of its offices or locations if the member, at any time during the Pilot: (1) is or becomes designated as a Restricted Firm under FINRA Rule 4111;[22] (2) is or becomes designated as a Taping Firm under FINRA Rule 3170;[23] (3) receives a notice from FINRA pursuant to Rule 9557 regarding compliance with FINRA Rule 4110, Rule 4120, or Rule 4130;[24] (4) is or becomes suspended from membership by FINRA;[25] (5) based on the date in the Central Registration Depository (''CRD'')[26] had its FINRA membership become effective within the prior 12 months;[27] or (6) is or has been found within the past three years by the Commission or FINRA to have violated FINRA Rule 3110(c).[28]

b. Firm Level Conditions (Proposed Rule 3110.18(f)(2))

i. Recordkeeping

Proposed Rule 3110.18(f)(2)(A) would require each participating broker-dealer to have a recordkeeping system that: (1) makes and keeps current, and preserves records required to be made and kept current, and preserved under applicable securities laws and regulations, FINRA rules, and the member's own supervisory procedures under FINRA Rule 3110; (2) ensures such records are not physically or electronically maintained and preserved at the office or location subject to remote inspection; and (3) gives the member prompt access to such records.[29]

ii. Surveillance and Technology Tools

Proposed Rule 3110(f)(2)(B) would require each participating broker-dealer to determine that their surveillance and technology tools are appropriate to supervise the types of risks presented by each such remotely supervised office or location.

3. Location Level Requirements (Proposed Rule 3110.18(g))

Proposed Rule 3110.18(g) includes a list of conditions an office or location must adhere to in order to participate in the Pilot, as well as a list of criteria that would render offices or locations ineligible to participate in the Pilot.

a. Location Level Ineligibility Criteria (Proposed Rule 3110.18(g)(1))

Under proposed Rule 3110.18(g)(1), a participating broker-dealer's office or location would not be eligible for a remote inspection if at any time during the Pilot: (1) one or more associated persons at such office or location is or becomes subject to a mandatory heightened supervisory plan under the rules of the Commission, FINRA, or a state regulatory agency;[30] (2) one or more associated persons at such office or location is or becomes statutorily disqualified, unless such disqualified person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member and is not subject to a mandatory heightened supervisory plan described above or otherwise as a condition to approval or permission for such association;[31] (3) the firm is or becomes subject to FINRA Rule 1017(a)(7) as a result of one or more associated persons at such office or location;[32] (4) one or more associated persons at such office or location has an event in the prior three years that required a ''yes'' response to certain subcategories of Question 14 of Form U4;[33] (5) one or more associated persons at such office or location is or becomes subject to a disciplinary action

[18] *See* proposed Rule 3110.18(d). Additionally, proposed Rule 3110.18(j) would provide that a broker-dealer that fails to satisfy the conditions of Rule 3110.18, including the requirement to timely collect and submit the data and information to FINRA as set forth in proposed Rule 3110.18(h), would be ineligible to participate in the Pilot and must conduct on-site inspections of each office and location on the required cycle in accordance with Rule 3110(c).

[19] Proposed Rule 3110.18(l) would set forth the meanings underlying ''Pilot Year'' as: (1) Pilot Year 1 would be the period beginning on the effective date of the proposed pilot program and ending on December 31 of the same year; (2) Pilot Year 2 would mean the calendar year period following Pilot Year 1, beginning on January 1 and ending on December 31; and (3) Pilot Year 3 would mean the calendar year period following Pilot Year 2, beginning on January 1 and ending on December 31; and (4) if applicable, where Pilot Year 1 covers a period that is less than a full calendar year, then Pilot Year 4 would mean the period following Pilot Year 3, beginning on January 1 and ending on a date that is three years after the effective date. *See* proposed Rule 3110.18(l).

[20] *See* proposed Rule 3110.18(e). FINRA stated that Amendment No. 1 also contains non-substantive updates to the proposed rule text to improve readability. *See* Amendment No. 1.

[21] *See* proposed Rule 3110.18(f).

[22] *See* proposed Rule 3110.18(f)(1)(A).

[23] *See* proposed Rule 3110.18(f)(1)(B).

[24] *See* proposed Rule 3110.18(f)(1)(C).

[25] *See* proposed Rule 3110.18(f)(1)(D).

[26] FINRA stated that CRD is the central licensing and registration system that FINRA operates for the benefit of the Commission, FINRA and other self-regulatory organizations, state securities regulators, and broker-dealers. The information maintained in the CRD system is reported by registered broker-dealers, associated persons and regulatory authorities in response to questions on specified uniform registration forms. *See* Notice at 28629 n. 76; *see generally* Rule 8312 (FINRA BrokerCheck Disclosure).

[27] *See* proposed Rule 3110.18(f)(1)(E).

[28] *See* proposed Rule 3110.18(f)(1)(F). FINRA stated that the term ''found'' as used in this proposed criterion would carry the same meaning as Rule 4530.03 (Meaning of ''Found''). *See* Notice at 28630 n.77.

[29] *See* proposed Rule 3110.18(f)(2)(A)

[30] *See* proposed Rule 3110.18(g)(1)(A).

[31] *See* proposed Rule 3110.18(g)(1)(B).

[32] *See* proposed Rule 3110.18(g)(1)(C). Amendment No. 1 removed the word ''or'' at the end of the originally proposed Rule 3110.18(g)(1)(C). *See supra* note 20.

[33] *See* proposed Rule 3110.18(g)(1)(D).

taken by the member that is or was reportable under FINRA Rule 4530(a)(2);[34] (6) one or more associated persons at such office or location is engaged in proprietary trading, including the incidental crossing of customer orders, or the direct supervision of such activities;[35] or (7) the office or location handles customer funds or securities.[36]

b. Location Level Conditions (Proposed Rule 3110.18(g)(2))

Proposed Rule 3110.18(g)(2) would require each specific office or location that participates in the Pilot to satisfy the following conditions: (1) electronic communications would be made through the broker-dealer's electronic system; (2) the associated person's correspondence and communications with the public would be subject to the broker-dealer's supervision in accordance with FINRA Rule 3110; and (3) no books or records of the member required to be made and kept current, and preserved under applicable securities laws and regulations, FINRA rules, and the participating broker-dealer's own written supervisory procedures under FINRA Rule 3110, would be physically or electronically maintained and preserved at such office or location.[37]

4. Data and Information Collection Requirement (Proposed Rule 3110.18(h))

a. Data and Information (Proposed Rule 3110.18(h)(1))

As originally proposed, proposed Rule 3110.18(h) would require a participating broker-dealer to collect and produce to FINRA on a quarterly basis the following data and information about its participating offices or locations:[38] (1) the total number of inspections—on-site and remote—completed during each calendar quarter;[39] (2) the number of those offices or locations in each calendar quarter that were subject to an on-site inspection because of a ''finding,'' (as described under proposed Rule 3110.18(h)(1));[40] (3) the number of offices or locations for which a remote inspection was conducted in the calendar quarter that identified a finding, the number of findings, and a list of the most significant findings;[41] and (4) the number of offices or locations for which an on-site inspection was conducted in the calendar quarter that identified a finding, the number of findings, a list of the most significant findings.[42] Amendment No. 1 modified proposed Rule 3110.18(h) to delete the word ''most'' from the phrase ''most significant findings.''[43]

In addition, at the time a participating broker-dealer first delivers the data points described above, the proposed rule change would require participating broker-dealers to provide FINRA their written supervisory procedures for remote inspections that account for: (1) escalating significant findings; (2) new hires; (3) supervising brokers with a significant history of misconduct; and (4) outside business activities and ''doing business as'' designations.[44] Any subsequent amendment to a participating broker-dealer's written supervisory procedures for remote inspections would need to be included in the next quarterly data submission to FINRA.

b. Additional Data and Information for Pilot Year 1, if Less Than Full Calendar Year (Proposed Rule 3110.18(h)(2))[45]

As originally proposed, if the first year of the Pilot covers a period of time that is less than a full calendar year, the proposed rule change would require participating broker-dealers to also collect and produce to FINRA the following data and information no later than December 31 of the first Pilot Year: (1) the number of offices and locations with an inspection completed during the full calendar year of the first Pilot Year;[46] (2) the number of offices and locations referenced in proposed Rule 3110.18(h)(2)(A) as originally proposed[47] that were inspected remotely during the full calendar year of the first Pilot Year;[48] and (3) the number of offices and locations referenced in proposed Rule 3110.18(h)(2)(A) as originally proposed[49] that were inspected on-site during the full calendar year of the first Pilot Year.[50] Amendment No. 1 modified the time period of the originally proposed Rule 3110.18(h)(2) to capture data and information about inspections that may occur in the time period preceding the effective date of the proposed Pilot if such effective date results in the first Pilot Year covering a period of time that is less than a full calendar year. Specifically, a participating broker-dealer would be required to collect and provide to FINRA the following data separately for OSJs, supervisory branch offices, non-supervisory branch offices, and non-branch locations: (1) the number of offices and locations with an inspection completed between January 1 of the first Pilot Year and the day before the effective date of the Pilot;[51] (2) the number of offices and locations referenced in proposed Rule 3110.18(h)(2)(A)[52] that were inspected remotely between January 1 of the first Pilot Year and the day before the effective date of the Pilot;[53] and (3) the number of offices and locations referenced in proposed Rule 3110.18(h)(2)(A)[54] that were inspected on-site between January 1 of first Pilot Year and the day before the effective date of the Pilot.[55]

In addition, Amendment No. 1 modified proposed Rule 3110.18(h)(2) to impose two new obligations to collect and produce data and information to FINRA. Specifically, participating broker-dealers would be required to collect and provide to FINRA the following: (1) the number of offices and locations referenced in proposed Rule 3110.18(h)(2)(B)[56] where findings were identified, the number of those findings,

[34] *See* proposed Rule 3110.18(g)(1)(E).

[35] *See* proposed Rule 3110.18(g)(1)(F).

[36] *See* proposed Rule 3110.18(g)(1)(G).

[37] *See* proposed Rule 3110.18(g)(2).

[38] *See supra* note 20.

[39] *See* proposed Rule 3110.18(h)(1)(A), (B), and (C).

[40] *See* proposed Rule 3110.18(h)(1)(D).

[41] *See* proposed Rule 3110.18(h)(1)(E). According to FINRA, a ''significant finding'' would be one that should prompt the broker-dealer to take further action that could include escalation to the appropriate channels at the firm for further review, the result of which may be enhanced monitoring or surveillance of a particular event or activity through more frequent inspections (remotely or on-site), on an announced or unannounced basis, of the office or location, or other targeted reviews of the root cause of the finding. FINRA states that examples of some findings that may prompt escalation or further internal review by the appropriate firm personnel include, among other things, the use of unapproved communication mediums, customer complaints, or undisclosed outside business activities or private securities transactions. *See* Amendment No. 1, *citing* Notice at 28632 n.92.

[42] *See* proposed Rule 3110.18(h)(1)(F); *see also supra* note 20.

[43] *See* Amendment No. 1; *see also supra* note 41.

[44] *See* proposed Rule 3110.18(h)(1)(G)(i) through (iv).

[45] Amendment No. 1 added the word ''in'' to proposed Rule 3110.18(h)(2). *See supra* note 20.

[46] *See* proposed Rule 3110.18(h)(2)(A) as originally proposed.

[47] *See supra* note 46 and accompanying text.

[48] *See* proposed Rule 3110.18(h)(2)(B) as originally proposed.

[49] *See supra* note 46 and accompanying text.

[50] *See* proposed Rule 3110.18(h)(2)(C) as originally proposed. For items (1) through (3), a member would be required to provide separate counts for OSJs, supervisory branch offices, non-supervisory branch offices, and non-branch locations. *See* proposed Rule 3110.18(h)(2) as originally proposed.

[51] *See* proposed Rule 3110.18(h)(2)(A); *see also* Amendment No. 1.

[52] *See supra* note 51 and accompanying text.

[53] *See* proposed Rule 3110.18(h)(2)(B); *see also* Amendment No. 1.

[54] *See supra* note 51 and accompanying text.

[55] *See* proposed Rule 3110.18(h)(2)(C); *see also* Amendment No. 1.

[56] *See supra* note 53 and accompanying text.

and a list of the significant findings; [57] and (2) the number of offices and locations referenced in proposed Rule 3110.18(h)(2)(C) [58] where findings were identified, the number of those findings, and a list of the significant findings.[59]

c. Additional Data and Information for Calendar Year 2019 (Proposed Rule 3110.18(h)(3)) [60]

As originally proposed, proposed Rule 3110.18(h)(3) would require a participating broker-dealer to collect and provide to FINRA the following calendar year 2019 data and information no later than December 31 of Pilot Year 1 (as defined under proposed Rule 3110.18(l)): (1) the number of offices and locations with an inspection completed during calendar year 2019; and (2) the number of offices and locations in item (1) where findings were identified, the number of those findings and a list of the most significant findings.[61] Amendment No. 1 modified proposed Rule 3110.18(h)(3) to require a participating broker-dealer to ''act in good faith using best efforts'' to collect and provide to FINRA such data. Amendment No. 1 also deleted the word ''most'' from the phrase ''most significant findings.'' [62]

d. Written Policies and Procedures (Proposed Rule 3110.18(h)(4))

Proposed Rule 3110.18(h)(4) would require a participating broker-dealer to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data and information collection, and transmission requirements of the Pilot.[63]

5. Election to Opt-In and Opt-Out of the Pilot (Proposed Rule 3110.18(i))

In general, proposed Rule 3110.18(i) would require a participating broker-dealer, at least five calendar days before the beginning of a Pilot Year (as defined under proposed Rule 3110.18(l)), to provide FINRA an ''opt-in notice'' in the manner and format determined by FINRA. By providing such opt-in notice to FINRA, the firm would agree to participate in the proposed pilot program for the duration of such Pilot Year and to comply with the requirements of Rule 3110.18.[64] A firm that provides the opt-in notice for a Pilot Year would be automatically deemed to have elected and agreed to participate in the Pilot for subsequent Pilot Years.[65] To opt out, proposed Rule 3110.18(i) would require a participating broker-dealer to provide FINRA with an ''opt-out notice'' at least five calendar days before the end of the then current Pilot Year.[66]

6. Determination of Ineligibility (Proposed Rule 3110.18(k))

Proposed Rule 3110.18(k) would authorize FINRA to make a determination in the public interest and for the protection of investors that a broker-dealer is no longer eligible to participate in the Pilot if the member fails to comply with the requirements of Rule 3110.18.[67]

III. Proceedings To Determine Whether To Approve or Disapprove File No. SR–FINRA–2023–007 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposed rule change should be approved or disapproved.[68] Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[69] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[70]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by August 29, 2023. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 12, 2023.

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–FINRA–2023–007 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–FINRA–2023–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[57] *See* proposed Rule 3110.18(h)(2)(D); *see also* Amendment No. 1.

[58] *See supra* note 55 and accompanying text.

[59] *See* proposed Rule 3110.18(h)(2)(E); *see also* Amendment No. 1.

[60] Amendment No. 1 added the word ''and'' within Rule 3110.18(h)(3)(A). *See supra* note 20.

[61] *See* proposed Rule 3110.18(h)(3) as originally proposed. For items (1) and (2), a member would be required to provide separate counts for OSJs, supervisory branch offices, non-supervisory branch offices, and non-branch locations. *See id.*

[62] *See* proposed Rule 3110.18(h)(3)(B); *see also* Amendment No. 1; *see also supra* note 43 and accompanying text.

[63] *See* proposed Rule 3110.18(h)(4).

[64] As stated in the Notice, a firm that participates in a Pilot Year would be committed to complying with the terms of proposed Rule 3110.18 for that Pilot Year. *See* Notice at 28633 n.97.

[65] *See* proposed Rule 3110.18(i).

[66] *See id.*

[67] In such instances, FINRA will provide written notice to the member of such determination and the member would no longer be eligible to participate in the Pilot and must conduct on-site inspections of required offices and locations in accordance with Rule 3110(c). *See* proposed Rule 3110.18(k).

[68] 15 U.S.C. 78s(b)(2)(B).

[69] *Id.*

[70] Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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 such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2023–007 and should be submitted on or before August 29, 2023. If comments are received, any rebuttal comments should be submitted on or before September 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[71]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16878 Filed 8–7–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–094, OMB Control No. 3235–0085]

Proposed Collection; Comment Request; Extension: Rule 17a–11

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17a–11, Notification Provisions for Brokers and Dealers (17 CFR 240.17a–11), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The Commission adopted Rule 17a–11 on July 11, 1971 in response to an operational crisis in the securities industry between 1967 and 1970. The rule requires broker-dealers that are experiencing financial or operational difficulties to provide notice to the Commission, the broker-dealer's designated examining authority (''DEA''), and the Commodity Futures Trading Commission (''CFTC'') if the broker-dealer is registered with the CFTC as a futures commission merchant. Rule 17a–11 is an integral part of the Commission's financial responsibility program which enables the Commission, a broker-dealer's DEA, and the CFTC to increase surveillance of a broker-dealer experiencing difficulties and to obtain any additional information necessary to gauge the broker-dealer's financial or operational condition.

Rule 17a–11 also requires over-the-counter derivatives dealers and broker-dealers that are permitted to compute net capital pursuant to Appendix E to Exchange Act Rule 15c3–1 to notify the Commission when their tentative net capital drops below certain levels.

To ensure the provision of these types of notices to the Commission, Rule 17a–11 requires every national securities exchange or national securities association to notify the Commission when it learns that a member broker-dealer has failed to send a notice or transmit a report required under the Rule.

Compliance with the Rule is mandatory. The Commission will generally not publish or make available to any person notices or reports received pursuant to Rule 17a–11. The Commission believes that information obtained under Rule 17a–11 relates to a condition report prepared for the use of the Commission, other federal governmental authorities, and securities industry self-regulatory organizations responsible for the regulation or supervision of financial institutions.

The Commission estimates that the total hour burden under Rule 17a–11 is approximately 274 hours per year.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by October 10, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 2, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16861 Filed 8–7–23; 8:45 am]

BILLING CODE 8011–01–P

[71] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

DEPARTMENT OF STATE

[Public Notice: 12138]

Imposition of Nonproliferation Measures Against Foreign Persons, Including a Ban on U.S. Government Procurement

ACTION: Notice.

SUMMARY: A determination has been made that a number of foreign persons have engaged in activities that warrant the imposition of measures pursuant to Section 3 of the Iran, North Korea, and Syria Nonproliferation Act. The Act provides for sanctions on foreign entities and individuals for the transfer to or acquisition from Iran since January 1, 1999; the transfer to or acquisition from Syria since January 1, 2005; or the transfer to or acquisition from North Korea since January 1, 2006, of goods, services, or technology controlled under multilateral control lists (Australia Group, Chemical Weapons Convention, Missile Technology Control Regime, Nuclear Suppliers Group, Wassenaar Arrangement) or otherwise having the potential to make a material contribution to the development of weapons of mass destruction (WMD) or cruise or ballistic missile systems. The latter category includes items of the same kind as those on multilateral lists but falling below the control list parameters when it is determined that such items have the potential of making a material contribution to WMD or cruise or ballistic missile systems, items on U.S. national control lists for WMD/

missile reasons that are not on multilateral lists, and other items with the potential of making such a material contribution when added through case-by-case decisions.

DATES: July 19, 2023.

FOR FURTHER INFORMATION CONTACT: On general issues: Pam Durham, Office of Missile, Biological, and Chemical Nonproliferation, Bureau of International Security and Nonproliferation, Department of State, Telephone (202) 647–4930. For U.S. Government procurement ban issues: Eric Moore, Office of the Procurement Executive, Department of State, Telephone: (703) 875–4079. Email: *mooreen@state.gov.*

SUPPLEMENTARY INFORMATION: On July 19, 2023, the U.S. Government applied the measures authorized in Section 3 of the Iran, North Korea, and Syria Nonproliferation Act (Pub. L. 109–353) against the following foreign persons identified in the report submitted pursuant to Section 2(a) of the Act:

Sinobright Import and Export Company (PRC) (People's Republic of China); and any successor, sub-unit, or subsidiary thereof;

Wisdom Import & Export (Shanghai) Co., Ltd. (PRC) and any successor, sub-unit, or subsidiary thereof;

Seyed Taba (Turkish individual);

EuroAsia (Turkiye) and any successor, sub-unit, or subsidiary thereof;

Mirel Makina Elektronik Teks (Turkiye) and any successor, sub-unit, or subsidiary thereof.

Accordingly, pursuant to Section 3 of the Act, the following measures are imposed on these persons:

1. No department or agency of the U.S. government may procure or enter into any contract for the procurement of any goods, technology, or services from these foreign persons, except to the extent that the Secretary of State otherwise may determine;

2. No department or agency of the U.S. government may provide any assistance to these foreign persons, and these persons shall not be eligible to participate in any assistance program of the U.S. government, except to the extent that the Secretary of State otherwise may determine;

3. No U.S. government sales to these foreign persons of any item on the United States Munitions List are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and

4. No new individual licenses shall be granted for the transfer to these foreign persons of items the export of which is controlled under the Export Control Reform Act of 2018 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and agencies of the U.S. government and will remain in place for two years from the effective date, except to the extent that the Secretary of State may subsequently determine otherwise. These measures are independent of and in addition to any other sanctions imposed on such entities and/or individuals by other federal agencies under separate legal authorities.

Choo S. Kang,

Assistant Secretary for International Security and Nonproliferation, Department of State.

[FR Doc. 2023–16891 Filed 8–7–23; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice: 12140]

Notice of Receipt of Request From the Government of the Federal Democratic Republic of Nepal Under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

ACTION: Public notice.

SUMMARY: Notice of receipt of request from Nepal for cultural property protection.

FOR FURTHER INFORMATION CONTACT: Kimberly Nizov, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 890–7523; *culprop@state.gov;* include ''Nepal'' in the subject line.

SUPPLEMENTARY INFORMATION: The Government of the Federal Democratic Republic of Nepal made a request to the Government of the United States on May 23, 2023, under Article 9 of the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.* Nepal's request seeks U.S. import restrictions on archaeological and ethnological materials representing Nepal's cultural patrimony. The Cultural Heritage Center website provides instructions for public comment and additional information on the request, including categories of material that may be included in import restrictions: *https://eca.state.gov/highlight/cultural-property-advisory-committee-meet-chicago-september-19-20-2023.* This notice is published pursuant to authority vested in the Assistant Secretary of State for Educational and Cultural Affairs and pursuant to 19 U.S.C. 2602(f)(1).

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–16956 Filed 8–7–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12141]

Cultural Property Advisory Committee; Notice of Meeting

SUMMARY: The Department of State announces the location, dates, times, and agenda for the next meeting of the Cultural Property Advisory Committee (''the Committee'').

DATES: The Committee will meet on September 19, 2023, from 9:00 a.m. to 3:00 p.m. (CDT) and September 20, 2023, from 9:00 a.m. to 3:00 p.m. (CDT).

ADDRESSES: The Committee will meet at the University of Illinois Chicago in Chicago, Illinois. The public will participate in the open session on September 19 via videoconference.

Participation: The public may participate in, or observe, the virtual open session on September 19, 2023, from 1:00 p.m. to 2:00 p.m. (CDT). More information below.

FOR FURTHER INFORMATION CONTACT: Allison Davis, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (771) 204–4765; (*culprop@state.gov*).

SUPPLEMENTARY INFORMATION: The Assistant Secretary of State for Educational and Cultural Affairs calls a meeting of the Cultural Property Advisory Committee (''the Committee'') in accordance with the Convention on Cultural Property Implementation Act (19 U.S.C. 2601–2613) (''the Act''). A portion of this meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Meeting Agenda: The Committee will review a request from the Government of the Federal Democratic Republic of Nepal seeking import restrictions on archaeological and ethnological materials and will review the proposed extension of an agreement with the Government of the Republic of Honduras.

The Open Session: The public can observe the virtual open session on September 19, 2023. Registered participants may provide oral comments for a maximum of five (5) minutes each. The Department provides specific instructions on how to observe or

provide oral comments at the open session at *https://eca.state.gov/highlight/cultural-property-advisory-committee-meet-chicago-september-19-20-2023.*

Oral Comments: Register to speak at the open session by sending an email with your name and organizational affiliation, as well as any requests for reasonable accommodation, to *culprop@state.gov* by September 12, 2023. Written comments are not required to make an oral comment during the open session.

Written Comments: The Committee will review written comments if received by 11:59 p.m. (EDT) on September 12, 2023. Written comments may be submitted in two ways, depending on whether they contain confidential information:

▪ *General Comments:* For general comments, use *http://www.regulations.gov,* enter the docket [DOS–2023–0023], and follow the prompts.

▪ *Confidential Comments:* For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please email submissions to *culprop@state.gov.* Include ''Nepal'' and/or ''Honduras'' in the subject line.

▪ *Disclaimer:* The Cultural Heritage Center website contains additional information about each agenda item, including categories of archaeological and ethnological material that may be included in import restrictions: *https://eca.state.gov/highlight/cultural-property-advisory-committee-meet-chicago-september-19-20-2023.* Comments should relate specifically to the determinations specified in the Act at 19 U.S.C. 2602(a)(1).

Written comments submitted via regulations.gov are not private and are posted at *https://www.regulations.gov.* Because written comments cannot be edited to remove any personally identifying or contact information, we caution against including any such information in an electronic submission without appropriate permission to disclose that information (including trade secrets and commercial or financial information that are privileged or confidential within the meaning of 19 U.S.C. 2605(i)(1)). We request that any party soliciting or aggregating written comments from other persons inform those persons that the Department will not edit their comments to remove any identifying or contact information and that they therefore should not include any such information in their comments that they do not want publicly disclosed.

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–16951 Filed 8–7–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12139]

Proposal To Extend the Cultural Property Agreement Between the United States and Honduras

ACTION: Public notice.

SUMMARY: Proposal to extend the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Honduras Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures of Honduras and Ecclesiastical Ethnological Material from the Colonial Period of Honduras.*

FOR FURTHER INFORMATION CONTACT: Andrew Zonderman, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 718–9481; *culprop@state.gov;* include ''Honduras'' in the subject line.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension of the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Honduras Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures of Honduras and Ecclesiastical Ethnological Material from the Colonial Period of Honduras* is hereby proposed.

A copy of the *Memorandum of Understanding,* the Designated List of categories of material currently restricted from import into the United States, and related information can be found at the Cultural Heritage Center website: *https://culturalheritage.state.gov.*

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–16955 Filed 8–7–23; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 519 (Sub-No. 4)]

Notice of National Grain Car Council Meeting; Correction

AGENCY: Surface Transportation Board.

ACTION: Notice of National Grain Car Council meeting; correction.

SUMMARY: Notice of this meeting was previously served and published in the **Federal Register** on July 31, 2023. This notice corrects the day of the week upon which the meeting will be held. All other information in the previous notice remains correct.

FOR FURTHER INFORMATION CONTACT: Alan Cassiday at (202) 245–0308, (717) 215–0635, or *alan.cassiday@stb.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of July 31, 2023, in FR Doc. 2023–16187, on page 49549, in the first column, correct the **DATES** caption to read:

DATES:

The meeting will be held on Tuesday, August 15, 2023, beginning at 1 p.m. (CDT), and is expected to conclude at 5 p.m. (CDT).

Decided: August 2, 2023.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2023–16893 Filed 8–7–23; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2023–0007]

Request for Comments and Notice of Public Hearing Concerning Russia's Implementation of Its WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will seek public comment to assist the Office of the United States Trade Representative (USTR) in the preparation of its annual report to Congress on Russia's implementation of its obligations as a Member of the World Trade Organization (WTO). This notice includes the schedule for the submission of comments to the TPSC for the Russia report and a public hearing.

DATES:

September 20, 2023 at 11:59 p.m. EDT: Deadline for submission of written comments, requests to testify, and written testimony, regarding the Russia WTO implementation report.

October 12, 2023 at 10:00 a.m. EDT: The TPSC will convene a public hearing to receive oral testimony related to the Russia WTO implementation report.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: *http://www.regulations.gov* (*Regulations.gov*). Follow the instructions for submitting comments in sections III and IV below, using docket number USTR–2023–0007. For alternatives to on-line submissions, please contact Silvia Savich, Deputy Assistant U.S. Trade Representative for Russia and Eurasia, in advance of the relevant deadline at *Silvia.Savich@ustr.eop.gov* or (202) 395–2256.

FOR FURTHER INFORMATION CONTACT: Silvia Savich, Deputy Assistant U.S. Trade Representative for Russia and Eurasia, at *Silvia.Savich@ustr.eop.gov* or (202) 395–2256.

SUPPLEMENTARY INFORMATION:

I. Background

Russia became a Member of the WTO on August 22, 2012, and on December 21, 2012, following termination of the application of the Jackson-Vanik amendment to Russia and the extension of permanent normal trade relations to the products of Russia, the United States and Russia filed letters with the WTO withdrawing their notices of non-application and consenting to have the WTO Agreement apply between them. In accordance with Section 201(a) of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012 (Public Law 112–208), USTR is required to submit annually a report to Congress on the extent to which Russia is implementing the WTO Agreement, including the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Trade Related Aspects of Intellectual Property Rights. The report also must assess Russia's progress on acceding to and implementing the Information Technology Agreement (ITA) and the Government Procurement Agreement (GPA). In addition, to the extent that USTR finds that Russia is not implementing fully any WTO agreement or is not making adequate progress in acceding to the ITA or the GPA, USTR must describe in the report the actions it plans to take to encourage Russia to improve its implementation and/or increase its accession efforts. In accordance with section 201(a), and to assist it in preparing this year's report, the TPSC is soliciting public comments.

The terms of Russia's accession to the WTO are contained in the Marrakesh Agreement Establishing the World Trade Organization and the Protocol on the Accession of the Russian Federation to the WTO (including its annexes) (Protocol). The Report of the Working Party on the Accession of the Russian Federation (Working Party Report) provides detail and context to the commitments listed in the Protocol. You can find the Protocol and Working Party Report on USTR's website at *https://ustr.gov/node/5887* or on the WTO website at *http://docsonline.wto.org* (document symbols: WT/ACC/RUS/70, WT/MIN(11)/2, WT/MIN(11)/24, WT/L/839, WT/ACC/RUS/70/Add.1, WT/MIN(11)/2/Add.1, WT/ACC/RUS/70/Add.2, and WT/MIN(11)/2/Add.1.)

II. Hearing Participation

USTR will convene a public hearing on October 12, 2023 related to Russia's implementation of its WTO commitments. Persons wishing to observe the public hearing will find a link on USTR's web page for Russia on the day of the hearing at *https://ustr.gov/countries-regions/europe-middle-east/russia-and-eurasia/russia.* To ensure participation, you must submit requests to present oral testimony at the hearing and written testimony by midnight on September 20, 2023, via *Regulations.gov*, using Docket Number USTR–2023–0007. Instructions for submission are in Sections III and IV below. Remarks at the hearing will be limited to no more than five minutes to allow for possible questions from the TPSC. Because it is a public the hearing, testimony should not include any business confidential information (BCI). USTR will provide a link in advance of the virtual hearing to persons wishing to testify.

The TPSC requests small businesses or organizations representing small business members that submit comments to self-identify as such, so that we may be aware of issues of particular interest to small businesses.

Written comments and/or oral testimony should address Russia's implementation of the commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas:

a. Import regulation (*e.g.,* tariffs, tariff-rate quotas, quotas, import licenses).
b. Export regulation.
c. Subsidies.
d. Standards and technical regulations.
e. Sanitary and phytosanitary measures.
f. Trade-related investment measures (including local content requirements).
g. Taxes and charges levied on imports and exports.
h. Other internal policies affecting trade.
i. Intellectual property rights (including intellectual property rights enforcement).
j. Services.
k. Government procurement.
l. Rule of law issues (*e.g.,* transparency, judicial review, uniform administration of laws and regulations).
m. Trade facilitation.
n. Other WTO commitments.

III. Procedures for Written Submissions

To be assured of consideration, submit your written comments, requests to testify, and written testimony by the September 20, 2023, 11:59 p.m. EDT deadline. All submissions must be in English. USTR strongly encourages submissions via *Regulations.gov*, using Docket Number USTR–2023–0007.

To make a submission via *Regulations.gov*, enter Docket Number USTR–2023–0007 in the 'search for' field on the home page and click 'search.' The site will provide a search results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'refine documents results' section on the left side of the screen and click on the link entitled 'comment.' *Regulations.gov* allows users to make submissions by filling in a 'type comment' field, or by attaching a document using the 'upload file' field. USTR prefers that you provide submissions in an attached document and, in such cases, that you write 'see attached' in the 'type comment' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If you use an application other than those two, please indicate the name of the application in the 'type comment' field.

At the beginning of your submission or on the first page (if an attachment), include the following text: (1) 2023 Russia WTO Implementation Report; (2) your organization's name; and (3) whether the submission is a comment, request to testify, or written testimony. Submissions should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Please do not attach separate cover letters, exhibits, annexes, or other attachments to electronic submissions; rather, include any in the same file as the submission itself, not as separate files. You will receive a tracking number upon completion of the submission procedure at *Regulations.gov.* The tracking number is confirmation that *Regulations.gov* received your submission. Keep the confirmation for

your records. USTR is not able to provide technical assistance for *Regulations.gov*.

For further information on using *Regulations.gov*, please consult the resources provided on the website by clicking on 'How to Use Regulations.gov' on the bottom of the home page. USTR may not consider submissions that you do not make in accordance with these instructions.

If you are unable to provide submissions as requested, please contact Silvia Savich, Deputy Assistant U.S. Trade Representative for Russia and Eurasia, in advance of the deadline at *Silvia.Savich@ustr.eop.gov* or (202) 395–2256, to arrange for an alternative method of transmission. USTR will not accept hand-delivered submissions. General information concerning USTR is available at *www.ustr.gov*.

IV. Business Confidential Information (BCI) Submissions

If you ask USTR to treat information you submit as BCI, you must certify that the information is business confidential and you would not customarily release it to the public. For any comments submitted electronically containing BCI, the file name of the business confidential version should begin with the characters 'BCI.' You must clearly mark any page containing BCI with 'BUSINESS CONFIDENTIAL' at the top of that page. Filers of submissions containing BCI also must submit a public version of their submission that will be placed in the docket for public inspection. The file name of the public version should begin with the character 'P.'

V. Public Viewing of Review Submissions

USTR will post written submissions in the docket for public inspection, except properly designated BCI. You can view submissions at *Regulations.gov* by entering Docket Number USTR–2023–0007 in the search field on the home page.

William Shpiece,

Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.

[FR Doc. 2023–16931 Filed 8–7–23; 8:45 am]

BILLING CODE 3390–F3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advanced Aviation Advisory Committee (AAAC); Notice of Public Meeting

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of Advanced Aviation Advisory Committee (AAAC) meeting.

SUMMARY: This notice announces a meeting of the AAAC.

DATES: The meeting will be held on August 23, 2023, between the hours of 1:00 p.m. and 4:30 p.m. Eastern Time.

Requests for accommodations for a disability must be received by August 16, 2023.

Requests to submit written materials to be reviewed during the meeting must be received no later than August 16, 2023.

ADDRESSES: The meeting will be held at the FAA Headquarters, 800 Independence Avenue SW, Washington, DC 20591. In-person attendance is limited to Advanced Aviation Advisory Committee members and selected FAA support staff. Members of the public who wish to observe the meeting through virtual means can access the livestream on the following FAA social media platforms on the day of the event: *https://www.facebook.com/FAA* or *https://www.youtube.com/FAAnews.* For copies of meeting minutes along with all other information, please visit the AAAC Internet website at *https://www.faa.gov/uas/programs_partnerships/advanced_aviation_advisory_committee/.*

FOR FURTHER INFORMATION CONTACT: Gary Kolb, Advanced Aviation Advisory Committee Manager, Federal Aviation Administration, U.S. Department of Transportation, at *gary.kolb@faa.gov* or 202–267–4441. Any committee-related request or reasonable accommodation request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The AAAC was created under the Federal Advisory Committee Act (FACA), in accordance with Title 5 of the United States Code (5 U.S.C. App. 2) to provide the FAA with advice on key drone and advanced air mobility (AAM) integration issues by helping to identify challenges and prioritize improvements.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Official Statement of the Designated Federal Officer
- Approval of the Agenda and Minutes
- Opening Remarks
- FAA Update
- Industry-Led Technical Topics
- New Business/Agenda Topics
- Closing Remarks
- Adjourn

Additional details will be posted on the AAAC Internet website address listed in the **ADDRESSES** section at least 5 days in advance of the meeting.

III. Public Participation

The meeting will be open to the public via livestream. Members of the public who wish to observe the virtual meeting can access the livestream on the following FAA social media platforms on the day of the event, *https://www.facebook.com/FAA* or *https://www.youtube.com/FAAnews.* The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The FAA is not accepting oral presentations at this meeting due to time constraints. Written statements submitted by the deadline will be provided to the AAAC members before the meeting. Any member of the public may submit a written statement to the committee at any time.

Issued in Washington, DC, on August 3, 2023.

Brandon Roberts,

Executive Director, Office of Rulemaking, Federal Aviation Administration.

[FR Doc. 2023–16960 Filed 8–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–1532; Summary Notice No. 2023–30]

Petition for Exemption; Summary of Petition Received; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief

from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before August 28, 2023.

ADDRESSES: Send comments identified by docket number FAA–2023–1532 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

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

FOR FURTHER INFORMATION CONTACT: Deana Stedman, AIR–646, Federal Aviation Administration, phone 206–231–3187, email *deana.stedman@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Los Angeles, California on August 3, 2023.

Thuan Nguyen,

Acting Manager, Technical Writing Section.

Petition for Exemption

Docket No.: FAA–2023–1532.
Petitioner: The Boeing Company.
Section(s) of 14 CFR Affected: §§ 25.1316(a) and 25.1317(a).
Description of Relief Sought: The Boeing Company is petitioning for a temporary exemption from the affected sections of 14 CFR until March 1, 2027 to allow it time to incorporate necessary design changes for the Stall Management Yaw Damper on the Model 737–7 airplane.

[FR Doc. 2023–16942 Filed 8–7–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0100]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Accident Recordkeeping Requirements

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew the ICR titled ''Accident Recordkeeping Requirements.'' This ICR relates to Agency requirements that motor carriers maintain a record of accidents involving their commercial motor vehicles (CMVs). Motor carriers are not required to report this data to FMCSA, but must produce it upon inquiry by authorized Federal, State, or local officials.

DATES: Comments on this notice must be received on or before October 10, 2023.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2023–0100 by 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, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2023–0100) for this notice. 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 received, go to *https://www.regulations.gov* and follow the online instructions for accessing the docket, or go to the street address listed above.

Privacy Act: In accordance with 49 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL–14 FDMS, which can be reviewed at *https://www.transportation.gov/privacy,* the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, Driver and Carrier Operations Division, DOT, FMCSA, West Building, 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 202–366–4225; *pearlie.robinson@dot.gov.*

SUPPLEMENTARY INFORMATION:

Instructions

All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials. If you submit a comment, please include the docket number for

this notice (FMCSA–2023–0100), indicate the specific section of this document to which the comment applies and provide a reason for suggestions or recommendations. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number ''FMCSA–2023–0100'' in the ''Keyword'' box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. 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. FMCSA will consider all comments and material received during the comment period.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Background

Title 49 of the Code of Federal Regulations (CFR), 390.15(b), requires motor carriers to make certain specified records and information pertaining to CMV accidents available to an authorized representative or special agent of FMCSA upon request or as part of an inquiry. Motor carriers are required to maintain an ''accident register'' consisting of information concerning all ''accidents'' involving their CMVs (§ 390.15(b) (see ''Definition: Accident'' below)). The following information must be recorded for each accident: date, location, driver name, number of injuries, number of fatalities, and whether certain dangerous hazardous materials were released. In addition, the motor carrier must maintain copies of all accident reports required by insurers or governmental entities. Motor carriers must maintain this information for 3 years after the date of the accident. Section 390.15 does not require motor carriers to submit any information or records to FMCSA or any other party.

This ICR supports the DOT strategic goal of safety. By requiring motor carriers to gather and record information concerning CMV accidents, FMCSA is strengthening its ability to assess the safety performance of motor carriers. This information is a valuable resource in Agency initiatives to prevent, and reduce the severity of, CMV crashes.

The Agency has modified several of its estimates for this ICR. The estimated number of annual respondents have increased, while the number of responses, burden hours, and annual costs to respondents have decreased. Explanations for these changes are summarized below.

The previously-approved burden is 55,425 burden hours. The Agency decreases its estimate to 48,760 burden hours. The text of § 390.15(b) is unchanged; the decrease in burden hours does not reflect changes in the requirements for accident recordkeeping. The adjustment in annual burden hours is due to an increase in the number of annual respondents from 89,270 to 93,280, and a decrease in the estimate of the number of reportable accidents from 184,749 to 162,533 per year, using interstate and intrastate DOT-reportable motor carrier crash records in FMCSA's Motor Carrier Management Information System for calendar years 2020 through 2022.

This ICR includes estimated labor costs associated with maintaining the Accident Register. The estimated annual labor cost for industry resulting from the Accident Register reporting requirements is decreased from $1,860,617 to $1,507,169.

Finally, the estimated annual cost associated with accident recordkeeping (outside of labor costs) is decreased from $106,785 to $93,944. In the current iteration of this ICR, FMCSA is assuming that (1) approximately 15 percent of motor carriers are storing their Accident Registers electronically, at no extra cost, and (2) approximately 85 percent of motor carriers are storing hard copy versions of their Accident Registers. FMCSA is further assuming that motor carriers that maintain paper records are storing their Accident Registers at their primary place of business, so that they have easy access to such records during an FMCSA investigation.

Title: Accident Recordkeeping Requirements.

OMB Control Number: 2126–0009.

Type of Request: Renewal of a currently approved collection.

Respondents: Motor carriers.

Estimated Number of Respondents: 93,280.

Estimated Time per Response: 18 minutes.

Expiration Date: February 29, 2024.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 48,760 burden hours (162,533 accidents × 18 minutes per response/60 minutes in an hour = 48,760 hours).

Definitions: Accident is an occurrence involving a CMV operating on a public road which results in: (1) a fatality, (2) bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or (3) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle (§ 390.5).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2023–16954 Filed 8–7–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2023–0051]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on July 7, 2023, TransitAmerica Services, Inc. (TASI), the operations contractor to Metrolink Arrow SCAX, petitioned the Federal Railroad Administration (FRA) for a waiver of

compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of Locomotive Engineers) and part 242 (Qualification and Certification of Conductors). FRA assigned the petition Docket Number FRA–2023–0051.

Specifically, TASI requests relief required to participate in FRA's Confidential Close Call Reporting System (C^{3}RS) Program. TASI seeks to shield reporting employees from mandatory punitive sanctions that would otherwise arise as provided in §§ 240.117(e)(1)–(4); 240.305(a)(1)–(4) and (a)(6); 240.307; 242.403(b), (c), (e)(1)–(4), (e)(6)–(11), (f)(1)–(2); and 242.407. The C^{3}RS Program encourages certified operating crew members to report close calls and protects the employees and the railroad from discipline or sanctions arising from the incidents reported per the C^{3}RS Implementing Memorandum of Understanding.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by October 10, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–16950 Filed 8–7–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2022–0056]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by letters received on May 10, 2023, and June 8, 2023, the Buffalo & Pittsburgh Railroad, Inc. (BPRR) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2022–0056.

Specifically, BPRR requests to discontinue the centralized traffic control (CTC) system on the BPRR mainline in three locations: (1) between the insulated joints at mileposts (MPs) 141.9 and 149.00, (2) between MP 162.10 and 169.80, and (3) between MP 199.9 and 206.28. Several block signals, power switches, and approach signals would be removed from service, and ''power switches will be replaced with powered DTMF switches with simulated OS locking circuits.'' In support of its application, BPRR states that ''the CTC system is no longer essential for the safe movement of traffic as current train activity is reduced,'' and removal of the CTC system will improve ''efficient operations.'' BPRR also states that ''there are no opposing train movements or fleeted trains with following moves.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by October 10, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. 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.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–16948 Filed 8–7–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–21]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) summarized below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before October 10, 2023.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on regulations.gov to the docket, Docket No. FRA–2023–0002. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number for each ICR, 2130–0545 and 2130–0576, respectively, in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice, made available to the public, and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908, or Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICRs regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, comments received will advance three objectives: (1) reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICRs that FRA will submit for OMB clearance as the PRA requires:

Title: Passenger Train Emergency Procedures.

OMB Control Number: 2130–0545.

Abstract: The railroad passenger train emergency preparedness regulations under 49 CFR part 239, set forth FRA's requirements for railroads to meet Federal standards for the preparation, adoption, and implementation of emergency preparedness plans connected with the operation of passenger trains, including freight railroads hosting passenger rail service operations. Part 239 also requires each affected railroad to instruct its employees on the provisions of its plan. The information collected is necessary for compliance with the regulation.

In this 60-day notice, FRA made adjustments that increased the previously approved burden hours from 350 hours to 353 hours. This increase, after a thorough review, is the result of a more accurate estimate of the annual responses for debrief and critique sessions under § 239.105 and emergency preparedness plans under § 239.101/201/203.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 34 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Total cost equivalent (D = C * wage rates) [1]
239.13—Penalties	FRA anticipates that there will be zero falsified records or reports during this 3-year ICR.				
239.13—Waivers	34 railroads	1 waiver petition	10 hours	10 hours	$859.30
239.101/201/203—Emergency preparedness plan: amended plans.	34 railroads	6 amended plans	16 hours	96 hours	$8,249.28
—Non-substantive changes to emergency preparedness plan.	34 railroads	6 amended plans	1 hour	6 hours	$515.58
—Emergency preparedness plans for new/start-up railroads.	34 railroads	1 new plan	80 hours	80 hours	$6,874.40
239.101(a)(1)(i)—Communication—Initial and on-board notification.	The requirement for initial on-board notification is routine and is covered by the economic cost.				
—(a)(1)(ii) RR designation of employees responsible for maintaining emergency phone numbers for use in contacting outside emergency responders and appropriate RR officials that a passenger emergency has occurred.	34 railroads	34 designations	5 minutes	2.80 hours	$240.60
—Commuter/intercity passenger RRs gathering/keeping emergency phone numbers.	34 railroads	34 lists/updated records	1 hour	34 hours	$2,921.62
—(a)(3) Coordinating applicable portions of emergency preparedness plan between each railroad hosting passenger service and each railroad that provides or operates such service.	The burden for this requirement is covered under § 239.101/201/203 —Emergency preparedness plan: amended plans.				
—(a)(5) Updating emergency responder liaison information and conducting emergency simulation.	The burden for this requirement is covered under § 239.101/201/203 —Emergency preparedness plan: amended plans.				

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Total cost equivalent (D = C * wage rates) [1]
—(a)(6)(iii)–(iv) On-board emergency lighting, Maintenance and marking of emergency exits.	The burden for this requirement is covered under OMB Control No. 2130–0576, § 238.113 (d)(1–3) and § 238.112(d)(1–2).				
—(a)(7) RR dissemination of information regarding emergency procedures/instructions.	1 new railroad	350 cards + 1 safety messages.	5 minutes	29.30 hours	$2,517.75
	34 railroads	1000 cards +100 safety messages.	5 minutes	91.70 hours	$7,879.78
239.105—Debrief and critique sessions	34 railroads	39 debrief/critique sessions.	5 minutes	3.30 hours	$283.57
239.301(b)(c)—Maintenance and retention of operational tests/inspection records.	This burden is covered under OMB Control No. 2130–0035 under § 217.9(d)(1).				
—(d) RR retention of 1 copy of operational testing & inspection program.	This burden is covered under OMB Control No. 2130–0035 under § 217.9(d)(2).				
—(e) RR six-month review of tests/inspections and adjustments to program of operational tests/inspections.	This burden is covered under OMB Control No. 2130–0035 under § 217.9(e).				
—(f) RR annual summary of tests/inspections & record of each summary.	This burden is covered under OMB Control No. 2130–0035 under § 217.9(f).				
Total	34 railroads	1,572		353 hours	[2] $30,342

Total Estimated Annual Responses: 1,572.

Total Estimated Annual Burden: 353 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $30,342.

Title: Passenger Train Emergency Systems.

OMB Control Number: 2130–0576.

Abstract: This information collection is due to passenger train emergency systems regulations under 49 CFR part 238. The purpose of this part is to prevent collisions, derailments, and other occurrences involving railroad passenger equipment that cause injury or death to railroad employees, railroad passengers, or the general public, and to mitigate the consequences of such occurrences to the extent they cannot be prevented. FRA further added requirements for emergency passage through vestibule and other interior passageway doors and enhanced emergency egress and rescue signage requirements.[3]

FRA also established requirements for low-location emergency exit path markings to assist occupants in reaching and operating emergency exits, particularly under conditions of limited visibility. Moreover, FRA added standards to ensure emergency lighting systems are provided in all passenger cars and enhanced requirements for the survivability of emergency lighting systems in new passenger cars.

In this 60-day notice, FRA has made adjustments that decreased the burden hours from 859 hours in the current inventory to 755 hours in the requested inventory. This decrease is more in line with the anticipated annual reporting of legible markings and instruction in passenger cars under § 238.123(e).

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses (railroads).

Form(s): N/A.

Respondent Universe: 34 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR Section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C = A * B)	Total cost equivalent in U.S. dollar (D = C * wage rates) [4]
238.112—Door emergency egress and rescue access systems: Markings, signage, instructions.	34 railroads	2,250 markings/signs/instructions.	5 minutes	187.50 hours	$16,111.88
—(e) Passenger car exterior doors intended for emergency access by responders marked with retro-reflective material and instructions provided for their use.	34 railroads	2,250 exterior door markings.	5 minutes	187.50 hours	$16,111.88
—(f)(5) Markings and instructions—interior doors/removable panels or windows.	34 railroads	1,500 marked panels/windows.	5 minutes	125.00 hours	$10,741.25
—(f)(6) Testing of car door removable panels, removable windows, manual override devices, & door retention mechanisms as part of periodic mechanical inspection. The sampling method must conform with a formalized statistical test method..	The burden for this requirement is covered under OMB Control No. 2130–0544 under § 238.307(e)(1).				

[1] The dollar equivalent cost is derived from the 2022 Surface Transportation Board Full Year Wage A&B data series using the employee group 200 (Professional & Administrative) hourly wage rate of $49.10. The total burden wage rate (Straight time plus 75%) used in the table is $85.93 ($49.10 × 1.75 = $85.93).

[2] Totals may not add up due to rounding.

[3] 78 FR 71785 (Nov. 29, 2013).

[4] Totals may not add due to rounding. The dollar equivalent cost is derived from the 2022 Surface Transportation Board Full Year Wage A&B data series using the employee group 200 (Professional & Administrative) hourly wage rate of $49.10. The total burden wage rate (Straight time plus 75%) used in the table is $85.93 ($49.10 × 1.75 = $85.93).

CFR Section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C = A * B)	Total cost equivalent in U.S. dollar (D = C * wage rates) [4]
238.113(d)—Emergency window exits—Markings/and instructions.	34 railroads	60 window markings	15 minutes	15.00 hours	$1,288.95
—(e) Periodic Testing of representative sample of car emergency exit windows as part of periodic mechanical inspection. The sampling method must conform with a formalized statistical test method..	The paperwork burden for this requirement is covered under OMB Control No. 2130–0544 under § 238.307(e)(1).				
238.114(d)—Rescue access windows—Markings with retro-reflective material on each exterior car.	34 railroads	1,500 access window markings.	5 minutes	125.00 hours ..	$10,741.25
238.121(b)—Emergency communications—Marking of each intercom intended for passenger use on new Tier I & Tier II passenger cars.	34 railroads	375 marked intercom locations.	5 minutes	31.25 hours	$2,685.31
238.123(e)—Marked emergency roof access locations	34 railroads	150 marked emergency roof access locations.	30 minutes	75.00 hours	$6,444.75
238.303—Exterior calendar day mechanical inspection of passenger equipment: Replacement of missing, illegible, or inconspicuous markings, signage, & instructions.	The burden for this requirement is covered under OMB Control No. 2130–0544 under § 238.303(e)(15).				
—Record of Non-complying marking, signage, or instruction.	The burden for this requirement is covered under OMB Control No. 2130–0544 under § 238.303(g).				
238.305—Interior calendar day mechanical inspection of passenger cars:.	The burden for this requirement is covered under OMB Control No. 2130–0544 under § 238.305.				
—(c)(10), (12), and (13) Written notification to train crew of non-complying condition.	34 railroads	250 notices	2 minutes	8.33 hours	$715.80
—(c)(13)(i) Written procedures for mitigating hazards of non-complying condition..	The burden for this requirement is covered under OMB Control No. 2130–0599 under § 270.103.				
238.307—Records of inspection, testing, and maintenance of passenger car emergency window exits.	The burden for this requirement is covered under OMB Control No. 2130–0544 under § 238.307(e)(1).				
238.311—Single Car Test: RR Copy of American Public Transportation Association (APTA) Standard (SS–M–005–98) for RR Head Trainer.	All the members have the option to obtain a copy of APTA's Standard on APTA's website for free.				
—Other RR copies of APTA Standard	All the members have the option to obtain a copy of APTA's Standard on APTA's website for free.				
Total	34 railroads	8,335 responses	NA	755 hours	$64,841

Total Estimated Annual Responses: 8,335.

Total Estimated Annual Burden: 755.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $64,841.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

(Authority: 44 U.S.C. 3501–3520)

Christopher S. Van Nostrand,

Acting Deputy Chief Counsel.

[FR Doc. 2023–16890 Filed 8–7–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2023–0047]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on June 25, 2023, Whitewater Valley Railroad (WVRR) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 215 (Railroad Freight Car Safety Standards) and 224 (Reflectorization of Rail Freight Rolling Stock). FRA assigned the petition Docket Number FRA–2023–0047.

Specifically, WVRR requested a special approval pursuant to 49 CFR 215.203, *Restricted cars,* for a total of 6 cars, comprised of 1 side dump car (CN 56752) and 5 cabooses (B&O C–2125, Erie 04946, NKP 759, EJ&E 521, and C&O 90299) that are more than 50 years from the date of original construction. WVRR also requests relief from § 215.303, *Stenciling of restricted cars,* and § 224.101, *General requirements,* to operate the cars in tourist/excursion service. In support of its request, WVRR states that the cars will not be interchanged and will be operated at a maximum speed of 15 miles per hour.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by October 10, 2023 will be considered by FRA

before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. 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.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–16949 Filed 8–7–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2023 Competitive Funding Opportunity: Pilot Program for Transit-Oriented Development Planning

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of funding opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to apply for $13,460,978 in Fiscal Year (FY) 2022 and FY 2023 funding under the Pilot Program for Transit-Oriented Development Planning (TOD Pilot Program). As required by Federal public transportation law and subject to funding availability, funds will be awarded competitively to support comprehensive planning or site-specific planning associated with new fixed guideway and core capacity improvement projects. FTA may award additional funding that is made available to the TOD Pilot Program prior to the announcement of project selections.

DATES: Complete proposals must be submitted electronically through the *GRANTS.GOV* ''APPLY'' function by 11:59 p.m. October 10, 2023.

ADDRESSES: Prospective applicants should initiate the process by registering on the *GRANTS.GOV* website immediately to ensure completion of the application process before the submission deadline. Instructions for applying can be found on FTA's website at *https://www.transit.dot.gov/TODPilot* and in the ''FIND'' module of *GRANTS.GOV.* The *GRANTS.GOV* funding opportunity ID is FTA–2023–011–TPE–TODP. Mail and fax submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: April McLean-McCoy, FTA Office of Planning and Environment, (202) 366–7429, or *April.McLeanMcCoy@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

Table of Contents

A. Program Description

Section 20005(b) of the Moving Ahead for Progress in the 21st Century Act (MAP–21; Pub. L. 112–141), as amended by section 30009 of the Infrastructure Investment and Jobs Act (Pub. L. 117–58) (also called the Bipartisan Infrastructure Law (BIL)), authorizes FTA to award grants under the TOD Pilot Program in the amounts provided by 49 U.S.C. 5338(a)(2)(B). This funding opportunity is occurring under Federal Assistance Listing number 20.500.

This program supports FTA's priorities and objectives through investments that (1) renew our transit systems, (2) reduce greenhouse gas emissions from public transportation, (3) advance racial equity by removing transportation related disparities to all populations within a project area and increasing equitable access to project benefits, (4) maintain and create good-paying jobs with a free and fair choice to join a union, and (5) connect communities by increasing access to affordable transportation options. The TOD Pilot Program grants are competitively awarded to local communities to integrate land use and transportation planning with a new fixed guideway or core capacity improvement transit capital project as defined in Federal public transportation law (49 U.S.C. 5309(a)). (See Section C of this NOFO for more information about eligibility). FTA seeks to fund projects under the TOD Pilot Program that:

- Reduce greenhouse gas emissions in the transportation sector, incorporate evidence-based climate resilience measures and features, reduce the lifecycle greenhouse gas emissions from the project materials, and avoid adverse environmental impacts to air or water quality, wetlands, and endangered species, and address the disproportionate negative environmental impacts of transportation on disadvantaged communities, consistent with Executive Order 14008, Tackling the Climate Crisis at Home and Abroad (86 FR 7619).
- Create proportional impacts to all populations in a project area, remove transportation related disparities to all populations in a project area, and increase equitable access to project benefits, consistent with Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009).
- Address equity and environmental justice, particularly for communities that have experienced decades of underinvestment and are most impacted by climate change, pollution, and environmental hazards, consistent with Executive Order 14008, Tackling the Climate Crisis at Home and Abroad (86 FR 7619).
- Support the creation of good-paying jobs with the free and fair choice to join a union and the incorporation of strong labor standards and training and placement programs, especially registered apprenticeships, in project planning stages, consistent with Executive Order 14025, Worker Organizing and Empowerment (86 FR 22829), and Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act (86 FR 64335).
- Support wealth creation, consistent with the Department's Equity Action Plan, through the inclusion of local inclusive economic development and entrepreneurship such as the utilization of Disadvantaged Business Enterprises, Minority-owned Businesses, Women-owned Businesses, or 8(a) firms.
- Qualify for Transportation Infrastructure Finance and Innovation Act (TIFIA) 49 and Railroad Rehabilitation and Improvement Financing (RRIF) TOD financing program(s) once the TOD planning study is complete.

Additionally, in support of the Federal House America Initiative led by the Department of Housing and Urban Development, DOT, through this NOFO, is looking for opportunities to strongly prioritize TOD planning grants in areas of high incidence rates of homelessness, in the hope of providing opportunities

for localities to address housing affordability in these areas and homelessness holistically through their planning processes.

The TOD Pilot Program intends to fund comprehensive planning that supports economic development, increased transit ridership and value capture multimodal connectivity, accessibility, increased transit access for pedestrian and bicycle traffic, and mixed-use and mixed-income development near transit stations; delivers 40 percent of the overall benefits of the planning work to Historically Disadvantaged Communities (defined below), consistent with the Justice40 Initiative; and supports the development of affordable housing, mitigates climate change, and addresses challenges facing environmental justice populations, and homelessness. The TOD Pilot Program also encourages the identification of infrastructure needs and engagement with the private sector. FTA also encourages TOD in areas where communities are trying to preserve, protect, and increase the supply of affordable housing. For assets that were acquired with federal assistance and are no longer needed for the originally authorized purpose, the Fiscal Year 2022 National Defense Authorization Act (NDAA) (Pub. L. 117–81) allows FTA to authorize the transfer of the asset to a local governmental authority, non-profit organization, or other third-party entity if, among other factors, it will be used for TOD that includes affordable housing (49 U.S.C. 5334(h)(1)).

FTA is seeking comprehensive or site-specific planning projects that cover an entire transit capital project corridor. To ensure that any proposed planning work both reflects the needs and aspirations of the local community and results in concrete, specific deliverables and outcomes, transit project sponsors must partner with entities with land use planning authority in the transit project corridor to conduct the planning work.

B. Federal Award Information

FTA intends to award all available funding in the form of grants to selected applicants responding to this NOFO. A total of $13,460,978 will be made available through this NOFO. The authorized funding level in BIL is $13,432,051 in Fiscal Year (FY) 2023 funds, with an additional $28,927 remaining from the FY 2022 appropriation. Additional funds made available prior to project selection may be allocated to eligible projects. Only proposals from eligible recipients for eligible activities will be considered for funding. Due to funding limitations, applicants that are selected for funding may receive less than the amount originally requested and are thus encouraged to identify a scaled funding request in their application.

In response to the FY 2022 NOFO (87 FR 32069, which closed on July 25, 2022), the TOD Pilot Program received applications for 23 eligible projects requesting a total of $17,332,094. Of the 23 eligible applications received, 19 projects were funded at a total of $13,131,094.

FTA will grant pre-award authority, consistent with 2 CFR 200.458, for selected projects to incur costs beginning on the date FY 2023 project selections are announced on FTA's website. Funds are available for obligation for four fiscal years after the fiscal year in which the competitive awards are announced. Funds are available only for projects that have not incurred costs prior to the announcement of project selections.

C. Eligibility Information

1. Eligible Applicants

Applicants to the TOD Pilot Program must be a State or States, U.S. Territory, or local governmental authority, and an FTA grant recipient (*i.e.,* existing direct or designated recipients) as of the publication date of this NOFO. An applicant must be the project sponsor of an eligible transit capital project as defined below in Section C, subsection 3, or an entity with land use planning authority in the project corridor of an eligible transit capital project. Except in cases where an applicant is both the sponsor of an eligible transit project and has land use authority in at least a portion of the transit project corridor, the applicant must partner with the relevant transit project sponsor or at least one entity in the project corridor with land use planning authority. Documentation of this partnership must be included with the application; see Section D, subsection 2 of this NOFO for further information.

Only one application per transit capital project corridor may be submitted to FTA. Multiple applications submitted for a single transit capital project corridor indicate that partnerships are not in place, and FTA may reject all of the applications. FTA will accept multiple applications for the same corridor if each application is a site-specific application, the applications are submitted by separate applicants with different land-use authorities, and a given application does not overlap with any other application that would cover the same site.

2. Cost Sharing or Matching

In general, the maximum Federal funding share for proposals is 80 percent. Proposals that support planning activities that assist parts of an urbanized area or rural area with lower population density or lower average income levels compared to the applicable area or adjoining areas are eligible to receive a Federal funding share of no less than 90 percent and applicants may request a share up to 100 percent (see the March 21, 2023 Dear Colleague letter: *https://www.transit.dot.gov/regulations-and-programs/dear-colleague-letters/dear-colleague-letter-increased-federal-share-under*). Proposals that address three or more activities related to the development of affordable housing (see section C.3.ii.v) will receive a Federal funding share of 100 percent.

Eligible sources of non-Federal match include the following: cash from non-Federal sources (other than revenues from providing public transportation services); revenues derived from the sale of advertising and concessions; amounts received under a service agreement with a State or local social service agency or private social service organization; revenues generated from value capture financing mechanisms; funds from an undistributed cash surplus; replacement or depreciation cash fund or reserve; or new funding. In-kind contributions are permitted. Transportation Development Credits (formerly referred to as Toll Revenue Credits) may not be used to satisfy the non-Federal match requirement.

3. Other Eligibility Criteria

i. Eligible Transit Projects

Any comprehensive or site-specific planning work proposed for funding under the TOD Pilot Program must be associated with an eligible transit capital project. To be eligible, the proposed transit capital project must be a new fixed guideway project or a core capacity improvement project, as defined by Federal public transportation law (49 U.S.C. 5302(8)).

A fixed guideway is a public transportation facility:

(A) Using and occupying a separate right-of-way for the exclusive use of public transportation;

(B) Using rail;

(C) Using a fixed catenary system;

(D) For a passenger ferry system; or

(E) For a bus rapid transit system.

A new fixed guideway capital project is defined in (49 U.S.C. 5309(a)) to be:

(A) A new fixed guideway project that is a minimum operable segment or

extension to an existing fixed guideway system; or

(B) A fixed guideway bus rapid transit project that is a minimum operable segment or an extension to an existing bus rapid transit system.

A fixed guideway bus rapid transit project is defined in (49 U.S.C. 5309(a)) as a bus capital project:

(A) In which the majority of the project operates in a separated right-of-way dedicated for public transportation use during peak periods;

(B) That represents a substantial investment in a single route in a defined corridor or subarea; and

(C) That includes features that emulate the services provided by rail fixed guideway public transportation systems, including:

(i) Defined stations;

(ii) Traffic signal priority for public transportation vehicles;

(iii) Short headway bidirectional services for a substantial part of weekdays and weekend days; and

(iv) Any other features the Secretary may determine are necessary to produce high-quality public transportation services that emulate the services provided by rail fixed guideway public transportation systems.

A core capacity improvement project is defined by 49 U.S.C. 5309(a) to mean a substantial corridor-based capital investment in an existing fixed guideway system that increases the capacity of the corridor by not less than 10 percent. The term does not include project elements designed to maintain a state of good repair of the existing fixed guideway system.

Comprehensive or site-specific planning work in a corridor for a transit capital project that does not meet the statutory definitions above of either a new fixed guideway project or a core capacity improvement project is not eligible under the TOD Pilot Program.

ii. Eligible Activities

As outlined in the Application Review Information section below, any comprehensive or site-specific planning funded under the TOD Pilot Program must address all six factors set forth in section 20005(b)(2) of MAP–21, as amended by section 30009 of BIL. Additionally, the comprehensive or site-specific planning effort must advance the metropolitan planning organization's metropolitan transportation plan. Applicants must establish performance criteria for the planning effort.

The following are examples of the types of substantial deliverables that may result from the comprehensive or site-specific planning work. Substantial deliverables are reports, plans, and other materials that represent the key accomplishments of the comprehensive planning effort and that must be submitted to FTA as each is completed. Substantial deliverables may include, but are not restricted to, the following:

i. A comprehensive plan report that includes corridor development policies and station development plans comprising the corridor or the specific site, a proposed timeline, and recommended financing strategies for these plans;

ii. A strategic plan report that includes corridor specific planning strategies and program recommendations to support comprehensive planning;

iii. Revised TOD-focused zoning codes and/or resolutions;

iv. A report evaluating and recommending financial tools to encourage TOD implementation such as land banking, value capture, and development financing;

v. Affordable Housing:

1. Policies that reduce regulatory barriers to the development of affordable housing such as inclusionary zoning that specifies a percentage of new units affordable for targeted incomes or the provision of density bonuses for the creation of affordable housing units;

2. Policies that support affordable rental opportunities;

3. Policies that reduce parking standards;

4. Policies that support permanent affordable housing for disadvantaged groups in areas with high incidence rates of homelessness; and

5. Policies that encourage streamlined permitting for affordable housing units;

vi. Policies to encourage TOD, including actions that reduce regulatory barriers that unnecessarily raise the costs of housing development or impede the development of affordable housing;

vii. Policies to encourage TOD, including actions that increase access to environmental justice populations, reduces greenhouse gas emissions, and the effects of climate change;

viii. Local or regional resolutions to implement TOD plans and/or establish TOD funding mechanisms;

ix. Policies to prioritize TOD in areas with high incidence rates of homelessness for localities to address homelessness holistically through their planning processes.

iii. Ineligible Activities

FTA will not make awards for the following activities:

i. Transit project development activities that would be reimbursable under an FTA capital grant, such as project planning, the design and engineering of stations and other facilities, environmental analyses needed for the transit capital project, or costs associated with specific joint development activities; and

ii. Capital projects, such as land acquisition, construction, and utility relocation.

D. Application and Submission Information

1. Address To Request Application Package

Applications must be submitted electronically through *GRANTS.GOV.* The application is only available on *GRANTS.GOV* and must be submitted electronically through *GRANTS.GOV.* General information for submitting applications through *GRANTS.GOV* can be found at *https://www.transit.dot.gov/howtoapply* along with specific instructions for the forms and attachments required for submission. The Standard Form (SF) 424, Application for Federal Assistance, which must be included with every application, can be downloaded from *GRANTS.GOV.* The supplemental form for the FY 2023 TOD Pilot Program can be downloaded from *GRANTS.GOV* or the FTA website at *https://www.transit.dot.gov/TODPilot.* The *GRANTS.GOV* funding opportunity ID is FTA–2023–011–TPE–TODP.

2. Content and Form of Application Submission

Failure to submit information as requested can delay review or disqualify the application. Proposals must include a completed SF–424 Mandatory form and the following attachments to the completed SF–424:

i. A completed Applicant and Proposal Profile supplemental form for the TOD Pilot Program (supplemental form) found on the FTA website at *https://www.transit.dot.gov/TODPilot.* The information on the supplemental form will be used to determine applicant and project eligibility for the program, and to evaluate the proposal against the selection criteria described in part E of this notice;

ii. A map of the proposed study area showing the transit project alignment and stations, major roadways, major landmarks, and the geographic boundaries of the proposed comprehensive planning activities;

iii. Documentation of a partnership between the transit project sponsor and an entity in the project corridor with land use planning authority to conduct the comprehensive planning work, if the

applicant does not have both of these responsibilities. Documentation may consist of a memorandum of agreement or letter of intent signed by all parties that describes the parties' roles and responsibilities in the proposed comprehensive planning project; and

iv. Documentation of any funding commitments for the proposed comprehensive or site-specific planning work.

Information such as the applicant's name, Federal amount requested, local match amount, and description of the study area, are requested in varying degrees of detail on both the SF–424 form and supplemental form. Applicants must fill in all fields unless stated otherwise on the forms. Applicants should use both the ''Check Package for Errors'' and the ''Validate Form'' buttons on both forms to check all required fields and ensure that the Federal and local amounts specified are consistent. In the event of errors with the supplemental form, FTA recommends saving the form on your computer and ensuring that JavaScript is enabled in your PDF reader. The information listed below must be included on the SF–424 and supplemental forms for TOD Pilot Program funding applications.

The SF–424 and supplemental form will prompt applicants to address the following items:

1. Provide the name of the lead applicant and, if applicable, the specific co-sponsors submitting the application.

2. Provide the applicant's Unique Entity Identifier (UEI), assigned by SAM.gov.

3. Provide contact information including: Contact name, title, address, phone number, and email address.

4. Specify the Congressional district(s) where the planning project will take place.

5. Identify the project title and project scope to be funded, including anticipated substantial deliverables and the milestones at which they will be provided to FTA.

6. Identify and describe an eligible transit project that meets the requirements of Section C, subsection 3 of this notice.

7. Provide evidence of a partnership between the transit project sponsor and at least one agency with land use authority in the transit capital project corridor, as described earlier in this subsection.

8. Address the six factors set forth in MAP–21 Section 20005(b)(2).

9. Provide evidence of a partnership between transit project sponsor and an entity in the project corridor and those that support unhoused populations and address affordable housing, such as cities, municipalities, non-profit organizations, and housing authority.

10. Address each evaluation criterion separately, demonstrating how the project responds to each criterion as described in Section E.

11. Provide a line-item budget for the total planning effort, with enough detail to indicate the various key components of the comprehensive planning project.

12. Identify the Federal amount requested.

13. Document the matching funds, including amount and source of the match (may include local or private sector financial participation in the project). Describe whether the matching funds are committed or planned and include documentation of the commitments.

14. Provide explanation of the scalability of the project.

15. Address whether other Federal funds have been sought or received for the comprehensive or site-specific planning project.

16. Provide a schedule and process for the development of the comprehensive plan that includes anticipated dates for incorporating the planning work effort into the region's unified planning work program, completing major tasks and substantial deliverables, and completing the overall planning effort.

17. Describe how the comprehensive or site-specific planning work advances the metropolitan transportation plan of the metropolitan planning organization.

18. Propose performance criteria for the development and implementation of the comprehensive or site-specific planning work.

19. Identify potential State, local, or other impediments to the implementation of the comprehensive plan or site-specific plan, and how the work will address them.

20. Describe how the comprehensive or site-specific planning work addresses climate change and elevates challenges facing environmental justice populations

21. Describe how the comprehensive or site-specific planning work allows 40 percent of the overall benefits to flow to Historically Disadvantaged Communities (defined below).

22. Describe how the comprehensive or site-specific planning work prioritizes TOD plans in areas with high incidence rates of homelessness and addresses homelessness holistically through their planning processes. Describe how the comprehensive or site-specific planning work prioritizes TOD plans in areas with high incidence rates of homelessness and addresses housing affordability holistically through their planning processes.

23. Describe how the comprehensive or site-specific planning work addresses the historic displacement of historically disadvantaged populations and how it seeks to mitigate the displacement or improve the conditions for populations at risk of displacement, if possible. In addition, describe how local residents surrounding the comprehensive or site-specific planning work will be included in community engagement, especially those who have been historically excluded.

24. Describe how the comprehensive or site-specific planning work includes value capture elements.

25. Describe the community input process for your comprehensive or site-specific planning work.

26. Identify infrastructure needs associated with the eligible project.

27. Describe how the comprehensive or site-specific planning work incorporates affordable housing or other mixed-income elements.

28. Applicants must address how the project will consider climate change and environmental justice in the planning stage and in project delivery. In particular, applicants must address how the project reduces greenhouse gas emissions in the transportation sector, incorporates evidence-based climate resilience measures and features, and reduces the lifecycle greenhouse gas emissions from the project materials. Applicants also must address the extent to which the project avoids adverse environmental impacts to air or water quality, wetlands, and endangered species, as well as address disproportionate negative impacts of climate change and pollution on disadvantaged communities, including natural disasters, with a focus on prevention, response, and recovery.

29. Applicants must address how their project will include an equity assessment that evaluates whether a project will create proportional impacts and remove transportation related disparities to all populations in a project area. Applicants must demonstrate how meaningful public engagement will occur throughout a project's life cycle. Applicants must address how project benefits will increase affordable transportation options, improve safety, connect Americans to good-paying jobs, fight climate change, and/or improve access to resources and quality of life.

30. Applicants must address all the applicable criteria and priority considerations identified in Section E.

FTA will also give priority consideration to projects that support the Justice40 initiative. In support of

Executive Order 14008, DOT has been developing a geographic definition of Historically Disadvantaged Communities as part of its implementation of the Justice40 Initiative. Consistent with OMB's Interim Guidance for the Justice40 Initiative, Historically Disadvantaged Communities include (a) certain qualifying census tracts, (b) any Tribal land, or (c) any territory or possession of the United States. Applicants are encouraged to use Climate & Economic Justice Screening Tool (CEJST), a new tool by the White House Council on Environmental Quality (CEQ), that aims to help Federal agencies identify disadvantaged communities. Applicants should use CEJST as the primary tool to identify disadvantaged communities. This tool can be found at *https://screeningtool.geoplatform.gov.* Alternatively, applicants may also use the USDOT Equitable Transportation Community (ETC) Explorer (*https://experience.arcgis.com/experience/0920984aa80a4362b8778d779b090723/page/Homepage/*) to understand how their community or project area is experiencing disadvantages related to lack of transportation investments or opportunities. Use of either mapping tool is optional; applicants may provide an image from the map tool outputs, or alternatively, consistent with OMB's Interim Guidance, applicants can supply quantitative, demographic data of their ridership demonstrating the percentage of their ridership that meets the criteria for disadvantage described in Executive Order 14008. Examples of indicators for Historically Disadvantaged Communities that an applicant could address using geographic or demographic information include percentages of low income, high or persistent poverty, high unemployment and underemployment, racial and ethnic residential segregation, linguistic isolation, high housing cost burden and substandard housing, and high transportation cost burden and/or low transportation access. Additionally, in support of the Justice40 Initiative, the applicant also should provide evidence of strategies that the applicant has used in the planning process to seek out and consider the needs of those historically disadvantaged and underserved by existing transportation systems. For technical assistance using the mapping tool, please contact *GMO@dot.gov.*

Project budgets must show how different funding sources will share in each activity and present the data in dollars and percentages. The budget should identify other Federal funds the applicant is applying for or has been awarded, if any, that the applicant intends to use. Funding sources should be grouped into three categories: non-Federal, the Pilot Program for Transit-Oriented Development Planning request, and other Federal, with specific amounts from each funding source provided.

Due to funding limitations, projects that are selected for funding may receive less than the amount originally requested, even if an application did not present a scaled project option. In those cases, applicants must be able to demonstrate that the proposed projects are still viable and can be completed with the amount awarded.

Sharing of Application Information—The Department may share application information within the Department or with other Federal agencies if the Department determines that sharing is relevant to the respective program's objectives.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (1) be registered in SAM before submitting an application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by FTA. FTA may not make an award until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant. These requirements do not apply if the applicant is excepted from registration per 2 CFR 25.110. SAM registration takes approximately 3–5 business days, but FTA recommends allowing ample time, up to several weeks, for completion of all steps. For additional information on obtaining a unique entity identifier, please visit *https://www.sam.gov.*

4. Submission Dates and Times

Project proposals must be submitted electronically through *https://www.GRANTS.GOV* by 11:59 p.m. Eastern Time October 10, 2023. *GRANTS.GOV* attaches a time stamp to each application at the time of submission. Proposals submitted after the deadline will only be considered under extraordinary circumstances not under the applicant's control. Applications are time and date stamped by *GRANTS.GOV* upon successful submission. Mail, email, and fax submissions will not be accepted.

Within 48 hours after submitting an electronic application, the applicant should receive two email messages from *GRANTS.GOV:* (1) confirmation of successful transmission to *GRANTS.GOV;* and (2) confirmation of successful validation by *GRANTS.GOV.* FTA will then validate the application and will attempt to notify any applicants whose applications could not be validated. If the applicant does not receive confirmation of successful validation or a notice of failed validation or incomplete materials, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated and check the box on the supplemental form indicating this is a resubmission. An application that is submitted at the deadline and cannot be validated will be marked as incomplete, and such applicants will not receive additional time to re-submit.

FTA urges applicants to submit their applications at least 96 hours prior to the due date to allow time to receive the validation messages and to correct any problems that may have caused a rejection notification. *GRANTS.GOV* scheduled maintenance and outage times are announced on the *GRANTS.GOV* website at *https://www.GRANTS.GOV.* Deadlines will not be extended due to scheduled maintenance or outages.

Applicants are encouraged to begin the registration process on the *GRANTS.GOV* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. Registered applicants may still be required to take steps to keep their registration up to date before submissions can be made successfully: (1) registration in SAM is renewed annually and (2) persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *GRANTS.GOV* by the AOR to make submissions.

5. Funding Restrictions

See Section C of this NOFO for detailed eligibility requirements. FTA emphasizes that any comprehensive or site-specific planning projects funded through the TOD Pilot Program must be associated with an eligible transit

project, specifically a new fixed guideway project or a core capacity improvement project as defined in Federal transit statute, 49 U.S.C. 5309(a). Projects are not required to be funded through the Capital Investment Grants Program. Funds must be used only for the specific purposes requested in the application. Funds under this NOFO cannot be used to reimburse projects for otherwise eligible expenses incurred prior to FTA's announcement of project selections and issuance of pre-award authority. Refer to Section C.3., Eligible Projects, for information on activities that are allowable in this grant program. Allowable direct and indirect expenses must be consistent with the Government-wide Uniform Administrative Requirements and Cost Principles (2 CFR part 200) and FTA Circular 5010.1E.

6. Other Submission Requirements

Applicants are encouraged to identify scaled funding options in case insufficient funding is available to fund a project at the full requested amount. If an applicant indicates that a project is scalable, the applicant must provide an appropriate minimum funding amount that will fund an eligible project that achieves the objectives of the program and meets all relevant program requirements. The applicant must provide a clear explanation of how the project budget would be affected by a reduced award. FTA may award a lesser amount regardless of whether a scalable option is provided.

All applications must be submitted via the *GRANTS.GOV* website. FTA does not accept applications on paper or by fax, email, or other means. For information on application submission requirements, please see Section D.1., Address to Request Application and Section D.4., Submission Dates and Times.

FTA encourages applicants to:

- Demonstrate whether they have considered climate change, housing affordability, and environmental justice in terms of the transportation planning process or anticipated design components with outcomes that address climate change (*e.g.,* resilience or adaptation measures).
- Describe what specific climate change, affordable housing, or environmental justice activities have been incorporated, including whether a project supports a Climate Action Plan, whether an equitable development plan has been prepared, and whether tools such as the Environmental Protection Agency's (EPA) EJSCREEN at: *https://www.epa.gov/ejscreen* or DOT's Historically Disadvantaged Community tool at: *https://usdot.maps.arcgis.com/apps/dashboards/d6f90dfcc8b44525b04c7ce748a3674a* have been applied in project planning.
- Address how a project is related to housing or land use reforms to increase density, and helps to reduce climate impacts. The application should also describe specific and direct ways the project will mitigate or reduce climate change impacts including any components that reduce emissions, promote energy efficiency, incorporate electrification or low emission or zero emission vehicle infrastructure, increase resilience, recycle or redevelop existing infrastructure or if located in a floodplain be constructed or upgraded consistent with the Federal Flood Risk Management Standard, to the extent consistent with current law.

In addition, FTA will consider benefits to Environmental Justice (EJ) populations (E.O. 12898) when reviewing applications received under this program.

- Identify any EJ populations located within the proposed service area and describe anticipated benefits to that population(s) should the applicant receive a grant under this program. A formal EJ analysis that is typically included in transportation planning or environmental reviews is not requested.

E. Application Review Information

1. Criteria

Project proposals will be evaluated primarily on the responses provided in the supplemental form. Additional information may be provided to support the responses; however, any additional documentation must be directly referenced on the supplemental form, including the file name where the additional information can be found. Applications will be evaluated based on the quality and extent to which the following evaluation criteria are addressed.

a. Project Factors

Whether the project funded under the TOD Pilot Program addresses all six factors set forth in Section 20005(b)(2) of MAP–21, as amended by section 30009 of BIL:

i. enhances economic development, ridership, and other goals established during the project development and engineering processes;

ii. facilitates multimodal connectivity and accessibility;

iii. increases access to transit hubs for pedestrian and bicycle traffic;

iv. enables mixed-use development;

v. encourages affordable housing, particularly in areas with high incidence rates of homelessness;

vi. identifies infrastructure needs associated with the eligible project; and

vii. includes private sector participation.

b. Demonstrated Need

FTA will evaluate each project to determine the need for funding based on the following factors:

i. How the proposed work will advance TOD implementation in the corridor and region;

ii. Justification as to why Federal funds are needed for the proposed work;

iii. Extent to which the transit project corridor could benefit from TOD planning;

iv. Extent to which TOD planning will address climate change, affordable housing, and challenges facing environmental justice populations.

c. Strength of the Work Plan, Schedule and Process

FTA will evaluate the strength of the work plan, schedule, and process included in the application based on the following factors:

i. Potential state, local, or other impediments to the implementation of the comprehensive or site-specific plan, and how the workplan will address them;

ii. Extent to which the schedule contains sufficient detail, identifies all steps needed to implement the work proposed, and is achievable;

iii. The proportion of the project corridor covered by the work plan;

iv. Extent of partnerships, including how community stakeholders will engage and consider the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, and unhoused populations, who may face challenges accessing employment and other services.

v. The partnerships' technical capability to develop, adopt, and implement the comprehensive plans, based on FTA's assessment of the applicant's description of the policy formation, implementation, and financial roles of the partners, and the roles and responsibilities of proposed staff;

vi. Extent to which this TOD planning effort increases access for environmental justice populations and allows them to participate in this TOD planning effort;

vii. Extent to which the TOD planning effort increases affordable housing supply;

viii. Extent to which the comprehensive planning work will reduce greenhouse gas emissions and the effects of climate change;

ix. How the performance measures identified in the application relate to the

goals of the comprehensive planning work.

d. Funding Commitments

FTA will assess the status of local matching funds for the planning work. In general, the maximum Federal funding share for proposals is 80 percent. Proposals that support planning activities that assist parts of an urbanized area or rural area with lower population density or lower average income levels compared to the applicable area or adjoining areas will receive a Federal funding share of no less than 90 percent and applicants may request a share up to 100 percent (see the March 21, 2023, Dear Colleague letter: *https://www.transit.dot.gov/sites/fta.dot.gov/files/2023-03/Dear-Colleague-Letter-Non-Federal-Share-Waiver-for-Complete-Streets-Planning.pdf*). Proposals that address three or more activities related to the development of affordable housing (see section C.3.ii.v) will receive a Federal funding share of 100 percent.

Applications demonstrating that matching funds for the proposed comprehensive planning work are already committed will receive higher ratings from FTA on this factor. Proposed comprehensive planning projects for which matching funding sources have been identified, but are not yet committed, will be given lower ratings under this factor by FTA, as will proposed comprehensive planning projects for which in-kind contributions constitute the primary or sole source of match.

2. Review and Selection Process

An FTA technical evaluation committee will verify each proposal's eligibility and evaluate proposals based on the published evaluation criteria. FTA may request additional information from applicants, if necessary.

After completing the merit review, among projects of similar merit, DOT will prioritize projects that:

1. Significantly reduce greenhouse gas emissions in the transportation sector, such as through utilizing fiscally responsible land use; increasing the use of energy efficient modes of transportation like transit, rail, and active transportation; transitioning to clean vehicles and fuels, including through electrification; and/or incorporating carbon-reducing uses of the right-of-way or other carbon reduction strategies.

2. Incorporate evidence-based climate resilience measures or features, such as using best-available climate data sets, information resources, and decision-support tools (including USDOT and other federal resources) to assess the climate-related vulnerability and risk of the project; developing and deploying resilience solutions to address those risks; incorporating nature-based solutions; constructing or upgrading infrastructure using the Federal Flood Risk Management Standard, consistent with current law; and monitoring performance of climate resilience measures.

3. Address the disproportionate negative environmental impacts of transportation on disadvantaged communities; such as considering the benefits and burdens a project may create, and what communities would be most affected.

4. Avoid adverse environmental impacts to air or water quality, wetlands, and endangered species; such as through reduction in Clean Air Act criteria pollutants and greenhouse gases, improved stormwater management, or improved habitat connectivity.

5. Enable all people within the multimodal transportation networks to reach their desired destination safely, affordably, and with a comparable level of efficiency and ease.

6. Reconnect communities and mitigate neighborhood bifurcation through land bridges, caps, lids, linear parks, investments in walking, biking and rolling assets, and other solutions.

7. Address the disproportional impacts of crashes on underserved communities, including individuals with disabilities.

8. Expand access to critical community services such as education and healthcare through mass transit services.

9. Increase housing supply, particularly location-efficient affordable housing, locally-driven land use and zoning reform, rural main street revitalization, growth management, and transit-oriented development.

10. Address the unique challenges rural and Tribal communities face related to mobility and economic development, including isolation, transportation cost burden, and traffic safety (pursuant to DOT's Rural Opportunities to Use Transportation for Economic Success (ROUTES) initiative).

11. Encourage an increase in housing supply, particularly location-efficient affordable housing, locally-driven land use and zoning reform, rural main street revitalization, growth management, and transit-oriented development, pursuant to the White House Housing Supply Action Plan (*https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/16/president-biden-announces-new-actions-to-ease-the-burden-of-housing-costs/*).

12. Incorporate and support integrated land use, economic development, and transportation planning to improve the movement of people and goods and local fiscal health, and to facilitate greater public and private investments and strategies in land-use productivity, including rural main street revitalization or an increase in the production or preservation of location-efficient housing.

13. Provide the plan to conduct meaningful public involvement that includes underserved communities throughout the project lifecycle and uses a meaningful public involvement process. Additionally, consider the benefits and potential burdens a project may create, who would experience them, and how they may be measured over time, with a specific focus on how the benefits and potential burdens will impact underserved/disadvantaged communities.

14. Benefit underserved/Historically Disadvantaged Communities, including benefits that would accrue to underserved/Historically Disadvantaged Communities outside of the specific project area. Use DOT's Transportation Disadvantaged Census Tracts (arcgis.com) tool to identify whether the project impact area encompasses disadvantaged communities. A screenshot of the results is encouraged. Furthermore, applicants are encouraged to use equity screening tools such as DOT's STEAP (Screening Tool for Equity Analysis of Projects) (*https://hepgis.fhwa.dot.gov/fhwagis/buffertool/*) as a resource for developing equity assessments.

In support of Executive Order 14008, and consistent with OMB's Interim Guidance for the Justice40 Initiative, Historically Disadvantaged Communities include (a) certain qualifying census tracts, (b) any Tribal land, or (c) any territory or possession of the United States. Applicants are encouraged to use Climate & Economic Justice Screening Tool (CEJST), a new tool by the White House Council on Environmental Quality (CEQ), that aims to help Federal agencies identify disadvantaged communities as part of the Justice40 initiative to accomplish the goal that 40 percent of benefits from certain federal investment reach disadvantaged communities. Applicants should use CEJST as the primary tool to identify disadvantaged communities (Justice40 communities). Applicants are strongly encouraged to use the USDOT Equitable Transportation Community (ETC) Explorer to understand how their community or project area is

experiencing disadvantage related to lack of transportation investments or opportunities. Through understanding how a community or project area is experiencing transportation-related disadvantage, applicants are able to address how the benefits of a project will reverse or mitigate the burdens of disadvantage and demonstrate how the project will address challenges and accrued benefits. Use of the map tool(s) is optional; applicants may provide an image of the map tool outputs or, alternatively, consistent with OMB's Interim Guidance, applicants can supply quantitative, demographic data of their ridership demonstrating the percentage of their ridership that meets the criteria described in Executive Order 14008 for disadvantage. Examples of Historically Disadvantaged Communities that an applicant could address using geographic or demographic information include low income, high and/or persistent poverty, high unemployment and underemployment, racial and ethnic residential segregation, linguistic isolation, or high housing cost burden and substandard housing. Additionally, in support of the Justice40 Initiative, the applicant also should provide evidence of strategies that the applicant has used in the planning process to seek out and consider the needs of those traditionally disadvantaged and underserved by existing transportation systems. For technical assistance using the mapping tool, please contact *GMO@dot.gov.*

FTA will evaluate the proposals to determine the extent that the proposed project will address affordable housing needs, provide equitable housing choices for environmental justice populations, and avoid displacement of low-income households and existing small businesses.

Among the factors in determining the allocation of program funds, FTA may consider geographic diversity, diversity in the size of the grantees receiving funding, or the applicant's receipt of other competitive awards. Additionally, taking into consideration the findings of the technical evaluation committee, the FTA Administrator will determine the final selection of projects for program funding.

3. Integrity and Performance Review

Prior to making an award, FTA is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information Systems (FAPIIS) accessible through SAM. An applicant may review and comment on information about itself that a Federal awarding agency previously entered. FTA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in the Office of Management and Budget's Uniform Requirements for Federal Awards (2 CFR 200.205).

F. Federal Award Administration Information

1. Federal Award Notices

The FTA Administrator will announce the final project selections on the FTA website. Project recipients should contact their FTA Regional Offices for additional information regarding allocations for projects under the TOD Pilot Program.

i. Pre-Award Authority

FTA will issue specific guidance to recipients regarding pre-award authority at the time of selection. FTA does not provide pre-award authority for competitive funds until projects are selected and, even then, there are Federal requirements that must be met before costs are incurred. Funds under this NOFO cannot be used to reimburse applicants for otherwise eligible expenses incurred prior to FTA award of a Grant Agreement until FTA has issued pre-award authority for selected projects, or unless FTA has issued a ''Letter of No Prejudice'' for the project before the expenses are incurred. For more information about FTA's policy on pre-award authority, please see the most recent Apportionment Notice at: FTA Fiscal Year 2023 Apportionments, Allocations and Program Information | US Department of Transportation (*https://www.transportation.gov/bipartisan-infrastructure-law/regulations/2023-07761*).

ii. Grant Requirements

If selected, awardees will apply for a grant through FTA's Transit Award Management System (TrAMS). Recipients of TOD Pilot Program funds are subject to the grant requirements of the Section 5303 Metropolitan Planning program, including those of FTA Circular 8100.1C (*https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/program-guidance-metropolitan-planning-and-state-planning-a-0*) and Circular 5010.1E (*https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/award-management-requirements-circular-50101e*). All competitive grants, regardless of award amount, will be subject to the Congressional notification and release process. Technical assistance regarding these requirements is available from each FTA regional office.

Additionally, recipients of TOD Pilot Program funds are required to participate in a briefing on the USDOT-Build America Bureau, TIFIA/RRIF financing program.

2. Administrative and National Policy Requirements

i. Planning

FTA encourages applicants to notify the appropriate metropolitan planning organizations in areas likely to be served by the funds made available under this program. Selected projects must be incorporated into the unified planning work programs of metropolitan areas before they are eligible for FTA funding or pre-award authority.

ii. Standard Assurances

The applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances (*https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-assurances*) before receiving a grant if it does not have current certifications on file.

iii. Disadvantaged Business Enterprise

FTA requires that its recipients receiving planning, capital, and/or operating assistance that will award prime contracts exceeding $250,000 in FTA funds in a Federal fiscal year comply with Department of Transportation Disadvantaged Business Enterprise (DBE) program regulations (49 CFR part 26). Applicants should expect to include any funds awarded, excluding those to be used for vehicle procurements, in setting their overall DBE goal.

iv. Civil Rights and Title VI

As a condition of a grant award, grant recipients must demonstrate that the recipient has a plan for compliance with civil rights obligations and nondiscrimination laws, including Title VI of the Civil Rights Act of 1964 and implementing regulations (49 CFR part 21), the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act, all other civil rights requirements, and accompanying regulations. This should include a current Title VI plan, completed Community Participation Plan, and a plan to address any legacy infrastructure or facilities that are not compliant with ADA standards. DOT's and FTA's Office of Civil Rights may work with awarded grant recipients to ensure full compliance with Federal civil rights requirements.

v. Performance and Program Evaluation

Recipients and subrecipients are also encouraged to incorporate program evaluation including associated data collection activities from the outset of their program design and implementation to meaningfully document and measure their progress towards meeting an agency priority goal(s). Title I of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), (Public Law 115–435) urges Federal awarding agencies and Federal assistance recipients and subrecipients to use program evaluation as a critical tool to learn, to improve equitable delivery, and to elevate program service and delivery across the program lifecycle. Evaluation means ''an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency'' (5 U.S.C. 311). Credible program evaluation activities are implemented with relevance and utility, rigor, independence and objectivity, transparency, and ethics (OMB Circular A–11, Part 6, Section 290).

For grant recipients receiving an award, evaluation costs are allowable costs (either as direct or indirect), unless prohibited by statute or regulation, and such costs may include the personnel and equipment needed for data infrastructure and expertise in data analysis, performance, and evaluation (2 CFR part 200).

3. Reporting

Post-award reporting requirements include submission of Federal Financial Reports and Milestone Progress Reports in FTA's electronic grants management system on a quarterly basis. Applicants should include any goals, targets, and indicators referenced in their application to the project in the Executive Summary of the TrAMS application. Awardees must also submit copies of the substantial deliverables identified in the work plan to the FTA regional office at the corresponding milestones.

As part of completing the annual certifications and assurances required of FTA grant recipients, a successful applicant must report on the suspension or debarment status of itself and its principals. If the award recipient's active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of an award made pursuant to this Notice, the recipient must comply with the Recipient Integrity and Performance Matters reporting requirements described in appendix XII to 2 CFR part 200.

It is the policy of the United States to strengthen the security and resilience of its critical infrastructure against both physical and cyber threats. Each applicant selected for Federal funding under this notice must demonstrate, prior to the signing of the grant agreement, effort to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the project. Projects that have not appropriately considered and addressed physical and cyber security and resilience in their planning, design, and project oversight, as determined by the Department and the Department of Homeland Security, will be required to do so before receiving funds for construction, consistent with Presidential Policy Directive 21—Critical Infrastructure Security and Resilience and the National Security Presidential Improving Cybersecurity for Critical Infrastructure Control Systems.

As expressed in Executive Order 14005, 'Ensuring the Future Is Made in All of America by All of America's Workers' (86 FR 7475), the executive branch should maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. Funds made available under this notice are subject to the domestic preference requirements:

(a) Except as provided in 49 CFR 661.7 and 661.11, no funds may be obligated by FTA for a grantee project unless all iron, steel, manufactured products, and construction materials used in the project are produced in the United States.

(b) All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

(c) The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components.

(d) For a manufactured product to be considered produced in the United States:

(1) All of the manufacturing processes for the product must take place in the United States; and

(2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

The Department expects all applicants to comply with that requirement.

G. Federal Awarding Agency Contacts

For program-specific questions, please contact April McLean-McCoy, Office of Planning and Environment, (202) 366–7429, email: *April.McLeanMcCoy@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS). Any addenda that FTA releases on the application process will be posted at *https://www.transit.dot.gov/TODPilot.* To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact FTA directly, rather than through intermediaries or third parties. FTA staff may also conduct briefings on the FY 2023 competitive grants selection and award process upon request.

For issues with GRANTS.GOV, please contact GRANTS.GOV by phone at 1–800–518–4726 or by email at *support@grants.gov.* Contact information for FTA's regional offices can be found on FTA's website at *https://www.transit.dot.gov.*

H. Other Program Information

This program is not subject to Executive Order 12372,

''Intergovernmental Review of Federal Programs.''

Nuria I. Fernandez,

Administrator.

[FR Doc. 2023–16894 Filed 8–7–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket Number OST–2023–0115]

Agency Information Collection Activity; Notice of Request for Approval To Collect New Information: Safe Maritime Transportation System (SafeMTS)—Voluntary Near-Miss Incident Reporting and Analysis System

AGENCY: Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology (OST–R), U.S. Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of Title 44 of the U.S. Code (Paperwork Reduction Act of 1995), this notice announces the intention of BTS to request the Office of Management and Budget (OMB) to approve a new data collection: SafeMTS—Voluntary Near-Miss Reporting and Analysis System.

DATES: Written comments should be submitted by October 10, 2023.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments by only one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the instructions for sending your comments electronically. Docket Number: OST–2023–0115.
- *Mail:* Docket Services, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to mail address above between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov,* and follow the online instructions for accessing the docket, or go to the street address listed above.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Allison Fischman, Office of Safety Data and Analysis, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology, U.S. Department of Transportation, RTS–35, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, *allison.fischman@dot.gov,* (202)-748–0546.

SUPPLEMENTARY INFORMATION:

In August 2022, the Maritime Administration's (MARAD) Office of Safety and BTS signed an Interagency Agreement (IAA) to develop and implement SafeMTS, a voluntary program for confidential reporting of 'near-misses' occurring on vessels within the Maritime Transportation System (MTS). The SafeMTS program provides a trusted, proactive means for the maritime industry to report sensitive and proprietary safety information, and to identify early warnings of safety problems and potential safety issues by uncovering hidden, at-risk conditions not previously exposed from analysis of reportable accidents and incidents. Companies participating in SafeMTS are voluntarily submitting safety data. There is no regulatory requirement to submit such data.

The scope of SafeMTS includes a broad range of data categories to promote safe operations and appropriate risk management, which adds a learning component to assist the maritime industry in achieving improved safety performance. BTS will be the repository for the data and will analyze and aggregate information proffered under this program. BTS will publish aggregated analyses providing information on potential causal factors and trends or patterns before safety is compromised and affording continuous improvement opportunities by focusing on repairing impediments to safety. This information collection is necessary to aid MARAD, the maritime industry, and other stakeholders in identifying safety trends and causes of near-miss incidents.

Title: SafeMTS—Near-Miss Reporting and Analysis Program for the Maritime Transportation System.

OMB Control Number: Not yet known.

Type of Request: New collection.

Affected Public: Businesses in the maritime industry that involve ownership or operation of vessels.

Number of Potential Responses: One hundred, submitted on a quarterly basis.

Estimated Total Annual Burden: 400 hours.

Abstract: The Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) (44 U.S.C. 3501 note), can provide strong confidentiality protection for information acquired for statistical purposes under a pledge of confidentiality. CIPSEA guidance from the Office of Management and Budget advises that a non-statistical agency or unit (MARAD) that wishes to acquire information with CIPSEA protection may consider entering into an agreement with a Federal statistical agency or unit (BTS). BTS and MARAD have determined that it is in the public interest to collect and process near-miss incident related data under a pledge of confidentiality for statistical purposes only.

Working with subject matter experts, BTS will then aggregate and further analyze these reports to identify potential causal factors and trends. All data reviewers would be subject to nondisclosure requirements mandated by CIPSEA. The results of these aggregated analyses will be distributed by BTS through publications, meetings, and other forms. Periodic industry meetings may be scheduled by MARAD or industry to discuss the data analysis and trend results, as well as share ideas and process improvements for preventing recurrence.

In August 2022, BTS and MARAD signed an IAA to develop and implement SafeMTS, a voluntary program for confidential reporting of 'near-misses' occurring on vessels. The goal of the voluntary near-miss reporting system is to provide BTS with essential information about accident precursors and other hazards. Under the program, BTS will develop and publish aggregate analyses that the industry and all MTS stakeholders can use—in conjunction with incident reports and other sources of information—to reduce safety and environmental risks and continue building a more robust safety culture within the maritime industry.

BTS, within the U.S. Department of Transportation (U.S. DOT), is an objective supplier of statistically sound baseline, contextual, and trend information used to shape

transportation policy and investment decisions across the United States. BTS is responsible for providing timely, accurate, and reliable information on U.S. passenger and freight transportation systems and the impact on the economy, society, and the environment. Further, BTS has experience developing and administering near-miss safety data collection programs for transportation and offshore energy sectors. As a federal statistical agency, BTS has the authority to collect data confidentially for statistical purposes under CIPSEA, which allows the program to overcome legal concerns among companies about sharing sensitive near-miss and safety data.

There is currently no reporting regime in place for maritime industry near-miss or safety incidents and other non-casualty/reportable safety matters. Marine casualties and many other incidents are reportable via separate regulations under either OSHA (Occupational Safety and Health Administration) or USCG (U.S. Coast Guard) jurisdiction. However, near-miss reporting is not required under current regulations, and no industrywide database of near-miss events exists for the maritime industry. A consolidated database of near-miss incident data would allow for analysis and dissemination of key findings to the industry for use in advancing maritime transportation safety.

The SafeMTS program, established by MARAD and BTS as a joint program, aims to fill this gap by establishing a confidential safety data system to collect and analyze voluntarily reported, safety-related data from the maritime industry to advance marine transportation safety. A broad set of existing data will be captured from industry partners and analyzed to identify critical safety-related trends that could prevent incidents or identify otherwise non-correlated events. With a broad set of data that includes protection from discovery as mandated by industry and robust data analytics, potential hazards of maritime operations can be identified and shared across the industry so corrective actions can be taken to improve safety. The benefit of data analytics in this area has been discussed in numerous studies, National Academies publications, reports, and articles for over two decades. This program will provide MARAD, in partnership with industry, with the ability to identify critical safety issues and concerns and leverage this information to advance maritime safety.

Respondents who report near-miss incidents will be asked to submit their data and pertinent supplemental information. Respondents will submit the report electronically to BTS. Respondents will be asked to provide information such as: time and location of the event; a short description of the event and operating conditions that existed at the time of the event; contributing factors to the event; results of an investigation or safety analysis report; any corrective actions taken as a result of the event; and any other information that might be useful in determining ways to prevents such events from occurring.

Data Confidentiality Provisions: The confidentiality of near miss and safety event information submitted to BTS is protected under the BTS confidentiality statute (49 U.S.C. 6307) and the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018 (Pub. L. 115–435, Title III of the Foundations for Evidence-Based Policymaking Act of 2018). In accordance with these confidentiality statutes, only aggregated and non-identifying data will be made publicly available by BTS through its reports for statistical purposes only. BTS will not release to information that might reveal the identity of individuals or organizations mentioned in event notices or reports without explicit consent of the respondent and any other affected entities.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of BTS's functions; (2) the accuracy of the estimated burden; (3) ways for BTS to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

Allison Fischman,

Acting Office Director.

[FR Doc. 2023–16865 Filed 8–7–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. OFAC is also publishing updates to the identifying information of three persons currently included on the SDN List.

DATES: See Supplementary Information section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

A. On July 20, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals:

1. IVANOVA, Tatyana Grigoryevna, Russia; Kyrgyzstan; DOB 02 May 1975; nationality Russia; Gender Female (individual) [RUSSIA–EO14024].

Designated pursuant to sections 1(a)(i) of Executive Order 14024 of April 15, 2021, ''Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation,'' 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021) (E.O. 14024) for operating or having operated in the electronics sector of the Russian Federation economy.

2. CVETIC, Ivan, Serbia; DOB 29 Apr 1976; POB Serbia; nationality Serbia; Gender Male; Passport 014236438 (Serbia) expires 20 May 2029 (individual) [RUSSIA–EO14024] (Linked To: LIMITED LIABILITY COMPANY AK MICROTECH).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of Limited Liability Company AK Microtech, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Entities:

1. SCIENTIFIC PRODUCTION COMPANY OPTOLINK (a.k.a. LIMITED LIABILITY COMPANY RESEARCH AND PRODUCTION COMPANY OPTOLINK; a.k.a. LLC RPC OPTOLINK; a.k.a. NPK OPTOLINK LLC; a.k.a. OOO NPK OPTOLINK; a.k.a. OPTOLINK RPC LLC; a.k.a. SPC OPTOLINK), 6A Sosnovaya Alley, Building 5, Zelenograd, Moscow 124489, Russia; Pr-d 4806 d. 5, g. Zelenograd, Moscow 124498, Russia; Saratov, Russia; Arzamas, Russia; Organization Established Date 18 Jul 2001; Tax ID No. 7735105059 (Russia); Registration Number 1027700040719 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy, and pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

2. AK SYSTEMS (a.k.a. AK SISTEMS), ul. Gorbunova d. 2, str. 3, et 5 pom. II kom 7, Moscow 121596, Russia; Tax ID No. 7731342210 (Russia); Registration Number 1177746022398 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

3. JOINT STOCK COMPANY COMPEL (a.k.a. ''AO KOMPEL''), ul. Novokhokhlovskaya d. 23, str. 1, Moscow 109052, Russia; Pr-kt Volgogradskii d. 28A, pom I et 3 kom 6, Moscow 109316, Russia; Bolshoi pr-t V.O., 18, Saint Petersburg, Russia; K. Marksa pr-t, 57, Novosibirsk, Russia; Tax ID No. 7713005406 (Russia); Registration Number 1027700032161 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

4. KOMPONENTA AO (a.k.a. KOMPONENTA INC), ul. Vyborgskaya d. 16, str. 1, pom. X kom 2, Moscow 125212, Russia; Tax ID No. 7743669411 (Russia); Registration Number 1077763331436 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

5. LIMITED LIABILITY COMPANY FOREPOST TRADING (a.k.a. FOREPOST TRADING LLC), ul. Generala Antonova d. 3A, Moscow 117342, Russia; Tax ID No. 7719667861 (Russia); Registration Number 1087746148962 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

6. LLC ALTRABETA, Per. 1–I Verkhnii d. 6, lit. A, office 211, Saint Petersburg 194292, Russia; Tax ID No. 7802646313 (Russia); Registration Number 1177847399498 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

7. LLC IQ COMPONENTS (a.k.a. AI KYU KOMPONENTS), ul. Salova d. 45, lit. Ya, pomeshch. 1N komnata 35, Saint Petersburg 192102, Russia; Tax ID No. 7816691806 (Russia); Registration Number 1197847052963 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

8. LLC ONELEK (a.k.a. LLC ONELEC), Moskovskiy pr, 19 korpus 10, pomeshchenie 2, Cheboksary, Russia; ploshchad Zhuravleva, d. 10, str 3, ofis 33, Moscow, Russia; ul. Bolshaya Tatarskaya d. 21, str. 8, komnata 213, Moscow 115184, Russia; Tax ID No. 7709988048 (Russia); Registration Number 1177746113709 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

9. LLC SPETSELSERVIS (a.k.a. SPECELSERVIS), ul Kakhovka, d. 20, str. 2 k. 56, Moscow 117461, Russia; ul. Elektrozavodskaya, d. 24, of. A214, A215, Moscow 107023, Russia; ul. Sushchevskaya d. 21, pod. 2, Moscow 127055, Russia; Tax ID No. 7727191914 (Russia); Registration Number 1037739375024 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

10. NPF–RADIOTEKHKOMPLEKT AO (a.k.a. ZAKRYTOE AKTSIONERNOE OBSHCHESTVO NPF RADIOTEKHKOMPLEKT; a.k.a. ZAO NPF RADIOTEKHKOMPLEKT), ul. 1-ya Khutorskaya d. 14, kv. 48, Moscow 127287, Russia; Tax ID No. 7714741462 (Russia); Registration Number 1087746661925 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

11. SATURN EK OOO, Pr-d 6–I Predportovyi d. 4, lit. S, pomeshch. 42, Saint Petersburg 196240, Russia; Tax ID No. 7806525158 (Russia); Registration Number 1147847154949 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

12. STAUT COMPANY LIMITED (a.k.a. STAUT CO LTD; a.k.a. STAUT DESIGN CENTER), Pr-kt Obukhovskoi Oborony d. 123A, pom. 20, Saint Petersburg 192029, Russia; ul. Moiseenko d. 41, lit. B, pomeshch. #4, floor 2, office 1, Saint Petersburg 191144, Russia; Tax ID No. 7811401214 (Russia); Registration Number 1089847105259 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

13. JOINT STOCK COMPANY SCIENCE RESEARCH INSTITUTE FOR PRECISE INSTRUMENTS (a.k.a. AKTSIONERNOE OBSHCHESTVO NAUCHNO ISSLEDOVATELSKI INSTITUT TOCHNYKH PRIBOROV; a.k.a. JOINT STOCK COMPANY RESEARCH INSTITUTE OF PRECISION INSTRUMENTS; a.k.a. ''AO NII TP''; a.k.a. ''JSC RIPI''), ul. Dekabristov, Vl 51, Moscow 127490, Russia; Target Type State-Owned Enterprise; Tax ID No. 7715784155 (Russia); Government Gazette Number 11482462 (Russia); Registration Number 1097746735481 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

14. JOINT STOCK COMPANY SPECIAL RESEARCH BUREAU OF MOSCOW POWER ENGINEERING INSTITUTE (a.k.a. AKTSIONERNOE OBSHCHESTVO OSOBOE KONSTRUKTORSKOE BYURO MOSKOVSKOGO ENERGETICHESKOGO INSTITUTA; a.k.a. ''AO OKB MEI''; a.k.a. ''JSC OKB MEI''), ul. Krasnokazarmennaya D. 14, Moscow 111250, Russia; Target Type State-Owned Enterprise; Tax ID No. 7722701431 (Russia); Government Gazette Number 02066983 (Russia); Registration Number 1097746729816 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

15. SPACE RESEARCH INSTITUTE RUSSIAN ACADEMY OF SCIENCES (a.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE NAUKI INSTITUT KOSMICHESKIKH ISSLEDOVANI ROSSISKOI AKADEMII NAUK; a.k.a. IKI RAN FGBU; a.k.a. ''IKI RAS''), Ul Profsoyuznaya, D 84/32, Moscow 117997, Russia; Tax ID No. 7728113806 (Russia); Government Gazette Number 02698692 (Russia); Registration Number 1027739475279 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

16. ALEKSINSKII KHIMICHESKII KOMBINAT (a.k.a. ALEKSINSKY CHEMICAL COMBINE; a.k.a. ALEKSINSKY CHEMICAL PLANT; a.k.a. ''AKHK''), pl. Pobedy D. 21, Aleksin 301361, Russia; Tax ID No. 7111003056 (Russia); Registration Number 1027100507510 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy, and pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

17. KAZANSKII GOSUDARSTVENNYI KAZENNYI POROKHOVOI ZAVOD (a.k.a. FEDERAL STATE ENTERPRISE KAZAN FEDERAL STATE GUNPOWDER PLANT; a.k.a. ''KGKPZ''), ul. Pervogo Maya D. 14, Kazan 420032, Russia; Tax ID No. 1656025681 (Russia); Registration Number 1031624002937 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

18. TAMBOVSKII POROKHOVOI ZAVOD (a.k.a. TAMBOV GUNPOWDER PLANT; a.k.a. TAMBOV POWDER PLANT; a.k.a.

''TPZ''), PR-kt Truda D.23, Kotovsk 393190, Russia; Registration ID 1026801010994 (Russia); Tax ID No. 6825000757 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

19. OPEN JOINT STOCK COMPANY RUSSIAN INSTITUTE OF RADIONAVIGATION AND TIME (a.k.a. ''JSC RIRT''), Pl. Rastrelli D. 2, Saint Petersburg 191124, Russia; Pr-kt Obukhovskoi Oborony D. 120, Lit. ets, Saint Petersburg 192012, Russia; 19 Staraya Basmannaya str., building 12, Moscow 105066, Russia; Organization Established Date 07 Sep 1956; Tax ID No. 7825507108 (Russia); Registration Number 1037843100052 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

20. BUDKER INSTITUTE OF NUCLEAR PHYSICS OF SIBERIAN BRANCH RUSSIAN ACADEMY OF SCIENCES (a.k.a. BUDKER INSTITUTE OF NUCLEAR PHYSICS OF SB RAS; a.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE NAUKI INSTITUT YADERNOL FIZIKI IM. G.I. BUDKERA SIBIRSKOGO OTDELENIYA ROSSISKOI AKADEMII NAUK; f.k.a. INSTITUTE OF NUCLEAR PHYSICS OF THE SIBERIAN BRANCH OF THE USSR ACADEMY OF SCIENCE; a.k.a. IYAF SO RAN FGBU; a.k.a. ''BINP SB RAS''), Prospkt Akademika Lavrentyeva D 11, Novosibirsk 630090, Russia; Organization Established Date 19 Jul 1994; Tax ID No. 5408105577 (Russia); Government Gazette Number 03533872 (Russia); Registration Number 1025403658136 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

21. INSTITUTE OF LASER PHYSICS OF THE SIBERIAN BRANCH OF THE RUSSIAN ACADEMY OF SCIENCES (a.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE NAUKI INSTITUT LAZERNOI FIZIKI SIBIRSKOGO OTDELENIYA ROSSISKOI AKADEMII NAUK; a.k.a. ILF SO RAN FGBU; a.k.a. INSTITUTE OF LASER PHYSICS OF THE SIBERIAN BRANCH OF THE RAS; a.k.a. INSTITUTE OF LASER PHYSICS SB RAS; a.k.a. ''ILP SB RAS''), 15B, prospekt Akademika Lavrenteva, Novosibirsk, Novosibirskaya Obl. 630090, Russia; Organization Established Date 06 Aug 1991; Tax ID No. 5408105471 (Russia); Government Gazette Number 11822515 (Russia); Registration Number 1025403665572 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

22. P.L. KAPITZA INSTITUTE FOR PHYSICAL PROBLEMS, RUSSIAN ACADEMY OF SCIENCES (a.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE NAUKI INSTITUT FIZICHESKIKH PROBLEM IM. P.L. KAPITSY ROSSISKOI AKADEMII NAUK; f.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE NAUKI INSTITUT FIZICHESKIKH PROBLEM IM. P.L. KAPITSY ROSSISKOI AKADEMII NAUK BU; a.k.a. ''IFP RAN FGBU''; a.k.a. ''KIPP''), Kapitaza Institute, 2 ul. Kosygina, Moscow 119334, Russia; Organization Established Date 31 Jan 1994; Tax ID No. 7736039850 (Russia); Government Gazette Number 02699338 (Russia); Registration Number 1037739409311 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

23. JOINT STOCK COMPANY URAL MINING AND METALLURGICAL COMPANY (a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO URALSKAYA GORNO METALLURGICHESKAYA KOMPANIYA; a.k.a. ''UMMC''), 1, prospekt Uspenski, Verkhnyaya Pyshma, Sverdlovsk region 624091, Russia; Organization Established Date 20 Oct 1999; Tax ID No. 6606013640 (Russia); Government Gazette Number 52306330 (Russia); Registration Number 1026600727713 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

24. JOINT STOCK COMPANY URALELEKTROMED (a.k.a. AKTSIONERNOE OBSHCHESTVO URALELEKTROMED; f.k.a. OPEN JOINT STOCK COMPANY URALELECTROMED; a.k.a. URALELEKTROMED AO; a.k.a. URALELEKTROMED JSC; a.k.a. URALELEKTROMED PUBLIC JOINT STOCK COMPANY), 1, Lenin Street, Lugovskoy 624091, Russia; 1, prospekt Uspenski Verkhnyaya Pyshma, Sverdlovsk region 624091, Russia; Organization Established Date 23 Dec 1992; Tax ID No. 6606003385 (Russia); Government Gazette Number 00194429 (Russia); Registration Number 1026600726657 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

25. JOINT STOCK COMPANY SCIENTIFIC PRODUCTION ENTERPRISE RESEARCH AND DESIGN INSTITUTE OF WELL LOGGING (a.k.a. JOINT STOCK COMPANY NPP VNIIGIS; a.k.a. ''AO NPP VNIIGIS''), 1, ul. Gorkogo Oktyabrski, Bashkortostan Republic 452614, Russia; Organization Established Date 26 Dec 1995; Tax ID No. 0265013492 (Russia); Government Gazette Number 01423872 (Russia); Registration Number 1020201929439 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

26. FUND FOR DEVELOPMENT OF ENERGY COMPLEX ENERGY (a.k.a. FOND ENERGIA; a.k.a. FOUNDATION FACILITATION OF THE STRATEGIC DEVELOPMENT OF THE FUEL AND ENERGY COMPLEX ENERGY; a.k.a. ''FUND ENERGY''), Ul. 1–YA Frunzenskaya D. 6, Moscow 119146, Russia; Organization Established Date 28 May 2008; Tax ID No. 7704274995 (Russia); Registration Number 1087799025269 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

27. JOINT STOCK COMPANY LOCKO BANK, Leningrad Prosp, D 39 building 80, Moscow 125167, Russia; SWIFT/BIC CLOKRUMM; website *http://www.lockobank.ru;* Organization Established Date 1994; Target Type Financial Institution; Tax ID No. 7750003943 (Russia); Identification Number 3QL4V4.99999.SL.643 (Russia); Legal Entity Number 253400BCBR616MTH6594 (Russia); Registration Number 1057711014195 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

28. JOINT STOCK COMPANY COMMERCIAL BANK SOLIDARNOST, Ul. Kubysheva D. 90, Samara 443099, Russia; SWIFT/BIC SLDRRU3S; website *www.solid.ru;* Organization Established Date 23 Oct 1990; Target Type Financial Institution; Tax ID No. 6316028910 (Russia); Identification Number BE8HW8.99999.SL.643 (Russia); Legal Entity Number 253400V4HY4PH2NE7E79; Registration Number 1026300001848 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

29. UNISTREAM COMMERCIAL BANK JSC (a.k.a. AO KB YUNISTRIM), Ul. Verkhnyaya Maslovka D. 20, Str. 2, Moscow 127083, Russia; SWIFT/BIC UMTNRUMM; website *www.unistream.ru;* Organization Established Date 31 May 2006; Target Type Financial Institution; Tax ID No. 7750004009 (Russia); Identification Number 2S1RNS.99999.SL.643 (Russia); Registration Number 1067711004437 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

30. JOINT STOCK COMPANY PETERSBURG SOCIAL COMMERCIAL BANK (a.k.a. JSC BANK PSCB; f.k.a. PETERSBURG SOCIAL COMMERCIAL BANK OPEN JOINT STOCK COMPANY), Ul. Shpalernaya D. 42, Saint Petersburg 191123, Russia; Moscow, Russia; SWIFT/BIC PSOCRU2P; alt. SWIFT/BIC PSOCRUA1; website *http://www.pscb.ru;* Organization Established Date 29 Oct 1993; Target Type Financial Institution; Tax ID No. 7831000965 (Russia); Identification Number 3QL4V4.99999.SL.643 (Russia); Legal Entity Number 25340080MLWXGXT26935; Registration Number 1027800000227 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

31. JSC TINKOFF BANK (a.k.a. KHIMMASHBANK; f.k.a. TINKOFF CREDIT SYSTEMS BANK CLOSED JOINT STOCK COMPANY), Ul. 2nd Khutorskaya, 38A, building 26, Moscow 127287, Russia; SWIFT/BIC TICSRUMM; website *www.tinkoff.ru;* Target Type Financial Institution; Tax ID No. 7710140679 (Russia); Identification Number TQWL8F.99999.SL.643 (Russia); Legal Entity Number 2534000KL0PLD6KG7T76; Registration Number 1027739642281 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

32. AMEGINO FZE, T1–9F–6D, RAKEZ Amenity Center, Al Hamra Industrial Zone-FZ, Ras Al Khaimah, United Arab Emirates; Organization Established Date 04 May 2017; Registration Number 5014362 (United Arab Emirates) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy and pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

33. A.M. PROKHOROV GENERAL PHYSICS INSTITUTE RUSSIAN ACADEMY OF SCIENCES (a.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENNIE NAUKI FEDERALNY ISSLEDOVATELSKI TSENTR INSTITUT OBSHCHEI FIZIKI IM. A.M. PROKHOROVA ROSSISKOI AKADEMII NAUK; a.k.a. PROKHOROV GENERAL PHYSICS INSTITUTE OF RAS; a.k.a. PROKHOROV GENERAL PHYSICS INSTITUTE OF THE RUSSIAN ACADEMY OF SCIENCES; a.k.a. RUSSIAN ACADEMY OF SCIENCES—ALEXANDR MIKHAILOVICH PROKHOROV GENERAL PHYSICS INSTITUTE; a.k.a. ''GPI RAS''; a.k.a. ''IOF RAN''; a.k.a. ''IOF RAN FGBU''), d. 38, ul. Vavilova Moscow, Moscow 119991, Russia; Organization Established Date 14 Sep 1993; Tax ID No. 7736029700 (Russia); Government Gazette Number 02700457 (Russia); Registration Number 1027700378595 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

34. OSIPYAN INSTITUTE OF SOLID STATE PHYSICS OF THE RUSSIAN ACADEMY OF SCIENCES (f.k.a. FEDERAL STATE BUDGETARY INSTITUTION OF SCIENCE INSTITUTE OF SOLID STATE PHYSICS N.A. YU. A. OSIPYAN OF THE RUSSIAN ACADEMY OF SCIENCES; f.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE NAUKI INSTITUT FIZIKI TVERDOGO TELA ROSSISKOI AKADEMII NAUK BU; a.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE NAUKI INSTITUT FIZIKI TVERDOGO TELA ROSSISKOI AKADEMII NAUK FGBU; a.k.a. INSTITUTE OF SOLID STATE PHYSICS OF THE ACADEMY OF SCIENCES SSSR; a.k.a. ''IFTT RAN''; a.k.a. ''ISSP RAS''), d. 2, ul. Akademika Osipyana Chernogolovka, Moskovskaya Obl 142432, Russia; Organization Established Date 12 Mar 1998; Tax ID No. 5031003120 (Russia); Government Gazette Number 02699796 (Russia); Registration Number 1025003915243 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

35. FEDERAL STATE BUDGETARY INSTITUTION OF SCIENCE FEDERAL RESEARCH CENTER KAZAN SCIENTIFIC CENTER OF THE RUSSIAN ACADEMY OF SCIENCES (f.k.a. FEDERAL GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE NAUKI KAZANSKI NAUCHNY TSENTR ROSSISKOI AKADEMII NAUK UCH; a.k.a. FEDERAL RESEARCH CENTER KAZAN SCIENTIFIC CENTER OF THE RUSSIAN ACADEMY OF SCIENCES; a.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE NAUKI FEDERALNY ISSLEDOVATELSKI TSENTR KAZANSKI NAUCHNY TSENTR ROSSISKOI AKADEMII NAUK; a.k.a. FITS KAZNTS RAN; a.k.a. FITS KAZNTS RAN FGBU; a.k.a. FRC KAZSC RAS), d. 2/31, ul. Lobachevskogo Kazan, Tatarstan Republic 420111, Russia; Organization Established Date 22 Apr 1991; Tax ID No. 1655022127 (Russia); Government Gazette Number 33859469 (Russia); Registration Number 1021602842359 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

36. JOINT STOCK COMPANY GAZPROM AVTOMATIZATSIYA (a.k.a. GAZAVTOMATIKA; a.k.a. OTKRYTOE AKTSIONERNOE OBSCHESTVO GAZPROM AVTOMATIZATSIYA; a.k.a. PUBLICHNOE AKTSIONERNOE OBSCHESTVO GAZPROM AVTOMATIZATSIYA), 25, Savvinskaya Naberezhnaya, Moscow 119435, Russia; d. 3 pom. VI kom. 21, ul. Kirpichnye Vyemki Moscow, Moscow 117405, Russia; Organization Established Date 05 Aug 1993; Tax ID No. 7704028125 (Russia); Government Gazette Number 00159093 (Russia); Registration Number 1027700055360 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

37. LIMITED LIABILITY COMPANY AK MICROTECH (a.k.a. AK MIKROTEKH; a.k.a. ''LLC AKM''), Sh. Varshavskoe d. 118, k. 1, floor 19 kom 3, Moscow 117587, Russia; Tax ID No. 7731339867 (Russia); Registration Number 5167746451648 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

38. MCI TRADING DOO BEOGRAD PALILULA (a.k.a. MCI DOO BEOGRAD), Mirocka 1⁄1, Belgrade 11060, Serbia; Tax ID No. 104545548 (Serbia); Registration Number 20186909 (Serbia) [RUSSIA–EO14024] (Linked To: LIMITED LIABILITY COMPANY AK MICROTECH).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of Limited Liability Company AK Microtech, a person whose property and interests in property are blocked pursuant to E.O. 14024.

39. LIMITED LIABILITY COMPANY TYUMEN PETROLEUM RESEARCH CENTER (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU TYUMENSKI NEFTYANOI NAUCHNY TSENTR; a.k.a. TNNTS LIMITED LIABILITY COMPANY; a.k.a. TPRC LIMITED LIABILITY COMPANY), d. 42, ul. Maksima Gorkogo Tyumen, Tyumen region 625048, Russia; Organization Established Date 30 Oct 2000; Tax ID No. 7202157173 (Russia); Government Gazette Number 5544280 (Russia); Registration Number 1077203000434 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

40. JOINT STOCK COMPANY NEFTEGAZAVTOMATIKA (a.k.a. NEFTEGAZAVTOMATIKA AO (Cyrillic: НЕФТЕГАЗАВТОМАТИКА АО)), Shosse Varshavshoe 39, Moscow 113105, Russia; Organization Established Date 19 Aug 1992; Tax ID No. 7724230019 (Russia); Registration Number 1037739224973 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

41. LIMITED LIABILITY COMPANY OKTANTA (a.k.a. OKTANTA NDT), Ul. Mayakovskogo D. 22, Kv. 34, Saint Petersburg 191014, Russia; Organization Established Date 05 May 2010; Tax ID No. 7841425639 (Russia); Registration Number 1107847143557 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

42. LIMITED LIABILITY COMPANY PERM OIL MACHINE COMPANY, Ul. Teknicheskaya D. 5, Perm 614070, Russia; Organization Established Date 11 Jun 1996; Tax ID No. 7727653358 (Russia); Registration Number 1087746698137 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

43. LIMITED LIABILITY COMPANY PROIZVOSTVENNAYA KOMMERCHESKAYA FIRMA GAZNEFTEMASH (a.k.a. GAZNEFTEMASH LLC; a.k.a. PKF GAZNEFTEMASH), Km Kievskoe Shosse 22–1, Domovladenie 4, Str. 5, Moscow 108811, Russia; Organization Established Date 02 Jun 2008; Tax ID No. 7727653358 (Russia); Registration Number 1087746698137 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

44. LIMITED LIABILITY COMPANY RUSTMASH, Ul. Lenina D. 1, Korp. 120, Taldom 141960, Russia; Organization

Established Date 22 Jul 2010; Tax ID No. 5078019486 (Russia); Registration Number 1105010001909 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

45. ARSENAL MACHINE BUILDING PLANT OPEN JOINT STOCK COMPANY (a.k.a. ARSENAL MACHINE BUILDING PLANT OJSC; a.k.a. MZ ARSENAL OAO; a.k.a. MZ ARSENAL PAO; a.k.a. OTKRYTOE AKTSIONERNOE OBSCHESTVO MASHINOSTROITELNYI ZAVOD ARSENAL), 1–3, Komsomola Street, Saint Petersburg 195009, Russia; Tax ID No. 7804040302 (Russia); Government Gazette Number 07541733 (Russia); Registration Number 1027802490540 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

46. JOINT STOCK COMPANY EXPERIMENTAL DESIGN BUREAU FAKEL (a.k.a. AKTSIONERNOE OBSHCHESTVO OPYTNOE KONSTRUKTORSKOE BYURO FAKEL; a.k.a. AO OKB FAKEL; a.k.a. JSC EDB FAKEL), Moskovskii PR D. 181, Kaliningrad 236001, Russia; Target Type State-Owned Enterprise; Tax ID No. 3906390669 (Russia); Government Gazette Number 44161069 (Russia); Registration Number 1203900004670 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

47. JOINT STOCK COMPANY RESEARCH AND PRODUCTION CORPORATION PRECISION SYSTEMS AND INSTRUMENTS (a.k.a. AKTSIONERNOE OBSHCHESTVO NAUCHNO PROIZVODSTVENNAYA KORPORATSIYA SISTEMY PRETSIZIONNOGO PRIBOROSTROENIYA; a.k.a. JSC RESEARCH AND PRODUCTION CORPORATION PRECISION SYSTEMS AND INSTRUMENTS; a.k.a. SCIENTIFIC AND INDUSTRIAL CORPORATION PRECISION INSTRUMENT SYSTEMS; a.k.a. ''AO NPK SPP''; a.k.a. ''JSC RPC PSI''), ul. Aviamotornaya D. 53, Moscow 111024, Russia; Target Type State-Owned Enterprise; Tax ID No. 7722698108 (Russia); Government Gazette Number 07559035 (Russia); Registration Number 1097746629639 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

48. M.V. FRUNZE ARSENAL DESIGN BUREAU JOINT STOCK COMPANY (a.k.a. AKTSIONERNOE OBSHCHESTVO KONSTRUKTORSKOE BYURO ARSENAL IMENI M.V. FRUNZE; a.k.a. AO KB ARSENAL), ul. Komsomola, D.1–3, Saint Petersburg 195009, Russia; Target Type State-Owned Enterprise; Tax ID No. 7804588900 (Russia); Government Gazette Number 06506278 (Russia); Registration Number 1177847042229 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

49. LIMITED LIABILITY COMPANY ISHIMBAY SPECIALIZED CHEMICAL PLANT OF CATALYST (a.k.a. ''ISCPC LLC''), Ul. Levyi Bereg D. 6, Ishimbay 453203, Russia; Organization Established Date 26 Apr 2006; Tax ID No. 0261014551 (Russia); Registration Number 1060261010996 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

50. LIMITED LIABILITY COMPANY KNT KAT (a.k.a. ''KNT GROUP''), Ul. Kommunisticheskaya D. 116, Kv. 48, Sterlitamak 453100, Russia; Organization Established Date 26 Jul 2018; Tax ID No. 0268084396 (Russia); Registration Number 1180280043580 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

51. LIMITED LIABILITY COMPANY RN KAT, Ul. Tekhnicheskaya D. 32, Korpus 159, Pom. 2, Sterlitamak 453110, Russia; Organization Established Date 06 Aug 2018; Tax ID No. 0268084491 (Russia); Registration Number 1180280045725 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

52. LIMITED LIABILITY COMPANY STERLITAMAK CATALYST PLANT (a.k.a. STERLITAMAKSKII ZAVOD KATALIZATOROV; a.k.a. ''SZK OOO''), Ul. Tekhnicheskaya 32, Sterlitamak 453110, Russia; Organization Established Date 11 Feb 2004; Tax ID No. 0268033994 (Russia); Registration Number 1040203421378 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

53. AO NPO KURGANPRIBOR (Cyrillic: АО НПО КУРГАНПРИБОР) (a.k.a. AKTSIONERNOE OBSHCHESTVO NAUCHNOPROIZVODSTVENNOE OBEDINENIE KURGANPRIBOR (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО НАУЧНОПРОИЗВОДСТВЕННОЕ ОБЪЕДИНЕНИЕ КУРГАНПРИБОР); a.k.a. KURGANPRIBOR JSC), Ul. Yastrzhembskogo D. 41A, Kurgan 640007, Russia; Tax ID No. 4501129676 (Russia); Registration Number 1074501002839 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

54. JOINT STOCK COMPANY ASTROPHYSIKA NATIONAL CENTRE OF LASER SYSTEMS AND COMPLEXES (a.k.a. AKTSIONERNOE OBSHCHESTVO NATSIONALNIY TSENTR LAZERNYKH SISTEM I KOMPLEKSOV ASTROFIZIKA (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО НАЦИОНАЛЬНЫЙ ЦЕНТР ЛАЗЕРНЫХ СИСТЕМ И КОМПЛЕКСОВ АСТРОФИЗИКА); a.k.a. AO NTSLSK ASTROFIZIKA; a.k.a. GP NPO ASTROFIZIKA), Ul. Aleksandra Solzhenitsyna D. 27, Pomeshch. I, Moscow 109004, Russia; Tax ID No. 7733826256 (Russia); Registration Number 1127747254744 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

55. BASIS TRADE PROSOFT LLC (a.k.a. BAZIS TREID PROSOFT; a.k.a. ''BTPTRADE''), Per. Savvinskii B D. 16, Pom/Et I/1, Moscow 119435, Russia; Tax ID No. 7704345974 (Russia); Registration Number 1167746176883 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

56. LIMITED LIABILITY COMPANY SIAISI, B-r Andreya Tarkovskogo d. 9, kv. 13, Poselenie Vnukovskoe 108850, Russia; Tax ID No. 7728192029 (Russia); Registration Number 1157746095748 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

57. LLC RM DESIGN AND DEVELOPMENT (a.k.a. OSOO RM DIZAYN AND DEVELOPMENT; a.k.a. OSOO RM DIZAYN END DEVELOPMENT; a.k.a. RM DESIGN&DEVELOPMENT; a.k.a. RM DESIGNANDDEVELOPMENT; a.k.a. RM DIZAIN AND DEVELOPMENT OSOO), Chyngyza Atymatova Str., 303, Bishkek 720016, Kyrgyzstan; Organization Established Date 17 Mar 2022; Tax ID No. 01703202210110 (Kyrgyzstan) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

58. OOO RADIOTEKHSNAB (a.k.a. RADIOTECHSNAB), Kosa Petrovskaya d. 1, k. 1, lit. R, pomeshch. 32N, Saint Petersburg 197110, Russia; Tax ID No. 7813257380 (Russia); Registration Number 1167847310619 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

59. OSOO KARGOLAYN (a.k.a. CARGOLINE LLC), Str. Shabdan Baatyra 27/1, Bishkek 720001, Kyrgyzstan; Organization Established Date 25 Mar 2022; Tax ID No. 02503202210145 (Kyrgyzstan) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

60. OSOO PROGRESS LIDER (a.k.a. PROGRESS LEADER LLC), Skryabina 39/1, Bishkek 720001, Kyrgyzstan; Organization Established Date 25 Mar 2022; Tax ID No. 02503202210310 (Kyrgyzstan) [RUSSIA–EO14024] (Linked To: LIMITED LIABILITY COMPANY SIAISI).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or

services to or in support of Limited Liability Company Siaisi, a person whose property and interests in property are blocked pursuant to E.O. 14024.

61. REGION–PROF LLC, Profsoyuznaya ulitsa d. 108, Moscow 117437, Russia; ul. Akademika Volgina d. 33, Pom. I Kom 38 Et 3, Moscow 117437, Russia; Tax ID No. 7728599583 (Russia); Registration Number 1067759114675 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the electronics sector of the Russian Federation economy.

62. TECHNOLOGIES SYSTEMS AND COMPLEXES LIMITED (a.k.a. OOO TEKHNOLOGII SISTEMY I KOMPLEKSY; a.k.a. ''TSC LTD''), Per. Perevedenovskii d. 21, str. 13, floor 1, pomeshch. 10, Moscow 105082, Russia; Tax ID No. 7701922888 (Russia); Registration Number 1117746474010 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

63. ZAO GTME TEKHNOLOGII, Str. Fatyanova 43, Bishkek 720001, Kyrgyzstan; Organization Established Date 28 Jun 2022; Tax ID No. 02806202210325 (Kyrgyzstan) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

64. CLOSED JOINT STOCK COMPANY SUPERCONDUCTING NANOTECHNOLOGY (a.k.a. LIMITED LIABILITY COMPANY SUPERCONDUCTING NANOTECHNOLOGY; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU SVERKHPROVODNIKOVYE NANOTEKHNOLOGII; a.k.a. SCONTEL; a.k.a. SKONTEL AO; a.k.a. SKONTEL OOO), 5 str. 1 etazh 4 pom. I kom. 14, ul. Lva Tolstogo, Moscow 119021, Russia; Organization Established Date 19 Jan 2005; Tax ID No. 7704445168 (Russia); Government Gazette Number 19634279 (Russia); Registration Number 5177746003815 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

65. JOINT STOCK COMPANY TULA CARTRIDGE WORKS (a.k.a. TULA CARTRIDGE PLANT; a.k.a. TULAMMO; a.k.a. ''AO TPZ''), ul. Marata D. 47 B, Tula 300004, Russia; Tax ID No. 7105008338 (Russia); Registration Number 1027100507268 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

66. UMMC NONFERROUS METALS PROCESSING LIMITED LIABILITY COMPANY (a.k.a. LIMITED LIABILITY COMPANY UMMC NFMP; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU UGMK OTSM; a.k.a. UGMK OTSM OOO), Ul. Petrova D. 59, Lit. D., Verkhnyaya Pyshma 624092, Russia; str. 1 kab. 206, prospekt Uspenski, Verkhnyaya Pyshma, Sverdlovsk region 624091, Russia; Organization Established Date 04 May 2007; Tax ID No. 6606024709 (Russia); Government Gazette Number 81180857 (Russia); Registration Number 1076606001152 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

B. On August 3, 2023, OFAC updated the entry on the SDN List for the following persons, whose property and interests in property subject to U.S. jurisdiction continues to be blocked under the relevant sanctions authority listed below.

1. A.M. PROKHOROV GENERAL PHYSICS INSTITUTE RUSSIAN ACADEMY OF SCIENCES (a.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENNIE NAUKI FEDERALNY ISSLEDOVATELSKI TSENTR INSTITUT OBSHCHEI FIZIKI IM. A.M. PROKHOROVA ROSSISKOI AKADEMII NAUK; a.k.a. PROKHOROV GENERAL PHYSICS INSTITUTE OF RAS; a.k.a. PROKHOROV GENERAL PHYSICS INSTITUTE OF THE RUSSIAN ACADEMY OF SCIENCES; a.k.a. RUSSIAN ACADEMY OF SCIENCES—ALEXANDR MIKHAILOVICH PROKHOROV GENERAL PHYSICS INSTITUTE; a.k.a. ''GPI RAS''; a.k.a. ''IOF RAN''; a.k.a. ''IOF RAN FGBU''), d. 38, ul. Vavilova Moscow, Moscow 119991, Russia; Organization Established Date 14 Sep 1993; Tax ID No. 7736029700 (Russia); Government Gazette Number 02700457 (Russia); Registration Number 1027700378595 (Russia) [RUSSIA–EO14024].

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A.M. PROKHOROV GENERAL PHYSICS INSTITUTE RUSSIAN ACADEMY OF SCIENCES (a.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENNIE NAUKI FEDERALNY ISSLEDOVATELSKI TSENTR INSTITUT OBSHCHEI FIZIKI IM. A.M. PROKHOROVA ROSSISKOI AKADEMII NAUK; a.k.a. PROKHOROV GENERAL PHYSICS INSTITUTE OF RAS; a.k.a. PROKHOROV GENERAL PHYSICS INSTITUTE OF THE RUSSIAN ACADEMY OF SCIENCES; a.k.a. RUSSIAN ACADEMY OF SCIENCES—ALEXANDR MIKHAILOVICH PROKHOROV GENERAL PHYSICS INSTITUTE; a.k.a. ''GPI RAS''; a.k.a. ''IOF RAN''; a.k.a. ''IOF RAN FGBU''), d. 38, ul. Vavilova, Moscow 119991, Russia; Organization Established Date 14 Sep 1993; Tax ID No. 7736029700 (Russia); Government Gazette Number 02700457 (Russia); Registration Number 1027700378595 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

2. FEDERAL STATE BUDGETARY INSTITUTION OF SCIENCE FEDERAL RESEARCH CENTER KAZAN SCIENTIFIC CENTER OF THE RUSSIAN ACADEMY OF SCIENCES (f.k.a. FEDERAL GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE NAUKI KAZANSKI NAUCHNY TSENTR ROSSISKOI AKADEMII NAUK UCH; a.k.a. FEDERAL RESEARCH CENTER KAZAN SCIENTIFIC CENTER OF THE RUSSIAN ACADEMY OF SCIENCES; a.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE NAUKI FEDERALNY ISSLEDOVATELSKI TSENTR KAZANSKI NAUCHNY TSENTR ROSSISKOI AKADEMII NAUK; a.k.a. FITS KAZNTS RAN; a.k.a. FITS KAZNTS RAN FGBU; a.k.a. FRC KAZSC RAS), d. 2/31, ul. Lobachevskogo Kazan, Tatarstan Republic 420111, Russia; Organization Established Date 22 Apr 1991; Tax ID No. 1655022127 (Russia); Government Gazette Number 33859469 (Russia); Registration Number 1021602842359 (Russia) [RUSSIA–EO14024].

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FEDERAL STATE BUDGETARY INSTITUTION OF SCIENCE FEDERAL RESEARCH CENTER KAZAN SCIENTIFIC CENTER OF THE RUSSIAN ACADEMY OF SCIENCES (f.k.a. FEDERAL GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE NAUKI KAZANSKI NAUCHNY TSENTR ROSSISKOI AKADEMII NAUK UCH; a.k.a. FEDERAL RESEARCH CENTER KAZAN SCIENTIFIC CENTER OF THE RUSSIAN ACADEMY OF SCIENCES; a.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE NAUKI FEDERALNY ISSLEDOVATELSKI TSENTR KAZANSKI NAUCHNY TSENTR ROSSISKOI AKADEMII NAUK; a.k.a. FITS KAZNTS RAN; a.k.a. FITS KAZNTS RAN FGBU; a.k.a. FRC KAZSC RAS), d. 2/31, ul. Lobachevskogo, Kazan, Tatarstan Republic 420111, Russia; Organization Established Date 22 Apr 1991; Tax ID No. 1655022127 (Russia); Government Gazette Number 33859469 (Russia); Registration Number 1021602842359 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

3. OSIPYAN INSTITUTE OF SOLID STATE PHYSICS OF THE RUSSIAN ACADEMY OF SCIENCES (f.k.a. FEDERAL STATE BUDGETARY INSTITUTION OF SCIENCE INSTITUTE OF SOLID STATE PHYSICS N.A. YU. A. OSIPYAN OF THE RUSSIAN ACADEMY OF SCIENCES; f.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE NAUKI INSTITUT FIZIKI TVERDOGO TELA ROSSISKOI AKADEMII NAUK BU; a.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE NAUKI INSTITUT FIZIKI TVERDOGO TELA ROSSISKOI AKADEMII NAUK FGBU; a.k.a. INSTITUTE OF SOLID STATE PHYSICS OF THE ACADEMY OF SCIENCES SSSR; a.k.a. ''IFTT RAN''; a.k.a. ''ISSP RAS''), d. 2, ul. Akademika Osipyana Chernogolovka, Moskovskaya Obl 142432, Russia; Organization Established Date 12 Mar 1998; Tax ID No. 5031003120 (Russia); Government Gazette Number 02699796 (Russia); Registration Number 1025003915243 (Russia) [RUSSIA–EO14024].

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OSIPYAN INSTITUTE OF SOLID STATE PHYSICS OF THE RUSSIAN ACADEMY OF SCIENCES (f.k.a. FEDERAL STATE BUDGETARY INSTITUTION OF SCIENCE INSTITUTE OF SOLID STATE PHYSICS N.A. YU. A. OSIPYAN OF THE RUSSIAN

ACADEMY OF SCIENCES; f.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE NAUKI INSTITUT FIZIKI TVERDOGO TELA ROSSISKOI AKADEMII NAUK BU; a.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE NAUKI INSTITUT FIZIKI TVERDOGO TELA ROSSISKOI AKADEMII NAUK FGBU; a.k.a. INSTITUTE OF SOLID STATE PHYSICS OF THE ACADEMY OF SCIENCES SSSR; a.k.a. ''IFTT RAN''; a.k.a. ''ISSP RAS''), d. 2, ul. Akademika Osipyana, Chernogolovka, Moskovskaya Obl 142432, Russia; Organization Established Date 12 Mar 1998; Tax ID No. 5031003120 (Russia); Government Gazette Number 02699796 (Russia); Registration Number 1025003915243 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

Dated: August 3, 2023.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–16934 Filed 8–7–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Escrow Funds and Other Similar Funds.

DATES: Written comments should be received on or before October 10, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include ''OMB Number 1545–1631-Escrow Funds and Other Similar Funds'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Escrow Funds and Other Similar Funds.

OMB Number: 1545–1631.

Regulation Project Number: TD 9249.

Abstract: This document contains final regulations relating to the taxation and reporting of income earned on qualified settlement funds and certain other escrow accounts, trusts, and funds, and other related rules. The final regulations affect qualified settlement funds, escrow accounts established in connection with sales of property, disputed ownership funds, and the parties to these escrow accounts, trusts, and funds.

Current Actions: There are no changes to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions and Federal, state, local or tribal governments.

Estimated Number of Respondents: 9,300.

Estimated Time per Respondent: 24 minutes.

Estimated Total Annual Burden Hours: 3,720.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 31, 2023.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2023–16905 Filed 8–7–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–INT

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning returns regarding payments of interest.

DATES: Written comments should be received on or before October 10, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include ''OMB Number 1545–0112–Interest Income'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Interest Income.

OMB Number: 1545–0112.

Form Number: 1099–INT.

Regulation Number: TD 7873.

Abstract: IRC section 6049 requires payers of interest of $10 or more to file a return showing the aggregate amount of interest paid to a payee. Regulations sections 1.6049–4 and 1.6049–7 require Form 1099–INT to be used to report this information. IRC section 6041 and Regulations section 1.6041–1 require persons paying interest (that is not

covered under section 6049) of $600 or more in the course of their trades orbusinesses to report that interest on Form 1099–INT. IRS uses Form 1099–INT to verify compliance with the reporting rules and to verify that the recipient has included the proper amount of interest on his or her income tax return.

Current Actions: There are no changes to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Federal Government, individuals or households, and not-for-profit institutions.

Estimated Number of Responses: 141,555,000.

Estimated Time per Respondent: 13 minutes.

Estimated Total Annual Burden Hours: 46,403,150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information onor other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 31, 2023.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2023–16909 Filed 8–7–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10, that the Advisory Committee on Women Veterans will conduct a virtual meeting on August 28–29, 2023. The meeting sessions will begin and end as follows:

Date	Time	Location
August 28, 2023	1 p.m.–3 p.m. (ET)	WEBEX link and call-in information below.
August 29, 2023	2 p.m.–4 p.m. (ET)	WEBEX link and call-in information below.

The meeting sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women Veterans with respect to health care, rehabilitation, compensation, outreach and other programs and activities administered by VA designed to meet such needs. The Committee makes recommendations to the Secretary regarding such programs and activities.

On Monday, August 28, the agenda includes full committee discussion on 2023 report recommendations. On Tuesday, August 29, the agenda includes time allotted for public comment starting at 2:15 p.m. and ending no later than 2:45 p.m. (ET). The comment period may end sooner, if there are no comments presented or they are exhausted before the end time. Individuals interested in providing comments during the meeting are allowed no more than three minutes for their statements. Following the comment period, full committee discussion on the 2023 report will continue.

Those who want to submit written statements for the Committee's review should submit them to the Center for Women Veterans at *00W@mail.va.gov* no later than August 21, 2023. Any member of the public who wishes to participate virtually may use the following access information: *https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=mc50d2108879e9bb93b4447cfb1a29609;* meeting number: 2764 568 8392, meeting password: FAmc6wJy*39. Join by phone at 1–404–397–1596 (USA toll number); Access code: 27645688392.

Dated: August 3, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–16915 Filed 8–7–23; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 88 Tuesday,

No. 151 August 8, 2023

Part II

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1190

Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way; Final Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1190

[Docket No. ATBCB 2011–0004]

RIN 3014–AA26

Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board or Board) issues its final rule that provides minimum guidelines for the accessibility of pedestrian facilities in the public right-of-way. These guidelines, once adopted, would ensure that facilities used by pedestrians, such as sidewalks and crosswalks, constructed or altered in the public right-of-way by Federal, state, and local Governments are readily accessible to and usable by pedestrians with disabilities. When the guidelines are adopted, with or without modifications, as accessibility standards in regulations issued by other Federal agencies implementing the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Architectural Barriers Act, compliance with those enforceable accessibility standards is mandatory.

DATES: The final rule is effective September 7, 2023.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW, Suite 1000, Washington, DC 20004–1111. Telephone (202) 272–0025 (voice) or (202) 272–0028 (TTY). Email address *row@access-board.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The U.S. Access Board issues its final rule for accessibility guidelines for pedestrian facilities in public rights-of-way (PROWAG or guidelines). These guidelines are issued under Title II of the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA). Title II of the ADA applies to State and local government facilities, among others. The ABA applies to facilities constructed or altered by or on behalf of the Federal Government, facilities leased by Federal agencies, and some facilities built with Federal funds.

The purpose of these guidelines is to ensure that pedestrian facilities located in the public right-of-way are readily accessible to and usable by pedestrians with disabilities. Despite on-going efforts to improve access, pedestrians with disabilities throughout the United States continue to face major challenges in public rights-of-way because many sidewalks, crosswalks, and other pedestrian facilities are inaccessible. Equal access to pedestrian facilities is of particular importance because pedestrian travel is the principal means of independent transportation for many persons with disabilities.

Key accessible features of pedestrian facilities specified in these guidelines include:

Pedestrian Access Routes: Sidewalks, shared use paths and other pedestrian circulation paths must contain a ''pedestrian access route,'' which is required to be accessible to and traversable by individuals with disabilities. The portions of these sidewalks and paths that comprise the pedestrian access route must be wide enough to minimize the possibility of a pedestrian using a mobility device falling into a roadway when passed by another pedestrian. Pedestrian access routes have specified cross slopes and running slopes so that they are traversable by pedestrians using manual wheelchairs or other mobility aids without exhaustive effort. Surfaces of paths in the pedestrian access route must be firm, stable, and slip resistant, without large openings or abrupt changes in level. Objects may not hazardously protrude onto sidewalks, shared use paths, or other pedestrian circulation paths.

- *Alternate Pedestrian Access Routes:* When an entity closes a pedestrian access route for construction, it must provide a temporary alternate pedestrian access route with basic accessible features. Alternate pedestrian access routes ensure that construction in the public right-of-way does not prevent pedestrians with disabilities from reaching their destinations.
- *Accessible Pedestrian Signals:* All new and altered pedestrian signal heads installed at crosswalks must include ''accessible pedestrian signals'' (APS), which have audible and vibrotactile features indicating the walk interval so that a pedestrian who is blind or has low vision will know when to cross the street. Pedestrian push buttons must be located within a reach range such that a person seated in a wheelchair can reach them. The walk speed used to calculate the crossing time allows pedestrians with disabilities sufficient time to cross.
- *Crosswalks:* Curb ramps and detectable warning surfaces are required where a pedestrian circulation path meets a vehicular way. Crosswalks at multilane roundabouts and channelized turn lanes must have additional treatments that alert motorists to the presence of pedestrians or slow or stop traffic at those crosswalks.
- *Transit Stops:* Boarding and alighting areas at sidewalk or street level, as well as elevated boarding platforms, must be sized and situated such that a person with a disability can board and alight buses and rail cars. Pedestrian access routes must connect boarding and alighting areas and boarding platforms to other pedestrian facilities. Transit shelters must have clear space for use by a person in a wheelchair.
- *On-Street Parking:* On-street non-residential parking must have designated accessible parking spaces sized so that a person with a disability may exit a parked vehicle and maneuver to the sidewalk without entering a vehicular way. Standard size designated accessible on-street parking spaces must be situated near an existing crosswalk with curb ramps.

These minimum guidelines will become enforceable once they are adopted, with or without modifications, as mandatory standards under the ADA by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (USDOT), or the four Federal agencies that set standards for the Federal Government under the Architectural Barriers Act—the U.S. Postal Service (USPS), General Services Administration (GSA), U.S. Department of Defense (DOD), and U.S. Department of Housing and Urban Development (HUD)).

II. Legal Authority and Need for Rulemaking

These guidelines are issued pursuant to the ADA and the Rehabilitation Act, which provide statutory authority for the Access Board to issue minimum accessibility guidelines to ensure that transportation facilities are usable by persons with disabilities. *See* 29 U.S.C. 792(b)(3)(B), 42 U.S.C. 12204. These guidelines serve as the minimum requirements for enforceable standards issued by other agencies pursuant to their responsibilities under the ADA and the ABA. 29 U.S.C. 792(b)(3)(B); 42 U.S.C. 4151 *et seq.*, 12134(c), 12149(b).

As described in the Rulemaking History section below, these final guidelines have been long awaited, particularly by state and local governments subject to Title II of the ADA. Both the Access Board's 2004

Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (2004 ADAAG/ABAAG), and the Board's initial 1991 Americans with Disabilities Act Accessibility Guidelines, were developed primarily for buildings and facilities on sites. 36 CFR part 1191; 56 FR 35408 (July 26, 1991). While some of the requirements can be readily applied to pedestrian facilities in the public right-of-way, others need substantial modification, and many issues specific to public rights-of-way were simply not addressed. Further, the magnitude of existing physical constraints in public rights-of-way poses unique considerations that are not present in the context of buildings and sites.

In the absence of final technical requirements for accessibility of pedestrian facilities, state and local governments have been left to determine on their own how to comply with the ADA's existing mandate to make public pedestrian transportation facilities accessible. The lack of final Federal standards has contributed to uncertainty about the relevant standards, which has resulted in courts determining technical requirements for accessibility, in some cases applying requirements for buildings and sites to public rights-of-way, although public rights-of-way are, for the most part, not specifically addressed by these standards (*see e.g., Kirola* v. *City & Cty. of S.F.,* 860 F.3d 1164 (9th Cir. 2017) (finding that ADAAG applies to public rights-of-way); *Fortyune* v. *City of Lomita,* 766 F.3d 1098 (9th Cir. 2014) (applying the 2010 ADA Standards to diagonal parking in public rights-of-way in the absence of enforceable accessibility standards for public rights-of-way); *see also Sarfaty* v. *City of L.A.,* No. 2:17–cv–03594–SVW–KS, 2020 U.S. Dist. LEXIS 40893 (C.D. Cal. Feb. 7, 2020) (concluding that neither PROWAG draft guidelines nor the 2010 ADA Standards are applicable to on-street parking).

In addition, the Federal Government similarly lacks accessibility criteria for public rights-of-way, although there are numerous Federal sites that contain public rights-of-way, such as national parks, medical and educational campuses, and military installations. Consequently, the Federal Government, which seeks to be a leader in accessibility, has been without clear, specific, enforceable technical standards for accessibility in public rights-of-way. These final accessibility guidelines for pedestrian facilities in public rights-of-way will serve as the technical basis of enforceable standards issued under the ABA by GSA, USPS, DoD, and HUD. *See* 29 U.S.C. 792(b)(3)(B); 42 U.S.C. 4151 *et seq.*

III. Rulemaking History

The Access Board began developing accessibility guidelines for pedestrian facilities in public rights-of-way shortly after the ADA was enacted in 1990. In 1992, the Board issued proposed guidelines for state and local government facilities, including pedestrian facilities in public rights-of-way, followed by interim guidelines in 1994 that also contained provisions for public rights-of-way. 57 FR 60612 (December 21, 1992); 59 FR 31676 (June 20, 1994).

In response to the proposed and interim guidelines, the Board received numerous public comments that indicated a need for further outreach, education, and research on accessible pedestrian facilities in public rights-of-way. Consequently, when the Board issued its first final guidelines for state and local government facilities in 1998, the requirements for pedestrian facilities in the public right-of-way were not included. 63 FR 2000 (January 13, 1998).

In 1999, the Access Board established a Federal advisory committee to recommend accessibility guidelines for pedestrian facilities in public rights-of-way. The committee included a wide range of stakeholders, including representatives of state and local governments, the transportation industry, disability rights advocacy organizations, and other interested groups.[1]

In 2001, the advisory committee presented its consensus recommendations to the Board. *See* U.S. Access Board, Building a True Community: Final Report of the Public Rights-of-Way Access Advisory Committee. (Jan. 10, 2001). Based on the advisory committee's recommendations, the Access Board developed draft accessibility guidelines for pedestrian facilities in the public right-of-way, which it made available for public review and comment in 2002. 67 FR 41206 (June 17, 2002). In 2005, the Board published revised draft guidelines, also seeking to gather data for a regulatory assessment of the guidelines' potential costs and benefits. 70 FR 70734 (November 23, 2005).

Following the 2005 release, the Access Board continued to further improve the draft guidelines, engaging numerous stakeholders and sponsoring research on various key provisions. The Access Board also engaged in substantial education and outreach efforts, conducting training programs around the country, and answering questions on its technical assistance hotline. In July 2007, the Public Rights-of-Way Access Advisory Committee released a 108-page planning and design guide for alterations based on the 2005 draft guidelines.

In July 2011, the Access Board initiated the instant rulemaking, issuing a Notice of Proposed Rulemaking for Accessibility Guidelines for Public Rights-of-Way (NPRM). *See* 76 FR 44664 (July 26, 2011); Notice of Proposed Rulemaking—Correction, 76 FR 45481 (July 29, 2011). The NPRM was supported by a regulatory analysis based in part on cost estimates provided through a 2010 interagency agreement with the Volpe National Transportation Systems Center (Volpe Center). *See* Regulatory Assessment of Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way & Appendix (June 2011); Volpe Center, ''Cost Analysis of Public Rights-of-Way Accessibility Guidelines'' (November 29, 2010), *both available at https://www.regulations.gov* in rulemaking docket (ATBCB–2011–0004).

The NPRM requested public comments on all provisions of the proposed Accessibility Guidelines for Public Rights-of-Way (proposed rule or proposed guidelines). In particular, the Access Board sought comments from regulated entities, including state and local governments, on the costs and impacts of certain portions of the proposed rule. The comment period ended on November 23, 2011, and was subsequently reopened until February 2,

[1] The following organizations were members of the advisory committee: AARP, America Walks, American Association of State Highway and Transportation Officials, American Council of the Blind, American Institute of Architects, American Public Transit Association, American Public Works Association, Association for Education and Rehabilitation of the Blind and Visually Impaired, Bicycle Federation of America, Californians for Disability Rights, Canadian Standards Association (Technical Committee on Barrier-Free Design), City of Birmingham (Department of Planning, Engineering and Permits), Council of Citizens with Low Vision International, Disability and Business Technical Assistance Centers, Disability Rights Education and Defense Fund, Federal Highway Administration, Hawaii Commission on Persons with Disabilities, Hawaii Department of Transportation, Institute of Traffic Engineers (now called Institute of Transportation Engineers), Los Angeles Department of Public Works (Bureau of Street Services), Massachusetts Architectural Access Board, Municipality of Anchorage, National Center for Bicycling and Walking, National Council on Independent Living, National Federation of the Blind, New York State Department of Transportation, Paralyzed Veterans of America, Portland Office of Transportation, San Francisco Mayor's Office on Disability, State of Alaska, TASH, Texas Department of Transportation, and The Seeing Eye.

2012.[2] During the two comment periods, 460 commenters submitted approximately 600 comments. The Board also held public hearings in Dallas, Texas and Washington, DC in fall 2011.

On February 13, 2013, the Board issued a supplemental notice of proposed rulemaking (SNPRM) announcing its intent to add requirements for shared use paths (SUPs) to the proposed guidelines for pedestrian facilities in the public right-of-way.[3] 78 FR 10110 (Feb. 13, 2013). The SNPRM specified which provisions of the proposed rule would be changed to include requirements for SUPs. During the 90-day comment period that followed, 55 commenters provided feedback on the provisions outlined in the SNPRM.

The Board carefully reviewed the public comments received in response to the NPRM and SNPRM, consulted with DOJ and USDOT, and revised the rule text for final publication. In 2015, the Board entered into a second interagency agreement with the Volpe Center to assess costs of the final provisions. However, in January 2017, in response to Executive Order 13771 (January 30, 2017), which required that agencies identify two regulations for elimination for every new regulation proposed and that the total incremental cost of any new regulations and deregulatory actions be zero, the Board ceased work on the PROWAG final rule. Staff shifted efforts to education, outreach, and technical assistance. From 2017 through 2022, Board staff addressed hundreds of technical assistance inquiries related to PROWAG.

In 2021, following issuance of E.O. 13992 (January 20, 2021), which rescinded E.O. 13771, the Board resumed work on the PROWAG rulemaking and entered into a final interagency agreement with the Volpe Center to prepare the final regulatory impact analysis (FRIA). The FRIA is available in the docket for this rulemaking on regulations.gov and on the Access Board's website, *www.access-board.gov.*

In consideration of the FRIA, public comments and testimony, feedback from other Federal agencies, and many years of close collaboration with stakeholders, the Access Board now issues these final guidelines on accessible pedestrian facilities in the public right-of-way.

IV. Summary of Significant Changes

The significant changes to the final rule text from the versions proposed in the NPRM and SNPRM are as follows:

• *Alterations.* There are three major changes with the way alterations are treated in the final rule. First, any portion of a pedestrian facility that is altered must be altered to comply with these guidelines regardless of the intended ''scope of the project'' by the entity undertaking the alteration (R201.1). This approach is consistent with the way accessibility guidelines for buildings and sites are applied. The change is described in the Major Issues section below.

Second, in the final rule, facilities and portions of facilities that are ''added'' to an existing, developed public right-of-way are ''alterations,'' and are subject to the requirements for altered facilities (*see* R104.3; R201.1; R202). This includes that compliance with the requirements is required to the maximum extent feasible where existing physical constraints make compliance with the applicable requirements technically infeasible (R202.3). In the proposed rule, added elements were treated as new construction and subject to full compliance with all applicable requirements regardless of existing physical constraints (NPRM R202.2). This change is addressed in the Major Issues section below.

Third, altered facilities must be connected to an existing pedestrian circulation path by a pedestrian access route (R202.2). In the proposed rule, only select alterations required a connection; however, to ensure that pedestrians with disabilities can realize the benefits of an altered pedestrian facility that is made accessible consistent with these guidelines, the final rule requires all altered facilities to connect to a pedestrian circulation path.

• *Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD).* In the final rule, MUTCD provisions are not incorporated by reference. The Board proposed to incorporate by reference various sections of the MUTCD in the NPRM. As explained in the major issues section below, this created confusion as to the application of those provisions in the context of PROWAG. Consequently, the Board has stated all required technical provisions directly in the rule text, many of which were taken from the MUTCD, as explained in the Section-by-Section discussion below.

• *Alterations that Trigger Installation of Accessible Pedestrian Signals.* In the NPRM, the Board indicated that the alteration of a signal controller and software, or the replacement of a signal head, would trigger the requirement to install an accessible pedestrian signal (NPRM R209.2). Upon consideration of public comments, the Access Board acknowledges the diverse nature of alterations that affect pedestrian signals, and declines in the final guidelines to list specific actions that trigger the requirement to install accessible pedestrian signals. Rather, pedestrian signals are subject to the same alteration requirements as other pedestrian facilities. The entity making the alteration will assess, according to requirements in the guidelines as adopted by USDOT and DOJ, whether installation of an accessible pedestrian signal is required. The Board notes that USDOT and DOJ may provide further specifics as to alterations triggering installation of APS in their rulemakings adopting these guidelines.

• *Crosswalk Treatments at Roundabouts.* The final rule expands the crosswalk treatment options among which jurisdictions must select for installation at multilane pedestrian crossings at roundabouts to include: a traffic control signal with a pedestrian signal head, a pedestrian hybrid beacon, a pedestrian actuated rectangular rapid flashing beacon, and a raised crossing. This change is discussed in the Major Issues section below.

V. Summary of Comments and Major Issues Raised by Commenters

A. Overview of Commenters

In response to the NPRM, 460 commenters submitted approximately 600 comments on the provisions of the proposed rule, including 25 state departments of transportation and highway administrations, 2 state utility organizations, and 1 state transit

[2] Before the NPRM's initial comment period ended on November 23, 2011, three national associations of local elected officials requested that the Access Board extend the comment period to allow local governments additional time to respond to the proposed rule. A national association of engineering companies also requested an extension of the comment period. The Access Board thus reopened the comment period through February 2, 2012. See Notice of Proposed Rulemaking—Reopening of Comment Period, 76 FR 75844 (Dec. 5, 2011).

[3] In March 2011, the Board issued an advance notice of proposed rulemaking announcing its intent to develop accessibility guidelines for SUPs and noted that it was considering including the SUP requirements in the guidelines for pedestrian facilities in the public right-of-way. 76 FR 17064, 17070 (March 28, 2011). The Board initially determined that SUPs would be addressed in a separate rulemaking, and thus did not include SUPs in the proposed public right-of-way guidelines. However, upon further consideration, the Board determined that SUPs were sufficiently similar to other pedestrian circulation paths such that they should be included in the final rule for pedestrian facilities in the public right-of-way. The Board then issued the SNPRM informing the public of its decision to include SUPs in the proposed guidelines and soliciting comments regarding the specific provisions that would apply to SUPs. 78 FR 10110 (Feb. 13, 2013).

authority. Eighty-seven local government organizations commented, including city and county departments of transportation, engineering, public works, and planning; city councils and mayor's offices; and highway districts and transit authorities.

The Access Board received comments from approximately 255 individuals commenting on their own behalf, including persons with a range of disabilities who will directly benefit from these guidelines, and mobility specialists with experience teaching persons with disabilities how to navigate public rights-of-way. Individual commenters also included numerous civil engineers and planners with expertise in the design and construction of pedestrian facilities.

In addition, the Access Board received comments from representatives of approximately 90 organizations including national and local disability rights advocacy organizations, engineering companies, law firms involved in ADA litigation, professional associations, and pedestrian and citizen advocacy organizations.

In addition to soliciting written comments, the Board also held two public hearings on the proposed rule. NPRM, 76 FR at 44664. In Dallas, Texas, on September 12, 2011, twelve witnesses testified regarding the proposed guidelines. See PROW NPRM Public Hearing, Dallas, Sept. 2011, Docket ID ATBCB–2011–0346. Witnesses included engineers and architects, local government officials, and disability rights advocates, among others. Id. Fifteen individuals testified at a public hearing in Washington, DC on November 9, 2011, including representatives from organizations working with people with disabilities, private industry, and professional associations. *See* Transcript from PROW NPRM, Docket ID ATBCB–2011–0607.

In response to the SNPRM to add shared use paths to the proposed rule, the Access Board received comments from 55 commenters. Eighteen state and local government entities commented, as well as seven disability rights organizations, three engineering companies, four citizens' organizations, and two industry associations. In addition, over 20 individuals, including industry professionals and persons with disabilities, responded to the SNPRM.

The Access Board appreciates the robust and thoughtful public response to the PROWAG rulemaking, and carefully considered all testimony and comments received in response to both the NPRM and the SNPRM. Commenters provided feedback on many specific provisions of the proposed rule. The majority of these comments are addressed in the Section-by-Section Analysis in Section VI of this preamble. However, numerous commenters raised concerns regarding four issues: the application of the guidelines to new construction and alterations; the requirements regarding accessible pedestrian signals; the requirement for pedestrian signals or pedestrian hybrid beacons at roundabouts; and the extension of the leveling out of intersections to pedestrian crossings. The Board addresses these major issues below.

B. Major Issues

1. Application of the Guidelines to New Construction and Existing Facilities

Treatment of New Construction, Added Facilities, and Alterations

In the proposed rule, the Board identified three types of pedestrian facilities subject to PROWAG: newly constructed facilities, added facilities, and altered facilities. The NPRM specified that newly constructed and added facilities were subject to full compliance with PROWAG (NPRM R201.1; NPRM R202.2), while alterations were expected to comply to the maximum extent practicable where existing physical constraints make it impracticable to fully comply (NPRM R202.3.1).

These three classifications of facilities were carried over from the accessibility guidelines for buildings and sites, where they have been used successfully for many years. 69 FR 44083, 36 CFR part 1191 (July 23, 2004) and 56 FR 35408 (July 26, 1991). However, in response to the PROWAG NPRM, the Board received comments from state DOTs and others indicating confusion as to how to distinguish between new, added, and altered facilities in the public right-of-way. In addition, since publication of the NPRM, the Board has regularly received technical assistance inquiries from individuals seeking to determine whether a particular public right-of-way construction project must fully comply with requirements for new construction or is subject to considerations for existing physical constraints for alterations.

The Board concurs that the distinctions between new construction, added facilities, and alterations, which are readily apparent in construction of a building, are not as clear in the public right-of-way. For example, under the language of the NPRM, a jurisdiction might consider the extension of a sidewalk an alteration of an existing pedestrian facility or alternatively an addition of a new pedestrian facility. The level of compliance with accessibility requirements might hinge on that characterization.

In determining how to resolve this confusion in the final rule, the Board considered comments from state DOTs, local government entities, an association of engineering companies, and the American Association of State Highway and Transportation Officials (AASHTO) indicating that any construction in existing public rights-of-way should be subject to considerations for existing physical constraints, highlighting that existing storm and sanitary sewer infrastructure, utilities, and adjacent developed facilities may make full compliance with the guidelines impossible.

In the final rule, the Board has defined ''alteration'' as ''a change to or an addition of a pedestrian facility in an existing developed public right-of-way that affects or could affect pedestrian access, circulation, or usability'' (R104.3). In so defining ''alteration,'' the Board has revised the requirements for added facilities, now allowing them to comply to the maximum extent feasible where existing physical constraints make compliance with applicable requirements technically infeasible (R202.3). The Board has also provided a definition for ''developed'' as ''[c]ontaining buildings, pedestrian facilities, roadways, utilities, or elements'' (R104.3). Taken together, the Board expects full compliance with the requirements for new construction on undeveloped land (*i.e.,* greenfield), while any construction undertaken in an existing developed right-of-way is expected to comply to the maximum extent feasible where existing physical constraints make compliance with applicable requirements technically infeasible. The Board has concluded that these expectations for compliance are reasonable in light of existing infrastructure in developed rights-of-way, and the opportunity for full compliance in a new public right-of-way built on undeveloped land.

Alterations vs. Maintenance

In response to the NPRM, the Board received several comments seeking clarity on what types of roadwork would constitute an ''alteration'' within the meaning of the rule. The proposed guidelines defined ''alteration'' as ''[A] change to a facility in the public right-of-way that affects or could affect pedestrian access, circulation, or use. Alterations include, but are not limited to, resurfacing, rehabilitation, reconstruction, historic restoration, or changes or rearrangement of structural

parts or elements of a facility'' (NPRM R105.5).

One state department of transportation, four local government entities, a national parks and recreation organization, and an individual engineer commenter requested further clarification on the definition of ''alteration,'' or additional examples.

Much of the concern centered on the Board's inclusion of the example of ''resurfacing.'' Five states and AASHTO, seven local government entities, various organizations associated with the construction industry, an independent Federal agency, and an engineering company expressed concern that ''resurfacing'' was included in the definition of alteration and sought additional information on the definition of ''resurfacing.'' These commenters were concerned that ''maintenance'' operations and ''pavement preservation'' would trigger an obligation to comply with these guidelines.

Since the publication of the NPRM, this issue has largely been resolved. In 2013, DOJ and USDOT issued joint guidance clarifying when resurfacing is considered an ''alteration'' for purposes of ADA Title II compliance and specifying the types of treatments that are considered maintenance. *See* DOJ and USDOT, Department of Justice/ Department of Transportation Joint Technical Assistance on Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing (July 8, 2013), *available at https://www.ada.gov/doj-fhwa-ta.htm; see also* Q & A Supplement to the 2013 DOJ/DOT Joint Technical Assistance on the Title II of the ADA Requirements To Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing, *available at https://ada.gov/doj-fhwa-ta-supplement-2015.html.*

The Board's revised definition of ''alteration'' in the final rule omits the examples of specific roadway treatments, deferring to USDOT's and DOJ's joint technical assistance as to which treatments and types of construction are considered alterations for purposes of enforcement of their standards. However, the Board here clarifies that where a roadway treatment is determined to be an alteration, compliance with PROWAG is triggered and the technical requirements apply, regardless of the ''scope of the [alteration] project.'' The elimination of the ''scope of the project'' language from the final rule is discussed below.

Scope of the Project

The proposed guidelines indicated that where existing elements are altered, each altered facility ''within the scope of the project'' must be made to comply with the guidelines (NPRM R202.3). One state and several local government entities requested clarification on the intended meaning of ''scope of the project,'' and disability rights advocacy organizations expressed concern that regulated entities may define the scope of the project to avoid compliance. The Board has thus removed this language from the final rule.

Under the final rule, altered portions of existing pedestrian facilities are expected to comply with the requirements (R201.1). This means that the portion of a pedestrian facility that is altered is expected to comply with all applicable technical requirements. Where existing physical constraints make compliance with applicable requirements technically infeasible, compliance with these requirements is required to the maximum extent feasible (R202.3). This is the same approach that is employed in the 2004 ADA and ABA Accessibility Guidelines for buildings and sites.

Existing Physical Constraints

Section R202.3.1 of the NPRM stated that where existing physical constraints make full compliance with these guidelines ''impracticable,'' alterations must comply with the technical specifications of these guidelines to the ''extent practicable.'' The proposed section R202.3.1 provided examples of existing physical constraints, including ''underlying terrain, right-of-way availability, underground structures, adjacent developed facilities, drainage, or the presence of a notable natural or historic feature.''

Numerous commenters expressed varying concerns about section R202.3.1 of the proposed rule. One state public utility commission, four local government entities, and an engineering firm requested that the Access Board provide further explanation of the meaning of ''extent practicable'' and one state DOT recommended replacing the term with ''maximum extent practicable.'' A disability rights advocacy organization requested a requirement for full compliance with the guidelines unless ''technically infeasible.'' Three disability rights advocacy organizations and two individuals expressed concern that the language describing existing physical constraints was too broad or might be used as an excuse to deviate from the technical requirements. Three state DOTs and one local government entity requested clarification on ''right-of-way availability'' as an existing physical constraint and wondered whether they would be expected to obtain additional right-of-way.

In the final rule, the Board has replaced the term ''impracticable'' with ''technically infeasible'' and ''extent practicable'' with ''maximum extent feasible,'' which are the terms used in the 2004 ADA and ABA Accessibility Guidelines. *See e.g.,* 36 CFR part 1191, App. B, 202.3 Exception 2. The Board acknowledges that ''impracticable'' and ''extent practicable'' were intended to be interpreted in the same way as ''technically infeasible'' and ''maximum extent feasible,'' and the use of different terms was creating confusion. The expectation is that in the context of alterations, entities are responsible for compliance with applicable technical requirements to the maximum extent feasible where existing physical constraints make compliance with those requirements technically infeasible.

The Board also eliminated ''right-of-way availability'' as an example of an existing physical constraint. The Board acknowledges that in many cases regulated entities have authority to acquire additional right-of-way, which made it a confusing example of an existing physical constraint. DOJ and USDOT may provide further information as to any expectations that entities acquire additional right-of-way to meet accessibility requirements.

A disability rights advocacy organization requested that the Board apply the ''primary function'' and ''path of travel'' requirements from the 2004 ADA and ABA Accessibility Guidelines. 36 CFR part 1191, App. B 202.4. In addition, a local chapter of a national public works association, seven local government entities, and a disability rights advocacy organization would like the final rule to contain a 20% threshold for determining whether the cost of providing accessibility features is disproportionate to the overall cost of the alteration.[4] The Board points

[4] Section 202.4 of the 2004 ADA and ABA Guidelines states that an alteration that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area, including the rest rooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope as determined under criteria established by the Attorney General. In existing transportation facilities, an area of primary function shall be as defined under regulations published by the Secretary of the Department of Transportation or the Attorney General. 36 CFR part 1191, App. B, § 202.4.

commenters to the detailed explanation in the preamble to the NPRM as to why the primary function area and path of travel concepts are not appropriate for pedestrian rights-of-way. 76 FR 44664, 44672 (July 26, 2011).

Existing Facilities

Several commenters expressed concern about their obligations under Title II of the ADA and Section 504 of the Rehabilitation Act for existing facilities that are not altered. *See* 28 CFR 35.150 (containing DOJ accessibility requirements for state and local governments' existing facilities); see also 49 CFR 27.11(c) (requiring recipients of USDOT Federal financial assistance to undertake accessibility compliance planning). When DOJ and USDOT conduct rulemaking to include accessibility standards for pedestrian facilities in the public right-of-way in regulations implementing Title II of the ADA and Section 504 of the Rehabilitation Act, they will address the application of their accessibility standards to existing facilities that are not altered. Comments concerning existing facilities that are not altered should be directed to DOJ and USDOT at that time. These guidelines address only new construction and alterations of existing facilities, and are voluntary until adopted by other agencies, with or without modifications, as enforceable standards.

2. Accessible Pedestrian Signals

Scoping for Accessible Pedestrian Signals

Accessible Pedestrian Signals are devices that communicate information about pedestrian signal timing in non-visual formats such as audible tones, speech messages, and/or vibrating surfaces (R104.3). In the NPRM, the Board proposed that all new and altered pedestrian signals conform to the requirements for accessible pedestrian signals in sections 4E.08 through 4E.13 of the MUTCD (NPRM R209.1).

Several entities submitted comments opposing universal installation of accessible pedestrian signals. Eight state and three local government entities advocated for their jurisdictions' more limited practices with respect to determining where accessible pedestrian signals should be installed: six states and one local government installed accessible signals upon citizen request or as part of planned upgrades; one state and one local government consulted with mobility specialists or disability advocacy groups before installing an accessible pedestrian signal in a given location; one state only installed accessible pedestrian signals where a substantial population of blind individuals is known to travel, such as near a school for students who are blind; one city installed accessible pedestrian signals within a quarter mile of light rail stations, and elsewhere upon request.

Two local governments, while not stating a current practice, indicated that they would like to work with organizations representing the ''low vision community'' to determine where accessible signals should be installed. Fifteen other local government commenters and six individual commenters from the engineering industry, and an association of city transportation engineers preferred that the guidelines leave the decision as to whether to install accessible pedestrian signals to ''engineering judgment,'' as specified in the MUTCD. A national organization of transportation officials expressed that the guidelines should require accessible pedestrian signals only where there is a demonstrated need. Three states and two cities indicated that they already provide accessible pedestrian signals whenever possible when new pedestrian signals are installed, or existing signals are altered.

This requirement for the installation of accessible pedestrian signals was also one of the proposed provisions of PROWAG that generated the most public support. More than 115 commenters, including disability rights organizations, individuals with disabilities, and mobility specialists, supported the proposed requirement.

Upon careful consideration of the comments, as well as the costs and benefits of this requirement, the Board has decided to retain in the final rule scoping specifying that accessible pedestrian signals be installed wherever new pedestrian signals are provided, and whenever pedestrian signals are altered. Accessible pedestrian signals are crucial to the independent movement of individuals who are blind or have low vision throughout public rights-of-way.[5] Over time this requirement will make accessible pedestrian signals ubiquitous throughout the United States, allowing people who are blind or have low vision to undertake independent pedestrian travel to any destination where pedestrian facilities exist. Anything less than a universal requirement is unlikely to achieve a uniform nationwide result.

The Board has assessed the incremental costs associated with the installation of accessible pedestrian signals. FRIA at 46. The Board acknowledges that the requirement for universal installation of APS is the single most costly provision of PROWAG. *Id.* However, it is the provision expected to provide the greatest advance in equity for persons who are blind or have low vision, as the use of accessible pedestrian signals is one of the accessibility features of public rights-of-way that has not been uniformly adopted across the United States. The Board has assessed the costs and benefits of this requirement and is confident that the combination of the monetizable and unmonetizable benefits greatly outweigh the costs. *See* FRIA at 129.

Specific changes to language of the provision are addressed in the section-by-section analysis below.

Alterations of Accessible Pedestrian Signals

In the NPRM, the Board specified alteration of the signal controller and software, and replacement of a signal head as alterations that would trigger

DOJ's 2010 ADA Standards state in part that alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area. 28 CFR 35.151(b)(4)(iii)(A).

[5] The Access Board acknowledges a historical difference of opinion between advocacy organizations for people who are blind as to the need for accessible pedestrian signals. The Board further notes that this difference of opinion has diminished over time. In the NPRM, the Access Board observed that in response to the 2002 draft guidelines, two thirds of commenters identifying themselves as being blind or having low vision supported installation of accessible pedestrian signals. 76 FR at 44676. In response to the NPRM, commenters indicating a vision disability overwhelmingly expressed support for accessible pedestrian signals. In 2001, the National Federation of the Blind (NFB) opposed universal installation of accessible pedestrian signals on the grounds that they were unnecessary in most circumstances, and that the sounds emitted by accessible signals interfered with detection of vehicles through audible cues. *See* Public Rights of Way Advisory Committee, Building a True Community, Minority Report. 153 (January 10, 2001). However, even at that time, the NFB noted changing features of public rights-of-way that complicated the traditional reliance on traffic noises for navigation, including quieter cars, complex signal intersections, wide streets, and the use of pedestrian actuated signals. *Id.* In response to the NPRM, the NFB advised that it now supports the use of accessible pedestrian signals when installed in consultation with the blind community. *See* NFB, Public Comment, ATBCB–2011–0004–0251, available at *www.regulations.gov.* The Access Board notes that accessible pedestrian signals must be equally available to all individuals, whether or not they are affiliated with or known to any particular advocacy organization or civic group. The Board observes that the American Council of the Blind strongly supports the installation of accessible pedestrian signals wherever pedestrian signals exist. *See* American Council of the Blind, Public Comment, ATBCB–2011–0004–0341, available at *www.regulations.gov.*

installation of an accessible pedestrian signal consistent with the technical requirements (NPRM R209.2). The Access Board received numerous comments disagreeing with the proposed provision. Ten state departments of transportation and 28 local government entities responded, in addition to five professional organizations. These commenters indicated that neither altering a signal controller and software, nor replacing a signal head offers an opportunity to convert an existing pedestrian signal to an accessible pedestrian signal. Some of these commenters were concerned that under the proposed language, a minor modification or repair could result in an extensive project to upgrade an entire intersection. Others worried that they would have to forgo regular software upgrades provided by signal manufactures unless they intended to convert existing equipment to accessible pedestrian signals.

Four disability rights advocacy organizations, one pedestrian advocacy organization, and four individuals supported the proposed specifications regarding specific actions that should trigger installation of accessible pedestrian signals, and requested that the Access Board add other triggering actions in the final rule. The National Committee on Uniform Traffic Control Devices (NCUTCD) recommended requiring installation of accessible pedestrian signals when traffic signal equipment modification or timing changes affect the ability of a pedestrian with a disability to be aware of the change. *See* NCUTCD, Public Comment, ATBCB–2011–0004–0477, available at *www.regulations.gov.* NCUTCD cited reduction of walk time or pedestrian clearance, and installation of modified turn phasing as examples of such changes that should warrant conversion to an accessible pedestrian signal. *Id.*

The Access Board proposed the requirements of section R209.2 to ensure that accessible pedestrian signals would be installed during alteration projects. Upon consideration of public comments, the Access Board acknowledges the diverse nature of alterations that affect pedestrian signals, and declines in the final guidelines to specify specific actions that trigger the requirement to install accessible pedestrian signals. Rather, pedestrian signals are subject to the same alteration requirements as other pedestrian facilities. The entity making the alteration will assess, according to requirements in the guidelines as adopted by USDOT and DOJ, whether installation of an accessible pedestrian signal is required. The Board notes that USDOT and DOJ may provide further specifics as to alterations triggering installation of APS in their rulemakings adopting these guidelines.

3. Pedestrian Crossing Treatments at Roundabouts

In the NPRM, the Board proposed a requirement for installation of an accessible pedestrian actuated signal at multilane pedestrian street crossings[6] at roundabouts (NPRM Section R306.3.2). In an advisory issued with the proposed rule, the Board indicated that a Pedestrian Hybrid Beacon (PHB) could be used in lieu of a standard pedestrian signal.[7]

Roundabouts present unique challenges for pedestrians who are blind. At roundabouts, entering and exiting vehicles yield, but do not stop. The continuous traffic flow removes many of the audible cues that pedestrians who are blind use to navigate pedestrian street crossings. Without signals that periodically stop vehicles, pedestrians must assess when there is a sufficient gap in traffic to cross. Sighted pedestrians visually assess the distance and speed of on-coming cars to decide when they should cross. However, pedestrians who are blind or have low vision are not able to identify breaks in on-coming traffic by sight and lack the audible cues that might otherwise substitute for visible information.

The Board included the requirement for an accessible pedestrian signal or an accessible PHB at multilane pedestrian street crossings at roundabouts to make those complex pedestrian street crossings accessible to people who are blind or have low vision. At multilane roundabouts, pedestrians who are blind or have low vision face additional challenges. While a vehicle in the lane nearest the curb might stop for a pedestrian who is blind, the stopped vehicle may mask the audible cues of a car in the next lane that does not yield. *See* Transportation Research Board, NCHRP Report 674: Crossing Solutions at Roundabouts and Channelized Turn Lanes for Pedestrians with Vision Disabilities, 6 (2011), *available at https://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_674.pdf. https://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_674.pdf. https://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_674.pdf.* As a result, pedestrians who are blind take substantially more time to locate a crossing opportunity and make more errors in assessing such opportunities than sighted pedestrians. *Id.* To address these challenges, the proposed rule specified a requirement for a pedestrian actuated signal to be provided at all multilane pedestrian street crossings at roundabouts.

The Access Board received numerous comments on this proposed provision. Five state departments of transportation, eleven local government entities, two professional associations for engineers, three engineering companies, and two individuals opposed a universal requirement for the proposed pedestrian treatments at multilane roundabouts. These commenters opined that engineering judgement and/or warrant criteria should be used on a case-by-case basis to determine whether a pedestrian treatment is appropriate at a given roundabout crossing. Two states, seven local government entities, a local public works association, and AASHTO opposed the requirement on the grounds that pedestrian signals and PHBs will create a false sense of safety for pedestrians as drivers who would not be expecting signals at roundabouts would fail to yield to pedestrians.

One state, five local government entities, and a professional association related to the construction industry expressed concern that the addition of pedestrian signals or PHBs would defeat the purpose of using roundabouts instead of traditional intersections. Specifically, these commenters noted that roundabouts keep traffic continuously flowing, reduce air pollution from idling vehicles, reduce accidents, and may cost less to build as compared to fully signalized intersections. Three local government entities expressed concern that PHBs would be confusing to motorists in parts of the country where, at the time the comments were submitted, they were not frequently used. Three state departments of transportation, eight local government entities, a transportation engineering firm, and a public works professional association found the proposed provision too restrictive as written and urged the Access Board to consider other pedestrian crossing treatments such as raised crosswalks and rapid rectangular flashing beacons (RRFBs).

Many other commenters supported the proposed requirement for signals or PHBs at multilane pedestrian street crossings at roundabouts. Two municipalities, seven disability rights advocacy organizations, two pedestrian

[6] In the final rule, the term ''crosswalk'' has been substituted for ''pedestrian street crossing'' to use terminology consistent with the MUTCD.

[7] Pedestrian Hybrid Beacons (PHBs) are a special type of hybrid beacon used to war and control traffic at an unsignalized location to assist pedestrians in crossing a street at a marked crosswalk (R104.3).

advocacy organizations, one engineering firm, and 99 individuals, including persons with disabilities, mobility specialists, and others, supported the proposed provision. Three disability rights organizations requested that the final rule require signals or PHBs at all roundabouts, including single lane pedestrian crossings. Two researchers who generally supported the proposed rule also encouraged further study on other acceptable treatments, such as raised crosswalks and RRFBs.

The Access Board considered all of the comments submitted regarding pedestrian treatments at roundabouts. In addition to the comments, the Board considered relevant research on alternate pedestrian treatments such as raised crosswalks and RRFBs. Raised crosswalks are marked pedestrian crossings on elevated speed tables that require a driver to slow down to cross the speed table. Because drivers must slow their vehicles to traverse the raised crossing, they are more likely to yield to pedestrians waiting to cross. RRFBs are flashing yellow rectangular lights that are activated by the pedestrian and supplement a pedestrian warning sign. The flashing beacons draw a driver's attention to the pedestrian in the crosswalk, increasing the likelihood that the driver will yield to the pedestrian. Unlike the PHB, neither the raised crosswalk nor the RRFB provide the driver with a ''stop'' signal. Rather, they bring increased awareness to the presence of a pedestrian.

National Cooperative Highway Research Program Project 674 assessed the use of PHBs and raised crosswalks at a multilane roundabout by blind pedestrians in Golden, Colorado. *See* Transportation Research Board, NCHRP Report 674: Crossing Solutions at Roundabouts and Channelized Turn Lanes for Pedestrians with Vision Disabilities 6 (2011), *available at https://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_674.pdf.* Researchers found positive effects on decision making regarding crossings by blind pedestrians using both types of treatments. *Id.*

A study undertaken by Western Michigan University confirmed the effectiveness of PHBs at multilane roundabouts and showed that RRFBs could be effective in some instances. *See* Dept. of Blindness and Low Vision Studies, Western Michigan University et al., Road Commission for Oakland County PHB and RRFB Study: Final Report, 5–7 (October 5, 2011) *available at https://www.rcocweb.org/DocumentCenter/Home/View/99* (indicating that RRFBs installed at two-lane roundabout entries had a positive impact on decision making by blind pedestrians as to assessing when to cross; however, RRFBs were less effective at two-lane roundabout exits and three-lane roundabouts).

A Federal Highway Administration (FHWA) study found further support for the conclusion that under certain circumstances, RRFBs can be effective at providing accessibility for pedestrian crossings at multilane roundabouts. FHWA, Pub. No. FHWA–SA–15–69, Evaluation of Rectangular Rapid-Flashing Beacons (RRFB) at Multilane Roundabouts, 34 (2015, Updated 2020) *available at https://safety.fhwa.dot.gov/intersection/roundabouts/fhwasa15069.pdf.*

The Board also reviewed Transportation Research Board-sponsored research on crossing solutions at roundabouts and channelized turn lanes for pedestrians who are blind or have low vision. *See* Transportation Research Board, NCHRP 3–78b: Guidelines for the Application of Crossing Solutions at Roundabouts and Channelized Turn Lanes for Pedestrians with Vision Disabilities, Final Project Report (2016) *available at https://itre.ncsu.edu/wp-content/uploads/sites/2/2017/04/NCHRP-03-78b_Final-Guidelines.pdf; see also* Transportation Research Board, NCHRP 834: Crossing Solutions at Roundabouts and Channelized Turn Lanes for Pedestrians with Vision Disabilities, A Guidebook (2017) *available at https://www.trb.org/Main/Blurbs/175586.aspx.*

Multilane roundabouts remain highly complex crossings for pedestrians who are blind or have low vision. In light of the lack of clear audible cues at these crossings and the additional challenges posed by the geometry of multilane crossings in these locations, in the final rule the Board has retained the requirement for an enhanced crosswalk treatment at each multilane pedestrian crossing at roundabouts. However, based on commenter feedback and the Board's review of available research, the final rule includes three treatment options for crosswalks at roundabouts, in addition to standard accessible pedestrian signals: PHBs, raised crosswalks, and RRFBs. All three treatments demonstrated positive effects over untreated crossings in the research studies described above. While the three treatments did not perform identically in each research study, the Board finds that each treatment was effective in certain scenarios. The final rule requires that, like other accessible pedestrian signals, all new and altered PHBs provide audible and vibrotactile information in addition to visible cues, and all new and altered RRFBs provide audible information communicating that the warning lights are flashing.

The Board notes that research on single lane roundabouts indicates that certain single lane roundabouts pose challenges to pedestrians with disabilities attempting to cross. *See* David A. Guth et. al., *Blind and Sighted Pedestrians' Road Crossing Judgments at a Single-Lane Roundabout,* 55 Human Factors, 632 (June 2013). However, it is not clear from the limited available research, whether all single lane roundabouts, or only those with certain characteristics, pose barriers to safe crossing for pedestrians who are blind such that enhanced crossing treatments are required. USDOT plans to undertake additional research to study the conditions under which single lane crossings at roundabouts present challenges for pedestrians who are blind.

4. Leveling Out of Intersections Extended Through Pedestrian Crossings

In the NPRM, the Board proposed to require that the grade of pedestrian access routes in crosswalks not exceed 5% (NPRM R302.5.1). The proposed rule also limited the cross slope of pedestrian access routes to 2% (NPRM R302.6), and the cross slope of pedestrian access routes contained within crosswalks at approaches without yield or stop control to 5% (NPRM R302.6.1). The effect of these provisions was to require that in new construction, the leveling out of streets at intersections be extended to crosswalks. It is common practice to level out streets at intersections so that the slope of a street does not present a significant cross slope to the intersecting roadway. AASHTO recommends that at intersections, grades in excess of three percent should be avoided. *See* AASHTO, Policy on Geometric Design of Highways and Streets at 9–34.

The cross slope of a crosswalk is the same as the grade of the roadway that runs through it. Where traffic is required to slow down at a crosswalk because there is a device such as a stop or yield sign, the grade of the road (and the cross slope of the crosswalk) can be flatter because vehicles move more slowly through the crosswalk. However, where traffic will flow across a crosswalk without slowing or stopping, such as during a green light or at an intersection without any traffic control device, abrupt changes in the grade of the road should be minimized to prevent a vehicle from jolting or bottoming out on the grade change in hilly areas.

The proposed rule specified cross slope of pedestrian street crossing in

new construction and alterations according to the type of traffic control provided at the intersection. At NPRM section R302.6.1, the proposed guidelines called for a maximum 5% cross slope for pedestrian street crossings ''without yield or stop control.'' In an advisory at R302.6.1, the Board explained that crossings ''without yield or stop control'' refer to those crossings that do not have a stop or yield sign, or alternately have a traffic signal that is ''designed for the green phase.'' The Board further clarified that crossings ''without yield or stop control'' are those intersections where ''vehicles can proceed through the intersection without slowing or stopping.'' Proposed provision R302.6 provided for a 1:48 maximum cross slope for other pedestrian street crossings at intersections, which would include those with a stop or yield sign, or other type of traffic control device requiring a full stop or yield.

In response to the NPRM, ten state entities, six local government entities, eight individuals from the engineering and planning industry, and one engineering firm indicated that the Board should use clearer language to distinguish between the types of crossings. Thus, in the final rule, the Board has separated the requirements according to the type of traffic control at the crosswalk: crosswalk with yield or stop control devices (R302.5.2.1); crosswalk at an uncontrolled approach (R302.5.2.2); crosswalk with traffic control signal or PHB (R302.5.2.3); and midblock and roundabout crosswalks (R302.5.2.4).

Many commenters expressed concern about the application of the cross slope provisions in alterations. Three state departments of transportation and one local government entity were concerned that changes in signalization alone, without any construction to the roadway itself, would trigger a requirement to comply with the cross slope requirements at pedestrian crossings. Two states, one association representing state departments of transportation, one local government, and one engineer pointed out that signalization of intersections change over time and questioned whether the requirement should be tied to a fluid marker. The local government and engineer commenters noted that while 5% maximum cross slope might be acceptable at the time of new construction, once more houses and facilities are built around an intersection warranting a stop sign, the requirement would shift to 2%. Commenters noted that a 2% maximum cross slope is less easily achieved in an alteration than in new construction. The Board notes that an alteration to a traffic control device would not necessarily trigger a requirement to comply with cross slope requirements at that crosswalk if the crosswalk is not being altered.

One state expressed concern that resurfacing roadways would trigger a requirement to regrade intersections. A local government indicated that retrofitting cross slopes of existing crossings would have more than minimal impacts, and another local government requested that existing crossings be entirely exempted from the requirement. Four organizations associated with the construction and public works industries expressed concern about the cost of compliance for existing intersections. One state was not sure that it could meet the cross slope requirements given existing infrastructure. Seven local government entities expressed that altering intersections to comply with cross slope requirements would be ''unreasonable,'' ''burdensome,'' ''impractical,'' ''difficult,'' or ''not feasible without major reconstruction.''

The Board acknowledges that full compliance with the cross slope requirements for crosswalks, which is expected in new construction, may be challenging in some alterations due to existing physical constraints. In alterations, compliance with R302.5.2 is required to the maximum extent feasible where existing physical constraints, as discussed in R202.3, make compliance technically infeasible. If existing curbs, gutters, sidewalks, and utilities are not part of the facility being altered, they are generally considered ''adjacent developed facilities'' which are a type of existing physical constraint under R202.3 that could constrain the technical feasibility of compliance with R302.5.2. Thus, if a public entity is not otherwise altering the adjacent developed facilities as part of its crosswalk alteration and those existing physical constraints would make compliance with R302.5.2 technically infeasible, then compliance is required to the maximum extent feasible without needing to alter the adjacent developed facilities.

The Board notes, however, that when alterations are made to crosswalks, R203.6.2 requires curb ramps or blended transitions to be provided on both ends of the crosswalk where a pedestrian access route crosses a curb, thus making such curb ramps or blended transitions part of the crosswalk being altered. Accordingly, existing curb ramps and blended transitions are not considered existing physical constraints under R202.3. Similarly, existing curbs within the crosswalk where there is no curb ramp or blended transition, are not considered existing physical constraints under R202.3.

The Board has assessed the costs of compliance with the crosswalk cross slope requirements in the FRIA. *See* FRIA at 114. In light of the existing physical constraints provision at R202.3, the application of which to R302.5.2 is described above, as well as the large number of jurisdictions whose design guidance for crosswalk cross slope already meets the PROWAG technical requirements, the Board believes commenters' concerns that this requirement is ''unreasonable,'' ''burdensome,'' or ''not feasible without major reconstruction'' to be based on a misunderstanding of the requirements. Further, the Board regards the accessibility of crosswalks, where individuals with disabilities are present in vehicular ways, to be critical in ensuring equitable use of pedestrian facilities.

Several state and local jurisdictions objected to the technical requirements themselves. One state department of transportation indicated that a 3% maximum cross slope is appropriate for pedestrian crossings with stop and yield control, and 6% maximum is appropriate for other crossings. Two local government entities recommended 5% maximum cross slope for all crossings. Another state agreed with a grade limitation on side streets, but not through streets, which would eliminate restrictions on cross slope of pedestrian crossings spanning through streets. Another state DOT commented that regrading pedestrian crossings is costly and problematic for vehicles, and preferred that tabling not be required. Three local government entities, a public works association, and an association of engineering professionals expressed concern that the cross slope requirements will create a ''roller coaster'' street profile or ''jolt'' vehicles as they pass over pedestrian crossings. The Board disagrees that the technical requirements, when properly implemented, will result in the engineering concerns expressed by some commenters. Further, the Board observes that if an entity can demonstrate that the unique characteristics of the underlying terrain of a specific newly designed intersection preclude full compliance with the cross slope requirements, under DOJ's Title II regulations under the ADA, full compliance with the cross slope requirements may not be required. *See* 28 CFR 35.151. In alterations, where compliance is technically infeasible,

alterations must comply with requirements to the maximum extent feasible (R202.3). In addition, the Board has provided an exception for the grade of crosswalks where superelevation exceeds 5% (R302.4.3).

Other commenters supported the proposed requirements. A professional organization of mobility specialists for people who are blind requested that the Board encourage tabling wherever feasible. A pedestrian advocacy organization asserted that 2% should be the maximum cross slope for all pedestrian crossings. A non-profit accessible design organization also indicated that 2% maximum cross slope should be the standard for all pedestrian crossings, noting that a 5% cross slope is too steep for many manual wheelchair users.

After careful review of the comments, the Board has retained the substantive cross slope requirements for crosswalks as proposed. A cross slope of 1:48 (2.1%) is well established in accessibility guidelines as the appropriate maneuverable cross slope for most individuals in manual wheelchairs and persons with balance impairments. *See, e.g.,* Uniform Federal Accessibility Standards (UFAS), 49 FR 31528 (Aug. 7, 1984) and the 2004 ABA and ADA Accessibility Guidelines, 36 CFR part 1191.

The Board notes that if the 1:48 cross slope ratio were expressed as a percentage to the nearest hundredth, the relevant percentage would be 2.08%. This percentage has been expressed as 2.1% in the regulatory text due to the limitations of current digital measuring tools commonly used in sidewalk construction, which would round 2.08% to 2.1%.

In these guidelines, the Board balances accessibility with engineering considerations. The Board has assessed the costs of compliance with the crosswalk cross slope requirements in the FRIA. *See* FRIA at 114.

5. MUTCD

The proposed guidelines incorporated by reference portions of the 2009 edition of the USDOT Federal Highway Administration's (FHWA's) Manual on Uniform Traffic Control Devices (MUTCD), which is the standard for traffic control devices used throughout the United States. The incorporated sections included several definitions and technical requirements for alternate pedestrian access routes and accessible pedestrian signals and push buttons (NPRM R105.2; R205; R209.1).

Several disability rights advocacy organizations objected to this approach. Two organizations objected to the Access Board's use of the MUTCD in lieu of creating its own technical specifications for these regulated features, while others did not oppose the use of the MUTCD standard but felt that the relevant text of the MUTCD should be reproduced within the guidelines or in an appendix. A variety of commenters urged the Access Board to include the full text of MUTCD definitions for specified terms incorporated by reference.

The National Technology Transfer and Advancement Act requires Federal agencies to use technical standards developed by voluntary consensus standards organizations to carry out policy objectives. 15 U.S.C. 3701 *et seq.* Wherever practical and appropriate, government adoption of voluntary standards reduces the burden of compliance with Federal regulations on regulated entities, and also reduces costs to the government. *See generally,* Office of Management and Budget (OMB), Circular A–119. The MUTCD was developed as a voluntary consensus standard for traffic control devices and was subsequently adopted by the FHWA as a national standard. *See* FHWA, Evolution of MUTCD, *available at https://mutcd.fhwa.dot.gov/kno-history.htm.* States must adopt the content of the MUTCD within two years of issuance. 23 CFR part 655, subpart F.

Consistent with its statutory obligations and OMB guidance to reduce the burden on regulated entities, the Access Board uses existing technical standards where possible to meet its policy objectives. Accordingly, the Board proposed incorporation by reference of the MUTCD sections. However, upon review of the comments, and after over a decade of providing technical assistance on the application of those provisions, the Board concurs with commenters that incorporating MUTCD provisions by reference does not provide sufficient clarity for a mandatory standard.

Specifically, the Board notes that the MUTCD contains several types of provisions, some of which are mandatory standards and some of which are guidance, options, and supporting explanations. The Board proposed to incorporate by reference the standards, but further indicated that the guidance, options, and support statements must be used to interpret the standards. The NPRM further stated that if there were any differences between the MUTCD and the proposed rule, the proposed rule applied. Upon review, and in light of the comments, it is clear that this approach does not provide sufficient specificity to achieve uniform nationwide accessibility. In addition, application of the MUTCD relies heavily on engineering judgement, which further invites the possibility of subjective determinations of the need for specific accessibility features.

In the final rule, the Board has addressed this confusion by eliminating all references to the MUTCD and including the specific definitions and requirements directly in the rule text. The technical provisions and the definitions included in the rule text adhere closely to substantive requirements of the MUTCD. The origin of the substantive requirements, and any deviations from the MUTCD, are explained in the Section-by-Section discussion below.

The Board notes that four state DOTs and three local government commenters expressed concern that these guidelines ''conflict'' with the MUTCD. One state DOT and two local governments indicated that where MUTCD and these guidelines differ, the MUTCD should apply. Two state DOTs commented that if certain treatments are required for accessibility purposes, they should be contained in the MUTCD. Another state department of transportation observed that the MUTCD and the guidelines should not be interpreted as conflicting.

In the development of this final rule, the Access Board consulted representatives from USDOT's Federal Highways Administration, which issues the MUTCD. In addition, the Access Board reviewed USDOT's proposed rule to update the MUTCD. National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Revision, 85 FR 80898 (proposed Dec. 14, 2020)(to be codified at 23 CFR parts 470, 635, and 655). When USDOT undertakes its own rulemaking to adopt these guidelines as enforceable standards, USDOT will determine how to ensure that there is no ''conflict'' within its own regulations.

VI. Section-by-Section Analysis

A. Structural Changes to the Rule Text

To improve clarity of the rule text, the Board made some non-substantive structural changes. First, while not a change to the rule text itself, the advisories that appeared with the proposed rule text have been removed. The Access Board no longer publishes advisories in the Code of Federal Regulations (CFR) as the information contained in those advisories is guidance, not mandatory requirements. The Access Board will provide guidance on its website to assist regulated parties understand and properly implement the final enforceable standards that are

issued by the standard-setting agencies. In some areas, information that previously appeared in an advisory has been moved to the rule text. Those instances are discussed in the section-by-section discussion below.

Second, as previously noted, the Board eliminated incorporation by reference of portions of the MUTCD, opting instead to state the requirements directly in the PROWAG rule text. The Board agreed with numerous commenters who indicated that stating the requirements in the rule text would provide greater clarity. Substantive changes relating to the specific MUTCD sections referenced in the proposed rule are discussed in their respective sections below.

B. Chapter 1: Application and Administration

R101 Purpose and Application

The final rule contains scoping and technical requirements that ensure that pedestrian facilities located in public rights-of-way are readily accessible to and usable by pedestrians with disabilities. This includes both pedestrian facilities in a street or highway right-of-way and pedestrian facilities located in an independent right-of-way or easement, such as a shared use path. These scoping and technical requirements apply to facilities covered by both the ADA and the ABA and become mandatory once adopted for enforcement by another Federal agency issuing regulations implementing the ADA, Section 504 of the Rehabilitation Act, or the ABA.

The intent of this section has not changed from what was proposed in the NPRM; however, the text has been edited for clarity. Specifically, R101.1 states that the guidelines apply to public rights-of-way, including a public right-of-way that forms the boundary of a site or that lies within a site. This clarification is provided so that jurisdictions understand that these guidelines apply to public rights-of-way that may also be part of a ''site,'' and thus subject to 36 CFR 1191. *See* CFR part 1191, App. B, 106.5 & App. C F106.5 (defining ''site'' as a ''parcel of land bounded by a property line or a designated portion of a public right-of-way''). Where a public right-of-way is part of a site covered by the ABA or Title II of the ADA, these guidelines apply to the public right-of-way portion of that site.

As stated in the Major Issues section above, these guidelines do not address existing facilities unless they are altered at the discretion of a covered entity. DOJ's and USDOT's regulations implementing these guidelines under the ADA, will address requirements for existing pedestrian facilities in the public right-of-way.

R102 Deviations From These Guidelines

This section, titled ''Equivalent Facilitation'' in the proposed rule, states that under the ADA, the use of alternative designs, products, or technologies that result in substantially equivalent or greater accessibility and usability than the proposed guidelines is permitted. The Access Board has added language clarifying that the use of alternative designs, products, or technologies is not permitted for facilities subject to the ABA. The Board has also added a provision at R102.2 explaining that under the ABA, deviations from an enforceable standard issued by GSA, HUD, DoD, or USPS require an approved waiver or modification, which is issued by the standard-setting agency upon a determination that the waiver or modification is ''clearly necessary.'' *See* 42 U.S.C. 4156.

R103 Conventions

R103.1 Conventional Industry Tolerances

Conventional industry tolerances apply where dimensions are not stated as a range. The final rule clarifies that dimensions that are stated as having a specific minimum or maximum endpoint are considered a range. For example, a cross slope specified as ''1:48 (2.1%) maximum'' is considered a range from zero to 1:48 (2.1%). Designing to a dimension below the maximum allows for construction inaccuracies without the need for a tolerance.

Several engineers and state DOTs requested that we provide a list of specific tolerances. Tolerances are determined by the industry for the material used. It would not be beneficial to codify specific tolerances in these guidelines that cannot be easily updated when revised by industry. The Board also received comments requesting guidance on how measurements should be taken to assess compliance and others expressing concern about how construction variations would be treated in enforcement scenarios. These concerns should be directed to the enforcing agencies when they issue their proposed rules.

R103.2 Calculation of Percentages

Where the required number of elements or facilities to be provided based on the specified ratio or percentage is not a whole number, the result is rounded up to the next whole number. For example, if a group of five benches is provided at a location that is not a transit stop or shelter, R209.6.2 requires 50% of the benches to provide clear space complying with R404. Since 50% of five is 2.5, the result is rounded up and three benches would be required to provide the clear space.

In the final rule, the Board has omitted the proposed sentence indicating that rounding down for values less than one half is permitted where the determination of the required size or dimension of an element or facility involves ratios or percentages. The Board notes the potential for misinterpretation of this sentence as allowing a regulated entity to round down the measurement of a slope, for example a cross slope of 2.44%, to a whole number. The Board further notes that while this provision is included in the 2004 ABA and ADA Accessibility Guidelines, it has long been a source of confusion. Notably, the Board received a comment from a local government entity erroneously applying this provision to the walking speed used to determine pedestrian signal timing.

R103.3 Units of Measurement

Linear measurements in these guidelines are stated in both U.S. customary units and metric units. Slopes are expressed in both ratios and percentages. Each system should be used independently and consistently, as they may not be exact equivalents.

In the proposed rule, slope measurements were stated only in percentages, which in most cases had been rounded to whole numbers. For consistency with the 2004 ADA and ABA Accessibility Guidelines, which expresses slope only in ratios, in the final rule slopes are expressed in both ratios and percentages. The practical effect of this change is that slopes stated as 2 percent in the proposed rule are 1:48 (2.1%) in the final rule, which is the ratio used in the 2004 ADA and ABA Accessibility Guidelines. The Board has elected to state percentages to one decimal place for ease of implementation, as current digital measuring tools commonly used in sidewalk construction typically provide measurements to one decimal place.

R104 Definitions

This was section 105 in the NPRM but was redesignated as section 104 when the Board deleted proposed section 104 as the result of the decision to eliminate the reference to the MUTCD in favor of providing the actual language from the MUTCD (sometimes as modified) throughout the rule.

R104.1 Undefined Terms

The proposed rule indicated that undefined terms are defined using a collegiate dictionary in the sense that the context implies. The final rule implements the Board's current standard approach to undefined terms, stating that undefined terms shall be given their ordinary meaning in the sense that the context implies.

R104.2 Interchangeability

This provision states that the plural and singular forms of a word are used interchangeably in these guidelines.

R104.3 Defined Terms

The Board's decision to include all substantive requirements in the final rule text in lieu of incorporating MUTCD provisions by reference has resulted in significant expansion of the number of defined terms in these guidelines. The proposed rule text, as modified by the SNPRM, included 17 definitions and nine MUTCD definitions that were incorporated by reference.

In addition, the proposed rule specified that terms appearing in the sections of the MUTCD that were incorporated by reference would have the meanings as stated in the definition section of the MUTCD. In moving MUTCD requirements and definitions that had been previously incorporated by reference directly into the rule text, the Board also added to the rule text the relevant defined terms from MUTCD that appeared in these sections.

The Board also added several terms to provide clarity to the rule text and removed a few defined terms that were no longer needed in light of revisions to the proposed rule. In total, the final rule has 52 defined terms, which are identified throughout the rule text in italic font.

The following terms were added from the MUTCD, either verbatim, or with minimal edits made for clarity: Accessible Pedestrian Signal, Crosswalk, Highway, Median, Pedestrian, Pedestrian Interval Change, Pedestrian Hybrid Beacon, Pedestrian Signal Head, Push Button, Push Button Locator Tone, Roadway, Roundabout, Sidewalk, Splitter Island, Traveled Way, and Walk Interval. The following additional terms, which have definitions that are not taken from MUTCD, have been added to provide further clarity to the rule text: Block Perimeter, Boarding Platform, Building, Curb, Detectable Warning Surface, Developed, Grade, Parallel Curb Ramp, Passenger Loading Zone, Pedestrian Activated Warning Devices, Pedestrian Refuge Island, Perpendicular Curb Ramp, Ramp, Stair, Standard Curb Height, Street,[8] Transit Shelter, Transit Stop, Transitional Segment, and Vibrotactile.

A few proposed defined terms have been removed from the final rule:

- ''Facility,'' a term and definition that came from ADAAG, has been replaced by ''pedestrian facility'' and a corresponding definition that more accurately reflects how the term is used in PROWAG. In addition, the reference to ''elements'' was removed from the definition of pedestrian facility, since elements are components of a pedestrian facility.
- ''Island,'' which was proposed to be incorporated by reference from MUTCD, has been replaced by ''Pedestrian Refuge Island'' with a corresponding definition that clarifies the characteristics that make an island suitable for pedestrian refuge (specifically, that the traversable path of the island be at least 72 inches long in the direction of travel to allow sufficient space for two detectable warning surfaces, separation of those surfaces, and space for a pedestrian to wait).
- ''Intersection,'' which was proposed to be incorporated by reference from MUTCD, has been eliminated from the defined terms. The Board concluded that future regulated entities, specifically state and local departments of transportation, can readily identify an intersection, and that reproducing the highly technical MUTCD definition of intersection in the rule text would not provide additional clarity.
- ''Vertical Surface Discontinuities'' was eliminated entirely from the rule text. In the final rule, this concept is expressed in the relevant provisions as ''changes in level,'' which is a widely understood requirement of ADAAG.

In the final PROWAG rule text, most of the original definitions that were proposed have been edited for clarity as follows:

- *Accessible:* The word ''facility,'' which is no longer a defined term, has been replaced with ''pedestrian facility'' and ''element.''
- *Alteration:* The defined term now also includes ''altered.'' As explained in the Major Issues section above, the definition has been edited to clarify that an addition of a pedestrian facility to an existing, developed right-of-way is considered an alteration within the requirements of PROWAG. Several commenters requested edits to or clarifications regarding the examples that were included in the proposed definition. The Board has removed the examples from the definitions. Providing examples, if necessary, is better left to the enforcing agencies.
- *Blended Transition:* This definition has been revised to more accurately describe the portion of a pedestrian access route that is a blended transition, and to differentiate blended transitions from curb ramps.
- *Cross Slope:* The word ''grade'' has been changed to slope, which reflects more typical usage.
- *Curb Line:* The word ''highway'' was removed for clarity, as ''street'' sufficiently conveys the concept.
- *Curb Ramp:* The edited definition clarifies that the words ''parallel'' and ''perpendicular'' are stated relative to the curb or street that curb ramps serve.
- *Element:* The word ''pedestrian facility'' has been substituted for ''facility,'' reflecting the substitution of defined terms, as described above.
- *Grade Break:* The term ''running slope'' has been substituted for ''grade'' for consistency in the way these terms are used throughout the rule text.
- *Operable Part:* The phrase ''interact with the element'' has been added to as a use of an operable part. This addition is designed to cover QR codes and any other markings that are intended to be scanned with a mobile device.
- *Pedestrian Access Route:* The term ''accessible'' has been added to clarify that the pedestrian access route is the portion of a pedestrian circulation path that complies with the pedestrian access route accessibility requirements in these guidelines. The phrase ''coinciding with'' has been removed as redundant.
- *Pedestrian Circulation Path:* The word ''travel'' was removed in favor of the word ''use'' for clarity.
- *Qualified Historic Building or Facility:* The term ''qualified historic facility'' was updated to ''qualified historic building or facility'' for clarity to match the term that is used in the 2004 ABA and ADA Accessibility Guidelines.
- *Running Slope:* The word ''slope'' has been substituted for ''grade'' for consistency. In response to comments, the Board has clarified that grade and running slope are synonymous.
- *Shared Use Path:* In response to comments from state and local government entities, the Board has edited the definition to emphasize the transportation purpose of shared use paths. While many shared use paths are also used for recreation, a path that is used primarily for recreation is not subject to the shared use path

[8] In the NPRM, the Board proposed to incorporate the definition of ''street'' from MUTCD, which is used in the MUTCD as a synonym of ''highway.'' However, the definition of ''street'' in the final rule reflects the use of the term in PROWAG as a synonym of the defined term ''roadway,'' not ''highway.''

requirements in this rule. Regulated entities should carefully consider the purpose and use of paths when determining whether to treat them as shared use paths under these guidelines. A wooded cut-through in a suburban area regularly used by residents on foot and on bicycles to reach a transit stop is likely a shared use path. A hiking trail through a mountainous area used primarily for recreational hiking and biking is probably not a shared use path under these guidelines.

C. Chapter 2: Scoping Requirements

R201 General

Scope (R201.1)

All newly constructed pedestrian facilities and elements, and all altered portions of existing pedestrian facilities must comply with these guidelines. There is no substantive change in the general scope of the final rule from what was proposed. However, as described in the major issues section above, the Board clarified that newly constructed pedestrian facilities are those that are constructed on greenfield. Any pedestrian facilities or elements that are constructed on or added to developed land, as defined in section R104 are subject to the requirements for alterations, described in section R202.

R201.1 excepts from compliance pedestrian facilities within areas used only by service personnel for maintenance, repair, or monitoring of equipment. This exception was included in the proposed rule as a separate provision entitled ''R203 Machinery Spaces.''

Temporary and Permanent Pedestrian Facilities (R201.2)

This provision specifies that both temporary and permanent pedestrian facilities in the public right-of-way must comply with these guidelines. Temporary facilities might include outdoor festival structures or pop-up service counters. In the final rule, the provision clarifies that when a pedestrian circulation path or transit stop is temporarily closed, an alternate pedestrian access route or transit stop must be provided in accordance with R204. As stated in R204, temporary alternate pedestrian access routes are subject to the technical requirements of R303 and R402 in lieu of the full requirements for permanent pedestrian access routes described at R203.

Buildings, Structures, and Elements (R201.3)

This provision explains that buildings, structures, and elements that are in the public right-of-way and are not specifically covered by these guidelines are subject to the applicable requirements for buildings and sites at 36 CFR part 1191. In response to commenters' requests for clarity as to what is intended here, the Board added examples of buildings, structures and elements at safety rest areas or park and ride lots, and temporary performance stages and reviewing stands. As stated in R201.2, all permanent and temporary pedestrian facilities in the public right-of-way must comply with accessibility standards. However, PROWAG does not provide technical requirements for every type of structure that is provided for pedestrian use in the public right-of-way. For example, technical accessibility requirements for performance stages are not included in PROWAG, but this provision directs a jurisdiction constructing a performance stage in the public right-of-way to the buildings and sites guidelines for technical accessibility requirements of that structure.

R202 Alterations

The main purpose of this section is to describe the additional flexibilities provided for compliance when construction of pedestrian facilities and elements occurs on developed land as compared to the expected full compliance of new construction on undeveloped land. These flexibilities are as follows.

- *R202.2:* Altered elements are connected by a pedestrian access route to an existing pedestrian circulation path. This allows altered elements to tie into an existing pedestrian circulation path (which may not necessarily have a pedestrian access route) instead of requiring a full network of pedestrian access routes as specified in R203.2, which for new construction requires all accessible elements, spaces, and pedestrian facilities to be connected by a pedestrian access route. A transitional segment, as defined in R104.3, may be used in the connection of an altered pedestrian access route to an existing pedestrian circulation path.
- *R202.3:* Alterations must comply with a requirement to the maximum extent feasible where existing physical constraints make full compliance with that requirement technically infeasible. Examples of physical constraints include underlying terrain, underground structures, adjacent developed facilities, drainage, or the presence of a significant natural or historic feature. The language of this section has been revised for clarity. Numerous commenters indicated that the proposed language, which stated that compliance was required to the ''extent practicable'' where physical constraints made full compliance ''impracticable,'' was confusing, and requested that the Board use the phrase ''maximum extent feasible'' the term that is used in the 2004 ABA and ADA Accessibility Guidelines. The Board concurred with commenters and modified the language of the provision for consistency.
- *R202.5:* Alterations to qualified historic buildings or facilities must comply with a requirement to the maximum extent feasible where full compliance with the requirement would threaten the historic significance of the qualified historic building or facility. The wording of this provision was changed slightly from the proposed language to clarify that this exception is not intended to protect every element of a historic property, for example every historic cobblestone, present in a public right-of-way. Rather, the intent is to protect the historic significance of the facility generally. The revised language clarifies, for example, that the removal of a portion of cobblestones to install a curb ramp that provides access to individuals with disabilities does not necessarily threaten the historic significance of the entire facility.

In addition, in section R202.4, the final rule states that alterations may not decrease the accessibility of existing pedestrian facilities below the requirements of the guidelines. This provision has been edited for clarity. The Board uses the term ''accessible'' in the rule text to refer to pedestrian facilities that are compliant with the guidelines (R104.3). This baseline is useful for jurisdictions implementing PROWAG in certain alteration scenarios where they must make choices amongst various accessible features to achieve compliance. For example, to add a missing landing, the slope of an existing curb ramp may need to be increased to the maximum allowable slope. This is an acceptable choice under these guidelines.

In addition to the above-described changes, the Board has made two other important modifications to the Alterations section of these guidelines. First, as described in the Major Issues section, the Board has included pedestrian facilities and elements that are ''added'' to developed areas within the definition of alteration. This is a change from the proposed rule where added elements and facilities were subject to the requirements for new construction. The Board agreed with numerous commenters who expressed the view that existing physical constraints present on developed property might affect the extent to

which some added elements and facilities in the public right-of-way could comply strictly with new construction standards.

Second, also as discussed in the Major Issues section, the Board stated at proposed R202.3 that each altered element, space, or facility ''within the scope of the [alteration] project'' was required to comply with these guidelines. Some state and local government commenters indicated confusion over the meaning of ''scope of the project,'' and some disability rights advocacy organizations expressed concern that the phrase did not clearly convey expectations for compliance with these guidelines. The Board concurs that this provision was an unnecessary source of confusion and has eliminated the proposed R202.3 (which would have appeared at 202.1 in the final rule) as duplicative with the general scoping provision at R201.1. The term ''scope of the project'' no longer appears in the guidelines. As in the 2004 ABA & ADA Accessibility Guidelines, whatever is altered must be made compliant.

R203 Pedestrian Access Routes

This section contains scoping requirements that explain where pedestrian access routes are required, and scoping requirements that point to the technical requirements in Chapters 3 and 4 applicable to each component of pedestrian access routes.

Pedestrian access routes are a portion of the traversable pedestrian facilities in a public right-of-way that must comply with the accessibility requirements in these guidelines. In new construction, there will be a continuous network of pedestrian access routes that connect all accessible elements, spaces, and pedestrian facilities (R203.2). In alterations, a continuous network of pedestrian access routes will be established piece-by-piece as pedestrian facilities are altered and brought into compliance with PROWAG.[9]

A pedestrian access route exists within or is connected by each newly constructed or altered traversable pedestrian facility: pedestrian circulation paths (including shared use paths) (R203.3); crosswalks (R203.4); pedestrian at-grade rail crossings (R203.5); curb ramps and blended transitions (R203.6); pedestrian overpasses and underpasses (R203.7); ramps (R203.8); elevators and limited use/limited application elevators (R203.9); platform lifts (R203.10); and doors and gates (R203.11).[10] Again, the goal, over time, is a continuous accessible pathway through all traversable facilities in the public right-of-way.

The structure of section R203 Pedestrian Access Routes in the final rule has been revised from the proposed section R204 of the NPRM (as modified by the SNPRM). First, with edits to R203.1 General, the Board has clarified that the facilities listed in R203 either ''contain'' or ''connect'' a pedestrian access route. In the years since the NPRM was published, Access Board technical staff have received inquiries related to whether each piece of sidewalk or pedestrian facility is expected to be part of a pedestrian access route, or whether, for example, a pedestrian access route could be provided on one side of the street and not the other. This confusion stems from a requirement in the 2004 ABA and ADA Accessibility Guidelines that at least one accessible route connect buildings, sites, elements, and spaces, but does not require that each route between these locations be accessible. *See* 36 CFR part 1191, App. A, Ch. 2, 206.2.2.

The public right-of-way in this aspect is not analogous to buildings and sites. Every new or altered pedestrian facility must be made accessible. Thus, the Access Board clarifies that the requirements for pedestrian access routes are applicable to every newly constructed or altered pedestrian circulation path, crosswalk, pedestrian at-grade rail crossing, and pedestrian overpass and underpass, and the curb ramps, ramps, elevators, platform lifts, and doors and gates that connect pedestrian facilities with pedestrian access routes must also comply with the accessibility requirements of PROWAG.

Second, the Board has moved the scoping for crosswalks (referred to as pedestrian street crossings in the proposed rule at NPRM R206) and the scoping for curb ramps and blended transitions (NPRM R207) into the final rule's scoping section for pedestrian access routes at R203. The Board made this change to further clarify that crosswalks, curb ramps, and blended transitions are pedestrian facilities that comprise part of the continuous network of pedestrian access routes present in the public right-of-way.

Third, in response to numerous technical assistance inquiries over the years since the NPRM was published, in the final rule the Board has added detailed scoping as to the required placement of curb ramps. The scoping clarifies when curb ramps are required at intersection crosswalks, midblock and roundabout crosswalks, on-street parking, and passenger loading zones. It further clarifies that when alterations are made to crosswalks, missing curb ramps must be added as part of the alteration. This added scoping is discussed in greater detail below.

Pedestrian Circulation Paths (R203.3)

In response to the proposed rule (NPRM 204.2), some commenters requested that the Access Board explicitly require that jurisdictions provide sidewalks, while others requested that the Board clarify that the PROWAG rule does not require sidewalks. The final rule requires that pedestrian access routes connect accessible elements, spaces, and pedestrian facilities (R203.2). A pedestrian access route is comprised primarily of conforming portions of a pedestrian circulation path, which are defined as ''a prepared exterior or interior surface provided for pedestrian use in the public right-of-way'' (R104.3). It does not matter under the rule whether the pedestrian access route runs through a sidewalk, shared use path, shoulder intended for pedestrian use, or other type of prepared surface, as long as it meets the technical requirements for pedestrian access routes. Jurisdictions may meet the requirements of PROWAG using any of the available options.

In the final rule the Board has revised this provision to indicate that transitional segments, as defined in R104.3, may be used to connect new or altered pedestrian access routes to existing pedestrian circulation paths. Transitional segments appeared in the proposed rule at NPRM R202.3.2.

Crosswalks (R203.4)

As noted above, in the final rule, the Board has relocated the scoping for crosswalks to the scoping section for pedestrian access routes to reinforce that crosswalks have a pedestrian access

[9] Consistent with the incremental method of application of this rule, the Board has included an exception for existing pedestrian circulation paths. This exception allows a jurisdiction to alter an element in the public right-of-way that is on or adjacent to an existing pedestrian circulation path without altering the pedestrian circulation path to provide a fully compliant pedestrian access route. For example, if a jurisdiction installs a bench on an existing sidewalk, the bench must comply with PROWAG requirements (R209.6), but the jurisdiction is not also required by PROWAG to replace the sidewalk. However, if the jurisdiction were to install a bench where no pedestrian circulation path existed, it would be required to connect the bench with a compliant pedestrian access route to an existing pedestrian circulation path (R202.2).

[10] Stairs are not part of a pedestrian access route and are not acceptable as a sole connector of pedestrian facilities. However, stairs may be provided in addition to ramps or other pedestrian access route components. Where stairs are provided in the public right-of-way, they must meet technical requirements (R213).

route within them and are part of the continuous network of accessible pedestrian facilities required through public rights-of-way. In addition, the Board has substituted the MUTCD-defined term ''crosswalk,'' with minor revisions to the MUTCD definition, for the term ''pedestrian street crossing'' that was used in the proposed rule (NPRM R204.3). In doing so the Board clarifies that there is no distinction between the places the Access Board expects pedestrian crossings to occur and the industry understanding of the places where crosswalks are located. The main impact of the use of the MUTCD-defined term ''crosswalk'' in place of ''pedestrian street crossing'' is to further clarify the places where curb ramps are required. This is detailed below in the discussion of R203.6.

Pedestrian At-Grade Rail Crossings (R203.5)

The Board has added scoping for pedestrian at-grade rail crossings to clarify that wherever pedestrian at-grade rail crossings are provided they contain a pedestrian access route. The technical requirements are referenced.

Curb Ramps and Blended Transitions (R203.6)

The 2011 NPRM specified that a curb ramp (or blended transition) must be provided for each pedestrian crossing (NPRM R207.1). The proposed rule indicated that a diagonal curb ramp would continue to be permitted in an alteration scenario where physical constraints prevented the installation of a curb ramp for each crossing (NPRM R207.2). In response to these proposed provisions, a few state and local government commenters requested flexibility to install a single curb ramp based on engineering judgement, while others either agreed with the changes or requested that the Board more clearly state the requirements. Two local government commenters lamented the costs of having installed non-compliant curb ramps over a number of years. Other individuals and disability rights advocacy organizations agreed with limiting the use of diagonal curb ramps.

The final rule maintains the requirement that one curb ramp or blended transition be provided for each crosswalk at an intersection corner, and alternatively allows a blended transition to span all crosswalks at an intersection corner. Use of a single curb ramp at the apex of an intersection corner is permitted in alterations where existing physical constraints make compliance technically infeasible. Diagonal curb ramps often route users into the roadway, not within a crosswalk. To provide equity to persons with disabilities in the public right-of-way, PROWAG must ensure that a person in a wheelchair who requires a curb ramp to cross a street is afforded the same opportunity to stay within the safety of a crosswalk as a person who is able to step off the curb directly into a crosswalk. Thus, unless there are existing physical constraints that prohibit the provision of a curb ramp for each crosswalk, one curb ramp per crossing that is contained within the crosswalk must be provided.

The Board notes that since 2011, numerous state and local jurisdictions have adopted a requirement for one curb ramp per crosswalk at an intersection corner, and the Board is not aware of widespread engineering concerns that have resulted from this shift in local policies. *See* FRIA at 99. In addition, the Board notes that when requesting flexibility for new construction, jurisdictions were characterizing newly installed curb ramps in existing rights-of-way as new construction. Such installations are considered alterations under the final rule, and the flexibility for a single curb ramp would be permitted if physical constraints make compliance technically infeasible. The Board does not anticipate that insurmountable engineering issues would prevent full compliance in new construction, which as described above, would be construction on undeveloped land.

In response to numerous technical assistance inquiries received by the Board since the NPRM was published seeking clarification on the places where curb ramps must be installed, the Board has added detailed scoping for the required placement of curb ramps. The NPRM stated that curb ramps or blended transitions are required at each pedestrian street crossing. This substantive requirement has not changed, but the Board has provided further clarification regarding what it meant by ''pedestrian street crossing'' to explain where curb ramps are required. As described above, the Board replaced the term ''pedestrian street crossing'' with the MUTCD-defined term ''crosswalk.''

The MUTCD definition of crosswalk, which appears in R104.5, indicates that a crosswalk is present wherever there is a pedestrian circulation path on one side of a street that approaches the roadway at an angle such that the path would cross the street if the lateral lines of the path were continued (regardless of whether it is marked or unmarked), or where pavement markings indicate a crosswalk. R203.6.1.1 and R203.6.2 clarify that a curb ramp or blended transition must be provided at each end of a crosswalk at an intersection corner, a midblock crossing, and a roundabout crossing. These provisions further clarify that where crossing is prohibited at an intersection or not intended midblock or at a roundabout, jurisdictions must take care to ensure that there is no crosswalk, no curb ramp, and the pedestrian circulation path is separated from the roadway. Information on how to ensure that no crosswalk is present has been added to these provisions for clarity. This information was previously stated in an advisory that accompanied the NPRM rule text (NPRM Advisory 206).

Equity in the public right-of-way requires that persons with disabilities have equal access to crosswalks and information about whether a crosswalk is present. Where pedestrian crossing is permitted, curb ramps must be provided so that persons who use wheelchairs can access them. Where pedestrian crossing is prohibited at an intersection or is not intended midblock or at a roundabout, cane-detectable features must indicate to persons who are blind that this a not a place to cross. Several state DOTs commented on the NPRM advisory, expressing concern that the addition of detectable treatments would be costly, unnecessary, or obstruct sightlines for motorists. The Board has included an assessment of the costs in its Final Regulatory Impact Analysis and notes that jurisdictions have options for ensuring that they do not create a crosswalk where crossing is prohibited or not intended. This includes options, such as grass strips and landscaping, that can be used where a jurisdiction is concerned that a sign or barrier might obstruct motorists' sightlines.

The Board is aware of concerns expressed by individuals seeking technical assistance implementing the proposed rule that a curb ramp is required on each side of a crosswalk, even in scenarios where there is a pedestrian circulation path only on one side. The purpose of this requirement is to ensure that a person in a wheelchair who has entered a crosswalk on one side is able to safely exit the roadway on the other side as a person who does not use a wheelchair would do by stepping onto the curb. Jurisdictions that do not wish to provide a curb ramp on the side of the street where no pedestrian circulation path is present must ensure that there is no crosswalk, as defined in R104.3. Thus, the jurisdiction must provide a separation between the pedestrian circulation path and the roadway to indicate to pedestrians that crossing is prohibited. Where no

crosswalk is present and a separation treatment exists, curb ramps are not required. USDOT and DOJ may provide additional information regarding the acceptable characteristics of a separation treatment used to indicate the absence of a crosswalk.

The Board has added scoping provisions at R203.6.1 clarifying that curb ramps or blended transitions may be required to connect on-street parking spaces, on-street parking space access aisles, and passenger loading zones to pedestrian access routes if needed to accomplish the required connection.

At R203.6.2, the Board has clarified that when alterations are made to crosswalks, curb ramps or blended transitions must be provided on both ends of the crosswalk where the pedestrian access route crosses a curb. This provision provides consistency with DOJ's and USDOT's joint technical assistance document on the requirements to provide curb ramps when streets, roads, or highways are altered through resurfacing. *See* Department of Justice/Department of Transportation Joint Technical Assistance on Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfaces, *available at https://www.fhwa.dot.gov/civilrights/programs/ada/doj_fhwa_ta.cfm; see also* Q & A Supplement to the 2013 DOJ/DOT Joint Technical Assistance on the Title II of the ADA Requirements To Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing, *available at https://ada.gov/doj-fhwa-ta-supplement-2015.html.* By adding this requirement to PROWAG, the Board seeks to minimize confusion as to the legal obligations of jurisdictions to provide curb ramps.

Pedestrian Overpasses and Underpasses (R203.7)

In R203.7, the Board has clarified that pedestrian overpasses and underpasses include overpasses and underpasses on shared use paths. In addition, the Board has eliminated platform lifts as an option to achieve accessibility of these structures in new construction. A state disability council opined in its comments that limited use/limited application elevators and platform lifts do not provide equal access because of limited functionality. Platform lifts are more difficult for users with disabilities to independently operate and are more likely to breakdown in outdoor environments than elevators and limited use/limited application elevators. The Board is aware of many instances of maintenance issues and mechanical failures with respect to platform lifts and has thus revised the rule text to allow these devices only in alterations when installation of an elevator or limited use/limited application elevator is not technically feasible. Jurisdictions that install platform lifts should be aware of their maintenance obligations to ensure platform lifts remain operable at all times that the pedestrian facility is open for pedestrian use.

Ramps (R203.8); Elevators and Limited Use/Limited Application Elevators (R203.9); Platform Lifts (R203.10)

At R203.8 through R203.10, the Board added scoping provisions for ramps, elevators and limited use/limited application elevators, and platform lifts so that it is clear that wherever these facilities are present in the public right-of-way, they must comply with accessibility requirements.

Doors, Doorways, and Gates (R203.11)

In the final rule, the Board has revised the scoping for doors, doorways, and gates to require that all doors, doorways and gates that are part of a pedestrian access route must comply with the specified technical accessibility requirements. This is a change from the proposed rule, which required all doors, doorways, and gates of any pedestrian facility to comply with requirements (NPRM R218), and a change from the SNPRM which exempted doors, doorways, and gates on shared use paths from compliance (SNPRM R218). In the preamble to the SNPRM, the Board indicated that the exemption for shared use paths was provided to avoid a perceived conflict with AASHTO guidance. 78 FR 10110, 10113 (Feb. 13, 2013). AASHTO discourages the use of physical barriers on shared use paths. *See* AASHTO, Guide for the Development of Bicycle Facilities at 5–46.

In response to the SNPRM, several disability rights advocacy organizations commented that doors, doorways, and gates on shared use paths should not be excepted, and two state DOTs requested clarity regarding applicable technical standards for these facilities. The Board concurred with commenters that pedestrian gates on shared use paths should not be excepted from accessibility requirements. Persons with disabilities must be able to access shared use paths through gates if they are provided. The Board has thus reinstated the technical requirements for doors, doorways, and gates in the final rule. Further, consistent with AASHTO guidance, which recommends the use of bollards if physical barriers are needed to restrict motor vehicle entry, the final rule permits the use of bollards on shared use paths (R302.2).

R204 Alternate Pedestrian Access Routes, Transit Stops, and Passenger Loading Zones

Alternate Pedestrian Access Route (R204.1)

The proposed scoping for alternate pedestrian access routes stated that an alternate pedestrian access route is required when a pedestrian circulation path is closed due to construction, alterations, maintenance operations, or other similar conditions (NPRM R205). In the final rule, the Board has maintained similar scoping; however, it has removed the term ''alterations'' from the list of conditions to avoid confusion as ''construction'' accurately covers the intended scenario. In addition, the Board has edited the text to indicate that the requirement to provide an alternate pedestrian access route is triggered by a pedestrian circulation path being made inaccessible due to the described conditions, rather than being completely closed, since a pedestrian circulation path can be unusable for persons with disabilities without being completely closed to all users. The Board has added ''closure'' to the list of conditions triggering the requirement for an alternate pedestrian access route to clarify that where a pedestrian circulation path is completely closed for any reason, an alternate pedestrian access route must be provided.

In the proposed rule, the scoping provision for alternate pedestrian access routes pointed to provisions of the MUTCD that were incorporated by reference. The final rule instead points to the relevant technical provisions of chapters 3 and 4, as the MUTCD provisions are no longer incorporated by reference.

In response to the proposed rule, state and local government commenters raised concerns regarding scenarios where the alternate route would need to deviate substantially from the original pedestrian circulation path. For example, one state DOT indicated that freeway widening projects may necessitate the complete closure of a bridge, including the pedestrian facilities, making an alternate pedestrian access route infeasible or impossible to provide.

In response to these concerns, in the final rule the Board has added an exception allowing an ''alternate means of providing access'' for pedestrians with disabilities where establishing an alternate pedestrian access route is technically infeasible. An ''alternate

means of providing access'' does not mean an alternate pedestrian access route that falls short of the technical requirements stated at R303. Rather, this exception is intended to allow for completely different means of access in scenarios such as a bridge closure, where establishing an alternate pedestrian access route is not technically feasible. For example, in the case of a bridge closure, an alternate means of providing access might be the provision of accessible shuttle bus service. DOJ and USDOT may provide additional information regarding acceptable alternate means of providing access and the circumstances under which this exception may be used.

The Access Board received numerous public comments supporting a requirement for the provision of alternate pedestrian access routes, including approximately 150 individual commenters and several disability rights and pedestrian advocacy organizations. Several local government commenters and one state DOT requested flexibility to provide alternate accessible routes only when deemed practicable. In addition, two state DOTs, two local government commenters, and two industry organizations expressed concern regarding the cost of providing alternate routes.

The Board acknowledges that there are costs involved in providing alternate pedestrian access routes and has assessed those costs in the FRIA. *See* FRIA at 126. However, equity in our public rights-of-way cannot be achieved without the provision of temporary accessible facilities where permanent accessible facilities are temporarily unavailable. A person without a disability may readily assess safety and traffic conditions and navigate around a closed pedestrian circulation path if an alternate facility is not provided. However, a pedestrian with a disability may not be able to see alternatives, assess traffic to step into a roadway, or have the ability to step on and off of the curb for a few feet around a closure. The Board thus maintains the requirement for the provision of alternate pedestrian access routes where pedestrian circulation paths are made inaccessible due to construction, maintenance operations, closure, or similar conditions. The technical requirements, now stated in R303, seek to provide minimum accessibility for alternate routes while minimizing the costs for regulated entities. The technical requirements are detailed in the discussion of section R303, below.

Alternate Transit Stops (R204.2)

In the final rule, the Board has added a provision requiring that where accessible transit stops are not accessible due to construction, maintenance operations, or other similar conditions, an alternate transit stop be provided. MUTCD section 6D.01, which the Board proposed to incorporate by reference indicates that to accommodate the needs of individuals with disabilities, transit stops should be maintained in temporary traffic control zones (6D.01 paragraph 11). If the accessibility of a transit stop cannot be maintained, an alternate accessible transit stop must be provided.

Alternate Passenger Loading Zones (R204.3)

The Board has added a provision in the scoping of the final rule to emphasize that where a temporary passenger loading zone is provided, it must be accessible per the relevant technical provisions. This requirement is already covered by the general scoping provision R201.2, which indicates that the requirements in the guidelines apply to temporary pedestrian facilities. However, the Board added this provision to emphasize that alternate passenger loading zones provided in the public right-of-way during construction or maintenance operations must be accessible.

R205 Detectable Warning Surfaces

Detectable warning surfaces are standardized surfaces built in or applied to certain pedestrian walking surfaces to warn pedestrians who are blind or have low vision of a hazard. A distinct cane-detectable pattern of truncated domes provides a tactile cue of transitions to vehicular routes and of open drop-offs at transit platforms. The proposed rule required detectable warning surfaces at curb ramps or blended transitions, which remove tactile cues otherwise provided by curb faces; at cut-through pedestrian refuge islands to indicate their presence within a crosswalk; at at-grade rail crossings not located in a street or highway; along drop-offs at the boundary of passenger boarding platforms, which are above standard curb height; and along boarding sidewalk and street-level rail boarding and alighting areas not protected by screens or guards.

In the final rule, the Board is also requiring detectable warning surfaces on pedestrian circulation paths at driveways with stop or yield control to alert pedestrians who are blind or have low vision that they are walking into an active vehicular way. The Board indicated in an advisory that accompanied the proposed rule text that detectable warning surfaces should be provided at commercial driveways with stop or yield control (NPRM Advisory R208.1). Several commenters, including state and local governments, requested clarification on the provision of detectable warning surfaces at commercial driveways. In the final rule, the Board clarifies that detectable warning surfaces are required at driveways where stop or yield control is provided. In the final rule, the Board declines to limit the covered driveways to ''commercial'' driveways to ensure that pedestrian circulation paths at driveways to multifamily housing facilities that have stop or yield control also have detectable warning surfaces.

Some state and local government commenters encouraged the Board to move the requirement for detectable warning surfaces at commercial driveways from the advisory to the rule text. Two state DOT commenters questioned whether stop or yield control was the appropriate threshold for application of the requirement. The Board has concluded that where there is sufficient vehicular traffic to provide stop or yield control (*i.e.,* stop or yield signage) or traffic signals, there is a sufficient hazard to pedestrians who are blind or have low vision such that a detectable warning surface is warranted to advise individuals that they are entering an active vehicular way. Two state DOTs objected to implementing detectable warning surfaces at commercial driveways because they would be provided at sidewalk as opposed to street level. In response to these concerns, the Board notes that detectable warning surfaces are consistently used to provide tactile notification of a vehicular way where a curb is not present. This could be at street level, in the case of curb ramps, or at sidewalk level in the case of driveways.

Several commenters questioned whether the Board intended to require detectable warning surfaces at street or sidewalk level bus stops. In R104.3, the Board added a definition of ''boarding platform'' to clarify that detectable warning surfaces are only required where the bus boarding and alighting area is on a platform raised above standard curb height.

The proposed rule indicated that detectable warning surfaces are neither required nor desirable at cut-through pedestrian refuge islands that are less than 6 feet in length in the direction of pedestrian travel (NPRM R208.2 and NPRM Advisory R208.2). In the final

rule, the Board has clarified this substantive requirement by defining the term ''pedestrian refuge island'' at R104.3. The definition clarifies that only islands that are at least 72 inches in length in direction of pedestrian travel are considered suitable for pedestrian refuge. Islands that are at least 72 inches in length allow for a 24-inch detectable warning surface at each edge and at least 24 inches between the surfaces to provide detectable separation of the surfaces and to have sufficient space to wait. A cut-through island that is shorter than 72 inches is not suitable for pedestrian refuge, and there is thus no need to distinguish the cut-through from the rest of the crosswalk; the timing provided for pedestrian crossing must allow for the pedestrian to cross the entire traveled way as required by R306.2.

In the final rule, the Board has restructured for clarity the scoping section for detectable warning surfaces at R205 to provide a separate provision for each place that detectable warning surfaces are required. Each provision indicates that technical requirements relevant to that placement.

R206 Pedestrian Signal Heads and Pedestrian Activated Warning Devices

Where pedestrian signal heads and pedestrian activated warning devices are provided at crosswalks, they must be accompanied by audible information devices that make those visual signals accessible to persons who are blind or have low vision. In the proposed rule, the Board incorporated by reference sections of the MUTCD in lieu of providing technical requirements for these devices.

As proposed by incorporation by reference of MUTCD section 4E.09 paragraph 7 (NPRM R209.1), the final rule requires that the accessible features of pedestrian signal heads and pedestrian activated warning devices must be available at all times.

Commenters expressed confusion regarding the expectations for implementation of the incorporated sections of the MUTCD. In response to these concerns, in the final rule the Board has stated the technical requirements for accessible pedestrian signal heads and accessible pedestrian activated warning devices directly in the rule text. The scoping section for these devices has been modified to provide detailed references to the new technical sections.

Numerous state and local government commenters objected to a universal requirement for accessible pedestrian signals in new construction wherever pedestrian signal heads are provided. As described above in the Major Issues section, after careful consideration of these comments, the Board has retained the requirement for accessible features for all new and altered pedestrian signal heads and pedestrian activated warning devices.

In the proposed rule, the Board specified that altering the signal controller and software, or replacing the signal head, would constitute an alteration requiring compliance with the technical requirements for accessible pedestrian signals and push buttons. As described above in the Major Issues section, in the final rule the Board has removed the provision specifying the types of alterations that would trigger implementation of the technical accessibility requirements for pedestrian signal heads and pedestrian activated warning devices. USDOT and DOJ may provide additional guidance on these issues.

Finally, in the final rule the Board has updated the terminology used in the heading of this section for consistency with the terminology used by MUTCD and USDOT, and to better described the devices that must be made accessible.

R207 Protruding Objects and Vertical Clearance

Limitations on the extent to which objects may protrude horizontally into a pedestrian circulation path, as well as vertical clearance requirements above a pedestrian circulation path, apply to the full width of pedestrian circulation paths. The specific technical requirements for protruding objects and vertical clearances appear in section R402 of the final rule.

In the public right-of-way context, a ''protruding object'' is anything that extends into the three-dimensional space above a pedestrian circulation path, or an object contained wholly within it. Examples include, but are not limited to, streetlights, utility poles and equipment cabinets, signposts and signs, parking meters, trash receptacles, public telephones, mailboxes, newspaper vending machines, benches, transit shelters, kiosks, bicycle racks, planters and planted trees, and street sculptures. Technical requirements for protruding objects are designed to ensure that objects located within pedestrian circulation paths are cane-detectable, so they do not present hazards for people who are blind or have low vision.

Regulated entities will need to comply with the requirements for protruding objects when installing or permitting the installation of utilities, trees, awnings, street furniture, and other objects on or adjacent to pedestrian circulation paths. The American Association of State Highway and Transportation Officials (AASHTO) recommends that trees and shrubs be pruned to maintain usability of walkways, and that permitted uses of public rights-of-way, such as sidewalk cafes, be monitored to ensure that they do not encroach upon the pedestrian access route. *See* AASHTO, Guide for the Planning, Design, and Operation of Pedestrian Facilities 4–3 (2021). State and local governments will be responsible for enforcing compliance with maintenance agreements to prevent tree branches or other objects from impermissibly protruding into a pedestrian circulation path where the jurisdiction does not provide the maintenance directly.

The scoping provision for protruding objects included in the SNPRM modified the proposed scoping provision text indicating that protruding objects must not reduce the clear width required for pedestrian access routes (NPRM 210). In the SNPRM, the Board added an 8-foot vertical clearance requirement for shared use paths (SNPRM 210.3). In the final rule, the Board has moved both vertical clearance and clear width requirements to the technical section on protruding objects and vertical clearance at R402.4 and R402.5. Comments received regarding those provisions are addressed in the discussion of R402.4 and R402.5 below. The Board has renamed the section to ''Protruding Objects and Vertical Clearance'' for clarity.

In response to the NPRM, a local government and an engineer commented that the requirements for protruding objects should apply only to the pedestrian access route portion of the pedestrian circulation path. A local government entity commented that an exception should be provided applying protruding objects requirements to only 36 inches of the pedestrian circulation path in constrained conditions. While a person using a wheelchair can visually assess a sidewalk to determine which portion has less cross slope or fewer changes in level, a blind pedestrian or a person with low vision is not going to know which portion of the pedestrian circulation path has been designated as a pedestrian access route. Thus, objects that protrude into any portion of the pedestrian circulation path could create a hazard if not cane-detectable. The Board thus maintains the requirement that the entire pedestrian circulation path comply with the technical requirements for protruding objects.

The Board acknowledges that the advisory included with the proposed rule created confusion for commenters

regarding the concepts of clear width and protruding objects (NPRM Advisory 210). Clear width refers to the width of pedestrian access route walking surface that is required to be completely clear of any objects. This means that within the width of the pedestrian access route, there can be no street furniture, utility poles, or other objects of any kind directly on the walking surface. Clear width technical requirements for pedestrian access routes are specified in R302.2. Protruding objects refer to objects that are in the three-dimensional area above the walking surface, but not directly touching the walking surface. Those objects must conform to the technical requirements for protruding objects at R402.

R208 Pedestrian Signs

Signs that are intended solely for pedestrians, including transit signs, and all signs serving shared use paths, must comply with the technical requirements for visual characters at R410. Thus, signs that are not on shared use paths and are intended for both motorists and pedestrians, or bicyclists and pedestrians, are not required to comply. However, all signs on shared use paths are required to comply as pedestrians (1) should be aware of the potential movement of bicycles in the shared space, and (2) have a reasonable expectation that any sign on a shared use path is potentially providing pedestrian information.

The scoping excepts two categories of pedestrian signs from compliance with technical requirements for visual characters at R410. First, transit schedules, timetables, and maps are not required to comply. Compliance with the technical requirements for these specific types of transit signs would render them too large. Other types of transit signs, such as signs that identify stops and routes, must comply with the requirements. The second category of signs that are exempted from compliance are signs that are mounted immediately above or incorporated into a push button detector unit. The requirements of R410 may also make these signs too large.

In the NPRM, the Board used inartful language to convey that signs intended solely for pedestrians are the signs covered by this rule (NPRM 211.2). The Board has edited this language for clarity. Also, in the NPRM, the Board proposed that where audible sign systems and other technologies are used to provide equivalent information to information contained on pedestrian signs, the signs would not need to comply with technical requirements for visual characters (NPRM R211.1). In an accompanying advisory, the Board presented remote infrared signs as an example of an audible technology, that if used, would make it unnecessary for the sign to comply with technical requirements for visual characters (NPRM Advisory 211.1). In response to the proposed rule, two advocacy organizations for people who are blind or have low vision and a state DOT commented that the provision of audible signs does not negate the need for compliance with technical requirements for visual characters.

The Board concurs that reliance on audible signs in lieu of compliance for visual characters is insufficient for persons who have both low vision and hearing impairments. Further, while acknowledging the 14 commenters who indicated support for the use of remote infrared signs, the Board has concluded that relying on technologies that require a pedestrian to have a receiver does not currently provide equal access to visual signs; however, in the future this may be a possibility with more widespread development and adoption of wayfinding mobile applications. Thus, in the final rule, all signs intended solely for pedestrians must comply with technical requirements for visual characters except for the two categories of signs described above.

Requirements for accessible parking space signs have been moved to the technical section for on-street parking spaces (R310). The requirement for signage at accessible passenger loading zones has been eliminated in the final rule for consistency with ADAAG and to avoid misinterpretation of the sign as indicating exclusive use for passengers with disabilities, particularly where there is only one loading zone.

R209 Street Furniture

Drinking Fountains (R209.2)

Each drinking fountain in the public right-of-way must comply with accessibility requirements at 602.1 through 602.6 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines).

Public Street Toilets (R209.3)

Each permanent public street toilet must comply with sections 603 through 610 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines). Permanent street toilets are standalone toilet room units that are provided in public rights-of-way in cities throughout the United States. Specific examples of these permanent street toilets are discussed in the FRIA. FRIA at 125. Street toilets are different than, for example, traditional restroom facilities provided at highway rest stops. Those traditional bathroom facilities are in a building; pursuant to R201.3, they are subject to the applicable requirements of 36 CFR part 1191 (ADA & ABA Accessibility Guidelines).

Portable toilet units must comply with section 603 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines). Where there are multiple portable toilet units clustered in a single location, at least 5 percent, but no fewer than one of each type of toilet unit at each cluster must comply with the referenced technical requirements. In this context, ''type'' references those units differentiated by gender.

The Board has revised the scoping of the public street toilet section for clarity, including revising the heading, which reads ''Public Toilet Facilities,'' to avoid the confusion between public street toilets and traditional toilet facilities that was reflected in the public comments. The Board has also corrected the references to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines) and provided separate provisions for permanent street toilets and portable toilet units.

Tables (R209.4)

At each group of adjacent tables, at least 5 percent, but no fewer than one table, must comply with technical accessibility requirements at 902 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines). The proposed rule had stated the requirements relative to each ''location'' where tables were provided, and a state government commenter indicated that this language was unclear. The Board has thus revised the text of this provision to clarify that the requirement applies to each group of adjacent tables, as opposed to all tables in a larger area that might be considered a ''location.''

Sales or Service Counters (R209.5)

Each sales or service counter in the public right-of-way must comply with section 904.4 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines). In the final rule, the Board has added exceptions (one applicable to facilities subject to the ADA and a second applicable to facilities subject to the ABA) to this scoping for sales and service counters that are located in a building that is not itself in the public right-of-way, but that directly serves the public right-of-way, such as a walk-up service window on a sidewalk. The Board added these exceptions to eliminate confusion for sales and service counters that are part of a building and thus subject to 36 CFR part

1191, but directly serve the public right-of-way. In buildings, at least one of each type of sales or service counter must comply with technical requirements. In the public right-of-way, each sales or service counter must comply.

Benches (R209.6)

In the proposed rule, the Board provided a single scoping provision for all benches in the public right-of-way except for those at tables (which are covered under the technical requirements for tables) (NPRM R212.6). This included benches along pedestrian circulation paths and those at transit stops and shelters. Commenters indicated that the requirement that clear space not overlap the area within 1.5 feet of the front of the bench was confusing. The Board concluded that while the requirement is appropriate for transit shelters, it should be revised for other contexts.

In the final rule, the Board has clarified that for benches at transit stops (R209.6.1) and benches not at transit stops or shelters (R209.6.2) the clear space complying with R404 must be next to either end of the bench, or if the bench does not have an ''end,'' such as a circular bench, the clear space must be either integral to the bench or located no more than 18 inches (455 mm) from the front of the bench. Where the clear space is integral to the bench, there will be a break in the bench where the clear space is located. These requirements ensure that a pedestrian using a wheelchair may sit in proximity to a companion seated on the bench. The Board has restructured the provision for clarity.

In the final rule, the Board has maintained the requirement that the clear space not overlap the area within 18 inches (455 mm) for benches provided within transit shelters. *See* R209.6.1; R309.2.2. In a transit shelter, the primary goal is to provide shelter to as many individuals as possible within the limited space. Thus, the clear space may be situated at the end of a bench or at least 18 inches from the front edge of the seat, ensuring that the bench may be fully occupied while the clear space is in use.

Four commenters requested that the Board provide technical criteria for benches. The Board concurs with commenters that benches in the public right-of-way should have armrests and back support for maximum accessibility. As stated in the advisory that accompanied the proposed rule, benches that provide full back support and armrests to assist in sitting and standing are more useable by pedestrians with disabilities. However, as the Board did not propose specific technical requirements, such as specifications for armrest loads and dimensions and back height, the Board declines to add those now at the final rule stage.

One company that provides jurisdictions with advertisement-funded bus stop benches requested that the Board exempt bus stop benches located on unimproved surfaces from the requirement to provide clear space in order to protect the company's business model. The Access Board declines this request. Consistent with the implementation approach of many accessibility regulations, new construction and alterations provide an opportunity for a jurisdiction to add accessibility to a pedestrian facility at minimal additional cost. PROWAG requires the provision of boarding and alighting areas at all newly constructed and altered transit stops. Thus, when installing concrete for the boarding and alighting areas required by PROWAG, a jurisdiction has the opportunity to install a concrete pad for a bench if the jurisdiction so desires. PROWAG does not require jurisdictions to provide benches at transit stops, but where provided, they must comply with accessibility requirements.

Operable Parts of Other Fixed Elements (R209.7)

Operable parts of other fixed elements to be used by pedestrians, including street furniture, not specifically addressed by this rule must comply with technical requirements for operable parts at R403. This provision has been added in response to commenters' concerns about other types of street furniture that are not specifically addressed in the rule text.

The Board notes that operable parts on parking meters and pay stations other than those that serve accessible parking spaces, which have additional technical requirements specified at 310.6, are covered under R209.7 and must comply with the technical requirements for operable parts at R403. This means that all parking meters and pay stations must meet clear space, reach range, and operation requirements; however, they do not need to comply with requirements for visual displays stated at R310.6 that ensure information is visible to a person using a manual wheelchair. Two disability rights advocacy organizations commented in support of clear space at all parking meters and pay stations. The Board observes that many individuals with disabilities use parking spaces other than accessible spaces; to ensure equity in public rights-of-way, persons with disabilities must be able to access parking meters and pay stations wherever they park.

R210 Transit Stops and Transit Shelters

Where provided, transit stops and transit shelters shall comply with the technical requirements at R309. In response to the NPRM, a local government transit advisory group commented that the Board had failed to propose a scoping provision for vending machines at transit shelters. The Board concurs that this was an oversight, and has added a scoping provision for fare vending machines that references the operable parts technical requirements at R403 and the relevant provisions of Section 707 of 36 CFR part 1191. The Board also added a scoping provision for operable parts of other fixed elements at transit stops and shelters intended to be used by pedestrians.

R211 On-Street Parking

Where on-street parking is provided and is metered or designated by signs or pavement markings, accessible parking spaces complying with the technical provisions at R310 must be provided. The minimum number of accessible on-street parking spaces required is determined according to Table R211 assessing the total number of spaces.

The Board has made several revisions to this scoping section based on public comments. In the proposed rule, the board used the total number of spaces on a ''block perimeter'' to determine the number of accessible spaces required. Several commenters indicated that the meaning of block perimeter was unclear, while others noted that not all on-street parking is located on a block perimeter. In response to these concerns, the Board has defined block perimeter in R104.3 and included an example within the definition for clarity. In addition, the Board has added a provision for parking not on a block perimeter to clarify that those on-street parking spaces are also subject to accessibility requirements.

In response to commenter concerns, the Board has excepted on-street spaces that are designated exclusively for commercial or law enforcement vehicles, or residential parking. Those excepted spaces are not counted for the purpose of determining the required number of accessible spaces. These spaces must be designated for use solely for the excepted purpose; spaces that are designated for commercial or law enforcement vehicle use or residential parking only during certain hours are not excepted and must be counted for the purpose of determining the required number of accessible spaces. Another

exception states that where on-street parking spaces are altered, the requirements of R211 shall apply only to the affected parking spaces until the minimum number of accessible on-street parking spaces as specified in Table R211 are provided. Thus, for example, alteration of a single on-street parking space on a block perimeter would not trigger the obligation to provide the total number of required accessible spaces on the block perimeter. Only the altered space would need to be made accessible if an insufficient number of accessible spaces were available.

The Board notes that these minimum guidelines for the provision of accessible parking in public rights-of-way do not prevent regulated entities from providing additional accessible parking, including residential accessible parking. Standard-setting agencies may also adopt a more stringent standard.

In response to the NPRM, a local government commenter asked whether on-street accessible spaces are required where there is an adjacent public off-street lot, and a state government DOT requested that the Board allow jurisdictions to combine the number of on-street and off-street parking spaces for the purpose of designating accessible spaces. On-street parking spaces are covered by PROWAG and off-street parking in lots or garages is covered by the requirements at 36 CFR 1191. Accessible parking must be separately designated for on-street and off-street locations. To ensure equity for persons with disabilities, if on-street parking is provided then accessible on-street parking must also be provided.

Several local government commenters requested flexibility for the provision of accessible on-street parking where paratransit or other parking management programs, such as free parking, are provided for persons with disabilities. The Board has carefully considered these comments and has declined to provide exceptions for jurisdictions with paratransit or parking management programs. The provision of accessible on-street parking spaces consistent with PROWAG ensures that parking spaces are available that will allow persons with disabilities to park close to their destinations and have either a direct or nearby connection to a pedestrian access route or pedestrian circulation path. The provision of paratransit or free parking for persons with disabilities does not address the availability of accessible parking for persons with disabilities who rely on private vehicle transportation. Jurisdictions that allow persons with disabled parking placards to park in ''no parking'' or loading zone areas cannot guarantee that those areas will have accessible features such as proximity to a curb ramp or an adjacent sidewalk clear of obstructions such that a ramp can be deployed.

One commenter indicated that the rule should include guidelines for accessible electric vehicle charging stations. The Board is undertaking a separate rulemaking to address the accessibility of electric vehicle charging stations, which may ultimately address electric vehicle charging stations in the public right-of-way. *See* ATBCB Fall 2022 Unified Agenda, *available at https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=3014-AA48.*

R212 Passenger Loading Zones

Where permanently designated passenger loading zones other than transit stops are provided, at least one accessible passenger loading zone complying with technical requirements must be provided in every continuous 100 feet (30 m) of loading zone space, or fraction thereof. The Board revised the text of this scoping provision to clarify that the passenger loading zones covered by this rule are those that are permanently designated for passenger loading, other than transit stops. This includes passenger loading zones permanently designated for ride share. Often, permanent passenger loading zones in the public right-of-way are comprised of a sidewalk cut out so that vehicles can pull out of the traveled way to unload passengers. However, a permanently affixed sign designating a passenger loading zone is sufficient to bring the loading zone under coverage of this rule. Passenger loading zones that vary with the time of day or the occupancy of a particular retail space, such as valet stands that are provided only during certain hours, are not considered permanently designated and are therefore not subject to PROWAG.

R213 Stairs and Escalators

Where provided on pedestrian circulation paths, stairs must comply with technical requirements at R408 and escalators must comply with section 810.9 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines). Stairs and escalators are not part of pedestrian access routes, but where they are provided in the public right-of-way, they must comply with technical requirements. Persons with certain disabilities will find a short set of stairs more useable than a long ramp, thus although these pedestrian facilities are not part of the pedestrian access route, it is nonetheless important that they conform to accessibility requirements.

In the final rule, the Board substituted the word ''stairs'' for ''stairways'' for consistency with the term used in the requirements of 36 CFR part 1191 (ABA & ADA Accessibility Guidelines), and to clarify that a single stair is subject to the requirements of PROWAG.[11] In response to technical assistance inquiries made to the Board over the years since the proposed rule was published, the Board has added a definition for ''stair'' in R104.3 to clarify that a curb is not a stair.

R214 Handrails

Wherever handrails are installed on *pedestrian circulation paths,* including on stairs, they must comply with technical requirements at R409. A few commenters expressed confusion over where handrails must be installed. PROWAG requires handrails in two places: on ramp runs with a rise greater than 6 inches (150mm) (R407.8) and on stairs (R408.8). The Board has taken care to ensure that the distinction between ramps requiring handrails and other sloped surfaces not requiring handrails is clear in the final rule. The final rule text clarifies that a sidewalk or other pedestrian circulation path is not subject to the requirements for ramps, including the requirement for handrails, unless its grade exceeds the allowable specifications of R302.4 (R407.1). Jurisdictions may install handrails in places other than ramps and stairs at their own discretion. Wherever handrails are installed in the public right-of-way, they must conform to the technical requirements of R409 regardless of whether they are required by PROWAG or have been placed voluntarily.

D. Chapter 3: Technical Requirements

R301 General

The technical requirements contain accessibility design criteria and apply as specified in the scoping provisions of Chapter 2 or where referenced by another technical requirement in Chapter 3 or 4. These technical requirements were developed specifically for pedestrian facilities in the public right-of-way.

R302 Pedestrian Access Routes

The technical requirements for pedestrian access routes at R302 are intended to provide a continuous path throughout the pedestrian facilities of a

[11] Section 504 of Appendix D to 36 CFR part 1191 (ABA & ADA Accessibility Guidelines) is entitled ''Stairways,'' however the terms ''stair'' or ''stairs'' are used throughout the text of the requirements.

public right-of-way that is accessible to persons with disabilities. These technical requirements include clear width, passing spaces, grade, cross slope, and surface characteristics. The technical requirements as proposed in the NPRM were adapted from the technical requirements for accessible routes for buildings and facilities at 36 CFR part 1191, Appx. A 206. Based on careful consideration of the many comments received in response to the proposed and supplemental proposed rules, the Board has modified several of the pedestrian access route technical provisions for consistency with the public right-of-way context and for clarity of the requirements.

In the final rule, the Board eliminated the list of components of pedestrian access routes that appeared in NPRM R302.2. The Board concurred with a local government commenter who opined that each facility included in this list should have scoping in Chapter 2. The Board revised R203 to provide scoping for each pedestrian facility, and then determined that the list of facilities with associated technical provisions at NPRM R302.2 was duplicative of the revised section R203. Further, the Board concluded that the list at NPRM R302.2 added to the confusion regarding the concept of a pedestrian access route in the public right-of-way.

As explained above in the discussion of R203, pedestrian access routes in the public right-of-way function differently than accessible routes in buildings and on sites. Accessible routes in buildings and on sites are required to connect accessible facilities and elements to other accessible facilities and elements and may consist of various components. 36 CFR part 1191, Appx. D 206.2, 402.2. A pedestrian access route in the public right-of-way runs through nearly every traversable surface within the pedestrian facilities; thus, unlike the requirements for a building, every new and altered traversable surface in the public right-of-way, except for stairs and facilities that have been specifically excepted, must comply with pedestrian access route requirements. As a result of elimination of the proposed R302.2, the sub-provisions of R302 have been renumbered.

Continuous Clear Width (R302.2)

The requirements for clear width of pedestrian access routes have not changed from what the Board proposed, as modified by the SNPRM (SNPRM R302.3). Specifically, a 48-inch (1220 mm) continuous clear width is required for most portions of the pedestrian access route. There are two exceptions: (1) places where a pedestrian access route crosses medians and pedestrian refuge islands, which require 60 inches of clear width or the width of the crosswalk (whichever is greater), and (2) shared use paths where the clear width must extend the entire width of the path. In response to commenter questions, the Board revised the language of the provision to clarify that the required width is measured exclusive of any curb. Also, in response to comments, the Board has added a sentence clarifying that bollards are permitted on shared use paths as long as the clear width of the pedestrian access route is 48 inches (1220 mm) or wider (R302.2.2).

In response to the NPRM, three state DOTs and two utility companies requested that the Board allow a reduction in the clear width of pedestrian access routes to accommodate utility poles, traffic signal poles, and similar obstructions. An additional 28 individual commenters employed by utility companies requested that the Board revise the clear width requirement to 36 inches. In alterations, including the addition of a pedestrian circulation path to an existing right-of-way, where existing physical constraints make compliance with the clear width requirements technically infeasible, compliance with these requirements is required to the maximum extent feasible. *See* R202.3. In that circumstance, the jurisdiction must comply with the requirement to the maximum extent feasible. Thus, these guidelines permit a jurisdiction to reduce the clear width of a pedestrian access route to account for existing utility infrastructure if the pedestrian circulation path cannot be rerouted around the utility and the utility cannot reasonably be relocated.

In the context of alterations, where there are existing physical constraints, the width must still comply to the maximum extent feasible; a pedestrian circulation path narrower than 36 inches may be impassible by a person with a mobility device. In new construction of undeveloped land, by contrast, the Board expects jurisdictions to insist that utilities, traffic signals, and street furniture be located to allow for full compliance with accessibility requirements. However, as provided in DOJ's Title II regulations, full compliance with the relevant accessibility requirements is not required in the context of new construction where a public entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance is considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features. 28 CFR 35.151.

Some commenters, including two disability rights advocacy organizations, a pedestrian advocacy organization and a local government DOT, requested that the Board expand the required clear width to 60 or 72 inches. The Board acknowledges that its public rights-of-way advisory committee recommended a width of 60 inches. *See* Public Rights of Way Access Advisory Committee, Building a True Community: Final Report, 13 (2001) *available at https://www.access-board.gov/files/advisory-committee-reports/prow-report.pdf.* However, that recommendation included several circumstances where a reduction in width would be permitted. *Id.* The Board opted to require 48 inches clear width with a requirement for 60 inch passing spaces as a minimum accessibility requirement. Forty-eight inches allows room for a person using a mobility device to traverse a pedestrian circulation path.

In response to the SNPRM, some commenters requested that the Access Board add a minimum width for shared use paths. Jurisdictions determine the width for a shared use path using criteria related to anticipated user volumes. AASHTO recommends that two-directional shared use paths should be 10 feet wide minimum. AASHTO, Guide for the Development of Bicycle Facilities 5–3 (4th ed. 2004). Where shared use paths are anticipated to serve a high percentage of pedestrians and high user volumes, AASHTO recommends that the paths should be 11 to 14 feet wide to enable a bicyclist to pass another path user travelling in the same direction, at the same time a path user is approaching from the opposite direction. *Id.* In certain ''very rare'' circumstances, AASHTO permits the width of shared use paths to be reduced to 8 feet. *Id.*

The Board is concerned that stating a minimum width, such as the width required for a pedestrian access route, may cause confusion that would result in the installation of narrower shared use paths than what would otherwise be used. Thus, the Board has maintained the requirement stated in the SNPRM that technical requirements for pedestrian access routes are applicable to the full width of shared use paths, whatever the width.

In response to a local government commenter that expressed concern that motorists would mistake a full-width curb ramp of a shared use path for a driveway, and a state DOT requested an exception for bollards that prohibit vehicular travel, the Board has added a

sentence to R302.2.2 clarifying the obstructions such as bollards are permitted on shared use paths as long as the clear width of the pedestrian access route is not reduced to less than 48 inches (1220 mm).

One local government commenter sought clarification regarding the applicable clear width for a path where bicyclists and pedestrians travel on separate but adjacent paths. A state's department of recreation asserted that for pedestrian paths with adjacent equestrian paths, the requirements should apply only to the pedestrian portion of the path. Whether a particular pedestrian facility should be considered a shared use path or not will be determined by the specific characteristics of the path. The question is whether there is a shared use path, or a pedestrian circulation path and an adjacent bike path or equestrian path.

If there is a detectable separation between the pedestrian portion of the path and the bike or equestrian portion of the path, then it may not actually be a shared use path, but rather two distinct facilities in close proximity.

Passing Spaces (R302.3)

Passing spaces must be provided at intervals of 200 feet (61 m) maximum where the clear width of the pedestrian access route is less than 60 inches (1525 mm). The passing spaces, which are 60 inches by 60 inches, are provided to allow sufficient space for two persons in wheelchairs to pass each other. Pedestrian access routes and passing spaces may overlap. In response to the NPRM, a utility company expressed concern about passing spaces being added to a pedestrian access route near an at-grade rail crossing where typically pedestrians would be channelized into the crossing. Passing spaces must be added at intervals no greater than 200 feet, but jurisdictions have flexibility to place some passing spaces at shorter intervals to ensure that specific areas are avoided.

A local government commenter requested clarification as to what length of a pedestrian circulation path would need to be altered to trigger the requirement for a passing space. As this is a question regarding how the technical requirements will be enforced, the Board notes that USDOT and DOJ may provide further specifics on this issue.

Grade (R302.4)

The grade of a pedestrian access route is the running slope of the route in the direction of pedestrian travel. Grade is the vertical change in elevation over the horizontal distance covered and is expressed as either a ratio or, when dividing these two numbers, as a percent. The grade of pedestrian access routes must comply with the specifications corresponding to the location of the pedestrian access route, except for the grade of curb ramps and blended transitions, and ramps, which must comply with the grade specifications of their respective technical requirements (R304, R407).

Where pedestrian access routes are contained within a street or highway right-of-way, the grade of the pedestrian access route shall not exceed 1:20 (5.0%). An exception permits the grade of the pedestrian access route to not exceed the grade established for the adjacent street or highway, where the grade established for that adjacent street or highway exceeds 1:20 (5.0%) (R302.4.1). However, where pedestrian access routes are contained within crosswalks, a maximum grade of 1:20 (5.0%) is required (R302.4.3). This is consistent with AASHTO guidance, which recommends that the sidewalk grade follow the grade of adjacent roadways, and also recommends maximum cross slopes for roadways. *See* AASHTO, A Policy on Geometric Design of Highways and Streets 4–7 (7th ed. 2018); *see also* AASHTO, Guide for the Development of Bicycle Facilities 5–16 (4th ed. 2012). Where pedestrian access routes are not contained within a street or highway right-of-way, such as a shared use path that runs through either a separate right-of-way or an easement on private land, a maximum grade of 1:20 (5.0%) is required (R302.4.2).

In response to comments from state and local government entities, the Board restructured R302.4.1 (NPRM 302.5) to clarify that a pedestrian access route within a highway right-of-way may be graded to 1:20 (5.0%), even where the grade of the adjacent street is less than 1:20 (5.0%). The Board has restructured this provision to provide a general requirement of 1:20 (5.0%) maximum grade of the pedestrian access route, with an exception stating that where the grade of the adjacent street exceeds 1:20 (5.0%), the grade of the pedestrian access route shall not exceed the grade of the adjacent street. In some circumstances where the grade of the adjacent street is less than 1:20 (5.0%), compliance with the general requirement could result in a pedestrian access route with a grade of 1:20 (5.0%) maximum being steeper than the grade of the adjacent street if the grade of the adjacent street is less than 1:20 (5.0%).

The Board also received comments from four state DOTs indicating that their standard maximum for superelevation exceeds 5%. To address this concern, the Board has added an exception for the grade of the pedestrian access route within a crosswalk, which specifies that where roadway design requires superelevation greater than 1:20 (5.0%) at the location of a crosswalk, the grade of the pedestrian access route within the crosswalk may be the same as the superelevation (R302.4.3).

In the SNPRM, the Board added a provision requiring compliance with grade requirements to the ''extent practicable'' in both new construction and alterations where compliance with grade requirements for pedestrian access routes ''not practicable'' due to existing terrain or infrastructure, right-of-way availability, a notable natural feature, or similar existing physical constraints (SNPRM R302.5.2). The Board explained that this provision was responsive to comments to the Advance Notice of Proposed Rulemaking (ANPRM) on accessibility guidelines for shared use paths indicating that physical constraints may prevent full compliance with grade requirements.

The comments received in response to the SNPRM indicate that the proposed language at SNPRM R302.5.2 did not provide additional clarity or substantial flexibilities beyond what is already available through other provisions and standards. The Board received comments from some state DOTs and local governments detailing circumstances where the grade of SUPs in their jurisdictions exceed 5% principally due to underlying terrain. For example, one local government located in a mountainous area noted that only 17% of the land within its jurisdiction has a slope of 5% or less and indicated that its design guidelines allow the grade of shared use paths to exceed 5% for short sections where topographical constraints necessitate design flexibility. A state DOT observed that the language of the SNPRM created a ''grey area'' where jurisdictions would use engineering judgement in determining whether compliance with the 5% maximum grade was ''practicable'' due to existing terrain. An accessibility advocacy organization commented that accessibility standards should be applied ''100 percent'' and only scaled back where existing site conditions warrant.

Upon consideration of the comments and further reflection and research, the Board has concluded that the proposed provision at SNPRM R302.5.2 specifically allowing the grade of the pedestrian access route to comply with grade requirements to the ''extent

practicable'' [12] where compliance is ''not practicable'' is not needed for the following reasons.

First, the Board notes that the Volpe Center, which assessed the costs of compliance with this provision, observed that the majority of shared use path miles cataloged in available documentation are built on abandoned or converted railroad track beds, and thus have a grade of less than 1:100 (1.0%) due to their railroad origins. *See* FRIA at 66. Further, the Board notes that the grade of shared use paths built within a highway right-of-way may match the grade of the adjacent street if it exceeds 1:20 (5.0%) (R302.4.1 Exception). In addition, AASHTO advises that the grade of a shared use path in an independent right-of-way should not exceed 5%. *See* AASHTO, Guide for the Development of Bicycle Facilities 5–16 (4th ed. 2012). Consequently, the majority of shared use paths will meet the technical requirements for the grade of pedestrian access routes at R302.4.

Second, the Board notes that most shared use paths are built on existing rights-of-way and thus considered alterations under the final rule. *See* FRIA at 66. As explained above, ''added'' pedestrian facilities were required to fully comply with technical requirements as ''new construction'' under the proposed rule; however, under the final rule pedestrian facilities added to existing, developed rights-of-way are alterations. *See* 104.3. Section R202.3 of the final rule allows a regulated entity to comply with a requirement to the maximum extent feasible where the requirement is technically infeasible due to existing physical constraints. Section R202.3 specifically lists underlying terrain, underground structures, adjacent developed facilities, drainage, and the presence of a significant natural or historic feature as examples of existing physical constraints that may prevent compliance with a requirement.

For example, a state department of conservation and recreation submitted a comment in response to the SNPRM requesting that the Access Board allow new shared use paths to use the grade of the existing facility that they will be built on, such as a fire road or abandoned railroad that would serve as a trail bed. Under the final rule, the construction of shared use paths on existing facilities such as these are alterations, and compliance would be expected to the maximum extent feasible where existing physical constraints make compliance technically infeasible (*see* R202.3).

Second, with respect to newly constructed shared use paths not within a highway right-of-way, the Access Board observes that DOJ regulations implementing accessibility requirements under Title II of the ADA state that full compliance with the relevant accessibility requirements is not required in the context of new construction where a public entity can demonstrate that it is structurally impracticable to meet the requirements. 28 CFR 35.151. While under DOJ's regulation full compliance is considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features, the comments received in response to the SNPRM indicate that the main impediment to full compliance with grade requirements is the underlying terrain. DOJ and USDOT may elect to provide additional information regarding the unique characteristics of terrain that would make compliance with grade requirements structurally impracticable.

In sum, the Board has eliminated SNPRM R302.5.4 from the final rule as unnecessary in light of other available flexibilities to address circumstances where the characteristics of the underlying terrain prevent full compliance with the technical requirements for grade.

In the final rule, the Board has also eliminated a provision that provided flexibilities for instances where compliance with grade requirements is precluded by laws intended to preserve threatened or endangered species, the environment, or archeological, cultural, historical, or significant natural features (SNPRM R302.5.5). This provision was modeled after a provision in the Board's supplemental rulemaking under the ABA for Federal outdoor areas. 36 CFR part 1191, Appx. D 1019.1. Upon further consideration, the Board has concluded that while this exception was suitable for recreational trails in National Parks and other Federal lands, is not appropriate for the construction of transportation facilities, including shared use paths, which should be designed to prioritize equitable transportation for all, and are already subject to environmental review.

Cross Slope (R302.5)

Cross slope is the slope perpendicular to the direction of pedestrian travel (*see* R104.3). On a sidewalk, the cross slope is measured perpendicular to the curb line or edge of the street or highway. Excessive cross slope impedes travel by pedestrians who use wheeled mobility devices, since energy must be expended to counteract the perpendicular force of the cross slope. Excessive cross slope makes it more difficult for pedestrians who use wheelchairs to travel on uphill slopes and to maintain balance and control on downhill slopes. Excessive cross slope also negatively affects pedestrians who use braces, lower limb prostheses, crutches, or walkers, as well as pedestrians who have gait, balance, or stamina impairments.

A maximum cross slope of 1:48 (2.1%) is specified for pedestrian access routes, except for pedestrian access routes contained within certain crosswalks. This is the same cross slope specified for accessible routes in buildings and facilities. 36 CFR part 1191, Appx. D 403.3. In exterior environments, this cross slope is adequate to allow water to drain off paved walking surfaces.

The Board has added an exception to this general rule to clarify that the portion of a pedestrian access route within a street that connects an accessible parallel parking space to the nearest crosswalk as specified in R310.2.2 is not required to comply with cross slope requirements.

In crosswalks, the slope of the roadway is taken into consideration because the grade or running slope of the roadway perpendicular to the direction of pedestrian travel will comprise the cross slope of the crosswalk. The NPRM specified 5 percent maximum cross slope for pedestrian access routes contained within pedestrian street crossings ''without yield or stop control'' (NPRM R302.6.1). The purpose of allowing a steeper cross slope at these crosswalks is to avoid a jolt to vehicles at the change of grade where vehicles do not need to slow to a yield or stop at a crossing.

In an advisory that accompanied the proposed rule text, the Board indicated that a pedestrian street crossing ''without yield or stop control'' included intersections with a traffic signal designed for the green phase. In response to the NPRM, several commenters indicated that the meaning of ''without yield or stop control'' was unclear. The Board concurs with these commenters, and in the final rule has provided more specific requirements for different types of approaches.

In R302.5.2 of the final rule, the Board breaks down the cross slope for pedestrian access routes contained within a crosswalk. Specifically, the Board addresses crosswalks where the

[12] As explained in the Major Issues section above, to improve clarity of the final rule text the Board has removed the word ''practicable'' in favor of ''feasible,'' which is used in the 2004 ABA and ADA Accessibility Guidelines.

intersection approach has a stop or yield control device such as a stop or yield sign or a flashing red or yellow light (R302.5.2.1); crosswalks at uncontrolled intersection approaches where there is no indication that traffic must slow or stop (R302.5.2.2); and crosswalks at intersection approaches with a traffic control signal or pedestrian hybrid beacon, which have phases where traffic need not slow to cross the intersection, such as when the traffic signal is green or when the pedestrian hybrid beacon is not activated (R302.5.2.3).

The cross slope of the pedestrian access route within a midblock crosswalk or a crosswalk at a roundabout is permitted to be the same as the grade of the street that it crosses (R302.5.2.4). The Board added a reference to crossings at roundabouts to clarify that these crosswalks, which do not occur at traditional intersections, operate similarly to midblock crossings.

In response to the NPRM, the Board received numerous comments on the topic of cross slope, which are addressed above in the Major Issues section. The Board has assessed the costs of compliance of R302.5.2 in the FRIA. *See* FRIA at 114.

Surfaces (R302.6)

The walking surfaces of pedestrian access routes, elements, and spaces that are required to be accessible shall be stable, firm, and slip resistant (R302.6). This is the same requirement as the proposed rule (NPRM 302.7); in the final rule, the Board made edits for clarity.

The NPRM contained a provision regarding vertical alignment of surfaces, which was intended to communicate that adjacent surfaces, such as pavers, portions of sidewalk, or other pedestrian facilities and elements within the pedestrian access route, be on the same plane. The provision further required grade breaks to be flush (*i.e.,* without a gap between them), and stated requirements for at-grade rail crossings. Commenters mostly expressed confusion regarding the purpose of this provision. In the final rule, the Board has removed most of this provision, leaving only the requirement that grade breaks be flush (R302.6.1). The Board determined that the proposed requirement for planar surfaces was not needed in light of requirements for grade (R302.4), cross slope (R302.5) and changes in level (R302.6.2). The requirements for at-grade rail crossing surfaces have been consolidated at R302.6.4.

Changes in Level (R302.6.2)

In the proposed rule, the Board used the term ''vertical surface discontinuities'' to describe what is referred to as ''changes in level'' in the 2004 ABA and ADA Accessibility Guidelines. *See* NPRM R302.7.2; *see also* 36 CFR part 1191, Appx. A 303. In response to the NPRM, commenters suggested that this section be revised for better consistency with the 2004 ABA and ADA Accessibility Guidelines. The Board concurred with this suggestion and has updated the language at R302.6.2 to address ''changes in level.'' The term ''surface discontinuities'' has been eliminated from the guidelines.

The term ''changes in level'' as used in these guidelines refers to an abrupt increase or decrease in the level of the walking surface of a pedestrian access route, such as occurs when one sidewalk panel is slightly higher than an adjacent panel. It is measured relative to the plane of the walking surface; it does not take into consideration the grade of the pedestrian access route. The text of this provision has been revised for clarity. The requirements state that changes in level up to ¼ inch (6.4 mm) may be vertical. Changes in level between ¼ inch (6.4 mm) high and ½ inch (13 mm) high must be beveled.

The Board has also included an additional clarification that changes in level greater than ½ inch (13 mm) up to 6 inches (150 mm) must have a slope no greater than 1:12 (8.3%), and changes in level greater than 6 inches (150 mm) must comply with the requirements for ramps at R407. The Board added these provisions in response to comments and due to the many technical assistance inquiries seeking clarification as to where in the public right-of-way pedestrian access routes are to be treated as ramps.

In the public right-of-way, changes in level of 6 inches (150 mm) or less are not subject to the ramps technical requirements and thus do not require handrails, edge protection, or landings. This clarification addresses local government commenters' concerns about the difficulty of limiting changes in level to ½ inch (13 mm) in the public right-of-way due to soil movements. The Board acknowledges that sidewalk panels shift over time due to tree root growth, soil movement, and other factors. The Board anticipates that the clarified provisions will help jurisdictions better plan for sustained compliance through regular maintenance programs.

The Board acknowledges comments from two state government commenters that requested a requirement that utility covers, vault frames, and gratings not be located on curb ramps in new construction. The Board does recommend that these items be located elsewhere in new construction; however, these items are permitted if installed consistent with the requirements.

Horizontal Openings (R302.6.3)

Horizontal openings in ground surfaces, for example, holes in gratings or gaping cracks in pavement, must not be so large such that a sphere larger than ½ inch in diameter may pass through. The Board revised the language of this provision slightly from the proposed NPRM 302.7.3 to clarify that holes in gratings and joints are examples of horizontal openings, not the only horizontal openings covered by PROWAG.

In general, elongated openings are permitted perpendicular to the dominant direction of travel. In the final rule, in response to comments from a state DOT and a pedestrian advocacy organization, the Board has clarified that elongated openings are not permitted where pedestrian access routes intersect as a single dominant direction of travel cannot be identified in that circumstance.

The Board notes the concern raised by one commenter that one northern state uses 1-inch-wide horizontal openings on stairs to minimize snow and ice build-up, and acknowledges that newly constructed and altered stairs in this jurisdiction may require additional maintenance to clear snow and ice. However, equity requires that persons with disabilities in northern climates also have access to pedestrian facilities. A cane or crutch tip may become trapped in a horizontal opening wider than ½ inch.

In response to the NPRM, a local government commenter indicated that the horizontal openings requirements may conflict with water drainage in existing rights-of-way. As discussed above, alterations in existing rights-of-way are to comply with technical requirements to the maximum extent feasible where existing physical constraints make compliance with applicable requirements technically infeasible.

Surfaces at Pedestrian At-Grade Rail Crossings (R302.6.4)

In the final rule, the Board has consolidated at R302.6.4 all of the surface requirements for pedestrian access routes at pedestrian at-grade rail crossings. The surface alignment requirement (R302.6.4.1) has not changed from the proposed rule, except

that it was moved from the proposed vertical alignment section (NPRM R302.7.1), which was eliminated. Where a pedestrian access route crosses rails at grade, the pedestrian access route surface must be level and flush with the top of rail at the outer edges of the rails, and the surface between the rails must be aligned with the top of rail. This requirement keeps the surface of these crossings as consistent as possible except for the flangeway gap.

Flangeway gaps are the horizontal opening immediately adjacent to the rails that allow passage of train wheel flanges. Flangeway gaps, like other horizontal openings in a walking surface, can pose a potential hazard to pedestrians with certain disabilities because they can entrap wheelchair casters, walker wheels, and crutch or cane tips.

The requirements for flangeway gaps have been set at the narrowest dimension that allows a train to safely traverse a pedestrian crossing. There are two different dimensions for flangeway gaps: 3 inches maximum for crossings located on railroad track subject to Federal Railroad Administration (FRA) safety regulations at 49 CFR part 213, and 2 and ½ inches maximum for all others (R302.6.4.2). In the proposed rule, the Board had described these two categories as ''freight rail track'' and ''non-freight rail track,'' but revised the description for clarity at the request of the FRA.

In response to the proposed rule a public utilities commission requested that the Board include a specification for field side gaps (*i.e.,* gaps on the outer side of the rail). An additional specification is not needed for field side gaps because the general requirement for horizontal openings (½ inch) at R302.6.3 applies. A railroads association commented that while a 3-inch gap is acceptable for new construction, flangeway gaps widen over time. The Board acknowledges that, similar to many accessibility requirements, maintenance to sustain compliance may be required.

The same railroads association also commented that a 2 and ½ inch gap is not sufficient for Amtrak and other commuter railroads. However, those railroads generally operate on track subject to FRA safety regulations at 49 CFR part 213, and thus would be subject to the 3-inch maximum, not the 2 and ½ inch maximum. A state DOT questioned whether the maximums set would cause derailments, but did not provide any factual basis for this concern. An association of transportation engineers requested an exception where specific freight safety issues are identified. The association did not provide further information regarding the specific freight safety issues that would be presented by the 3-inch (75 mm) maximum requirement. The Board notes that this maximum is applicable only at pedestrian crossings; in alterations, compliance is expected to the maximum extent feasible where existing physical constraints make compliance with applicable requirements technically infeasible (R202.3).

A public utilities commission requested a requirement for flange filler. In the NPRM, the Board asked a question seeking information or research on materials and devices that fill the flangeway gap but received no responses. At the time that the NPRM was published, the Board anticipated that significant research would be undertaken on this topic. The Board acknowledges that flangeway gap fillers are used at some light rail station stops; however, there has not been sufficient research for the Board to conclude that a national mandatory requirement for flangeway gap fillers at grade-level crossings is appropriate. The Board intends to encourage further research on this topic, and may revisit a requirement for flangeway gap fillers in the future.

R303 Alternate Pedestrian Access Routes

The proposed rule did not contain technical provisions for alternate pedestrian access routes. Rather the scoping incorporated by reference specific provisions of the MUTCD. In response to commenter concerns, and as described above, the Board has eliminated references to the MUTCD and included technical requirements directly in the rule text.

In proposed section NPRM 205, the Board indicated that alternate pedestrian access routes must comply with sections 6D.01, 6D.02 and 6G.05 of the MUTCD (2009 Edition). The proposed rule further noted that where provided, pedestrian barricade and channelizing devices were required to comply with sections 6F.63, 6F.68, and 6F.71 of the MUTCD.[13]

The guiding principle with respect to accessibility for MUTCD alternate pedestrian access routes is found in MUTCD 6D.02 paragraph 3, which states, ''When existing pedestrian facilities are disrupted, closed, or relocated in a [temporary traffic control] zone, the temporary facilities shall be detectable and include accessibility features consistent with the features present in the existing pedestrian facility.'' In section R303, the Board has specified the required accessibility features of alternate pedestrian access routes to ensure that they are detectable and contain the basic accessibility features of the closed route without being overly burdensome.

Signs (303.2)

The final rule requires that jurisdictions provide signs identifying alternate pedestrian access routes in advance of decision points. The signs must comply with technical requirements for characters at R410. In addition, proximity actuated audible signs or other non-visual means of conveying the information on the signs must be provided within the public right-of-way.

The signs are intended to provide clarity to pedestrians as to where any alternate pedestrian access route is located. Placing signs ahead of decision points, such as at an intersection that precedes a closed sidewalk, reduces the need for pedestrians to retrace their steps or alternately attempt to cross a roadway at a place other than a crosswalk.

The proposed rule referenced MUTCD 6D.01 paragraph 3, which requires that jurisdictions provide advance notification of sidewalk closures. Equity requires that whatever information is made available to sighted persons must also be provided in a non-visual format. Equitable access to information on alternate pedestrian access routes is contemplated in the guidance to MUTCD 6D.02, which was referenced in the proposed rule:

Because printed signs and surface delineation are not usable by pedestrians with visual disabilities, blocked routes, alternate crossings, and sign and signal information should be communicated to pedestrians with visual disabilities by providing audible information devices, accessible pedestrian signals, and barriers and channelizing devices that are detectable to pedestrians traveling with the aid of a long cane or who have low vision.

The Board also indicated in an advisory that accompanied the proposed rule that proximity-actuated audible signs are a preferred means to warn pedestrians who are blind or have low vision about sidewalk closures (NPRM Advisory R205).

In response to the NPRM, the Board received comments from four disability rights advocacy organizations, one state

[13] The Board acknowledges that some of the MUTCD provisions that were incorporated by reference contained standards that are not relevant to accessibility and therefore beyond the scope of this regulation. Accordingly, the substance of those non-relevant provisions of the MUTCD is not included in this final rule.

council on disability, and one state DOT in support of the use of proximity actuated audible signs. Two engineering organizations expressed concern that proximity actuated audible signs are not commonly used, would be expensive, and would likely be stolen. A rail transit and crossings branch of a public utility expressed concern that proximity actuated signs should not be required at rail crossings, where they might not be heard.

As stated above, equity requires that information provided in a visual format to pedestrians also be provided in a non-visual format so that pedestrians who are blind or have low vision have equal access to the information. The Board has evaluated the costs of these devices in the FRIA. *See* FRIA at 128. Further, the Board is confident that jurisdictions will find ways to secure these devices, as they do other types of equipment, to reduce the risk of theft. There is no exception for at-grade rail crossings. While the noise of a passing train may momentarily compete with an audible sign, during all other times it would be as functional as anywhere else. It is critical that dangerous areas for pedestrians, such as at-grade rail crossings, offer maximum accessibility with respect to safety information, such as information relating to an alternate route.

Surface (R303.3)

The surface of an alternate pedestrian access route must comply with technical accessibility requirements for surfaces at R302.6 at least to the extent that the closed route complied with those surface requirements. This is consistent with the proposed rule's reference to MUTCD 6D.02, which requires that temporary pedestrian facilities have accessibility features consistent with the closed route.

Continuous Clear Width (R303.4)

The minimum continuous clear with of alternate pedestrian access routes must be 48 inches, except where an alternate pedestrian access route utilizes an existing pedestrian circulation path, in which case the width must be at least the width of the temporarily closed pedestrian circulation path. MUTCD 6D.02 paragraph 3, which was referenced in the proposed rule, requires that temporary facilities include accessibility features consistent with the features present in the existing pedestrian facility.

With respect to the requirements for clear width of alternate pedestrian access routes, the Board has sought to balance the concerns of over 150 individual commenters and several disability rights and pedestrian advocacy organizations who support mandatory alternate pedestrian access routes usable by persons with disabilities, with the concerns of six state and local DOTs that would like the accessibility requirements for alternate routes not to exceed the existing accessibility of the temporarily closed route.

The Board has provided a general requirement for a minimum clear width of 48 inches, which as described in the discussion of pedestrian access routes at R302.2 above, is the minimum width that the Board has determined to be accessible for persons with disabilities. This width is achievable where an alternate pedestrian access route is provided within the roadway using barricades, or where an existing sidewalk used for the alternate pedestrian access route is at least 48 inches (as is the case in most central business districts and many jurisdictions that have already adopted 48 inches as a minimum sidewalk width). *See* FRIA at 76. However, as the Board is aware that there are existing sidewalks that will need to be used as alternate pedestrian access routes that are not 48 inches, the Board has provided an exception indicating that where an existing pedestrian circulation path is used as the alternate pedestrian access route, the width of the alternate route must not be less than the width of the temporarily closed path.

Curb Ramps or Blended Transitions (R303.5)

Where an alternate pedestrian access route crosses a curb, a curb ramp or blended transition complying with the requirements must be provided to ensure that the alternate pedestrian access route is useable by persons with mobility disabilities. A curb ramp or blended transition is required regardless of whether the temporarily closed pedestrian circulation path contained this accessibility feature. Again, the Board is seeking to balance the concerns of over 150 individual commenters and disability rights and pedestrian advocacy organizations with the concerns of local and state DOTs about the burden of building temporary facilities. An alternate pedestrian access route that does not provide a curb ramp or blended transition over a curb would not be usable for many persons with mobility disabilities, and they would not have equal access to the alternate route.

Detectable Edging of Channelizing Devices (R303.6)

Where a channelizing device is used to delineate an alternate pedestrian access route, continuous detectable edging complying with technical requirements must be provided for the length of the route. An exception is provided for places where pedestrians or vehicles turn or cross, which would necessitate a gap in the channelizing device and detectable edging. Where detectable edging is provided, the top of the topmost part of the detectable edging cannot be lower than 32 inches above the ground and must not be sharp or abrasive. These specifications allow for persons who are blind or have low vision to detect the edging by running their hands along the topmost part of the edging. The bottommost part of the edging cannot be more than 2 inches above the ground to allow for continuous cane detection. These specifications for detectable edging come from MUTCD 6F.63 paragraph 5, which was incorporated by reference in the proposed rule.

Pedestrian Signal Heads (R303.7)

Temporary pedestrian signals at alternate pedestrian access routes are not required by these guidelines. However, when a jurisdiction decides to provide temporary pedestrian signal heads in the public right-of-way, they are subject to these guidelines, as specified at R201.2. The Board has reiterated this requirement at R303.7 to ensure that jurisdictions understand that when a temporary pedestrian signal head is provided at a crosswalk that is part of an alternate pedestrian access route, pedestrian pushbuttons or passive detection devices complying with the technical requirements at R307 must be provided. Similar to the requirements for temporary signage, equity requires that visual information provided on pedestrian signal heads must be available to persons who are blind or have low vision in a non-visual format.

R304 Curb Ramps and Blended Transitions

Curb ramps provide a smooth transition where a pedestrian access route crosses a curb. Blended transitions provide a smooth wraparound connection at a corner or a flush connection where there is no curb to cut through. There are two types of curb ramps: perpendicular and parallel. Perpendicular curb ramps have running slopes that are perpendicular to the curb or street served. Parallel curb ramps have running slopes that are parallel to the curb or street served. Parallel curb

ramps provide a smooth transition to a landing at street level where a turn is made to enter the crosswalk. Blended transitions connect a pedestrian circulation path to the crosswalk with a grade not steeper than 1:20 (5.0%.) Examples of blended transitions are depressed corners or a connection from a sidewalk to a raised crosswalk. Although curb ramps may have slopes of 1:20 (5.0%) or less, blended transitions are not curb ramps with slopes 1:20 (5.0%) or less.

In the final rule, this section has been reorganized for clarity. In response to commenter concerns, the Board has provided definitions in R104.3 for ''perpendicular curb ramp,'' ''parallel curb ramp,'' and ''blended transitions.'' In addition, in the final rule, the Board has substituted the term ''landing'' for ''turning space,'' in response to commenters' requests for consistency with ADAAG terminology. The Board had used the term ''turning space'' in the NPRM to avoid confusion with the ''landings'' associated with ramps (R407). However, the Board acknowledges that ''landing'' is the commonly used term for these curb ramp-associated spaces, and in the final rule now uses the term ''landing.'' It is important to note, however, that the landings associated with ramps (R407.6) have different technical requirements than the landings associated with curb ramps (R304.2.4 and R304.3.4). Curb ramps are not ''ramps'' for the purposes of PROWAG (see definition of ''ramp'' at R104.3) and are thus not subject to the requirements for ramps at R407.

Perpendicular Curb Ramps (R304.2)

Numerous commenters from state and local government entities and an engineering association expressed confusion as to the proposed 1:20 (5.0%) minimum for the running slope of curb ramps, pointing out that in many cases a curb ramp need not reach 5% depending on the grade of the adjacent pedestrian facilities. The Board concurred with commenters and in the final rule has removed the minimum running slope and stated only a maximum of 1:12 (8.3%) (R304.2.1). In addition, the Board has added an exception to clarify that where the curb ramp length must exceed 15 feet (4.6 m) to achieve a 1:12 (8.3%) running slope, the curb ramp length shall extend at least 15 feet (4.6 m) and may have a running slope greater than 1:12 (8.3%). A curb ramp complying with the exception to R304.2.1 need not exceed 15 feet in length.

The cross slope of perpendicular curb ramp runs is specified at 1:48 (2.1%) maximum (R304.2.2). The Board has provided an exception stating that for curb ramps at a crosswalk, the cross slope may be equal to or less than the cross slope permitted at the crosswalk. This exception corrects an error in the proposed rule indicating that at certain pedestrian street crossings, the cross slope could equal the highway grade (NPRM R304.5.3); this conflicted with the cross slope provisions for certain crosswalks.

The requirements for grade breaks were moved out of the common requirements section to the perpendicular and parallel curb ramps sections for clarity. Grade breaks at the top and bottom of a curb ramp run must be perpendicular to the direction of the curb ramp run (R304.2.3). Grade breaks are not permitted on the surfaces of curb ramp runs and landings. Surface slopes that meet at grade breaks must be flush. There are no changes to this requirement from the proposed rule.

For each perpendicular curb ramp, a clear area 48 inches (1220 mm) wide by 48 inches (1220 mm) long must be provided beyond the bottom grade break and within the width of the crosswalk (R304.2.4). The clear area must be located outside the vehicle lanes, including any bike lanes, that run parallel to the crosswalk. The running slope of the clear area cannot exceed 1:20 (5.0%) maximum, and the cross slope is as specified by R302.5. The purpose of the clear area is to allow pedestrians an area outside of the vehicle lanes to orient themselves to the crossing.

In the proposed rule, this provision was entitled, ''Clear Space'' and appeared in the common requirements for curb ramps and blended transitions (NPRM R304.5.5). In the final rule it has been renamed ''Clear Area'' to avoid confusion with the clear spaces described at R404 and has been moved to the section specific to perpendicular curb ramps for clarity. Also in the final rule, the Board has specified slope and cross slope of clear areas in response to commenters' request for clarity on these requirements. In addition, the Board has clarified that vehicle lanes include any bike lanes.

Numerous state and local government entity commenters expressed confusion regarding the required location of the clear space, and in particular the requirement that the clear space be located wholly outside the parallel vehicle travel lane. Some commenters erroneously thought that an additional 48 inches of shoulder would be required to comply with this requirement. The confusion reflects a misunderstanding of how compliance is assessed. Each curb ramp is assessed separately, so although the clear space may be in a vehicle travel lane that is *perpendicular* to the pedestrian direction of travel, vehicle travel of that lane would be stopped when pedestrians enter the clear area to orient themselves to the crossing. The appropriate inquiry to assess compliance is whether the clear area is wholly outside the *parallel* vehicle travel lane when looking at the individual curb ramp.

When a change in direction is necessary to access the top of a perpendicular curb ramp from a pedestrian access route, a landing 48 inches (1220 mm) wide minimum by 48 inches (1220 mm) long minimum must be provided at the top of the curb ramp (R304.2.5). At shared use paths, the landing must be as wide as the shared use path. In response to numerous comments, the final rule eliminates a proposed requirement for a larger landing where the turning space is constrained. The cross slope requirements for landings, which appeared in the proposed rule at NPRM 304.5.3, have been consolidated into the perpendicular curb ramp section. Slope requirements have been added for clarity.

Perpendicular curb ramps must have flared sides with a 1:10 (10.0%) maximum slope where a pedestrian circulation path crosses the side of a curb ramp (R304.2.6). The slope of the flared sides is measured parallel to the curb line. In the NPRM, the Board sought comment on whether a steeper side flare slope should be specified (NPRM Question 18). While a few state and local government entities and other commenters expressed support for increasing the slope of flared sides, others, mostly disability rights advocacy organizations and individuals sought to retain the 1:10 (10%) maximum citing hazards to pedestrians. The Board carefully considered the comments and was persuaded that increasing the slope of flares beyond 1:10 (10.0%) would present accessibility issues. Thus, the Board has retained the 1:10 (10.0%) maximum side flare slope.

The Board has added a new provision at R304.2.7 which clarifies that a transitional segment may be used in the connection of a perpendicular curb ramp or its landing to a pedestrian access route. A transitional segment is defined in R104.3 as ''[t]he portion of a pedestrian circulation path that connects adjacent surfaces with different slopes or dimensions to provide a smooth transition.'' The purpose of allowing a transitional segment is to address circumstances such as the warping in the pedestrian circulation path that will need to occur,

even in new construction, to connect a curb ramp or landing with a cross slope that exceeds 1:48 (2.1%) to a pedestrian access route with a cross slope of 1:48 (2.1%) maximum.

Parallel Curb Ramps (R304.3)

Numerous commenters from state and local government entities and a public works association expressed confusion as to the proposed 1:20 (5.0%) minimum for the running slope of curb ramps, pointing out that in many cases a curb ramp need not reach 5% depending on the grade of the adjacent pedestrian facilities. The Board concurred with commenters and in the final rule has removed the minimum running slope and stated only a maximum of 1:12 (8.3%) (R304.3.1). In addition, the Board has added an exception to clarify that where the curb ramp length must exceed 15 feet (4.6 m) to achieve a 1:12 (8.3%) running slope, the curb ramp run length shall extend at least 15 feet (4.6 m) and may have a running slope greater than 1:12 (8.3%). Curb ramps complying with the exception to R304.3.1 need not exceed 15 feet.

The cross slope of parallel curb ramp runs is 1:48 (2.1%) maximum (R304.3.2). This provision was moved from the common requirements for curb ramps and blended transitions in the proposed rule (NPRM R304.5.3).

The requirements for grade breaks were moved out of the common requirements section to the perpendicular and parallel curb ramps sections for clarity. Grade breaks at the top and bottom of a curb ramp run must be perpendicular to the direction of the curb ramp run (R304.3.3). Grade breaks are not permitted on the surfaces of curb ramp runs and landings. Surface slopes that meet at grade breaks must be flush. There are no changes to this requirement from the proposed rule.

Landings that are 48 inches (1220 mm) wide minimum by 48 inches (1220 mm) long minimum must be provided at the bottom of parallel curb ramps (R304.3.4). As discussed above, in the proposed rule these landings were referred to as ''turning spaces'' (NPRM R304.3.1). In response to numerous comments, the final rule eliminates a proposed requirement for a larger landing where the turning space was constrained. The cross slope requirements for parallel curb ramp landings, which appeared in the proposed rule at NPRM 304.5.3, have been moved into the parallel curb ramp section. Slope requirements have been added for clarity.

Blended Transitions (R304.4)

A blended transition is a wraparound connection at a corner, or a flush connection where there is no curb to cut through, other than a curb ramp (R104.3). A blended transition is permitted in lieu of a curb ramp where a pedestrian access route crosses a curb, and where there is a flush connection between the sidewalk or shared use path and a crosswalk, such as at a raised crossing. When designed properly, one blended transition can serve all of the crosswalks at an intersection corner. The running slope of blended transitions is 1:20 (5.0%) maximum (R304.4.1).

The cross slope of a blended transition must be equal to or less than the cross slope of the crosswalk it serves (R304.4.2). The final rule corrects an error in the proposed rule indicating that at certain pedestrian street crossings, the cross slope of a blended transition may equal the highway grade (NPRM R304.5.3); this conflicted with the cross slope provisions for certain crosswalks. As explained above, the cross slope provision was moved from the common requirements for curb ramps and blended transitions in the proposed rule (NPRM R304.5.3) to provide greater clarity.

In the final rule, the Board has added a provision requiring a bypass where a blended transition serving more than one pedestrian circulation path has a running slope greater than 1:48 (2.1%). This is provided so that a pedestrian with a disability may bypass the slope of blended transition that the individual does not need to use. Without a bypass an individual with a disability may be forced to unnecessarily traverse a corner at a 1:20 (5.0%) cross slope. A bypass for blended transitions was not included in the proposed rule; individuals contacting the Board for technical assistance in implementing the proposed guidelines brought this issue to the attention of the Board.

Common Requirements (R304.5)

R304.5 specifies technical requirements applicable to both curb ramps and blended transitions.

Clear Width (R304.5.1)

The minimum clear width of curb ramps and blended transitions not on shared use paths is 48 inches (1220 mm) (R304.5.1.1). The minimum clear width of curb ramps and blended transitions on shared use paths is the width of the shared use path (R304.5.1.2).

In response to the SNPRM, the Board received comments from a few local government entities indicating concerns about the requirement that a curb ramp or blended transition on a shared use path be the same width as the shared use path. One local government commenter expressed concern that motorists would mistake a full-width curb ramp for a driveway. Another indicated that a full width curb ramp might be hard to achieve in an alteration. Another indicated that drainage, bridges, or utility poles might preclude full compliance.

The Board notes that jurisdictions have options to discourage motorists from erroneously entering a shared use path at a curb ramp, including signage or properly installed bollards (*see* R302.2.2). The Board further notes that alterations subject to existing physical constraints that make compliance with applicable requirements technically infeasible must comply with the applicable requirements to the maximum extent feasible (R202.3); in new construction of undeveloped land, the placement of drainage, bridges, or utility poles should not be an issue. In the SNPRM, the Board indicated that the requirement that a curb ramp or blended transition on a shared use path be the same width as the shared use path was similar to section 5.3.5 of the AASHTO Guide for the Development of Bicycle Facilities (2012). That provision states that the opening of a shared use path at a roadway should be the same width as the shared use path itself. While the Board considers the AASHTO approach to be best practice and anticipates that most jurisdictions will maintain the same width of a shared use path approaching a crosswalk, especially in new construction on undeveloped land, the language of R304.5.3 does not preclude a jurisdiction from tapering the width of a shared use path as it approaches a crosswalk. The clear width of the curb ramp must be the width of the shared use path at the place that the curb ramp meets the shared use path.

Change of Grade (R304.5.2)

A change of grade is an abrupt difference in the grades of two adjacent surfaces. Change of grade is determined by adding the two opposing slopes together. Where a change of grade that exceeds 13.3% occurs between a curb ramp or blended transition and the street or gutter, the final rule requires a transition space, with a running slope of 1:48 (2.1%) maximum and a cross slope no greater than the cross slope of the crosswalk as specified by R302.5, between the two surfaces that is a minimum of 24 inches in depth in the direction of pedestrian travel and the full width of the curb ramp. This

requirement is intended to prevent a wheelchair from tipping over while traversing an abrupt change of grade.

An accessible design firm commented that the change of grade should be limited to 11%. The Board acknowledges that its Public Rights-of-Way Access Advisory Committee recommended an 11% limit on change of grade in its 2001 report. *See* Public Rights-of-Way Advisory Committee, *supra,* at 18. However, the proposed change of grade has been 13% for many years, as described below, and the Access Board is not aware of safety issues resulting from this practice.

The proposed rule addressed change of grade as ''Counter Slope'' (NPRM R304.5.4) and specified a 5% maximum counter slope. Commenters requested additional clarity with respect to this provision. This provision has been reworded for clarity, and also to add an option for a change of grade that exceeds 13.3% if a transitional space is provided. However, the substantive requirements have not changed; the 13.3% maximum is a function of the 1:12 (8.3%) upper limit on curb ramp running slope (R304.2.1) and the 1:20 (5.0%) limit on grade of the pedestrian access route (R302.4), which was the permitted counter slope in the proposed rule.

Crosswalks (R304.5.3)

To ensure equitable safety to pedestrians with disabilities, in the final rule the Board has added a separate provision clarifying that curb ramps and blended transitions must lead directly into crosswalks. Specifically, perpendicular curb ramp runs and parallel curb ramp landings must be contained wholly within the width of the crosswalk they serve. In addition, the full width of blended transitions at shared use paths and 48 inches (1220 mm) of blended transitions at all other pedestrian circulation paths must be contained wholly within the width of the crosswalks they serve. In the proposed rule, the Board specified that the clear area required at the bottom of curb ramps be contained wholly within the width of the crosswalk served (NPRM R304.5.5). In light of the confusion exhibited by commenters with respect to the proposed clear area provision, the Board has made explicit the requirement that curb ramps and blended transitions lead directly into crosswalks.

Surfaces (R304.5.4)

In the final rule, the Board has added a provision clarifying that surfaces of curb ramps and blended transitions must comply with the technical requirements for surfaces of pedestrian access routes at R302.6; however, changes in level as described at R302.6.2 are not permitted.

R305 Detectable Warning Surfaces

Detectable warning surfaces are cane detectable surfaces consisting of truncated domes aligned in a square or radial grid pattern. As indicated in R205, detectable warning surfaces are required at specified locations to warn pedestrians who are blind or have low vision that they are entering or exiting a vehicular way, or that there is a drop from a boarding platform into a track street.

Two individual commenters and a manufacturer of detectable warning surfaces requested that the Board add wayfinding elements to the technical requirements for detectable warning surfaces. The Board is aware that there are detectable wayfinding surfaces that exist that provide tactile directional guidance. However, these serve a different purpose than the detectable warning surfaces required by ADAAG and PROWAG, which serve to warn pedestrians of the presence of a vehicular way.

As described in the final regulatory impact analysis, detectable warning surfaces as described in the proposed rule have been widely implemented throughout the United States over the past decade. FRIA at 13. Widespread consistent implementation of detectable warning surfaces coupled with the final rule's clarified requirement at R304.5.4 that curb ramps and blended transitions lead directly into crosswalks will provide additional wayfinding for pedestrians who are blind or have low vision. The Board will continue to monitor developments in outdoor wayfinding for possible future updates to PROWAG.

Dome Size and Spacing (R305.1.1 and R305.1.2)

The truncated domes on detectable warning surfaces have a base diameter of 0.9 inches (23 mm) minimum and 1.4 inches (36 mm) maximum, a top diameter of 50 percent of the base diameter minimum and 65 percent of the base diameter maximum, and a height of 0.2 inches (5.1 mm) (R305.1.1). In the final rule, in consideration of technical assistance inquiries received by the Access Board since publication of the proposed rule, the Board has added a sentence clarifying that when detectable warning surface tiles are cut to fit, partial domes are permitted along the cut edges.

With respect to spacing, truncated domes have a center-to-center spacing of 1.6 inches (41 mm) minimum and 2.4 inches (61 mm) maximum, and a base-to-base spacing of 0.65 inches (17 mm) minimum, measured between the most adjacent domes (R305.1.2). In the final rule, the Board has added an exception to clarify that when detectable warning surfaces are cut to fit, center-to-center spacing measured between domes adjacent to cut edges may exceed the spacing requirement up to twice the normal spacing between domes (R305.1.2 Exception 1). In addition, the Board has added an exception to clarify that dome spacing requirements do not apply at a gap in a detectable warning surface at an expansion joint, provided that the detectable warning surface aligns with both edges of the expansion joint (R305.1.2 Exception 2). This exception is particularly relevant to the installation of detectable warning surfaces on boarding platforms in the public right-of-way.

An advocacy organization for people who are blind commented that the Board should restate the dome size with exact specifications to ensure uniformity and to avoid the potential domes that are too large and close together to be detected. The Board maintains a narrow range in the permitted dome size to account for the various materials used for detectable warning surfaces. Again, over the past decade the proposed guidelines for detectable warning surfaces have been implemented by numerous jurisdictions throughout the United States; the Board is not aware of a detectability issue for detectable warning surfaces made within the required specifications.

A few other concerns were raised by commenters regarding the truncated dome design of detectable warning surfaces: one individual indicated that the truncated domes are too rough on wheelchair users; another individual asserted that the truncated dome design is difficult to keep free of snow and ice; and a regional association of engineers was concerned that the spacing would present a hazard to rollerbladers and skateboarders. The Board is aware that people who use wheelchairs typically prefer smooth surfaces for rollability; however, the Board must balance the accessibility needs of individuals with various types of disabilities. With respect to the concern regarding maintenance of detectable warning surfaces, the Board notes that over the past decade numerous jurisdictions that experience winter weather have been able to implement and appropriately maintain detectable warning surfaces. Further, the Board is not aware of widespread hazards to rollerbladers and

skateboarders posed by detectable warning surfaces.

Contrast (R305.1.3)

Detectable warning surfaces must contrast visually with adjacent walking surfaces, either light-on-dark or dark-on-light. Four commenters requested a more specific measure of contrast, such as 70%. Ten individual commenters, three disability rights advocacy organizations, and a pedestrian advocacy organization requested that the Board require that detectable warning surfaces be ''federal yellow.'' The Board has carefully considered these comments and declines to require a specific color or contrast percentage. The Board appreciates the desire for measurable standards; however, the percentage of contrast between surfaces is difficult to measure in outdoor environments that will have varying lighting conditions throughout the day. Further, as PROWAG does not specify a color or building material for any pedestrian surfaces, it would be difficult to specify a single color that would provide appropriate contrast in all circumstances. For example, federal yellow may provide less contrast with a concrete sidewalk than a maroon or black detectable warning surface. The Board has concluded that contrast is appropriately assessed on a case-by-case basis in consideration of the building materials used.

Size of Detectable Warning Surface (R305.1.4)

Detectable warning surfaces must extend 24 inches (610 mm) minimum in the direction of pedestrian travel. The width is specified depending on the type of pedestrian facility where the detectable warning surface is installed. This provision has been restructured for clarity. In the final rule, the Board has clarified that at cut-through pedestrian islands, the width of the detectable warning surface is the full width of the pedestrian circulation path; detectable warning surfaces at pedestrian refuge islands with curb ramps were already covered under the specification for the width of detectable warning surfaces at curb ramps and blended transitions, which is the full width of the curb ramp run (excluding any flared sides), blended transition, or landing.

In response to the proposed rule, the Board received comments from one individual and several local government entities in California requesting that the Board require a minimum of 36 inches in the direction of pedestrian travel or clarification as to whether 36 inches is permitted under PROWAG. The Board is aware that state requirements in California specify a 36-inch depth of detectable warning surfaces at curb ramps. *See* Cal. Code Regs. tit. 24, § 11B–705.1.2.2 (2022). Under PROWAG, detectable warning surfaces must extend a minimum of 24 inches in the direction of pedestrian travel. No maximum is stated; thus 36 inches is permitted. The Board notes that the requirement for a minimum of 24 inches (610 mm) of detectable warning surface in the direction of travel is supported by research. *See* Public Rights-of-Way Access Advisory Committee, *supra,* at 107 (describing the Committee's recommendation for a 24-inch (610 mm) detectable warning surface). To minimize the potential discomfort to some wheelchair users who traverse these surfaces, the Board seeks to require only the minimum length needed to provide adequate detectable warning.

Location (R305.2)

Section R305.2, called ''Placement'' in the NPRM, indicates specifically where a detectable warning surface is to be located at each of the places listed in R205 where detectable warning surfaces are required. In the final rule, the Board has revised the title of Section R305.2 to ''Location'' and the language of this section to address scenarios where there is no curb. The Board uses the phrase ''edge of pavement'' to refer to the place where the curb ramp or blended transition meets the street.

In addition, the Board has added a sentence stating that if a concrete border is required for proper installation of a detectable warning surface, a concrete border not exceeding 2 inches is permitted on all sides of the detectable warning surface except where the requirements at R305.2.1, R305.2.3, and R305.2.4 specifically allow a setback of six inches between the detectable warning surface and the edge of pavement. In the proposed rule, the Board provided an advisory indicating that where a concrete border is required for proper installation of a detectable warning surface, the border should not exceed 2 inches (NPRM Advisory R305.2). A local government in Texas and an association of accessibility professionals in Texas requested that the Board allow a 4-inch border. A design firm indicated that the Board should allow 6 inches on either side of the detectable warning surface, and a local government requested a 2-inch tolerance for the full width of a curb ramp. The Board is not aware of detectable warning surfaces requiring a border larger than 2 inches for proper installation. The option for up to a 6-inch (150 mm) setback between the detectable warning surface and the edge of pavement is provided to minimize the potential for damage to detectable warning surfaces during snow removal operations.

In the final rule, the substantive requirements for the location of detectable warning surfaces (except for the setback allowances described above) at perpendicular curb ramps (R305.2.1), parallel curb ramps (R305.2.2), blended transitions (R305.2.3), pedestrian refuge islands (R305.2.4), and sidewalk and street-level rail boarding and alighting areas (R305.2.7) are unchanged, although the Board has clarified some of the language. Specifically, the Board removed the requirement in the NPRM R305.2.1(2) that detectable warning surfaces are to be placed within one dome spacing of the bottom grade break. The final rule requires that the detectable warning surface be placed on the ramp run at the bottom grade break.

With respect to pedestrian at-grade rail crossings (R305.2.5), the Board has added a sentence clarifying that pedestrian gates must not overlap detectable warning surfaces. With respect to boarding platforms (R305.2.6), the Board has added an exception clarifying that where a curb is present, such as is the case with some bus rapid transit platforms, the detectable warning surface may be placed at the back of curb.

As described above in the discussion of R205, the final rule specifies that detectable warning surfaces be provided at driveways controlled with yield or stop control devices or traffic signals. Thus, the Board has added a corresponding technical provision at R305.2.8 stating that detectable warning surfaces at driveways controlled with yield or stop control devices or traffic signals are to be provided on the pedestrian circulation path where the pedestrian circulation path meets the driveway.

In response to the NPRM, the Board received various comments on the location of detectable warning surfaces at curb ramps. With respect to perpendicular curb ramps, two local government commenters requested clarification as to the placement of detectable warning surfaces at commercial driveways. For driveways where detectable warning surfaces are required, jurisdictions must follow any of the options for perpendicular curb ramps as appropriate. A level transition between the pedestrian access route and the driveway is treated as a blended transition.

In response to comments regarding the placement of detectable warning surfaces on perpendicular curb ramps at

a corner, in R305.2.1.(B) the Board changed ''either end'' to ''both ends'' for clarity. The Board received a comment asserting that the permitted 60-inch (1525 mm) setback was too great, while another requested an 8-foot setback instead. The Board notes that a setback of 5 feet is appropriate because it is still close enough to the curb to provide accurate notice of an imminent vehicular way and allow use of audible cues for crossing.

With respect to the location of detectable warning surfaces at parallel curb ramps, two commenters raised concerns regarding the clarity of the use of the terms ''flush transition'' and ''turning space'' in this context. In the final rule, these terms have been replaced (see R305.2.2). Two state DOTs expressed concerns regarding the clarity of the provision describing the location of the detectable warning surfaces at blended transitions. The Board has revised this language for clarity (*see* R305.2.3).

The Board also received comments regarding the location for the detectable warning surface at pedestrian at-grade rail crossings. Two state DOTs and a state public utilities commission expressed concern that 72 inches from the centerline of the nearest rail is too close to the rail to place the detectable warning. The Board notes that this provision provides a range that allows the detectable warning surface to be placed between 72 inches (1830 mm) and 15 feet (4.6 m) from the centerline of the nearest rail. This range applies to light rail and freight train crossings. Seventy-two inches (1830 mm) is appropriate for some light rail crossings; the Board concurs that freight crossings would likely be placed farther back from the rail. The Board is confident that jurisdictions will apply appropriate safety considerations for particular crossings when determining where to place the detectable warning surface within the required range.

Two advocacy organizations for persons with disabilities expressed concern about how close the detectable warning surface would be placed to pedestrian gates at pedestrian at-grade rail crossings. In response, the Board added language clarifying that pedestrian gates must not overlap detectable warnings (R305.2.5).

The Board received three comments requesting that it clarify the meaning of ''boarding platform,'' as used in R305.2.6 so that it is clear that the Board does not intend for detectable warning surfaces to be placed at standard sidewalk-level bus stops. In the final rule, the Board added a definition of ''boarding platform'' at R104.3, which clarifies that boarding platforms are platforms ''raised above standard curb height.''

R306 Crosswalks

The technical requirements for crosswalks address the required pedestrian signal phase timing and accessible walk indication, as well as specifications for crosswalks at roundabouts and channelized turn lanes.

Pedestrian Signal Phase Timing (R306.2)

Where pedestrian signal indications are provided at a crosswalk, the pedestrian signal phase timing is based on a pedestrian clearance time that is calculated using a pedestrian walking speed of 3.5 ft/s (1.1 m/s) or less from the location of the pedestrian push button to a pedestrian refuge island or the far side of the traveled way. This is the same walking speed proposed in the NPRM.

Four state DOTs and ten local government entities objected to this provision in the NPRM, pointing out that in the MUTCD this walk speed appears as guidance (MUTCD 4E.06 paragraph 7) and is thus not required. These jurisdictions would like to use engineering judgment to determine the clearance time, expressing potential issues that might result from longer clearance times, such as an increase in air pollution from vehicular delays, jaywalking, and red light running. Six disability rights advocacy organizations requested that pedestrian clearance times be calculated using a slower walking speed of 3.0 ft/s to 3.25 ft/s.

The Board has carefully considered the comments received on this issue. In the final rule, the Board has maintained the requirement that pedestrian clearance time be calculated using a walking speed of 3.5 ft/s (1.1 m/s) or less, and further requires that the walk interval be 7 seconds minimum.

In addition, the final rule states that where the pedestrian clearance time is calculated to a pedestrian refuge island, an additional pedestrian push button or passive detection device must be provided on the pedestrian refuge island. This was a proposed requirement that comes directly from MUTCD section 4E.08 paragraph 13, which was incorporated by reference in the NPRM (NPRM R209.1).

In using a walking speed of 3.5 ft/s (1.1 m/s), the Board seeks to balance the traffic management concerns of state and local jurisdictions while ensuring that pedestrians with disabilities are afforded sufficient time to traverse a crosswalk. The Board notes that in 2009, FHWA made a research-based decision to revise the MUTCD recommended walking speed for calculating pedestrian clearance times.[14] The Board acknowledges that disability rights advocacy organizations cited an AAA Foundation study that found that pedestrians with mobility impairments who do not use wheelchairs had an average walking speed of 3.30 ft/s (1.01 m/s), but also found that a walking speed of 3.5 ft/s would generally accommodate a 15th percentile older adult.[15] However, a more recent study found a 3.41 ft/s (1.04 m/s) walking speed for pedestrians with physical disabilities at unsignalized crosswalks.[16] The Board concludes that the combination of a 7-second minimum walk interval and a pedestrian clearance time based on a 3.5 ft/s (1.1 m/s) walking speed will provide sufficient crossing time for most persons with disabilities. This requirement should not cause significant vehicular delays.[17]

Further, in the final rule, the Board incorporated another option from MUTCD section 4E.06 paragraph 8 in an exception allowing a faster walking speed to be used if a passive detection device is provided that automatically adjusts the pedestrian clearance time based on the pedestrian's actual clearance of the crosswalk (R306.2 Exception). These devices tailor the clearance to the actual presence of the pedestrian in the crosswalk.

One state DOT and one local government commenter, as well as the National Committee on Uniform Traffic Control Devices, requested that the Access Board add a provision allowing a 4 ft/s walking speed where an extended pushbutton press allows additional time. This is an option under MUTCD section 4E.06 paragraph 8. The Board declines to allow jurisdictions to raise the walking speed to 4 ft/s where an extended pushbutton press is provided as pedestrians may not be aware that they need additional time until they are already in the crosswalk. However, as noted above, the Board has provided additional flexibility for

[14] *National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Revision* 74 FR 66730, 66822 (Dec. 16, 2009) (codified at 23 CFR part 655).

[15] AAA Foundation for Traffic Safety, Pedestrian Signal Safety for Older Adults, 18 (2007) available at *https://aaafoundation.org/wp-content/uploads/2018/02/PedestrianSignalSafetyOlderPersonsReport.pdf.*

[16] Albert Forde & Janice Daniel, *Pedestrian Walking Speed at Un-signalized Midblock Crosswalk and Its Impact on Urban Street Segment Performance,* 8 J.of Traffic and Transportation Eng., 57 (2021) *available at https://www.sciencedirect.com/science/article/pii/S209575641830415X.*

[17] *See* AAA Foundation for Traffic Safety, Pedestrian Signal Safety for Older Adults at 19.

jurisdictions if a passive detection device is used that auto-adjusts to the pedestrian's actual clearance of the crosswalk. *See* R306.2 Exception.

As noted above, in the final rule text, the Board has specified a requirement that the walk interval be 7 seconds minimum for all signalized crosswalks, which is the length recommended by the MUTCD. Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) 2009 Edition, 4E.06 paragraph 11. The MUTCD provides guidance indicating that walk intervals as short as 4 seconds may be used where pedestrian volumes and characteristics do not require a 7-second walk interval; however, walk intervals of less than 7 seconds do not provide a sufficient amount of time for many people with disabilities to leave the curb as they need to wait for a curb ramp to be clear and then navigate down the ramp.

Accessible Walk Indication (R306.3)

An accessible walk indication complying with the technical requirements at R308.2 must have the same duration as the walk interval. However, where the pedestrian signal rests in ''walk,'' the accessible walk indication may be limited to the first 7 seconds of the walk interval. If the pedestrian signal is resting in walk and there is sufficient time remaining to provide an accessible walk interval before the beginning of the pedestrian change interval, the accessible walk indication may be recalled by a button press (R306.3 Exception). This requirement is based on MUTCD section 4E.11, which was among the sections of the MUTCD incorporated by reference in the proposed rule. In consultation with USDOT, the Board has slightly revised the second sentence of the exception from the MUTCD language to clarify that the accessible walk interval may be recalled only when there is sufficient time remaining for a full walk interval before the pedestrian change interval begins. This change ensures that an accessible walk indication is provided only when there is enough crossing time remaining to disembark the sidewalk and fully cross the street.

Roundabouts (R306.4)

Section R306.4 specifies the edge detection and crosswalk treatments required at roundabouts. A roundabout is a circular intersection with yield control at entry, which permits a vehicle on the circulatory roadway to proceed, and with deflection of the approaching vehicle counter-clockwise around a central island (R104.3).

Several commenters requested an explanation as to why edge detection treatments are needed at roundabouts but not elsewhere. Edge detection treatments are required at roundabouts to assist pedestrians who are blind or have low vision to locate the crosswalk (R306.4.1). At roundabouts, the orientation of the crosswalks to the circular roadway eliminates traditional tactile cues at crosswalks inherent to standard rectilinear intersections. In addition, the continuous circular traffic flow at these unsignalized crosswalks obscures the audible cues that pedestrians who are blind would otherwise use to detect a crossing and gaps in the traffic. Thus, edge detection treatments are needed to ensure that pedestrians who are blind or have low vision have the same opportunity to use a crosswalk at a roundabout as individuals with vision.

There are two options to ensure that crosswalks at roundabouts are detectable. The pedestrian circulation path can be separated from the curb, crosswalk to crosswalk, with landscaping or another nonprepared surface 24 inches (610 mm) wide minimum (R306.4.1.1). Alternatively, where sidewalks are flush against the curb, a continuous and detectable vertical edge treatment must be provided along the street side of the sidewalk wherever pedestrian crossing is not intended (R306.4.1.2). The bottom of the vertical edge treatment can be no higher than 15 inches (380 mm) maximum above the walking surface of the pedestrian circulation path.

In the proposed rule, the Board addressed continuous and detectable edge treatment at curb-attached sidewalks (NPRM R306.3.1). In the final rule, the Board has clarified that the other option is separation between the curb and the pedestrian circulation path by landscaping or nonprepared surface (R306.4.1.1).

The Board's reference in the proposed rule (NPRM R306.3.1) to chains, fencing, and railings created confusion for commenters and others who have sought technical assistance from the Board regarding vertical edge detection. The Board indicated a maximum height for the bottom edge of these treatments but did not intend to convey that these are the only options for vertical edge detection that jurisdictions may use. Consequently, in the final rule, the Board has removed the reference to chains, fencing and railings. The Board will provide examples of vertical edge detection options in its technical assistance materials.

Two state DOTs and one engineer commented that a standard or raised curb should be a sufficient indication that crossing is not intended. A standard or raised curb does not provide sufficient indication that a crossing is not intended. Four state DOTs expressed concern that vertical edge treatments would negatively impact snow removal operations. The Board notes that jurisdictions that have these concerns may opt for separation instead of a vertical edge treatment. One state DOT requested that cobblestone treatment be permitted for separation. Cobblestone surfaces are prepared surfaces that are used in existing facilities for pedestrian circulation. Thus, they are not useful for wayfinding because they are easily mistaken for a walking surface. *See e.g.,* Transportation Research Board, NCHRP 3–78b: Guidelines for the Application of Crossing Solutions at Roundabouts and Channelized Turn Lanes for Pedestrians with Vision Disabilities at 3–2 (showing a blind pedestrian mistaking a cobblestone separation for a walking surface at a roundabout).

The Board observes that while several state DOTs and local government commenters expressed concern regarding the implementation or need for detectable edge treatment at roundabouts, over 150 individuals, five disability rights organizations, and one local government official commented in support of a requirement for edge detection at roundabouts. The Board is confident that persons with disabilities need edge detection for equitable use and safety of pedestrian facilities at roundabouts.

Crosswalks at multi-lane segments of roundabouts and multi-lane channelized turn lanes require one or more of the following treatments: a traffic control signal with a pedestrian signal head; a pedestrian hybrid beacon; a pedestrian actuated rectangular rapid flashing beacon; or a raised crossing (R306.4.2 and R306.5). The requirement for crosswalk treatments at multi-lane roundabouts is discussed in the Major Issues section above. For the same accessibility reasons that these treatments are needed at roundabout crossings, they are also needed at multi-lane channelized turn crossings. Accordingly, the Board has included that requirement at R306.5.

R307 Pedestrian Pushbuttons and Passive Pedestrian Detection

An accessible pedestrian signal is a device that communicates information about pedestrian signal timing in non-visual formats such as audible tones or speech messages, and vibrating surfaces. In the proposed rule, technical requirements for accessible pedestrian signals were incorporated by reference from the MUTCD. Specifically, the

proposed rule indicated that accessible pedestrian signals and pushbuttons would comply with MUTCD sections 4E.08 through 4E.13. A rehabilitation design firm and a state DOT requested that the Board clarify whether the MUTCD provisions were required or recommended, and three disability rights advocacy organizations expressed concern that engineering judgement would be permitted in a jurisdiction's implementation of the incorporated MUTCD provisions. In addition, one engineering association requested that the requirements be consistent with the MUTCD.

The Board concurs that additional clarification as to the technical requirements for accessible pedestrian signals is appropriate and has thus added technical sections for pedestrian pushbuttons and passive pedestrian detection (R307) and accessible pedestrian signal walk indications (R308) directly to the rule text, based on the technical requirements of the MUTCD sections referenced in the proposed rule. The MUTCD sections are not incorporated by reference. The requirements are generally consistent with the MUTCD, as described in the provision-specific discussions below; however, the language used in the final rule text clarifies that these requirements are mandatory.

In general, accessible pedestrian signals have three features: (1) a method of activation, which is either a pushbutton that activates accessible features when pressed or a passive pedestrian detection device that uses technology to detect the presence of pedestrians and then automatically activates accessible features; (2) a device that provides audible indications of visual pedestrian signals for people who are blind or have low vision; and (3) a pushbutton with a tactile arrow that provides vibrotactile cues to individuals who are deaf and also blind or have low vision. These three features may be integrated into one device or presented in multiple devices that work together as a system. Operable parts must comply with technical requirements for operable parts at R403 (R307.1).

Activation (R307.2)

Pedestrian push buttons and passive detection devices activate the accessible pedestrian signals and, where applicable, the walk interval. This provision was incorporated by reference in the proposed rule from MUTCD section 4E.09 paragraph 13, but referred only to pedestrian push buttons. In the final rule, the Board revised the language to clarify that push buttons or passive detection will activate the accessible pedestrian signals and walk interval, where applicable. In addition, the language of the proposed MUTCD provision suggested that pushbuttons were optional, which was inconsistent with the language of NPRM R209.1 indicating that pushbuttons are required. The revised language in the final rule removes this inconsistency, clarifying that pedestrian push buttons are required.

Extended Push Button Press (R307.3)

Where an extended push button press is used to provide additional features, a push button press of less than one second actuates only the pedestrian timing and any associated accessible walk indication, and a push button press of one second or more actuates the pedestrian timing, any associated accessible walk indication, and any additional features. If additional crossing time is provided by means of an extended pushbutton press, a sign so indicating shall be mounted adjacent to or integral with the pedestrian push button. This provision is taken from MUTCD section 4E.13 paragraph 2.

Location (R307.4)

Pedestrian push buttons must be located no greater than 5 feet from the side of a curb ramp run or the edge of the farthest associated crosswalk line from the center of the intersection (R307.4). Pedestrian push buttons must be located between 1.5 and 10 feet from the edge of the curb or pavement. The purpose of this provision is to ensure that push buttons are placed in close proximity to the crosswalk they serve as individuals who need the tactile features will need to stand next to the push button while awaiting the walk interval, and often the audible signals emanate from the push button housing.

This provision is taken from MUTCD 4E.08 paragraph 4, which states that pedestrian pushbuttons should be located between 1.5 and 6 feet from the edge of the pavement and 4E.08 paragraph 6, which states that where physical constraints prevent that location, the pushbutton should not be farther than 10 feet from the edge of curb or pavement. The Board agrees that placing the pushbutton between 1.5 and 6 feet from the edge of curb or pavement is preferable but has extended the requirement to 10 feet in acknowledgment that the geometry of some intersections, even in new construction, will necessitate placement further than 6 feet from the edge of curb or pavement.

Where two pedestrian push buttons are provided on the same corner, they must be 10 feet or more apart; however, in alterations where it is technically infeasible to provide 10 feet of separation between pedestrian push buttons on the same corner, the pedestrian pushbuttons may be closer together and a pedestrian push button information message complying with R308.3.2 must be provided (R307.4.1). This provision is taken from MUTCD sections 4E.08 paragraphs 7 and 8 and 4E.10 paragraph 3. Two local government commenters and AASHTO expressed concern regarding the requirement for 10 feet of separation between pedestrian push buttons on the same corner. The Board notes that in the final rule this requirement applies to new construction on undeveloped land. Pedestrian push buttons that are added to existing rights-of-way are considered alterations, and alterations subject to existing physical constraints that make compliance with applicable requirements technically infeasible must comply with the applicable requirements to the maximum extent feasible (R202.3).

Push Button Orientation (R307.5)

The face of the push button must be aligned parallel to its associated crosswalk. This alignment ensures that the tactile arrow points in the direction of pedestrian travel, and provides uniformity for wayfinding. This provision is taken from MUTCD section 4E.08 paragraph 4.

Audible and Vibrotactile Walk Indications for Pedestrian Signal Heads (R307.6)

Pedestrian push buttons or passive detection devices must activate audible and vibrotactile walk indications complying with R308. This requirement specifies that both audible and vibrotactile indications are required, and is taken from MUTCD section 4E.11 paragraph 2.

Audible and Vibrotactile Indication for Pedestrian Activated Warning Devices Without a Walk Indication (R307.7)

Where a pedestrian push button or a passive detection device is provided for pedestrian activated warning devices, such as rectangular rapid flashing beacons, the pedestrian push button or passive detection device must activate a speech message that indicates the status of the beacon in lieu of an audible walk indication. The speech message volume must comply with requirements stated at R308.4. Where a pedestrian push button is provided, it must not include vibrotactile features indicating a walk interval.

This provision clarifies the type of accessible indications that are required

for pedestrian activated warning devices. Pedestrian activated warning devices, such as rectangular rapid flashing beacons, do not stop traffic. Rather they provide flashing lights that draw drivers' attention to the crosswalk to warn them of the presence of pedestrians. Because these devices do not stop traffic, there is no walk interval, and thus no audible or vibrotactile walk indication. An audible or vibrotactile walk indication would falsely convey to a pedestrian who is blind or has low vision that the traffic has been stopped by a traffic control device. Instead, the speech message will state the status of the beacon, such as the beacon is flashing or the beacon has been activated, which is consistent with the visual indications of the device.

Locator Tone (R307.8)

Pedestrian push buttons must have a locator tone complying with R307.8. This provision is taken from MUTCD section 4E.12 paragraph 2. The locator tone is a sound that emanates from the push button housing that enables individuals who are blind or have low vision to locate the push button.

Locator tones have a duration of 0.15 seconds or less and repeat at one-second intervals except when another audible indication from the same device is active (R307.8.1). This requirement is taken from MUTCD section 4E.12 paragraph 4. To avoid a scenario in which multiple sounds are simultaneously emanating from the same device, the Board has added language clarifying that when another audible indication from the same device is active, the locator tone is to be silenced. The Board has also added an exception allowing the locator tone to be silenced if a passive detection system activates the locator tone when a pedestrian is within a 12-foot radius of the pedestrian push button. This addresses some commenter concerns regarding sounds bothering nearby residents. However, the Board also notes that those concerns are likely no longer an issue due to evolving technology; when the proposed rule was published, speakers were placed closer to the pedestrian signal heads, and were not typically integrated into the pedestrian push button device as they are now. This resulted in louder audible cues than those that emanate from today's devices.

Pedestrian push button locator tones must be intensity responsive to ambient sound and audible 6 to 12 feet from the push button, or to the building line, whichever is less (R307.8.2). The push button locator tone must be louder than ambient sound up to a maximum volume of 5 dBA louder than ambient sound. Automatic volume adjustment in response to ambient traffic sound level is capped at a maximum volume of 100 dBA. This requirement is taken from MUTCD sections 4E.11 paragraphs 9 and 10 and 4E.12 paragraph 6.

Section R307.8.3 requires that where audible beaconing is used, the volume of the push button locator tone during the pedestrian change interval of the called pedestrian phase be increased and operated in one of the following ways: the louder audible walk indication and louder locator tone comes from the far end of the crosswalk, as pedestrians cross the street; the louder locator tone comes from both ends of the crosswalk; or the louder locator tone comes from an additional speaker that is aimed at the center of the crosswalk and that is mounted on a pedestrian signal head. This requirement is taken from MUTCD section 4E.13 paragraph 8.

When the traffic control signal is operating in a flashing mode, pedestrian push button locator tones must remain active, and the pedestrian push button must activate a speech message that communicates the operating mode of the traffic control signal (R307.8.4). Where traffic control signals or pedestrian hybrid beacons are activated from a flashing or dark mode to a stop-and-go mode by pedestrian actuations, a speech message communicating the operating status of the traffic control signal is not required. Flashing mode refers to when traffic signals flash either red or yellow, often late at night when traffic volumes are reduced, or at intersections in rural areas with low regular traffic flow.

Requirements for push button locator tones are addressed at MUTCD section 4E.12 paragraph 5. The MUTCD states that push buttons must be deactivated when the traffic control signal is in flashing mode. In response to comments from a national disability rights advocacy organization that emphasized the importance of visual information being provided in non-visual format for pedestrians who are blind or have low vision, the Board has explicitly deviated from the MUTCD's approach in this instance to ensure that pedestrians who are blind or have low vision can access information regarding the status of the traffic control device.

Tactile Arrow (R307.9)

Pedestrian push buttons must have a tactile arrow with high visual contrast that is aligned parallel to the direction of travel on their associated crosswalks. This requirement is taken from MUTCD 4E.12 paragraph 1.

R308 Accessible Pedestrian Signal Walk Indications

Audible and vibrotactile walk indications are provided by accessible pedestrian signals during a walk interval. The walk interval occurs when a traffic control device signals traffic to stop and a pedestrian signal head signals to pedestrians, using the illuminated ''walking person'' visual signal, to exit the curb and begin to cross the street. The remainder of the time allotted for pedestrians to complete the crossing is called the ''pedestrian change interval,'' and is signaled by an illuminated flashing ''upraised hand.'' The technical requirements in section R308 pertain mostly to the audible and vibrotactile cues during the walk interval. The Board acknowledges and concurs with commenters' requests for standardization with respect to audible cues. These requirements will provide standardization with respect to the type of sound, pattern of speech message, and volume of the audible cues provided.

Audible and Vibrotactile Walk Indications (R308.2)

Accessible pedestrian signals have an audible and vibrotactile walk indication during the walk interval only. The audible walk indication must be audible from the beginning of the associated crosswalk. During the pedestrian change interval, audible cues of the accessible pedestrian signals revert to the pedestrian push button locator tone. This requirement is taken from MUTCD sections 4E.11 paragraphs 4 and 25.

Audible Walk Indications (R308.3)

There are two types of audible walk indications: a percussive tone (R308.3.1) and a speech walk message (R308.3.2). A percussive tone is required where an accessible pedestrian signal is provided at a single crossing or where two accessible pedestrian signals are 10 feet or more from each other at a corner. The percussive tone repeats eight to ten ticks per second with multiple frequencies and a dominant component at 880 Hz. In alterations, where it is technically infeasible to provide 10 feet separation between pedestrian push buttons on the same corner, the audible walk indication for each signal is a speech walk message that complies with R308.3.2. These requirements are taken from MUTCD section 4E.11 paragraphs 7 and 8.

Several commenters objected to the ''chirping'' noise that was used by early accessible pedestrian signals. The Board notes that the final rule prescribes either a percussive tone or an audible speech

message depending on the circumstances; chirping noises are not permitted.

The Board carefully considered comments on the format of audible walk indications from two national advocacy organizations for people who are blind or have low vision. Both organizations requested that the audible walk indications be limited to speech messages to ensure that the same information available to a sighted pedestrian is provided to a pedestrian who is blind or has low vision.

In the absence of additional significant research studies regarding audible walk indications, the Board has accepted the MUTCD's preference for percussive tones over speech messages. The Board notes that MUTCD adopted this approach based on research that concluded that speech walk indications were not understandable to pedestrians under all ambient sound conditions. *See* Transportation Research Board, NCHRP Document 117B: Guidelines for Accessible Pedestrian Signals: Final Report, 91–92 (2007) available at *https://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_w117b.pdf.* The principal purpose of visual pedestrian signal heads is to provide safety to pedestrians who are crossing the street by informing pedestrians of the walk interval, that is, the interval during which they are to step off the curb so that they have sufficient time to cross the street before the traffic light changes. In accepting the MUTCD's preference for percussive tones, the Board is prioritizing audible communication of the walk indication over other information, and the available research indicates that the percussive tone is more widely audible across various ambient sound conditions. *Id.*

The Board acknowledges that this approach does not wholly address issues that may face pedestrians who are blind or have low vision, as they are not provided with the same information that is provided visually, specifically the pedestrian countdown. Consequently, persons who are blind or have low vision approaching a crosswalk during the pedestrian clearance interval will not know how many seconds remain and may then wait an entire cycle for the audible walk indication even if they would have had sufficient time to cross. The Board will encourage additional research regarding speech messages at crosswalks, including the viability of an audible pedestrian countdown.

Jurisdictions have the option of providing speech information messages at a pedestrian signal, regardless of whether it is a pretimed signal or actuated with the pedestrian push button or passive detection; however, the speech information message may only be actuated when the walk interval is not timing (R308.3.2.1). Speech information messages provide wayfinding assistance for persons who are blind or have low vision and can be especially helpful at intersection corners with multiple crossings. If provided, the speech message must begin with the term ''Wait,'' followed by intersection identification information modeled after: ''Wait to cross Broadway at Grand.'' Information on intersection signalization or geometry may also be provided after the intersection identification information.

Where a speech walk message is used as the audible walk indication, it must use the following patterns. At intersections having pedestrian phasing that is concurrent with vehicular phasing, the speech message must be patterned after the model: ''Broadway. Walk sign is on to cross Broadway.'' (R308.3.2.2). At intersections with exclusive pedestrian phasing, meaning that traffic is stopped in all directions while pedestrians cross in all directions, the speech message must be patterned after the model: ''Walk sign is on for all crossings'' (R308.3.2.3). Where a pilot light is provided, the speech message ''Wait'' must be provided if actuated while the walk interval is not timing (R308.2.3.4). These speech message requirements come from MUTCD sections 4E.11 paragraphs 18 and 19 and 4E.08 paragraph 17.

Volume (R308.4)

Audible walk indications must be louder than ambient sound, up to a maximum volume of 5 dBA louder than ambient sound. For automatic volume adjustment in response to ambient traffic sound, the maximum volume is 100 dBA. Where audible beaconing is provided in response to an extended push button press, the beaconing can exceed 5 dBA louder than ambient sound; however, the maximum volume remains 100 dBA. Volume requirements come from MUTCD section 4E.10 paragraphs 9 and 10.

Vibrotactile Walk Indication (R308.5)

The pedestrian push button must vibrate during the walk interval. People who use vibrotactile cues, such as people who are both deaf and blind, will stand with their hand on the pedestrian push button until it vibrates indicating the walk interval. The only vibrotactile cue provided is the walk interval. The vibrotactile walk indication requirement comes from MUTCD section 4E.11 paragraph 3.

R309 Transit Stops and Transit Shelters

The technical requirements for transit stops and transit shelters, which appear at NPRM section 308 in the proposed rule, are largely based on provisions for transit facilities in the 2004 ADA and ABA Guidelines.

Transit Stops (R309.1)

A transit stop is defined in the final rule as, ''An area that is designated for passengers to board or alight from buses, rail cars, and other transportation vehicles that operate on a fixed route or scheduled route, including bus stops and *boarding platform*s. This definition does not include intercity rail except where a stop is located in the *public right-of-way.*'' (R104.3). This includes, but is not limited to, all bus stops, bus rapid transit stops, and streetcar stops on fixed or scheduled routes in the public right-of-way. It also includes intercity rail stops located in the public right-of-way, such as flag stops. An alteration to a transit stop will trigger these technical requirements, including alterations to bus stops that currently have no features other than signage.

Boarding and alighting areas at sidewalk or street-level must comply with technical requirements specific to boarding and alighting areas for slope and dimensions, as well as common requirements for all transit stops, and must serve each accessible vehicle entry and exit (R309.1.1, R309.1.3). Where a transit shelter is provided, the boarding and alighting area can be located within or outside the shelter.

The proposed rule required that transit stops serving multicar vehicles have technically compliant boarding and alighting areas for each vehicle (NPRM R308.1.1). In the final rule, the Board has replaced this language with a more precise requirement that a compliant boarding and alighting area serve each accessible vehicle entry.

A state DOT requested that the Board incorporate language indicating that entities comply with this requirement ''to the extent that the construction specifications are within their control,'' which is language that the U.S. Department of Transportation added to modify its adoption of 810.2.2 of Appendix D to 36 CFR part 1191. *See* 49 CFR part 37, Appx. A. The Board expects that entities will coordinate to comply with accessibility requirements in the public right-of-way, and thus declines to add this language. However, enforcement-related issues may be addressed by USDOT's separate rulemaking adopting these guidelines.

Boarding and alighting areas must have a clear length of 96 inches (2440

mm) minimum, measured perpendicular to the face of the curb or street edge, and a clear width of 60 inches (1525 mm) minimum, measured parallel to the street. These are the same substantive requirements proposed in the NPRM (NPRM R308.1.1.1). In response to the NPRM, five local government entities and one state DOT expressed concern that 8 feet of clear space would not be feasible at existing shuttle stops, and a state DOT requested to orient the boarding and alighting area in the other direction to accommodate limited right-of-way. The orientation of boarding and alighting areas is important because the dimensions as specified accommodate deployment of a lift or ramp. The Board notes that alterations, including transit stops that are added to existing right-of-way, are required to comply with the applicable requirements to the maximum extent feasible where existing physical constraints make compliance with these requirements technically infeasible (R202.3). The Board thus anticipates that there will be instances in existing right-of-way where full compliance of the 96-inch length will not be achieved.

The slope of boarding and alighting areas measured parallel to the street must be the same as the grade of the street (R309.1.1.2). The slope of boarding and alighting areas measured perpendicular to the street must be 1:48 (2.1%) maximum. There are no substantive changes to this provision from the proposed rule. The provision has been retitled ''slope,'' as the term ''grade,'' which was used in the proposed rule, connotes a specific direction of pedestrian travel.

Boarding platforms in the public right-of-way must comply with technical requirements for platform and vehicle coordination (R309.1.2.1) and slope (R309.1.2.2) as well as common requirements for all transit stops (R309.1.3). The final rule defines ''boarding platform'' as ''[a] platform raised above *standard curb height* used for transit vehicle boarding and alighting'' (R104.3). Standard curb height is defined as, ''[t]he typical height of a curb according to local standards for a given road type, but usually between 3 inches (75 mm) and 9 inches (230 mm) high relative to the surface of the roadway or gutter'' (R104.3). Examples of boarding platforms in the public right-of-way include, but are not limited to, bus rapid transit stops or streetcar stops where the boarding and alighting area is higher than the standard curb height. This may include places where the stop is on the sidewalk, but the sidewalk is raised higher than the standard curb height.

Boarding platforms must be positioned to coordinate with vehicles in accordance with DOT's applicable requirements in 49 CFR parts 37 and 38, which require the height of the vehicle floor and the platform to be coordinated so as to minimize vertical and horizontal gaps. There is no change to this requirement from the proposed rule.

The slope of boarding platforms measured parallel to the track or street must be the same as the grade of the track or street, while the slope of the boarding platform measured perpendicular to the track or street must be 1:48 (2.1%) maximum. This is a change from the proposed rule, which required the slope to be 2% maximum in each direction for new construction. Upon consideration, the Board has concluded that similar to boarding and alighting areas at street level, the slope of boarding platforms measured parallel to the street or track must be the same as the grade of the track or street even in new construction.

Boarding and alighting areas and boarding platforms must comply with surface characteristics stated at R302.6 (R309.1.3.1). In new construction on undeveloped land, boarding and alighting areas and boarding platforms connect to pedestrian access routes in accordance with R203.2. In alterations, boarding and alighting areas and boarding platforms must connect to existing pedestrian circulation paths by pedestrian access routes complying with R302 (R309.1.3.2). This connection is required by R202.2 but also expressed here to ensure that jurisdictions understand that any altered boarding and alighting areas and boarding platforms must be connected to an existing pedestrian circulation path. This requirement seeks to avoid a scenario in which a person with a disability alights a transit vehicle but is then trapped in the alighting area because there is no connection to a pedestrian circulation path. In response to the NPRM, two individuals and a state DOT commented in support of a connection requirement.

The Board acknowledges a comment from a national advocacy organization for individuals who are blind or have low vision requesting that the Board require all transit stops in new construction to have boarding and alighting areas or boarding platforms that are at least 6 inches higher than street level. The organization asserts that such a requirement will minimize gaps between the vehicle and the alighting area, minimize the slope of low-floor transit bus ramps when extended, and prevent transit vehicles from encroaching into alighting areas and possibly hitting a passenger. The Board is unaware of research indicating that these are widespread problems for transit riders with disabilities in jurisdictions where transit stops are located at street-level. The Board thus declines to require a specific height for transit stops.

Transit Shelters (R309.2)

Pedestrian access routes must connect transit shelters to boarding and alighting areas or boarding platforms (R309.2.1). This requirement, which appeared at NPRM R308.2 in the proposed rule, ensures that persons with disabilities are able to access transit shelters. Transit shelters must have a clear space complying with the technical requirements at R404 entirely within the shelter (R309.2.2). This clear space allows a person using a wheelchair sufficient space inside the shelter to await the transit vehicle. Where seating is provided within the shelter, the clear space must be located either at one end of a seat or so as to not overlap the area within 18 inches (460 mm) from the front edge of the seat to leave leg room for seating provided within the shelter.

Any environmental controls provided within a transit shelter, such as lights or heating, must be proximity actuated to ensure that persons with disabilities can use them (R309.2.3). Protruding objects within transit shelters must comply with technical requirements for protruding objects at R402 to ensure that they are not hazards to persons who are blind or have low vision (R309.2.4).

There are no substantive changes in the final rule for technical requirements for transit shelters, although the provisions have been restructured for clarity. In response to the proposed rule, a disability rights advocacy organization requested that the Board add a requirement for a wheelchair turning space. Two design firms also commented on turning space, indicating that any required turning space should be permitted to be partially outside the shelter. The Board considered these comments and concluded that a requirement for turning space is not necessary in light of the typical designs of transit shelters, which would allow a person in a wheelchair to make a turn either partially inside the shelter or directly outside.

The Board acknowledges a comment from a design firm requesting technical criteria for benches. As stated above in the discussion of street furniture (R209), the Board concurs that technical criteria for benches, specifically back support and armrest requirements, would be useful to ensure accessibility, but as the

Board did not propose specific dimensions for accessible benches in the proposed rule, the Board declines to add them now in the final rule. The Board may consider technical criteria for benches in a future rulemaking.

R310 On-Street Parking Spaces

In the proposed rule, technical requirements for accessible on-street parking spaces were addressed at NPRM R309. There are few substantive changes from the proposed requirements; however, in the final rule, the provisions have been restructured for clarity.

Parallel On-Street Parking Spaces (R310.2)

In the proposed rule, the Board presented two sets of specifications for accessible parallel on-street parking spaces: specifications for wide sidewalks where the width of the adjacent sidewalk or available right-of-way exceeds 14 feet (NPRM R309.2.1) and specifications for narrow sidewalks, where the available sidewalk or right-of-way is 14 feet or less.

In the final rule, the Board had restructured this section to clarify that in new construction on undeveloped land, larger accessible parallel on-street parking spaces are required. Specifically, in the final rule, the default dimensions of accessible parallel on-street parking spaces are 24 feet long minimum parallel to the sidewalk and 13 feet wide minimum perpendicular to the sidewalk (R310.2.1). The 13-foot width accounts for the typical width of a parallel parking space plus an additional five feet, which in the proposed rule was characterized as an ''access aisle'' (NPRM R309.2.1). The 24-foot length accounts for the 20-foot length of a typical parking space (the dimension that the Board has used in R211 as a proxy to count unmarked parking spaces) plus 48 inches that will allow a person exiting on the driver side of the vehicle to access the connection to the pedestrian access route, such as a curb ramp, on the passenger side of the vehicle.

In the final rule, the Board concurred with an individual commenter who recommended that the Board provide total dimensions for the accessible parallel space instead of dimensions for an additional access aisle. The Board has observed in the implementation of the proposed guidelines that some jurisdictions have marked the access aisles, which creates confusion for both drivers and parking enforcement officials as to whether a vehicle may be parked in the access aisle. The point of the additional space of the access aisle (now additional width in the final rule) is to allow the driver to situate the vehicle anywhere within the full width of the space so that a person with a disability may exit the vehicle on whichever side is needed without exiting directly into a travelled way. Some persons with disabilities will need space on the driver side of their vehicle, outside of the travelled way, to transfer to a wheelchair.

The Board has provided two exceptions to the required dimensions for accessible parallel on-street parking spaces that are applicable in alterations. First, in Exception 1, the Board states that where parallel on-street parking spaces are altered but the adjacent pedestrian circulation path is not, any accessible parallel on-street parking spaces provided may have the same dimensions as the adjacent parallel on-street parking spaces if they are provided nearest the crosswalk at the end of the block face or nearest a midblock crosswalk, and a curb ramp or blended transition is provided serving the crosswalk.

This exception clarifies that where a jurisdiction is not altering a sidewalk, it need not alter the sidewalk solely to provide accessible parallel on-street spaces with the prescribed dimensions of R310.2.1, if they meet the conditions above. Rather, where, for example, the parking lane is being repaved (altered), but the sidewalk will not be altered, the jurisdiction is permitted to provide typically-sized, accessible parking spaces if they are provided nearest a crosswalk at the end of the block face or nearest a midblock crosswalk, and a curb ramp or blended transition is provided serving the crosswalk. The substantive content of this exception appeared at NPRM R309.2.1.1. The language has been revised to clarify that that the spaces must be provided nearest to a crosswalk where a curb ramp or blended transition is provided, as was the intent of the proposed language requiring the spaces to be located ''at the end of the block face.''

Exception 2 of section R310.2.1 of the final rule contains the provision that appeared at NPRM R309.2.2, which relates to the requirements for parallel parking adjacent to narrow sidewalks. Where providing parallel on-street parking spaces with the dimensions specified in R310.2.1 would result in an available right-of-way width less than or equal to 9 feet (2.7 m), measured from the curb line to the right-of-way line, the accessible parallel on-street parking spaces may have the same dimensions as the adjacent parallel on-street parking spaces if they are provided nearest a crosswalk at the end of the block face or nearest a midblock crosswalk, and a curb ramp or blended transition is provided serving the crosswalk. The language of this provision has been edited to clarify that there must be a curb ramp or blended transition present where the accessible spaces are located, as was the intention in the proposed rule of requiring that they be located ''at the end of the block face.'' In addition, in the final rule, the Board has clarified that these accessible spaces may have the same dimensions as the adjacent parallel on-street spaces.

As in the proposed rule, the Board limits the requirement for the larger sized parking space to places where 9 full feet of available right-of-way will remain. Nine feet of available right-of-way allows for the required 48-inch clear width of the pedestrian access route and an additional 5 feet for street furniture and building frontage.

Two local government commenters and one state DOT objected to the requirement to locate typically-sized accessible parallel on-street parking spaces nearest to curb ramps. They asserted that local programs may locate spaces based on need or have requirements that the must be a certain distance from an intersection. The Board acknowledges that in the absence of Federal requirements, some state and local jurisdictions have created their own specifications for the location of accessible on-street spaces. However, to provide equity to persons with disabilities with respect to their personal safety, the amount of time that they spend in the roadway between their vehicle and the sidewalk must be minimized. Thus, it is crucial that accessible spaces are located nearest the crosswalk at the end of the block face or nearest mid-block crosswalk with a curb ramp or blended transition serving the crosswalk.

Each accessible parking space complying with the dimensions of R310.2.1 must have an independent connection to a pedestrian access route (R310.2.2). If there is a curb between the parking space and the pedestrian access route, a curb ramp or blended transition complying with R304 must be provided in accordance with R203.6.1.3 and R310.2.2; however, a detectable warning surface is not required. Built-up curb ramps within the parking space are not permitted. The clear area requirement for a curb ramp directly serving a parking space complying with the dimensions of R310.2.1 is satisfied within the additional length of the space. Accessible spaces provided in accordance with the exceptions to R310.2.1 must be connected to the curb ramp serving the crosswalk by a

pedestrian circulation path that complies with technical requirements for surfaces at R302.6, except that changes in level are not permitted.

A state disability board requested that the rule specify slope and cross slope for parking spaces. The Board considered this request, but concluded that roadway design considerations preclude the Board from specifying slope and cross slope for on-street parking. However, in the final rule, the Board has added a provision requiring surfaces of parking spaces to comply with technical specifications for surfaces at R302.6, except that changes in level are not permitted (R310.2.3). As indicated in the advisory at NPRM 309.1, accessible parking spaces should be located where the street has the least crown and grade (and close to key destinations).

A state DOT and a local government entity pointed out in response to the proposed rule that the access aisle (now additional width) of a parallel parking space does not benefit side lift and ramp users because they typically deploy onto the sidewalk. In the final rule, the Board has added a provision requiring that the center 50 percent of the length of the sidewalk or other surface adjacent to accessible parking spaces be free of obstructions (R310.2.4). This requirement will ensure that there is an adjacent unobstructed area to accommodate deployment of a lift or ramp.

In the final rule, the Board, concurring with a comment from an association of accessibility professionals, also added a provision clarifying the requirement for identification of accessible on-street parking spaces with a sign bearing the International Symbol of Accessibility installed 60 inches (1525 mm) minimum above the ground measured to the bottom of the sign (R310.2.5).

Perpendicular Parking Spaces (R310.3)

In the final rule, the Board has split perpendicular and angled on-street parking spaces into separate provisions, with an additional common requirements provision applicable to both, to address a change in the dimensions of the spaces and access aisles. In response to comments expressing confusion as to the need for a 96-inch access aisle for perpendicular and angled parking, the Board notes that the purpose of the access aisle is to allow sufficient space between an accessible vehicle and the next vehicle to deploy a ramp.

In R310.3.1 of the final rule, the Board has retained the proposed requirement that perpendicular spaces have an adjacent 96-inch (2440 mm) minimum access aisle extending the full length of the space. The Board has also retained the allowance that one access aisle may be shared by two spaces, but has clarified that this is only permitted where the front entry and rear entry parking are both allowed. Most wheelchair vans that are equipped with a ramp deploy on the passenger side. Thus, where a driver can park the vehicle such that the access aisle is on the passenger side, regardless of which side of the space the access aisle is located, it is appropriate that access aisle be shared by two spaces.

Angled Parking Spaces (R310.4)

In the final rule, the Board has reallocated the total amount of space anticipated for the angled parking space and access aisle as follows. The Board has stated the width of accessible angled parking spaces to 132 inches (3350 mm) and reduced the width of the access aisle to 60 inches (1525 mm) (R310.4.1). The access aisle must extend the full length of the parking space on the passenger side (R310.4.2).

Because most wheelchair vans equipped with a ramp deploy on the passenger side, the Board requires that the access aisle be located on that side of the vehicle. The larger parking space allows a driver flexibility to situate the vehicle within the space so that a person with a disability on either side of the vehicle will have sufficient clearance to disembark. A person deploying a ramp on the passenger side would pull in all the way to the left in the space, which would allow the equivalent of the proposed 96-inch access aisle (*see* NPRM R309.3). However, for a person with a disability exiting the vehicle on the driver's side, the vehicle would be situated immediately adjacent to the access aisle, which would allow an additional three feet of clearance on the driver's side.

Common Requirements for Perpendicular and Angled Parking Spaces (R310.5)

The following requirements apply to accessible perpendicular and accessible angled on-street parking spaces. The access aisles must be marked to discourage people from parking in them (R310.5.1). The access aisles must be located at the same level as the parking space they serve and cannot encroach on the traveled way (R310.5.2). These requirements are substantively the same as those proposed at NPRM R309.3.

In new construction on undeveloped land, access aisles must connect to pedestrian access routes (R310.5.3); in alterations, the access aisle may connect to an existing pedestrian circulation path in accordance with R202.2 (R310.5.3 Exception 1). In the proposed rule, this provision was entitled, ''Curb Ramps or Blended Transitions'' (NPRM R309.4). The Board has replaced this section with more precise language requiring a connection to a pedestrian access route, as in some areas there is no curb between the parking and the pedestrian access route and thus, no curb ramp is needed. Where curb ramps are used to make the connection, they must be provided in accordance with R203.6.1.4 and must comply with the technical requirements for curb ramps at R304 (R310.5.3); however, a detectable warning surface is not required on a curb ramp or blended transition used exclusively to connect on-street parking access aisles to pedestrian access routes.[18]

Where curb ramps or blended transitions are used, they must not reduce the required width or length of the access aisles or accessible parking spaces (R310.5.3). This requirement clarifies a statement made in the proposed rule that ''[c]urb ramps shall not be located within the access aisle'' (NPRM R309.4), which a state DOT indicated was unclear. The Board has observed jurisdictions install curb ramps within an access aisle that obstruct the area intended for deployment of a ramp. The connection to the pedestrian access route, which could be a curb ramp, blended transition, or a section of pedestrian access route, must be wholly outside the required dimensions of the access aisle. A built-up curb ramp within the access aisle that reduces the required dimensions or otherwise obstructs deployment of a ramp or lift is not permitted.

Surfaces of parking spaces and access aisles serving them must comply with technical requirements for surface characteristics at R302.6, except that changes in level are not permitted (R310.5.4). A state DOT, a local government entity, and an engineer commented on the slope and cross slope characteristics of access aisles; however, the Board neither proposed nor included in the final rule any slope or cross slope requirements for on-street parking spaces or access aisles due to roadway design considerations.

In the final rule, the Board, concurring with a comment from an

[18] The Board acknowledges an error in NPRM Figure R309.3 depicting a detectable warning surface on a curb ramp serving an access aisle. Several commenters pointed out this error. The error will be corrected in technical assistance materials made available on the Access Board's website in support of the final rule.

association of accessibility professionals, has added a provision clarifying the requirement for identification of accessible on-street parking spaces with a sign bearing the International Symbol of Accessibility installed 60 inches (1525 mm) minimum above the ground measured to the bottom of the sign (R310.5.5).

Parking Meters and Parking Pay Stations (R310.6)

The operable parts of parking meters and parking pay stations that serve accessible parking spaces must comply with technical requirements for operable parts at R403. The clear space required by R403.2 shall be located so that displays and information on parking meters and pay stations are visible from a point located 40 inches (1015 mm) maximum above the center of the clear space in front of the parking meter or parking pay station.

The only change to the substantive requirements of this section from the proposed rule is the elimination of NPRM 309.5.1 which required that parking meters for parallel parking spaces be located at the head or foot of the parking space. This requirement has been superseded by R310.2.4, which requires the center 50 percent of the length of each parking space to be free from obstructions. The provision in the final rule more precisely accomplishes the goal of ensuring that the area adjacent to a parallel parking space needed to deploy a ramp will not be obstructed, while eliminating a concern expressed by a commenter as to the uncertainty of where the ''head'' and ''foot'' of the parking space are located, and the concern expressed by other commenters that the proposed language prescribed the provision of parking meters even for jurisdictions where users of accessible spaces do not pay for parking.

R311 Passenger Loading Zones

The substantive technical requirements for accessible passenger loading zones differ minimally from the proposed requirements at NPRM R310; however, in the final rule they have been reorganized for clarity.

Accessible passenger loading zones must provide a vehicular pull-up space that is 96 inches (2440 mm) wide minimum and 20 feet (6.1 m) long minimum (R311.2). Vehicle pull-up spaces have adjacent access aisles that are 60 inches (1525 mm) wide minimum extending the full length of the vehicle pull-up space (R311.3). Two local government entities and one individual commented that the dimensions specified do not account for sidewalk widths or pedestrian volumes. The Board does not require that accessible passenger loading zones be provided. In new construction on undeveloped land, neither of the issues raised should be a concern as the design would reflect these considerations. In alterations, jurisdictions must comply with the applicable requirements to the maximum extent feasible where existing physical constraints make compliance with these requirements technically infeasible (see R202.3).

Access aisles must be at the same level as the vehicle pull-up space they serve and must not encroach on the traveled way. In alterations, where existing right-of-way precludes the installation of an access aisle separate from the pedestrian access route and the vehicle drop-off area is at-grade with the sidewalk, there may be overlap between the pedestrian access route and the access aisle.

As with accessible parallel parking spaces, the Board has added a requirement for accessible passenger loading zones that the center 50 percent of the adjacent sidewalk, or other surface, be free of obstructions to ensure that there is room for a vehicle to deploy a side lift or ramp.

Access aisle surfaces must be marked to discourage parking in them (R311.3.2). Surfaces of vehicle pull-up spaces and the access aisles serving them must comply with characteristics of surfaces specified at R302.6; in the final rule the Board has clarified that changes in level are not permitted (R311.4). Some commenters requested clarification regarding the required slope and cross slope of accessible passenger loading zones; however, the Board neither proposed nor included in the final rule any slope or cross slope requirements for passenger loading zones due to roadway design considerations.

Similar to the final requirements for accessible parking spaces, the Board has replaced a proposed provision requiring curb ramps or blended transitions to connect the access aisle to the pedestrian access route (NPRM R310.3) with language simply requiring the connection in consideration of places where there is no curb between the passenger loading zone and the adjacent pedestrian access route (R311.5). In alterations, the access aisle may connect to an existing pedestrian circulation path in accordance with R202.2. Where curb ramps and blended transitions are used, they must comply with technical requirements for curb ramps, except that detectable warning surfaces are not required on curb ramps and blended transitions used exclusively to connect access aisles to pedestrian access routes. Curb ramps and blended transitions also must not reduce the required width or length of access aisles. A built-up curb ramp within the access aisle that reduces the required dimensions or otherwise obstructs deployment of a ramp or lift is not permitted.

E. Chapter 4: Supplemental Technical Requirements

Chapter 4 contains technical requirements that, as originally proposed in the NPRM, were virtually the same as similarly titled provisions in the 2004 ADA and ABA Accessibility Guidelines. In response to public comments, and to improve the clarity of the final rule text, several of these provisions have been revised to address the public rights-of-way context more precisely. Consequently, the original distinction between Chapter 3 and Chapter 4 of the PROWAG rule text, where Chapter 3 was specific to PROWAG and Chapter 4 was taken almost directly from the 2004 ADA and ABA Accessibility Guidelines, no longer applies. However, as the proposed guidelines have been widely adopted by state and local government entities, the Board has maintained the two-chapter structure of the technical requirements to ease the transition from the proposed guidelines to the final Guidelines.

R401 General

The supplemental technical requirements in Chapter 4 apply as specified in the scoping provisions of Chapter 2 or where referenced by another technical requirement in Chapter 3 or 4. These technical requirements have been adapted specifically for pedestrian facilities in the public right-of-way. In the final rule, the Board has replaced the term ''finish surface,'' which is typically used to refer to an interior surface, with ''walking surface'' or ''ground surface,'' which are more appropriate in the rights-of-way context. Measurements are taken from the top of the surface.

R402 Protruding Objects and Vertical Clearance

The name of this section, called ''Protruding Objects'' in the proposed rule (NPRM R402) has been revised in the final rule to more precisely reflect the content. There are many types of protrusions in the public right-of-way, including but not limited to signs, awnings, and landscaping. Landscaping protrusions in the public rights-of-way are common and pose special challenges to pedestrians with disabilities. For example, low hanging tree branches pose a hazard to pedestrian who are

blind or have low vision. Overgrown shrubbery may impede a blind pedestrian's ability to trail on the edge of a sidewalk or force a pedestrian in a wheelchair hazardously close to the roadway. Thus, to ensure equal access to public rights-of-way for persons with disabilities, jurisdictions must take care to ensure that protrusions do not exceed the specified limits, and that vertical clearance is properly maintained.

Protrusion Limits (R402.2)

Objects with leading edges that are more than 27 inches (685 mm) and less than 80 inches (2030 mm) above the walking surface cannot protrude horizontally more than 4 inches (100 mm) into pedestrian circulation paths. The text of this provision has been revised for clarity, but the substantive requirement has not been changed from the proposed provision, which was based on the 2004 ABA and ADA Accessibility Guidelines. However, in the final rule, the Board has added an exception that allows handrails to protrude 4.5 inches (115 mm) into a pedestrian circulation path to account for consistency with the 2004 ABA and ADA Accessibility Guidelines. *See* 36 CFR part 1191, Appx. D 307.2 Exception (allowing handrails to protrude 4.5 inches (115 mm)).

In response to the NPRM, one local government entity indicated that the protrusion limits could affect landscaping requirements and increase landscape trimming costs. The Board notes that it is common practice for jurisdictions to manage and maintain the landscaping abutting sidewalks and other pedestrian circulation paths; the final rule's protrusion limits are unlikely to significantly affect those costs.

Post-Mounted Objects (R402.3)

Post-mounted objects must be installed in compliance with these technical requirements so they do not pose a hazard to persons who are blind or have low vision. In the final rule, the Board has revised the text of these provisions for clarity. The Board has also excepted the sloping portion of handrails serving stairs and ramps from compliance with R402.3.

Where objects mounted on a single post or pylon are more than 27 inches (685 mm) and less than 80 inches (2030 mm) above the walking surface, the objects must not protrude more than 4 inches horizontally into the pedestrian circulation path, as measured horizontally either from the post or pylon or from the outside edge of the base if the base is at least 2½ inches (64 mm) high (R402.3.2). A 2½ inch solid base is cane detectable.

Where objects within a pedestrian circulation path are mounted between posts or pylons and the clear distance between the posts or pylons is greater than 12 inches (305 mm), the lowest edge of the object must be 27 inches (685 mm) maximum above the walking surface (low enough so that it is cane-detectable) or 80 inches (2030 mm) minimum above the walking surface (high enough that someone could walk under it) (R402.3.2). In the final rule, the Board has added an exception allowing objects mounted on two or more posts or pylons that do not comply with the above dimensions if a barrier with its lowest edge at 27 inches maximum above the walking surface is provided. The barrier is cane-detectable, and thus reduces the hazard.

Vertical Clearance (R402.4)

The vertical clearance of a pedestrian circulation path must be 80 inches high minimum. Where the vertical clearance is less than 80 inches, guards or other barriers must be provided to prohibit pedestrian travel. This will prevent pedestrians from colliding with objects overhead. The lowest edge of the guard or barrier must be no higher than 27 inches above the walking surface to ensure that it is cane detectable. These substantive requirements for vertical clearance have not changed from those in the proposed rule, although they have been revised for clarity. In addition, the Board has substituted the word ''guard'' for ''guardrail,'' which has a different meaning in the transportation context.

In response to the NPRM, the Board received comments from a disability rights advocacy organization and an accessible design firm requesting that the Board required vertical clearance of 96 inches to account for sagging wet branches, awnings, and wires. The Board has maintained the vertical clearance at 80 inches, which provides sufficient head clearance for most people. As in the case of several of PROWAG's technical requirements, some maintenance may be needed to maintain compliance.

Required Clear Width (R402.5)

In the final rule, the Board has added a provision to clarify that protruding objects may not reduce the clear width required for pedestrian access routes, as specified at R302.2. That means, for example, that an object mounted between posts cannot be placed in the middle of a sidewalk, even if it complies with the requirements at R402.3.2, if it obstructs the required clear width of the path.

R403 Operable Parts

An operable part is a component of an element used to insert or withdraw objects, or to activate, deactivate, or adjust the element, or interact with the element (R104.3). The technical requirements for operable parts apply to operable parts on street furniture, fare vending machines, other fixed elements at transit stops and shelters, accessible pedestrian signals (pedestrian push buttons), parking meters and parking pay stations that serve accessible parking spaces, and any other fixed elements used by pedestrians. A clear space complying with technical requirements at R404 must be provided at operable parts (R403.2). Operable parts must be located within the reach ranges specified in R406 (R403.3). There are no substantive changes to the technical requirements for operable parts from what was proposed in the NPRM; however, the Board updated the definition of ''operable part'' to include a component of an element use to ''interact with the element'' (R104.3). This addition is designed to cover QR codes and any other future markings that are intended to be scanned with a mobile device. If a QR code or similar marking is provided on an element, that code or marking must be within reach range, and clear space complying with R404 must be provided so that a person in a wheelchair can use it.

Operable parts must be operable with one hand and not require tight grasping, pinching, or twisting of the wrist (R403.4). The force required to activate operable parts may not exceed 5 pounds (22.2 N). One local government entity objected to this requirement asserting that products rated for exterior use have controls that likely require more force than 5 pounds to operate. The Board is not aware of jurisdictions having actual difficulties obtaining products that comply with this requirement. Exterior environments on buildings and sites are also subject to the same technical requirements for operable parts. 36 CFR part 1191, Appx. B 205, Appx. C F205, Appx. D 309.

R404 Clear Spaces

Clear spaces are required at operable parts so that a person with a wheelchair or other mobility aids (such as a walker or crutches) has sufficient room and a stable surface to access an operable part. Clear spaces are also provided adjacent or integral to benches so that a person using a wheelchair may sit in proximity to a companion using the bench. Two disability rights advocacy organizations requested in their comments that the Board remove the advisory specifying

clear space is required at parking meters and parking pay stations ''that serve accessible parking spaces'' (NPRM Advisory R404.1), because they believe that clear space should be provided at all parking meters and pay stations. All advisories have been removed from the final rule text; however, the Board also notes that with the addition of R209.7 in the final rule, operable parts of all fixed elements, which would include all parking meters and pay stations, must comply with technical requirements for operable parts at R403.

Clear spaces are 30 inches (760 mm) minimum by 48 inches (1220 mm) minimum (R404.3). Their surfaces must comply with technical requirements for surface characteristics at R302.6 (R404.2). The slope of a clear space must be 1:48 (2.1%) maximum in both directions (R402.2). This is a change from the proposed rule, which required a running slope consistent with the grade of the adjacent pedestrian access route and a cross slope of 2 percent. The Board agreed with commenters that minimizing the slope in both directions provides better accessibility, particularly where both hands are needed for an operable part, leaving a person without a hand to stabilize a manual wheelchair. The Board has retained an exception where the grade of an adjacent pedestrian access route conforms to the requirements of R302.4; in those situations, the slope of the clear space may be consistent with the slope of the pedestrian access route.

Two state DOTs and a regional association of engineers raised concerns about the cross slope exceeding 2 percent in circumstances where a pedestrian pushbutton for an accessible pedestrian signal is adjacent to a curb ramp and the clear space then overlaps the curb ramp. The Board notes that full compliance is expected for new construction on undeveloped land, and that in alterations, where existing physical constraints make compliance with applicable requirements technically infeasible, compliance with these requirements is required to the maximum extent feasible (*see* R202.3). The final rule also allows pedestrian push buttons to be located up to 10 feet away from the edge of curb to help avoid the scenario where clear space is located on a curb ramp (*see* R307.4).

Clear spaces may include knee and toe clearance complying with R405 (R404.4.). Clear spaces are positioned either for a forward approach or parallel approach (R404.5). In the final rule, the Board has clarified the orientation of the clear space for each approach: the 30-inch side is nearest to the element for a forward approach, and the 48-inch side is nearest to the element for a parallel approach (R404.5).

Clear spaces must not be located on curb ramp runs or flares. One fully unobstructed side of a clear space must adjoin a pedestrian access route or another clear space (R404.6). If a clear space is confined on all or part of three sides, additional maneuvering clearance must be provided (R404.7). For a forward approach where the depth of the confined space exceeds 24 inches measured perpendicular to the element, the clear space and additional maneuvering clearance must be 36 inches (915 mm) wide minimum (R404.7.1). The clear space and additional maneuvering clearance must be 60 inches (1525 mm) wide minimum for a parallel approach where the depth of the confined space exceeds 15 inches.

R405 Knee and Toe Clearance

The technical requirements for knee and toe clearance apply where space beneath an element is included as part of the clear space. These technical requirements are virtually identical to those in the 2004 ABA and ADA Accessibility Guidelines. The only change from the proposed rule is that the Board added a clarifying provision at R405.2.4 stating that space extending more than 6 inches (150 mm) beyond the available knee clearance at 9 inches above the ground surface is not considered toe clearance. The Board added this provision for consistency with section 306.2.4 of the 2004 ABA and ADA Accessibility Guidelines.

R406 Reach Ranges

Technical requirements for reach ranges describe where an operable part must be located so that a person using a wheelchair can reach it. They also specify whether obstructions between the pedestrian and the element with the operable part are permitted, and if so, to what extent. The substantive requirements have not changed from the proposed rule, but the text of the provisions has been edited for clarity.

For both forward and parallel approaches, the reach range extends between 15 inches (380 mm) and 48 inches (1220 mm) above the ground surface (R406.2). Where the clear space is configured solely for a forward approach to an element, obstructions are not permitted between the clear space and the element (R406.3.1). Where a clear space is configured for a parallel approach to an element, an obstruction 10 inches (255 mm) deep maximum is permitted between the clear space and the element (R406.3.2).

In response to comments from three state DOTs requesting that the Board clarify the permitted height of an obstruction, in the final rule the Board has stated that for clear spaces configured for a parallel approach to an element, the permitted obstruction must be no more than 34 inches (865 mm) high (R406.3.2). This obstructed high reach limit is consistent with that stated in section 308.3.2 of the 2004 ABA and ADA Accessibility Guidelines.

Four state DOTs, three local government commenters, and an engineering firm requested that an obstructed side reach up to 24 inches deep be allowed as is permitted in the 2004 ADA and ABA Accessibility Guidelines. The Board declines to make this change, as most operable parts placed in new construction in the public right-of-way can be located so they are unobstructed. The Board notes that most of the concerns expressed related to existing rights-of-way. Alterations must comply with the applicable requirements to the maximum extent feasible where existing physical constraints make compliance with these requirements technically infeasible (R202.3). An engineering firm expressed concern that the 10-inch obstruction depth limit would present challenges for mounting push buttons within the specified reach range. The Board notes that push button extensions, which are readily available, mitigate this concern.

R407 Ramps

Ramps in the public right-of-way are used to provide access to a pedestrian overpass or underpass, to the entrance of a building or facility, and in instances where the grade of the sidewalk exceeds the allowances specified at R302.4. In the final rule, the Board has defined a ''ramp'' as a ''sloped walking surface with a running slope steeper than 1:20 (5.0%) that accomplishes a change in level and is not part of a pedestrian circulation path that follows the roadway grade. A curb ramp is not a ramp'' (R104.3).

In addition, the Board has revised R407.1 to state that R407 does not apply to curb ramps or pedestrian access routes following the grade established for the adjacent street consistent with the requirements of R302.4.1.

This definition and revisions to R407.1 address two repeated concerns in the comments to the NPRM and in subsequent technical assistance inquiries the Board has received since the NPRM was published. First, the Board clarifies that ''curb ramps'' and ''ramps'' are different types of pedestrian facilities and have distinct technical requirements. Two state DOTs, one local government entity, an

accessible design firm, and an association of accessibility professionals requested that the Board clarify that R407 does not apply to curb ramps. In the final rule, both ''ramp'' and ''curb ramp'' are defined in R104.3. The technical requirements for curb ramps appear at R304 in accordance with the scoping at R203.6. The technical requirements for ramps appear at R407. Second, the Board clarifies that pedestrian circulation paths that follow the street grade are not ramps, even if they exceed a slope of 1:20 (5.0%) and thus do not require compliance with R407 (see R302.4.1).

The running slope of a ramp run is 1:12 (8.3%) maximum (R407.2) and the cross slope of a ramp run is 1:48 (2.1%) maximum (R407.3). In the proposed rule, the Board had specified a minimum running slope of 5 percent, which was derived from the proposed maximum grade of a pedestrian access route (NPRM R407.2). A state DOT requested that the Board eliminate the minimum slope, and the Board concurred that stating a minimum slope was contributing to the confusion as to the applicability of the ramp technical requirements. Thus, the final rule does not state a minimum running slope for ramp runs.

The clear width of a ramp run must be 48 inches (1220 mm) minimum, and if handrails are provided, the clear width between handrails must be 48 inches (1220 mm) minimum (R407.4). This is a departure from the NPRM in which the Board proposed that the clear width of ramps be 36 inches minimum, consistent with the 2004 ADA and ABA Accessibility Guidelines. Several commenters, including three state DOTs and a local government entity, recommended that ramps have a minimum width of 48 inches, consistent with the rest of the pedestrian access route in the public right-of-way. The Board concurred, but also provided an exception allowing a minimum width between handrails of 36 inches (915 mm) for ramps that exclusively serve a building entrance.

The rise for any ramp run is 30 inches (760 mm) maximum (R407.5). Landings must be provided at the top and bottom of each ramp run (R407.6). Landing slopes must be 1:48 (2.1%) maximum parallel and perpendicular to the ramp running slope. Landings are 60 inches (1525 mm) long minimum (R407.6.3) and as wide as the widest ramp run leading to the landing (R407.6.2). Ramps that change direction between runs at landings must have a clear landing 60 inches (1525 mm) minimum by 60 inches (1525 mm) minimum where the ramps change direction (R407.6.4). A state DOT requested 48 inch (1220 mm) minimum landings; the Board declines this suggestion as switchbacks require more space for maneuvering. A state disability board requested that the Board clarify that handrails cannot overlap the minimum clear dimensions of the landing. The Board does not think this modification to the rule text is needed, as R407.4 indicates that clear width is measured inside any handrails.

Surfaces of ramp runs and landings comply with R302.6, except that changes in level, are not permitted (R407.7). Ramp runs with a rise greater than 6 inches (150 mm) must have handrails complying with R409 (R407.8).

Edge protection must be provided on each side of ramp runs and each side of ramp landings, except those serving an adjoining ramp run, stairway, or other pedestrian circulation path (R407.9). In the final rule, this provision has been revised for clarity. There are two options for edge protection. One is to extend the surface of the ramp run or landing 12 inches (305 mm) minimum beyond the inside face of the handrail (R407.9.1). The other is to provide a 4-inch (100 mm) high curb or a barrier that prevents the passage of a 4-inch sphere (R407.9.2). In the final rule, the Board has specified the minimum height of the curb for clarity and consistency with guidance for the 2004 ABA and ADA Accessibility Guidelines. *See* U.S. Access Board, Guide to ADA Accessibility Standards, ''Edge Protection'' *available at https://www.access-board.gov/ada/guides/chapter-4-ramps-and-curb-ramps/* (stating, ''Curbs if used must be at least 4'' high''). The Board emphasizes that only one edge protection option is required; if a curb or barrier is provided, the extended surface is not required.

R408 Stairs

Technical accessibility requirements for stairs are needed for individuals with disabilities who are ambulatory and use stairs. For example, a person who drags a foot may catch it on a nosing if it does not comply with the requirements. For individuals who walk with difficulty or have challenges with balance, it is often preferable to use stairs rather than a ramp when both are provided as stairs may represent a shorter distance to be traveled or a more even surface.

The final technical requirements for stairs in the public right-of-way are almost identical to the requirements for stairs in the 2004 ADA and ABA Accessibility Guidelines, and those proposed in the NPRM with two exceptions. First, consistent with the requirements in the 2004 ADA and ABA Accessibility Guidelines but different than the NPRM, the Board has clarified at R408.4 that treads are permitted to have a slope of 1:48 (2.1%) maximum. Second, in response to a request from over 80 commenters, the Board has added a requirement for visual contrast on stair treads and landings.

All steps on a flight of stairs must have uniform riser heights and uniform tread depths (R408.2). Risers must be 4 inches (100 mm) high minimum and 7 inches (180 mm) high maximum. Treads must be 11 inches (280 mm) deep minimum. Two commenters requested that the Board permit the bottom riser to be of varying height to accommodate the grade of the sidewalk. The Board does not find that a modification to the rule text is needed to account for this scenario. DOJ regulations implementing accessibility requirements under Title II of the ADA state that full compliance with the relevant accessibility requirements is not required in the context of new construction where a public entity can demonstrate that it is structurally impracticable to meet the requirements. 28 CFR 35.151. In alterations, where compliance with a requirement is technically infeasible, compliance is required to the maximum extent feasible (*see* R202.3).

Open risers are not permitted (R408.3). Stair treads must comply with technical requirements for surface characteristics at R302.6, except that changes in level are not permitted (R408.4). However, treads may have a slope not steeper than 1:48 (2.1%).

The radius of curvature at the leading edge of the tread must be 0.5 inches (13 mm) maximum (R408.5). If the nosing projects beyond the riser, the underside of the leading edge of the nosing must be curved or beveled. Risers are permitted to slope under the tread at an angle of 30 degrees maximum from vertical. The nosing may project 1.5 inches (38 mm) maximum over the tread below.

The leading edge of each step tread and top landing must be marked by a 1-inch (25 mm) wide stripe (R408.6). The stripe must contrast visually with the rest of the step tread or circulation path surface, either light-on-dark or dark-on-light. In adopting a requirement for contrast striping, the Board notes that a 1- to 2-inch stripe of contrasting color (either dark-on-light or light-on dark) is required by American National Standard (ANSI) through adoption of international building codes (IBC) to help users distinguish each step.[19] In

[19] ''Accessible and Usable Buildings and Facilities,'' American National Standard (2009): 41,

addition, the Access Board requires contrast striping on vehicle stairs to assist individuals with low vision distinguish between steps. 36 CFR part 1192, Appx. A T405.3. The Board has assessed the costs of contrast striping on stairs and finds them reasonable with respect to the accessibility for persons with low vision. FRIA at 109.

Stairs must have handrails complying with the technical requirements for handrails at R409.

R409 Handrails

Wherever handrails are provided in the public right-of-way, regardless of whether or not they are required, they must comply with technical requirements for handrails. The Board received several comments in response to the handrails technical requirements in the NPRM asking the Board to clarify where handrails are required. Again, handrails are required on ramps and stairs (R409.2); they are not required on curb ramps or pedestrian circulation paths complying with the grade requirements at R302.4. The Board added a statement to R409.1 clarifying that R409 does not apply to curb ramps.

The technical requirements for handrails in the final rule are substantively the same as the technical requirements in the NPRM. The Board provided clarification, described below, as to how jurisdictions are to handle scenarios where handrail extensions would reduce the clear width of a pedestrian access route (see R409.10).

Handrails must be continuous within the full length of each ramp run or stair flight (R409.3). Inside handrails on switchback or dogleg ramps and stairs must be continuous between ramp runs or stair flights.

The top of handrail gripping surfaces must be between 34 inches (865 mm) and 38 inches (965 mm) above walking surfaces, ramp surfaces, and stair nosings (R409.4). Handrails must be installed at a consistent height. There must be at least 1.5 inches (38 mm) between the handrail gripping surface and any other adjacent surface to allow sufficient room to grip the handrail (R409.5).

Handrail gripping surfaces must be continuous along their length and unobstructed along their tops and sides (R409.6). The bottoms of handrail gripping surfaces must not be obstructed for more than 20 percent of their length. Any horizontal projections must be at least 1.5 inches (38 mm) below the bottom of the handrail gripping surface.

Handrail gripping surfaces' cross sections comply with either R409.7.1 (circular) or R409.7.2 (non-circular). Where expansion joints are necessary for large spans of handrails, the expansion joint cross section may be smaller than the specified cross section diameters for sections no more than 1 inch (25 mm) long. Handrail gripping surfaces with a circular cross section must have an outside diameter of 1.25 inches (32 mm) minimum and 2 inches (51 mm) maximum (R409.7.1). Handrail gripping surfaces with a non-circular cross section must have a perimeter dimension of 4 inches (100 mm) minimum and 6.25 inches (160 mm) maximum, and a cross-section dimension of 2.25 inches (57 mm) maximum (R409.7.2). Handrail gripping surfaces and any surfaces adjacent must not be sharp or abrasive and must have rounded edges (R409.8).

Handrails must not rotate within their fittings; however, where expansion joints are necessary for large spans of handrails, the expansion joint may rotate in its fitting (R409.9).

Handrail gripping surfaces must extend beyond and in the same direction of ramp runs and stair flights in accordance with R409.10. In response to a comment from a state DOT requesting clarity on the requirement for handrail extensions where they would protrude into a pedestrian circulation path, the Board has clarified that in new construction on undeveloped land, handrails must not extend into a roadway or pedestrian circulation path. However, in alterations, if handrail extensions complying with R409.10 would reduce the clear width of a pedestrian access route, they shall extend as far as possible without reducing the clear width. Extensions are not required for continuous handrails at the inside turn of switchback or dogleg ramps and stairs.

The required extensions are as follows. Ramp handrails must extend horizontally above the landing for 12 inches (305 mm) minimum beyond the top and bottom of ramp runs (R409.10.1). Extensions must either return to a wall, guard, or the landing surface, or be continuous to the handrail of an adjacent ramp run. At the top of a stair flight, handrails must extend horizontally above the landing for 12 inches (305 mm) minimum beginning directly above the first riser nosing (R409.10.2). Extensions must either return to a wall, guard, or the landing surface, or be continuous to the handrail of an adjacent stair flight.

At the bottom of a stair flight, handrails must extend at the slope of the stair flight for a horizontal distance at least equal to one tread depth beyond the last riser nosing (R409.10.3). Extensions must either return to a wall, guard, or the landing surface, or be continuous to the handrail of an adjacent stair flight.

R410 Visual Characters on Signs

Technical requirements for pedestrian signs provide accessibility to pedestrians with low vision. As stated in the scoping at R208, all signs on shared use paths and all other signs in the public right-of-way intended for pedestrians other than those explicitly excepted are required to comply with the technical requirements. The Board notes, in response to a local government comment, that a noncompliant sign accompanied by a compliant sign does not meet the requirements. All signs covered by the scoping must comply with the technical requirements.

The only change to the final technical requirements for signs from the proposed provisions is that the Board has relocated the requirement for height to the end of the section as a more logical placement. The technical requirements for visual characters on signs are substantively identical to the character requirements in the 2004 ADA and ABA Accessibility Guidelines. 36 CFR part 1191, Appx. D 703.

Characters and their background must have a non-glare finish (R410.2), contrast with their background (R410.2), and be conventional in form (R410.4). Characters may be uppercase or lowercase or a combination of both (R410.3).

Characters must be selected from fonts where the width of the uppercase letter ''O'' is 55 percent minimum and 110 percent maximum of the height of the uppercase letter ''I'' (R410.5). Minimum character heights are specified in Table R410.6. The viewing distance is measured as the horizontal distance between the character and an obstruction preventing further approach towards the sign (R410.6). Character height is based on the uppercase letter ''I''.

Stroke thickness (R410.7), character spacing (R410.8), and line spacing (R410.9) are specified. Visual characters must be at least 40 inches (1015 mm) above the ground surface.

411 International Symbol of Accessibility

The International Symbol of Accessibility (ISA) is provided as a figure. Wherever the ISA is used, it must have a non-glare finish and contrast with its background. In the final rule, this provision has been slightly restructured, but there are no

access from ANSI A117.1 (2009): Accessible and Usable Buildings and Facilities (*mzarchitects.com*)

substantive changes from the proposed requirements.

VII. Regulatory Process Matters

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

The Office of Management and Budget has reviewed this final rule pursuant to E.O. 12866, 58 FR 51735 (Sept. 30, 1993), Principles of Regulations, and E.O. 13563, 76 FR 3821, (Jan. 21, 2011), Improving Regulation and Regulatory Review.

The USDOT Volpe Center prepared the final regulatory impact analysis (FRIA) on behalf of the Access Board. The FRIA is available on the Access Board's website at *www.access-board.gov* and in the regulatory docket at *www.regulations.gov.* The FRIA estimates the annual costs of PROWAG, and describes the significant benefits, some of which are quantifiable. While the benefits of regulations that ensure civil rights cannot be fully quantified and monetized, according to the Volpe Center's estimates, the monetizable benefits of this final rule far outweigh the costs. The Board concludes that consistent with E.O. 13563, the benefits of this final rule, (quantitative and qualitative) justify the costs.

Pursuant to E.O. 13563, the Volpe Center has used ''the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible''; however, the final rule and the underlying statutes create many important benefits that, in the words of E.O. 13563, stem from ''values that are difficult or impossible to quantify.'' In addition to considering the rule's quantitative effects, the Board has considered the rule's qualitative effects.

Executive Order 13563 states that in making a reasoned determination that a regulation's benefits justify its costs, ''each agency may consider and (discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.'' The proposed guidelines promote important societal values that are difficult or impossible to quantify. When enacting the ADA, Congress found ''the discriminatory effects of architectural, transportation, and communication barriers'' to be a continuing problem that ''denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.'' 42 U.S.C. 12101(a)(5) and (9).

Congress declared that ''the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency.'' 42 U.S.C. 12101(a)(8). This final rule promotes the goals declared by Congress by eliminating the discriminatory effects of architectural, transportation, and communication barriers in the design and construction of pedestrian facilities in the public right-of-way. The proposed guidelines are also important to achieving the benefits of the other parts of the Americans with Disabilities Act. As the House Report for the Americans with Disabilities Act stated, ''[t]he employment, transportation, and public accommodation sections . . . would be meaningless if people who use wheelchairs were not afforded the opportunity to travel on and between the streets.'' H.R. 485, 101st Cong., 2d Sess. 84 (1990).

In the FRIA, the Volpe Center provides benefits and costs calculated relative to a no-action baseline, which represents a continuation of existing state and local design standards and construction practices. The details of the baseline vary significantly across PROWAG provisions, because in some areas existing practices align fairly closely with PROWAG, while in other cases there are larger differences.

The FRIA describes the methodology used to calculate compliance costs and associated benefits, including data sources, key input values and assumptions, calculation methods, and information on potential limitations and sources of uncertainty. This methodology is then applied to estimate the costs and benefits of major PROWAG provisions on a lifecycle basis, relative to a no-action baseline.

The below summarizes the quantified cost and benefit estimates. The FRIA also presents a discussion of potential compliance costs for pedestrian overpasses and underpasses; sidewalk dimensions and materials; handrails; public street toilets; transit stops and shelters; and alternate pedestrian access routes. However, these are not listed in the summary table because they are expected to have little to no overall cost impact relative to the baseline. Similarly, a number of other benefits were identified that could not be monetized using the available data.

As the relevant analysis time periods can vary by provision, the costs and benefits have been converted to annualized equivalents (using 3% and 7% discount rates) to ease comparisons. As the figures indicate, estimated monetized benefits exceed estimated compliance costs by a considerable margin. However, some of the most important benefits of this rule, in the form of equal access to public facilities, personal freedom and independence, and the elimination of accessibility barriers to mobility, are not quantified due to the inherent difficulty in monetizing such impacts.

SUMMARY OF ESTIMATED BENEFITS AND COSTS

PROWAG provision	Annualized cost/benefit ($ millions, 7% discounting to 2021 base year)	Annualized cost/benefit ($ millions, 3% discounting to 2021 base year)	Time period analyzed (years)
Detectable Warning	$1.0	$1.0	50
On-Street Parking	11.4	17.0	20
Passenger Loading Zones	1.4	1.4	20
Accessible Pedestrian Signals	98.8	103.6	25
Shared-Use Paths	43.9	60.0	15
Pedestrian Overpasses and Underpasses	0.0	0.0	30
Sidewalk Width	0.0	0.0	50
Roundabouts—Crossings	12.6	16.9	25
Roundabouts—Edge Detection	2.4	2.8	50
Curb Ramps	22.0	30.6	20
Stair Visual Contrast	0.1	0.1	50
Crosswalk Cross Slope	3.0	3.1	25

SUMMARY OF ESTIMATED BENEFITS AND COSTS—Continued

PROWAG provision	Annualized cost/benefit ($ millions, 7% discounting to 2021 base year)	Annualized cost/benefit ($ millions, 3% discounting to 2021 base year)	Time period analyzed (years)
Total Costs	196.7	236.5	
Accessible Pedestrian Signals: Mobility Component	68.9	83.5	25
Roundabouts: Safety Component	0.1	0.1	25
On-Street Parking: Mobility Component	928.0	1,083.6	20
Multiple Provisions: New Trips Value	14,479.3	19,575.3	30
Multiple Provisions: Health Benefit	0.03	0.04	30
Total Benefits	15,476.3	20,742.5	

B. Regulatory Flexibility Act

The impacts of the proposed guidelines on small governmental jurisdictions with a population of less than 50,000 are discussed below. This information is required by the Regulatory Flexibility Act (5 U.S.C. 603).

1. Statement of the Need for, and Objectives of, the Rule

The Access Board's current accessibility guidelines, the 2004 ADA and ABA Accessibility Guidelines, were developed primarily for buildings and facilities on sites. Some of the requirements in the 2004 ADA and ABA Accessibility Guidelines can be readily applied to pedestrian facilities in the public right-of-way, but other requirements are developed specifically for pedestrian facilities in the public right-of-way and address conditions and constraints that exist in the public right-of-way.

The Access Board is required to issue accessibility guidelines by the Americans with Disabilities Act (ADA) (42 U.S.C. 12204) and Section 502 of the Rehabilitation Act (29 U.S.C. 792) to ensure that newly constructed and altered facilities are readily accessible to and usable by pedestrians with disabilities.

2. Statement of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis

The NPRM received 14 comments from entities considered ''small'', *i.e.,* government entities with a population under 50,000. In these comments, the most common concern was about the cost of APS, although in at least some instances this was due to a misunderstanding that the final rule requires retrofitting equipment, which is not the case. This final rule applies only to new construction and alterations.

Other comments asked clarifying questions about definitions and the applicability of the proposed rule, and one commentor explicitly supported the proposed rule in its entirety.

The Access Board carefully considered all comments, including those from small government entities, and revised the final rule in light of those comments. No changes were made, however, that solely affect small government entities.

3. Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule

No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule.

4. Small Governmental Jurisdictions Affected by Proposed Accessibility Guidelines

The number of small governmental jurisdictions with a population less than 50,000 affected by the proposed guidelines is shown in the table below.[20] The total number of jurisdictions with populations under 50,000 is 36,931.

Governmental jurisdictions	Population under 10,000	Population 10,000 to 24,999	Population 25,000 to 49,999
County	687	807	611
Municipal	16,432	1,559	738
Town or Township	14,997	784	316
Total	32,206	3,150	1,665

More than 65 percent of municipal governments (12,701) and almost 75 percent of towns and townships (12,062) have a population of less than 2,500. Many of these small governmental jurisdictions are located in rural areas, which generally do not construct pedestrian transportation networks (*e.g.,* sidewalks, pedestrian street crossings, and pedestrian signals).

In addition, some jurisdictions do not have full responsibility for all rights-of-way within their town or county boundaries, and accordingly would only be affected by this final rule with respect to the right-of-way that is in their purview. For example, in Delaware, North Carolina, and West Virginia, the State DOT is responsible for the management of roadways, which means that small governmental jurisdictions in these states [21] are less likely to be burdened by the final rule, as the State DOTs may be primarily

[20] Source: U.S. Census Bureau 2017 Census of Governments available at: *https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html.*

[21] There are 90 counties and 821 municipal governments with population under 50,000 per U.S. Census data in these three states.

responsible for the affected infrastructure.

5. Compliance Requirements

The public rights-of-way accessibility guidelines address the design, construction, and alteration of pedestrian facilities in the public right-of-way, including sidewalks, crosswalks, pedestrian overpasses and underpasses, curb ramps and blended transitions at crosswalks, pedestrian signals, street furniture (*i.e.,* drinking fountains, public toilet facilities, tables, counters, and benches), pedestrian signs, transit stops and transit shelters for buses and light rail vehicles, on-street parking that is marked or metered, and passenger loading zones. The Section-by-Section Analysis of the preamble describes the proposed accessibility guidelines. Compliance with the proposed accessibility guidelines is not mandatory until they are adopted, with or without additions and modifications, as accessibility standards by other Federal agencies. There are no reporting or recordkeeping requirements.

6. Significant Alternatives Which Minimize Any Significant Economic Impacts on Small Entities

The regulatory assessment analyzes the following five requirements in the final rule that will have more than minimal impacts on state and local transportation departments:

• *Accessible pedestrian signals and pedestrian pushbuttons required when pedestrian signals are newly installed or altered at signalized intersections.* Accessible pedestrian signals and pedestrian pushbuttons communicate the information about the WALK and DON'T WALK intervals at signalized intersections in non-visual formats (*i.e.,* audible tones and vibrotactile surfaces) to pedestrians who are blind or have low vision.

• *Pedestrian activated signals or raised crossings at roundabouts with pedestrian street crossings.* A roundabout is a circular intersection with yield control at entry, which permits a vehicle on the circulatory roadway to proceed, and with deflection of the approaching vehicle counter-clockwise around a central island. Pedestrian activated signals or raised crossings are required at roundabouts with pedestrian street crossings to facilitate crossing by pedestrians who are blind or have low vision. Some small governmental jurisdictions with a population less than 50,000 do construct roundabouts, and accordingly may be affected by this requirement, although they may only construct a small number of roundabouts.

• *Accessible shared use paths located in the public right-of-way.* The shared use paths requirements that are likely to impose costs include those related to detectable warning surfaces, grade, and trail surface. The existing data suggests that shared use paths in small governmental jurisdictions are not necessarily any more or less compliant than all shared use paths in the U.S., suggesting that this will be an area of costs for small jurisdictions in line with the overall prevalence of shared use paths.

• *One curb ramp per street crossing provided at each corner of intersections.* Existing guidelines allow for a single diagonal curb ramp serving street crossings; however, the final rule will require two parallel or perpendicular curb ramps. There is no requirement where no pedestrian crossing exists.

• *On-street parking must meet minimum thresholds for the number of accessible spaces per block perimeter or other location.* On-street parking is typically found along the curbside in retail, office, and mixed-use areas, but it is unknown how common this type of parking is in small governmental jurisdictions.

There are no significant alternatives that will minimize any significant impacts of these requirements on small governmental jurisdictions and achieve the objectives of the ADA, Section 504 of the Rehabilitation Act, and the ABA to eliminate the discriminatory effects of architectural, transportation, and communication barriers in the design and construction of pedestrian facilities in the public right-of-way.

C. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act does not apply to legislative or regulatory provisions that establish or enforce any ''statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' 2 U.S.C. 658a. Accordingly, it does not apply to this rulemaking.

D. Paperwork Reduction Act

This regulation contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act. See 44 U.S.C. 3501, *et seq.*

E. Congressional Review Act

To the extent this rule is subject to the Congressional Review Act, the Access Board has complied with its requirements by submitting this final rule to Congress and the Government Accountability Office prior to publication in the **Federal Register**.

F. Federalism (Executive Order 13132)

The proposed rule adheres to the fundamental federalism principles and policy making criteria in Executive Order 13132. The portion of this rule applicable to state and local governments is issued under the authority of the Americans with Disabilities Act, civil rights legislation that was enacted by Congress pursuant to its authority to enforce the Fourteenth Amendment to the U.S. Constitution and to regulate commerce. The Americans with Disabilities Act was enacted ''to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.'' 42 U.S.C. 12101(b)(1). The Americans with Disabilities Act recognizes the authority of State and local governments to enact and enforce laws that ''provide for greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter.'' 42 U.S.C. 12201(b). This rule is based largely on the recommendations of a Federal advisory committee which included representatives of state and local governments. The Access Board made drafts of the proposed rule available for public review and comment. State and local governments provided comments on the drafts of the proposed rule.

List of Subjects in 36 CFR Part 1190

Buildings and facilities, Civil rights, Federal buildings and facilities, Highways and roads, Individuals with disabilities, Parking, Rights-of-way, Transportation.

Approved by vote of the Access Board on March 15, 2023.

Christopher Kuczynski,

General Counsel.

■ Accordingly, for the reasons set forth in the preamble, the Access Board adds 36 CFR part 1190 to read as follows:

PART 1190—ACCESSIBILITY GUIDELINES FOR PEDESTRIAN FACILITIES IN THE PUBLIC RIGHT-OF-WAY

Sec.

Authority: 29 U.S.C. 792; 42 U.S.C. 12204; 42 U.S.C. 4151 *et seq.*

§ 1190.1 Accessibility Guidelines.

The accessibility guidelines for pedestrian facilities in the public right-

of-way are set forth in the appendix to this part. When the guidelines are adopted, with or without additions and modifications, as accessibility standards in regulations issued by other Federal agencies implementing the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Architectural Barriers Act, compliance with the accessibility standards is mandatory.

Appendix to Part 1190—Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way

Chapter 1: Application and Administration

R101 Purpose and Application

R101.1 *Purpose.* These guidelines contain scoping and technical requirements to ensure that *pedestrian facilities* located in the *public right-of-way* (including a *public right-of-way* that forms the boundary of a site or that lies within a site bounded by a property line), are readily *accessible* to and usable by *pedestrians* with disabilities.

R101.2 *Application to ADA-Covered Facilities.* These guidelines apply to *pedestrian facilities* in *public rights-of-way* to the extent required by regulations issued by Federal agencies under the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 *et seq.*) (ADA).

R101.3 *Application to ABA-Covered Facilities.* These guidelines apply to *pedestrian facilities* in *public rights-of-way* to the extent required by regulations issued by Federal agencies under the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) (ABA).

R101.4 *Effect on Existing Pedestrian Facilities.* These guidelines do not address existing *pedestrian facilities* unless the *pedestrian facilities* are altered at the discretion of a covered entity. The Department of Justice has authority over existing facilities that are subject to the requirement for program access under title II of the ADA. Any determination that this document applies to existing facilities subject to the program access requirement is solely within the discretion of the Department of Justice and is effective only to the extent required by regulations issued by the Department of Justice.

R102 Deviations From These Guidelines

R102.1 *ADA-Covered Facilities and Equivalent Facilitation.* The use of alternative designs, products, or technologies that result in substantially equivalent or greater accessibility and usability than the requirements in these guidelines shall be permitted for *pedestrian facilities* in the *public right-of-way* subject to the ADA.

R102.2 *ABA-Covered Facilities and Waivers or Modifications.* Equivalent facilitation is not permitted for *pedestrian facilities* in the *public right-of-way* subject to the ABA. The ABA authorizes the Administrator of the General Services Administration, the Secretary of the Department of Housing and Urban Development, the Secretary of the Department of Defense, and the United States Postal Service to modify or waive the accessibility standards for buildings and facilities covered by the ABA on a case-by-case basis, upon application made by the head of the department, agency, or instrumentality of the United States concerned and upon a determination that the waiver is clearly necessary. Pursuant to Section 502(b)(1) of the Rehabilitation Act of 1973, 29 U.S.C. 792(b), the Access Board shall ensure that modifications and waivers are based on findings of fact and are not inconsistent with the ABA.

R103 Conventions

R103.1 *Conventional Industry Tolerances.* All dimensions are subject to conventional industry tolerances except where requirements are stated as a range with specific minimum or maximum endpoints.

R103.2 *Calculation of Percentages.* Where the required number of *elements* or facilities to be provided is determined by calculations of ratios or percentages and remainders or fractions result, the next greater whole number of such *elements* or facilities shall be provided.

R103.3 *Units of Measurement.* Measurements are stated in U.S. customary units and metric units. The values stated in each system (U.S. customary units and metric units) may not be exact equivalents, and each system shall be used independently of the other. Slopes are expressed in terms of both ratios and percentages. Ratios and percentages may not be exact equivalents, and each shall be used independently of the other.

R104 Definitions

R104.1 *Undefined Terms.* Terms that are not defined in R104.3 or in regulations issued by the Department of Justice and the Department of Transportation under the ADA, the four standard setting agencies under the ABA or other Federal agencies that adopt these guidelines as accessibility standards shall be given their ordinarily accepted meaning in the sense that the context implies.

R104.2 *Interchangeability.* Words, terms, and phrases used in the singular include the plural and those used in the plural include the singular.

R104.3 *Defined Terms.* For the purpose of these guidelines, the following terms have the indicated meaning:

Accessible. A *pedestrian facility* or *element* in the *public right-of-way* that complies with these guidelines.

Accessible Pedestrian Signal. A device that communicates information about *pedestrian* signal timing in non-visual formats such as audible tones or speech messages, and vibrating surfaces.

Alteration or altered. A change to or an addition of a *pedestrian facility* in an existing, *developed public right-of-way* that affects or could affect *pedestrian* access, circulation, or usability.

Blended Transition. A wraparound connection at a corner, or a flush connection where there is no *curb* to cut through, other than a *curb ramp.*

Block Perimeter. The near side of the *streets* surrounding a block. For example, on a square block bounded by Main Street to the south, Pine Street to the north, 1st Street to the east, and 2nd Street to the west, the *block perimeter* includes the north side of Main Street, the south side of Pine Street, the west side of 1st Street, and the east side of 2nd Street.

Boarding Platform. A platform raised above *standard curb height* used for transit vehicle boarding and alighting.

Building. Any structure used or intended for supporting or sheltering any use or occupancy.

Crosswalk. That part of a *roadway* that is located at an intersection included within the connections of the lateral lines of the *pedestrian circulation paths* on opposite sides of the *highway* measured from the *curbs,* or in the absence of *curbs,* from the edges of the traversable *roadway,* and in the absence of a *pedestrian circulation path* on one side of the *roadway,* the part of a *roadway* included within the extension of the lateral lines of the *pedestrian circulation path* at right angles to the center line; or at any portion of a *roadway* at an intersection or elsewhere distinctly indicated as a *pedestrian* crossing by pavement marking lines on the surface. *Crosswalks* at intersections may be marked or unmarked.

Cross Slope. The slope that is perpendicular to the direction of *pedestrian* travel.

Curb. A raised feature along the side of a *street* that delineates the edge of the *roadway* or *pedestrian circulation path.*

Curb Line. A line at the face of the *curb* that marks the transition between the *curb* and the gutter or *street.*

Curb Ramp. A sloped connection that is cut through or built up to a *curb. Curb ramps* may be perpendicular or parallel to the *curb* or to the *street* they serve or be a combination thereof.

Detectable Warning Surface. A standardized surface feature built in or applied to *pedestrian circulation paths* and other *pedestrian facilities* to warn of hazards.

Developed. Containing *buildings, pedestrian facilities, roadways,* utilities, or *elements.*

Element. An architectural or mechanical component of a *building, pedestrian facility,* space, site, or *public right-of-way.*

Grade. See *Running slope.*

Grade Break. The line where two surface planes with different *running slopes* meet.

Highway. A general term denoting a public way for purposes of vehicular travel, including the entire area within the *public right-of-way.*

Median. The area between two *roadways* of a divided *highway* measured from edge of *traveled way* to edge of *traveled way.* The *median* excludes turn lanes. The *median* width might be different between intersections, interchanges, and at opposite approaches of the same intersection.

Operable Part. A component of an *element* used to insert or withdraw objects, or to activate, deactivate, or adjust the *element,* or to interact with the *element.*

Parallel Curb Ramp. A *curb ramp* with a *running slope* that is parallel to the *curb* or *street* it serves.

Passenger Loading Zone. An area that is specifically designed or designated for

loading and unloading passengers, but that does not primarily serve vehicles on a fixed or scheduled route.

Pedestrian. A person on foot, travelling by wheelchair or other mobility device, on skates, or on a skateboard.

Pedestrian Access Route. An *accessible,* continuous, and unobstructed path of travel for use by *pedestrians* with disabilities within a *pedestrian circulation path.*

Pedestrian Activated Warning Devices. Devices that are installed in conjunction with a warning sign and are activated to alert vehicle operators to the presence of a *pedestrian,* such as rectangular rapid flashing beacons.

Pedestrian Change Interval. An interval during which the flashing upraised hand (symbolizing ''don't walk'') signal indication is displayed.

Pedestrian Circulation Path. A prepared exterior or interior surface provided for *pedestrian* use in the *public right-of-way.*

Pedestrian Facility. A structure, route, or space for *pedestrian* circulation or use located in the *public right-of-way.*

Pedestrian Hybrid Beacon. A special type of hybrid beacon used to warn and control traffic at an unsignalized location to assist *pedestrians* in crossing a *street* at a marked *crosswalk.*

Pedestrian Refuge Island. A defined area 72 inches (1828 mm) long minimum in the direction of *pedestrian* travel located between traffic lanes for *pedestrian* refuge within a *median, splitter island,* or channelizing island.

Pedestrian Signal Head. A device containing the walking person symbol (symbolizing ''walk'') and the upraised hand symbol (symbolizing ''don't walk''), that is installed to direct *pedestrian* traffic at a *crosswalk.*

Perpendicular Curb Ramp. A *curb ramp* with a *running slope* that is perpendicular to the *curb* or the *street* it serves.

Public Right-of-Way. Public land acquired for or dedicated to transportation purposes, or other land where there is a legally established right for use by the public for transportation purposes.

Push Button. A button to activate a device or signal timing for *pedestrians,* bicyclists, or others crossing a *roadway.*

Push Button Locator Tone. A repeating sound that informs approaching *pedestrians* that a *push button* exists to actuate *pedestrian* timing or receive additional information and that enables *pedestrians* who are blind or have low vision to locate the *push button.*

Qualified Historic Building or Facility. A *building* or facility that is listed in or eligible for listing in the National Register of Historic Places or designated as historic under an appropriate state or local law.

Ramp. A sloped walking surface with a *running slope* steeper than 1:20 (5.0%) that accomplishes a change in level and is not part of a *pedestrian circulation path* that follows the *roadway grade.* A *curb ramp* is not a *ramp.*

Roadway. That portion of a *highway* improved, designed, or ordinarily used for vehicular travel and parking lanes, but exclusive of the *sidewalk,* berm, or shoulder.

Roundabout. A circular intersection with yield control at entry, which permits a vehicle on a circular *roadway* to proceed, and with deflection of the approaching vehicle counterclockwise around a central island.

Running Slope. The slope that is parallel to the direction of *pedestrian* travel.

Shared Use Path. A multi-use path designed primarily for use by bicyclists, *pedestrians,* and other authorized motorized and non-motorized users, for transportation purposes, and that may also be used for recreation. *Shared use paths* are physically separated from motor vehicle traffic by an open space or barrier and are either within the *highway* or other *public right-of-way.*

Sidewalk. That portion of a *highway* between the *curb line,* or the lateral line of a *roadway,* and the adjacent property line, or on easements of private property, that is paved or improved and intended for use by *pedestrians.*

Splitter Island. A *median* island used to separate opposing directions of traffic entering and exiting a *roundabout.*

Stair. A change in elevation comprised of at least one tread and riser. A *curb* is not a *stair.*

Standard Curb Height. The typical height of a *curb* according to local standards for a given road type, but usually between 3 inches (75 mm) and 9 inches (230 mm) high relative to the surface of the *roadway* or gutter.

Street. See *Roadway.*

Transit Shelter. A structure provided at a *transit stop* to provide passengers protection from the weather.

Transit Stop. An area that is designated for passengers to board or alight from buses, rail cars, and other transportation vehicles that operate on a fixed route or scheduled route, including bus stops and *boarding platforms.* This definition does not include intercity rail except where a stop is located in the *public right-of-way.*

Transitional Segment. The portion of a *pedestrian circulation path* that connects adjacent surfaces with different slopes or dimensions to provide a smooth transition.

Traveled Way. The portion of the *roadway* for the movement of vehicles, exclusive of the shoulder, berm, *sidewalk,* and parking lane.

Vibrotactile. A method of communicating information by touch using a vibrating surface.

Walk Interval. An interval during which the walking person (symbolizing ''walk'') signal indication is displayed.

Chapter 2: Scoping Requirements

R201 General

R201.1 *Scope.* All newly constructed *pedestrian facilities* and *altered* portions of existing *pedestrian facilities* for *pedestrian* circulation and use located in the *public right-of-way* shall comply with these guidelines.

Exception: Pedestrian facilities within vaults, tunnels, and other spaces used only by service personnel for maintenance, repair, or monitoring of equipment are not required to comply with these guidelines.

R201.2 *Temporary and Permanent Pedestrian Facilities.* The requirements in these guidelines shall apply to temporary and permanent *pedestrian facilities* and *elements* in the *public right-of-way.* Where a *pedestrian circulation path* or *transit stop* is temporarily closed by construction, maintenance operations, or similar conditions, an alternate *pedestrian access route or transit stop* shall be provided in accordance with R204.

R201.3 *Buildings, Structures, and Elements. Buildings,* structures, and *elements* in the *public right-of-way* that are not covered by the requirements in these guidelines shall comply with the applicable requirements in 36 CFR part 1191 (ADA & ABA Accessibility Guidelines). Examples include, but are not limited to, *buildings,* structures, and *elements* at safety rest areas or park and ride lots, temporary performance stages and reviewing stands.

R202 Alterations

R202.1 *General. Alterations* to *pedestrian facilities* shall comply with R202.

R202.2 *Connection to Pedestrian Circulation Path.* Where *pedestrian facilities* are *altered,* they shall be connected by a *pedestrian access route* complying with R302 to an existing *pedestrian circulation path.* A *transitional segment* may be used in the connection.

R202.3 *Existing Physical Constraints.* In *alterations,* where existing physical constraints make compliance with applicable requirements technically infeasible, compliance with these requirements is required to the maximum extent feasible. Existing physical constraints include, but are not limited to, underlying terrain, underground structures, adjacent *developed* facilities, drainage, or the presence of a significant natural or historic feature.

R202.4 *Reduction in Access Prohibited.* An *alteration* to *pedestrian facilities* or *elements* shall not decrease the accessibility of an existing *pedestrian facility* or *element* or an *accessible* connection to an adjacent *building* or site below the requirements in these guidelines.

R202.5 *Alterations to Qualified Historic Facilities.* Where the State Historic Preservation Officer or Advisory Council on Historic Preservation determines that compliance with an applicable requirement of these guidelines would threaten or destroy the historic significance of a *qualified historic building or facility,* compliance with that requirement is required to the maximum extent feasible without threatening or destroying the historic significance of the *qualified historic building or facility.*

R203 Pedestrian Access Routes

R203.1 *General.* Where provided, the *pedestrian facilities* addressed in R203 shall contain or connect a *pedestrian access route,* and shall comply with these guidelines.

R203.2 *Connection to Accessible Facilities. Pedestrian access routes* shall connect *accessible elements,* spaces, and *pedestrian facilities* in accordance with R203.2.

R203.2.1 *Connection to Accessible Facilities subject to the ADA. Pedestrian access routes* subject to the ADA shall connect *accessible elements,* spaces, and

pedestrian facilities required to be *accessible* and connect to *accessible* routes required by section 206.2.1 of appendix B to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines) that connect *building* and facility entrances to public *streets* and *sidewalks.*

Exception: Where *elements* are *altered,* on or adjacent to an existing *pedestrian circulation path,* the existing *pedestrian circulation path* need not be *altered* to provide a *pedestrian access route* complying with R202.2.

R203.2.2 *Connection to Accessible Facilities subject to the ABA. Pedestrian access routes* subject to the ABA shall connect *accessible elements,* spaces, and *pedestrian facilities* required to be *accessible* and connect to *accessible* routes required by section F206.2.1 of appendix C to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines) that connect *building* and facility entrances to public *streets* and *sidewalks.*

Exception: Where *elements* are *altered,* on or adjacent to an existing *pedestrian circulation path,* the existing *pedestrian circulation path* need not be *altered* to provide a *pedestrian access route* complying with R202.2.

R203.3 *Pedestrian Circulation Paths. Pedestrian access routes* complying with R302 shall be provided within *pedestrian circulation paths,* including *sidewalks* and *shared use paths. Transitional segments* may be used to connect new or *altered pedestrian access routes* to existing *pedestrian circulation paths,* and the differences between adjacent surface characteristics shall be minimized to provide a smooth transition.

R203.4 *Crosswalks.* A *pedestrian access route* complying with R302 shall be provided within and for the full length of a *crosswalk,* including *medians* and *pedestrian refuge islands. Crosswalks* shall comply with R306.

R203.5 *Pedestrian At-Grade Rail Crossing.* Where a *pedestrian circulation path* crosses at-grade rail tracks, a *pedestrian access route* complying with R302 shall be included within the *pedestrian* at-grade rail crossing. *Pedestrian* at-grade rail crossings shall comply with R306.

R203.6 *Curb Ramps and Blended Transitions.* A *curb ramp, blended transition,* or a combination of *curb ramps* and *blended transition*s shall be provided in accordance with R203.6 and shall comply with R304.

R203.6.1 *Placement.* Placement of *curb ramps* and *blended transition*s shall comply with R203.6.1.

R203.6.1.1 *Crosswalks at an Intersection.* At an intersection corner, one *curb ramp* or *blended transition* shall be provided for each *crosswalk,* or a single *blended transition* that spans all *crosswalks* at the intersection corner may be provided. Where *pedestrian* crossing is prohibited, *curb ramps* or *blended transitions* shall not be provided, and the *pedestrian circulation path* shall be either (a) separated from the *roadway* with landscaping or other non-prepared surface or (b) separated from the *roadway* by a detectable vertical edge treatment with a bottom edge 15 inches maximum above the *pedestrian circulation path.*

Exception: In *alterations,* where existing physical constraints make compliance with R203.6.1.1 technically infeasible, a single *curb ramp* complying with R304 shall be permitted at the apex of the intersection corner.

R203.6.1.2 *Mid-Block and Roundabout Crosswalks.* At a mid-block or *roundabout crosswalk, curb ramps* or *blended transitions* shall be provided on both ends of the *crosswalk.* Where *pedestrian* crossing is not intended, *curb ramps* or *blended transitions* shall not be provided, and the *pedestrian circulation path* shall be either (a) separated from the *roadway* with landscaping or other non-prepared surface or (b) separated from the *roadway* by a detectable vertical edge treatment with a bottom edge 15 inches maximum above the *pedestrian circulation path.*

R203.6.1.3 *Parallel On-Street Parking.* At parallel on-street parking spaces complying with the dimensions specified in R310.2.1, a *curb ramp* or *blended transition* shall be provided at either end of the parking space if needed to connect the parking space to a *pedestrian access route.*

R203.6.1.4 *Perpendicular and Angled On-Street Parking and Passenger Loading Zones.* At perpendicular and angled on-street parking spaces, and at *passenger loading zones,* a *curb ramp* or *blended transition* shall be provided if needed to connect the access aisle to a *pedestrian access route.*

R203.6.2 *Alterations to Crosswalks.* When *alterations* are made to *crosswalks, curb ramps* or *blended transition*s shall be provided on both ends of the *crosswalk* where the *pedestrian access route* crosses a *curb.*

R203.7 *Pedestrian Overpasses and Underpasses. Pedestrian* overpasses and underpasses shall contain a *pedestrian access route* complying with R302. Where an overpass, underpass, bridge, or similar structure is designed for *pedestrian* use only, or pedestrian and bicycle use only, and the approach slope to the structure exceeds 1:20 (5.0%), a *ramp* complying with R407, or an elevator or limited use/limited application elevator complying with sections 407 or 408 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines), shall be provided. Elevators and limited use/limited application elevators shall be unlocked and independently usable during the operating hours of the *pedestrian facility* served.

Exception: In *alterations,* where existing physical constraints make compliance with R203.7 technically infeasible, a platform lift complying with section 410 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines) shall be permitted.

R203.8 *Ramps.* Where provided, *ramps* shall comply with R407.

R203.9. *Elevators and Limited Use/Limited Application Elevators.* Where provided, elevators and limited use/limited application elevators shall comply with sections 407 or 408 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines).

R203.10 *Platform Lifts.* In *alterations,* where the use of elevators or limited use elevators is not technically feasible, platform lifts may be used and shall comply with section 410 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines).

R203.11 *Doors, Doorways, and Gates.* Doors, doorways, and gates that are part of a *pedestrian access route* shall comply with section 404 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines).

R204 Alternate Pedestrian Access Routes, Transit Stops, and Passenger Loading Zones

R204.1 *Alternate Pedestrian Access Route.* When a *pedestrian circulation path* is temporarily not *accessible* due to construction, maintenance operations, closure, or other similar conditions, an alternate *pedestrian access route* must be provided and comply with R303 and R402.

Exception: If establishing or maintaining an alternate *pedestrian access route* is technically infeasible due to site conditions or existing physical constraints, an alternate means of providing access for *pedestrians* with disabilities shall be permitted.

R204.2 *Alternate Transit Stops.* Where *accessible transit stops* are temporarily not *accessible* due to construction, maintenance operations, or other similar conditions, alternate *transit stops* complying with R309 shall be provided.

R204.3 *Alternate Passenger Loading Zones.* Where a permanently designated *passenger loading zone* is temporarily not *accessible* due to construction, maintenance operations, or other similar conditions, and a temporary *passenger loading zone* is provided, it must comply with R311.

R205 Detectable Warning Surfaces

R205.1 *General. Detectable warning surfaces* shall be provided in accordance with R205.

R205.2 *Curb Ramps and Blended Transitions. Curb ramps* shall have *detectable warning surfaces* complying with R205.2.1. *Blended transition*s shall have *detectable warning surfaces* complying with R205.2.2.

Exception: Detectable warning surfaces are not required on *curb ramps* and *blended transition*s used exclusively to connect *passenger loading zones, accessible* parallel on-street parking spaces, and access aisles for perpendicular and angled parking spaces to *pedestrian access routes.*

R205.2.1 *Curb Ramps. Curb ramps* located at *crosswalks* shall have *detectable warning surfaces* complying with R305.1 and either R305.2.1 or R305.2.2.

R205.2.2 *Blended Transitions. Blended transition*s located at *crosswalks* shall have *detectable warning surfaces* complying with R305.1 and R305.2.3.

R205.3 *Pedestrian Refuge Islands.* Cut-through *pedestrian refuge islands* shall have *detectable warning surfaces* complying with R305.1 and R305.2.4.

R205.4 *Pedestrian At-Grade Rail Crossings. Pedestrian* at-grade rail crossings not located within a *street* shall have *detectable warning surfaces* complying with R305.1 and R305.2.5. *Pedestrian* at-grade rail crossings located within a *street* at a *crosswalk* shall not have *detectable warning surfaces* adjacent to the railway.

R205.5 *Boarding Platforms. Boarding platform*s at *transit stops* that are not protected by screens or guards along the sides of the boarding and alighting areas facing the transit vehicles shall have *detectable warning surfaces* complying with R305.1 and R305.2.6.

R205.6 *Sidewalk and Street-Level Rail Boarding and Alighting Areas.* Boarding and alighting areas at *sidewalk* or *street*-level *transit stops* for rail vehicles that are not protected by screens or guards along the side of the boarding and alighting areas facing the rail vehicles shall have *detectable warning surfaces* complying with R305.1 and R305.2.7.

R205.7 *Driveways. Pedestrian circulation paths* at driveways controlled with yield or stop control devices or traffic signals shall have *detectable warning surfaces* complying with R305.2.8.

R206 Pedestrian Signal Heads and Pedestrian Activated Warning Devices

R206.1 *General.* Where provided, *pedestrian signal heads* and *pedestrian activated warning devices* shall comply with R206. The *accessible* features required by these guidelines shall be available at all times.

R206.2 *Traffic Control Signals and Hybrid Beacons with Pedestrian Signal Heads.* Where *pedestrian signal heads* are provided at *crosswalks,* the walk indication shall comply with R308. *Pedestrian signal heads* must have a *pedestrian push button* complying with R307, except for R307.7, or passive detection or pretimed operation that activates audible and *vibrotactile* indications complying with R308.

R206.3 *Pedestrian Activated Warning Devices. Pedestrian activated warning devices* shall have *pedestrian push buttons* complying with R307, except for R307.2 and R307.6, or passive detection that operates audible indications complying with R307.7.

R207 Protruding Objects and Vertical Clearance

R207.1 *General.* Protruding objects and vertical clearance along any portion of a *pedestrian circulation path* shall comply with R402.

R208 Pedestrian Signs

R208.1 *General.* Where provided, signs intended solely for *pedestrians,* including transit signs, and all signs serving *shared use paths,* shall comply with R410.

Exceptions: 1. Transit schedules, timetables, and maps are not required to comply with R410.

2. Signs mounted immediately above or incorporated into a *push button* detector unit are not required to comply with R410.

R209 Street Furniture

R209.1 *General.* Where provided, street furniture shall comply with the applicable requirements in R209.

R209.2 *Drinking Fountains.* Drinking fountains shall comply with sections 602.1 through 602.6 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines).

R209.3 *Public Street Toilets.* Public street toilets shall be provided in accordance with R209.3.

R209.3.1 *Permanent Public Street Toilets.* Permanent public street toilets shall comply with sections 603 through 610 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines).

R209.3.2 *Portable Toilet Units.* Portable toilet units shall comply with section 603 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines). Where multiple single user portable toilet units are clustered at a single location, at least 5 percent, but no fewer than one of each type of the toilet units at each cluster shall be required to comply with 603 Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines). Portable toilet units complying with section 603 shall be identified by the International Symbol of Accessibility complying with R411.

R209.4 *Tables.* At least 5 percent of tables at each group of adjacent tables, but no fewer than one, shall comply with section 902 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines).

R209.5 *Sales or Service Counters.* Sales or service counters shall comply with section 904.4 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines).

Exception 1: Sales or service counters that are located in a *building* subject to the ADA that is not itself in the *public right-of-way* but that directly serve the *public right-of-way,* such as at a service window accessed from the *sidewalk,* may comply with section 227.3 of Appendix B to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines).

Exception 2: Sales or service counters that are located in a *building* subject to the ABA that is not itself in the *public right-of-way* but that directly serve the *public right-of-way,* such as at a service window accessed from the *sidewalk,* may comply with section F227.3 of Appendix C to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines).

R209.6 *Benches.* Benches, other than those that are part of tables complying with R209.4, shall comply with R209.6.

R209.6.1 *Benches at Transit Stops and Shelters.* Benches provided at *transit stops* shall have clear space complying with R404 next to either end of the bench, or if the bench has no end, such as a circular bench, the clear space shall either be integral to the bench or no more than 18 inches (455 mm) from the front of the bench. Benches provided within *transit shelters* shall have clear space complying with R309.2.2.

R209.6.2 *Benches Not at Transit Stops and Shelters.* At least 50 percent, but no less than one, of benches at each group of adjacent benches shall provide clear space complying with R404. The clear space shall be located next to either end of the bench, or if the bench has no end, such as a circular bench, the clear space shall either be integral to the bench or no more than 18 inches (455 mm) from the front of the bench.

R209.7 *Operable Parts of Other Fixed Elements. Operable parts* of other fixed *elements* to be used by *pedestrians* shall comply with R403.

R210 Transit Stops and Transit Shelters

R210.1 *General.* Where provided, *transit stops* and *transit shelters* shall comply with R309.

R210.2 *Fare Vending Machines.* Where provided at *transit stops* and *transit shelters,* fare vending machines shall comply with R403 and section 707 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines), except for 707.2 and 707.3.

R210.3. *Operable Parts of Other Fixed Elements. Operable parts* of other fixed *elements* at *transit stops* and shelters intended to be used by *pedestrians* shall comply with R403.

R211 On-Street Parking Spaces

R211.1 *General.* Where on-street parking is provided and is metered or designated by signs or pavement markings, accessible parking spaces complying with R310 shall be provided in accordance with R211 and Table R211.

Exceptions: 1. On-street parking spaces designated exclusively as residential parking shall not be required to comply with R211 and shall not be counted for purposes of Table R211.

2. On-street parking spaces designated exclusively for commercial or law enforcement vehicles shall not be required to comply with R211 and shall not be counted for purposes of Table R211.

3. Where on-street parking spaces are *altered,* the requirements of R211 shall apply only to the affected parking spaces until the minimum number of *accessible* on-street parking spaces as specified in Table R211 are provided.

R211.2 *Parking on Block Perimeter.* Where parking spaces are provided on a *block perimeter* and are metered or designated by signs or pavement markings, *accessible* parking spaces complying with R310 shall be provided in accordance with Table R211. Where parking is metered or designated by signs or pavement markings, but individual spaces are not marked, each 20 feet (6.1 m) of *block perimeter* where parking is designated shall be counted as one parking space.

R211.3 *Parking not on Block Perimeter.* Where parking spaces are provided on a section of a *street* that is not part of a *block perimeter, accessible* parking spaces complying with R310 shall be provided in accordance with Table R211. Where parking is metered or designated by signs or pavement markings, but individual spaces are not marked, each 20 feet (6.1 m) of *street* where parking is designated shall be counted as one parking space.

TABLE R211 ON-STREET PARKING SPACES

Total number of metered or designated parking spaces	Minimum required number of *accessible* parking spaces
1 to 25	1.
26 to 50	2.
51 to 75	3.
76 to 100	4.
101 to 150	5.
151 to 200	6.
201 and over	4 percent of total.

R212 Passenger Loading Zones

R212.1 *General.* Where permanently designated *passenger loading zones* other than *transit stops* are provided, at least one *accessible passenger loading zone* complying with R311 shall be provided in every continuous 100 feet (30 m) of loading zone space, or fraction thereof.

R213 Stairs and Escalators

R213.1 *General.* Where provided on *pedestrian circulation paths, stairs* shall comply with R408 and escalators shall comply with section 810.9 of Appendix D to 36 CFR part 1191 (ADA & ABA Accessibility Guidelines). *Stairs* and escalators shall not be part of *pedestrian access routes.*

R214 Handrails

R214.1 *General.* Where provided on *pedestrian circulation paths,* handrails shall comply with R409.

Chapter 3: Technical Requirements

R301 General

R301.1 *Scope.* The technical requirements in Chapter 3 shall apply where required by Chapter 2 or where referenced by a requirement in these guidelines.

R302 Pedestrian Access Routes

R302.1 *General. Pedestrian access routes* shall comply with R302.

R302.2 *Continuous Clear Width.* Except as provided in R302.2.1 and R302.2.2, the continuous clear width of *pedestrian access routes* shall be 48 inches (1220 mm) minimum, exclusive of the width of any *curb.*

R302.2.1 *Medians and Pedestrian Refuge Islands.* The clear width of *pedestrian access routes* crossing *medians* and *pedestrian refuge islands* shall be 60 inches (1525 mm) minimum, except that where *shared use paths* cross *medians* and *pedestrian refuge islands* the clear width of the *pedestrian access route* shall be 60 inches (1525 mm) minimum or at least as wide as the *crosswalk,* whichever is greater.

R302.2.2 *Shared Use Paths.* On *shared use paths,* the clear width of the *pedestrian access route* shall extend the full width provided for *pedestrian* circulation on the path. Obstructions, such as bollards, shall not reduce the clear width of the *pedestrian access route* to less than 48 inches (1220 mm) measured from the edge of the obstruction.

R302.3 *Passing Spaces.* Where the clear width of *pedestrian access routes* is less than 60 inches (1525 mm), passing spaces shall be provided at intervals of 200 feet (61 m) maximum. Passing spaces shall be 60 inches (1525 mm) minimum by 60 inches (1525 mm) minimum. Passing spaces and *pedestrian access routes* are permitted to overlap.

R302.4 *Grade.* The *grade* of *pedestrian access routes* shall comply with R302.4, except the *grade* of *curb ramps* and *blended transitions* shall comply with R304 and the *grade* of *ramps* shall comply with R407.

R302.4.1 *Within Highway Right-of-Way.* Except as provided in R302.4.3, where a *pedestrian access route* is contained within a *highway* right-of-way, the *grade* of the *pedestrian access route* shall not exceed 1:20 (5.0%).

Exception: Where the *grade* established for the adjacent *street* exceeds 1:20 (5.0%), the *grade* of the *pedestrian access route* shall not exceed the *grade* established for the adjacent *street.*

R302.4.2 *Not Within Highway Right-of-Way.* Where a *pedestrian access route* is not contained within a *highway* right-of-way, the *grade* of the *pedestrian access route* shall not exceed 1:20 (5.0%).

R302.4.3 *Within a Crosswalk.* Where a *pedestrian access route* is contained within a *crosswalk,* the *grade* of the *pedestrian access route* shall be 1:20 (5.0%) maximum.

Exception: Where *roadway* design requires superelevation greater than 1:20 (5.0%) at the location of a *crosswalk,* the *grade* of the *pedestrian access route* within the *crosswalk* may be the same as the superelevation.

R302.5 *Cross Slope.* The *cross slope* of a *pedestrian access route* shall comply with R302.5.

R302.5.1 *Not Contained Within a Crosswalk.* The *cross slope* of a *pedestrian access route* not contained within a *crosswalk* shall be 1:48 (2.1%) maximum.

Exception: The portion of a *pedestrian access route* within a *street* that connects an *accessible* parallel on-street parking space to the nearest *crosswalk* at the end of the block face or the nearest midblock *crosswalk* is not required to comply with R302.5.

R302.5.2 *Contained Within a Crosswalk.* The *cross slope* of a *pedestrian access route* contained within a *crosswalk* shall comply with R302.5.2.

R302.5.2.1 *Crosswalk with Yield or Stop Control Devices.* Where a *pedestrian access route* is contained within a *crosswalk* at an intersection approach with yield or stop control devices, the *cross slope* of the *pedestrian access route* shall be 1:48 (2.1%) maximum.

R302.5.2.2 *Crosswalk at Uncontrolled Approach.* Where a *pedestrian access route* is contained within a *crosswalk* at an uncontrolled approach, the *cross slope* of the *pedestrian access route* shall be 1:20 (5.0%) maximum.

R302.5.2.3 *Crosswalk with Traffic Control Signal or Pedestrian Hybrid Beacon.* Where a *pedestrian access route* is contained within a *crosswalk* at an intersection approach controlled by a traffic control signal or *pedestrian hybrid beacon,* the *cross slope* of the *pedestrian access route* shall be 1:20 (5.0%) maximum.

R302.5.2.4 *Midblock and Roundabout Crosswalks.* The *cross slope* of a *pedestrian access route* within a midblock *crosswalk* or a *crosswalk* at a *roundabout* shall not exceed the *street grade.*

R302.6 *Surfaces.* The walking surfaces of *pedestrian access routes, elements,* and spaces that are required to be *accessible* shall be stable, firm, and slip resistant and shall comply with R302.6.

R302.6.1 *Grade Breaks. Grade breaks* shall be flush.

R302.6.2 *Changes in Level.* Changes in level of ¼ inch (6.4 mm) maximum shall be permitted to be vertical. Changes in level between ¼ inch (6.4 mm) and ½ inch (13 mm) shall be beveled with a slope not steeper than 1:2 (50.0%). Changes in level greater than ½ inch (13 mm) up to 6 inches shall have a 1:12 (8.3%) maximum slope. Changes in level greater than 6 inches (150 mm) shall comply with R407.

R302.6.3 *Horizontal Openings.* Horizontal openings in ground surfaces, such as those in gratings and joints, other than flangeway gaps (see R302.6.4), shall not allow passage of a sphere larger than ½ inch (13 mm) in diameter. Except where multiple directions of travel intersect, elongated openings are permitted and shall be placed so that the long dimension is perpendicular to the dominant direction of travel.

R302.6.4 *Surfaces at Pedestrian At-Grade Rail Crossings.* Surfaces at *pedestrian* at-grade rail crossings shall comply with R302.6.4.

R302.6.4.1 *Surface Alignment.* Where a *pedestrian access route* crosses rails at grade, the *pedestrian access route* surface shall be level and flush with the top of rail at the outer edges of the rails, and the surface between the rails shall be aligned with the top of rail.

R302.6.4.2 *Flangeway Gaps. Flangeway gaps shall comply with R302.6.4.2.*

R302.6.4.2.1 *Flangeway Gaps at Tracks Subject to FRA Safety Regulations.* At *pedestrian* at-grade rail crossings that cross tracks that are subject to safety regulations at 49 CFR part 213, issued by the Federal Railroad Administration, flangeway gaps shall be 3 inches (75 mm) wide maximum.

R302.6.4.2.2 *Flangeway Gaps at Tracks Not Subject to FRA Safety Regulations.* At *pedestrian* at-grade rail crossings that cross tracks that are not subject to safety regulations at 49 CFR part 213, issued by the Federal Railroad Administration, flangeway gaps shall be 2 ½ inches (64 mm) wide maximum.

R303 Alternate Pedestrian Access Routes

R303.1 *General.* Alternate *pedestrian access routes* shall comply with R303.

R303.2 *Signs.* Signs identifying alternate *pedestrian access routes* shall be provided in advance of decision points and shall comply with R410. Proximity actuated audible signs or other non-visual means within the *public right-of-way* of conveying the information that identifies the alternate *pedestrian access route* shall also be provided.

R303.3 *Surface.* Alternate *pedestrian access route* surfaces shall comply with R302.6 or shall not be less *accessible* than the surface of the temporarily closed *pedestrian circulation path.*

R303.4 *Continuous Clear Width.* The minimum continuous clear width of alternate *pedestrian access routes* shall be 48 inches (1220 mm) exclusive of the width of any *curb.*

Exception: Where the alternate *pedestrian access route* utilizes an existing *pedestrian circulation path,* the width shall not be less than the width of the temporarily closed *pedestrian circulation path.*

R303.5 *Curb Ramp or Blended Transition.* Where an alternate *pedestrian access route* crosses a *curb,* a *curb ramp* or *blended transition* complying with R304 shall be provided.

R303.6 *Detectable Edging of Channelizing Devices.* Where a channelizing device is used to delineate an alternate *pedestrian access route,* continuous detectable edging complying with R303.6 shall be provided throughout the length of the route.

Exception: Where *pedestrians* or vehicles turn or cross, gaps in the detectable edging are permitted.

R303.6.1 *Top.* The top of the top detectable edging shall be no lower than 32

inches (815 mm) above the walking surface and be free of sharp or abrasive surfaces.

R303.6.2 *Bottom.* The bottom of the bottom detectable edging shall be 2 inches (51 mm) maximum above the walking surface.

R303.7 *Pedestrian Signal Heads.* Where temporary *pedestrian signal heads* are provided at a *crosswalk* that is part of an alternate *pedestrian access route,* pedestrian pushbuttons or passive detection devices shall be provided and shall comply with R307.

R304 Curb Ramps and Blended Transitions

R304.1 *General. Curb ramps* and *blended transition*s shall comply with R304 and have *detectable warning surfaces* in accordance with R205.

R304.2 *Perpendicular Curb Ramps. Perpendicular curb ramps* shall comply with R304.2 and R304.5.

R304.2.1 *Running Slope.* The *running slope* of a *curb ramp* shall be perpendicular to the curb or gutter *grade break.* The *running slope* of the *curb ramp* shall be 1:12 (8.3%) maximum.

Exception: Where the *curb ramp* length must exceed 15 feet (4.6 m) to achieve a 1:12 (8.3%) *running slope,* the *curb ramp* length shall extend at least 15 feet (4.6 m) and may have a *running slope* greater than 1:12 (8.3%).

R304.2.2 *Cross Slope.* The *cross slope* of a *curb ramp* run shall be 1:48 (2.1) maximum.

Exception: At *crosswalks,* the *cross slope* of the *curb ramp* run shall be permitted to be equal to or less than the *cross slope* of the *crosswalk* as specified by R302.5.

R304.2.3 *Grade Breaks. Grade breaks* at the top and bottom of a *curb ramp* run shall be perpendicular to the direction of the *curb ramp* run. *Grade breaks* shall not be permitted on the surfaces of *curb ramp* runs and landings. Surface slopes that meet at *grade breaks* shall be flush.

R304.2.4 *Clear Area.* A clear area 48 inches (1220 mm) wide minimum by 48 inches long (1220 mm) minimum shall be provided beyond the bottom *grade break* of the *perpendicular curb ramp* run and within the width of the *crosswalk.* At *shared use paths,* the clear area shall be as wide as *the shared use path.* The clear area shall be located wholly outside the vehicle travel lanes, including bicycle lanes, that run parallel to the *crosswalk.* The *running slope* of the clear area shall be 1:20 (5.0%) maximum. The *cross slope* of the clear area shall be as specified by R302.5.

R304.2.5 *Landing.* When a change in direction is necessary to access a *curb ramp* from a *pedestrian access route,* a landing shall be provided at the top of the *curb ramp.* The landing shall be 48 inches (1220 mm) wide minimum by 48 inches (1220 mm) long minimum. At *shared use paths,* the landing shall be as wide as the *shared use path.* Where a landing serves only one *curb* ramp, the landing slope measured perpendicular to the *curb ramp* run shall be equal to or less than the *cross slope* of the *curb ramp* run, and the landing slope measured parallel to the *curb ramp* run shall be 1:48 (2.1%) maximum. Where a landing serves two *curb ramps,* the landing slope in either direction of travel shall not exceed the *cross slope* of the *crosswalk* parallel to the direction of travel as specified by R302.5.

R304.2.6 *Side Treatments.* Where a *pedestrian circulation path* crosses the side of a *curb ramp,* the side of the *curb ramp* shall be flared. The slope of the flared side shall be 1:10 (10.0%) maximum, measured parallel to the adjacent *curb line.*

R304.2.7 *Connection to Pedestrian Facilities. Perpendicular curb ramps* or their landings shall be connected to adjacent *pedestrian facilities* by *pedestrian access routes* complying with R302. A *transitional segment* may be used in the connection.

R304.3 *Parallel Curb Ramps. Parallel curb ramps* shall comply with R304.3 and R304.5.

R304.3.1 *Running Slope.* The *running slope* of the *curb ramp* run shall be parallel to the curb and shall be 1:12 (8.3%) maximum.

Exception: Where the *curb ramp* run length must exceed 15 feet (4.6 m) to achieve a 1:12 (8.3%) *running slope,* the *curb ramp* run length shall extend at least 15 feet (4.6 m) and may have a *running slope* greater than 1:12 (8.3%).

R304.3.2 *Cross Slope.* The *cross slope* of the *curb ramp* run shall be 1:48 (2.1%) maximum.

R304.3.3 *Grade Breaks. Grade breaks* at the top and bottom of a *curb ramp* run shall be perpendicular to the direction of the *curb ramp* run. *Grade breaks* shall not be permitted on the surfaces of *curb ramp* runs or landings. Surface slopes that meet at *grade breaks* shall be flush.

R304.3.4 *Landings.* Landings shall be provided at the bottom of *parallel curb ramps.* Landings shall be 48 inches (1220 mm) wide minimum by 48 inches (1220 mm) long minimum. The slope of the landing, measured parallel to the direction of travel on the *curb ramp* run, shall be permitted to be equal to or less than the slope of the *roadway* or the *cross slope* of the *crosswalk* as specified by R302.5. The *cross slope* of the landing shall be 1:48 (2.1%) maximum measured perpendicular to the direction of travel on the *curb ramp* run.

R304.4 *Blended Transitions. Blended transition*s shall comply with R304.4 and R304.5.

R304.4.1 *Running Slope.* The *running slope* of *blended transition*s shall be 1:20 (5.0%) maximum.

R304.4.2 *Cross Slope.* The *cross slope* of *blended transition*s shall be equal to or less than the *cross slope* of the *crosswalk* as specified by R302.5.

R304.4.3 *Bypass.* Where a *blended transition* serving more than one *pedestrian circulation path* has a *running slope* greater than 1:48 (2.1%), a *pedestrian access route* shall be provided so that a *pedestrian* not crossing the *street* may bypass the *blended transition.*

R304.5 *Common Requirements. Curb ramps* and *blended transition*s shall comply with R304.5.

R304.5.1 *Width.* The width of *curb ramp* runs (excluding any flared sides) and *blended transition*s shall comply with R304.5.1.1 or R304.5.1.2, as applicable.

R304.5.1.1 *Curb Ramps and Blended Transitions Not on Shared Use Paths.* The clear width of *curb ramp* runs (excluding any flared sides) and *blended transition*s not on *shared use paths* shall be 48 inches (1220 mm) minimum.

R304.5.1.2 *Curb Ramps and Blended Transitions on Shared Use Paths.* On *shared use paths,* the width of *curb ramp* runs (excluding any flared sides) and *blended transition*s shall be equal to the width of the *shared use path.*

R304.5.2 *Change of Grade.* At gutters and *streets* where a change of *grade* occurs adjacent to *curb ramps* and *blended transition*s, the change of *grade* shall comply with the requirements contained in (A) or (B) below:

A. The change of *grade* shall not exceed 13.3 percent, or

B. A transitional space shall be provided at the bottom of the *running slope* of the *curb ramp* run or *blended transition.* The transitional space shall extend 24 inches (610 mm) minimum in the direction of *pedestrian* travel and the full width of the *curb ramp* run or *blended transition.* Transitional spaces shall have *running slopes* of 1:48 (2.1%) maximum and *cross slopes* no greater than the *cross slope* of the *crosswalk* as specified by R302.5.

R304.5.3 *Crosswalks. Perpendicular curb ramp* runs, *parallel curb ramp* landings, and 48 inches (1220 mm) minimum width of *blended transition*s, except those at *shared use paths,* shall be contained wholly within the width of the *crosswalks* they serve. At *shared use paths,* the full width of a *perpendicular curb ramp* run, *parallel curb ramp* landing, or the *blended transition* shall be contained wholly within the width of the *crosswalk* it serves.

R304.5.4 *Surfaces.* Surfaces of *curb ramps* and *blended transitions* shall comply with R302.6 except that changes in level are not permitted.

R305 Detectable Warning Surfaces

R305.1 *General. Detectable warning surfaces* shall consist of truncated domes in a square or radial grid pattern and shall comply with R305.

R305.1.1 *Dome Size.* The truncated domes shall have a base diameter of 0.9 inches (23 mm) minimum and 1.4 inches (36 mm) maximum, a top diameter of 50 percent of the base diameter minimum and 65 percent of the base diameter maximum, and a height of 0.2 inches (5.1 mm). When *detectable warning surface* tiles are cut to fit, partial domes are permitted along the cut edges.

R305.1.2 *Dome Spacing.* The truncated domes shall have a center-to-center spacing of 1.6 inches (41 mm) minimum and 2.4 inches (61 mm) maximum, and a base-to-base spacing of 0.65 inches (17 mm) minimum, measured between the most adjacent domes.

Exceptions: 1. When *detectable warning surfaces* are cut to fit, center-to-center spacing measured between domes adjacent to cut edges shall not exceed twice the normal spacing between domes not adjacent to cut edges.

2. Dome spacing requirements do not apply at a gap in a *detectable warning surface* at an

expansion joint provided that the *detectable warning surface* aligns with both edges of the expansion joint.

R305.1.3 *Contrast. Detectable warning surfaces* shall contrast visually with adjacent walking surfaces, either light-on-dark or dark-on-light.

R305.1.4 *Surface Size. Detectable warning surfaces* shall extend 24 inches (610 mm) minimum in the direction of *pedestrian* travel. The width of *detectable warning surfaces* shall be as follows:

A. At *curb ramps* and *blended transitions*, *detectable warning surfaces* shall extend the full width of the *curb ramp* run (excluding any flared sides), *blended transition,* or landing.

B. At cut-through *pedestrian refuge islands, detectable warning surfaces* shall extend the full width of the *pedestrian circulation path* opening.

C. At *pedestrian* at-grade rail crossings not located within a *street, detectable warning surfaces* shall extend the full width of the *pedestrian circulation path.*

D. Where required at *boarding platforms*, *detectable warning surfaces* shall extend the full length of the unprotected areas of the platform.

E. At boarding and alighting areas at *sidewalk* or *street* level *transit stops* for rail vehicles, detectable warning surfaces shall extend the full length of the unprotected area of the *transit stop.*

R305.2 *Location.* The location of *detectable warning surfaces* shall comply with R305.2. Where a concrete border is required for proper installation of a *detectable warning surface,* a concrete border not exceeding 2 inches (51 mm) shall be permitted on all sides of the *detectable warning surface* except between the *detectable warning surface* and the edge of pavement where a setback is already permitted.

R305.2.1 *Perpendicular Curb Ramps.* On *perpendicular curb ramps, detectable warning surfaces* shall be located as follows:

A. Where the ends of the bottom *grade break* are in front of the back of *curb* or at the edge of pavement where there is no *curb,* the *detectable warning surface* shall be placed at the back of *curb* or no greater than 6 inches (150 mm) from the edge of pavement where there is no *curb.*

B. Where the ends of the bottom *grade break* are behind the back of *curb* or edge of pavement where there is no *curb* and the distance from both ends of the bottom *grade break* to the back of *curb* or edge of pavement where there is no *curb* is 60 inches (1525 mm) or less, the *detectable warning surface* shall be placed on the *ramp* run at the bottom *grade break.*

C. Where the ends of the bottom *grade break* are behind the back of *curb* or edge of pavement where there is no *curb* and the distance from either end of the bottom *grade break* to the back of *curb* or edge of pavement where there is no *curb* is more than 60 inches (1525 mm), the *detectable warning surface* shall be placed on the clear area so that both front corners of the *detectable warning surfaces* are at the back of *curb* or no greater than 6 inches (150 mm) from the edge of pavement where there is no *curb.*

R305.2.2 *Parallel Curb Ramps.* On *parallel curb ramps, detectable warning surfaces* shall be located on the landing at either the back of *curb* or the edge of pavement where there is no *curb.*

R305.2.3 *Blended Transitions.* On *blended transitions*, *detectable warning surfaces* shall be located on the *blended transition* so that both front corners of the *detectable warning surfaces* are at the back of *curb* or no greater than 6 inches (150 mm) from the edge pavement where there is no *curb.*

R305.2.4 *Pedestrian Refuge Islands.* At cut-through *pedestrian refuge islands, detectable warning surfaces* shall be located no greater than 6 inches (150 mm) from the edges of the *pedestrian refuge island* or at back of *curb* and shall be separated by a 24 inch (610 mm) minimum length of surface in the direction of travel without *detectable warning surfaces.*

R305.2.5 *Pedestrian At-Grade Rail Crossings.* At *pedestrian* at-grade rail crossings not located within a *street, detectable warning surfaces* shall be located on each side of the rail crossing. The edge of the *detectable warning surface* nearest the rail crossing shall be 6 feet (1.8 m) minimum and 15 feet (4.6 m) maximum from the centerline of the nearest rail. Where *pedestrian* gates are provided, *detectable warning surfaces* shall be located on the side of the gate opposite the rail. *Pedestrian* gates shall not overlap *detectable warning surfaces.*

R305.2.6 *Boarding Platforms.* At *boarding platforms* for transit vehicles, *detectable warning surfaces* shall be located at the boarding edge of the platform.

Exception: Where a *curb* is present at the boarding edge of the platform, the *detectable warning surface* may be placed at the back of *curb.*

R305.2.7 *Sidewalk and Street-Level Rail Boarding and Alighting Areas.* At boarding and alighting areas at *sidewalk* or *street*-level *transit stops* for rail vehicles, *detectable warning surfaces* shall be located at the edge of the boarding and alighting area closest to the rail vehicles.

R305.2.8 *Driveways.* Where driveways are controlled with yield or stop control devices or traffic signals, *detectable warning surfaces* shall be provided on the *pedestrian circulation path* where the *pedestrian circulation path* meets the driveway.

R306 Crosswalks

R306.1 *General. Crosswalks* shall comply with R306.

R306.2 *Pedestrian Signal Phase Timing.* Where a traffic control signal with *pedestrian* signal indications is provided at a crosswalk, *pedestrian* signal phase timing shall be based on a *pedestrian* clearance time that is calculated using a *pedestrian* walking speed of 3.5 ft/s (1.1 m/s) or less from the location of the *pedestrian push button* to a *pedestrian refuge island* or the far side of the *traveled way.* The *walk interval* shall be 7 seconds minimum. Where the *pedestrian* clearance time is calculated to a *pedestrian refuge island,* an additional *pedestrian push button* or passive detection device shall be provided on the *pedestrian refuge island.*

Exception: If a passive *pedestrian* detection device is used to automatically adjust the *pedestrian* clearance time based on the *pedestrian's* actual clearance of the *crosswalk,* a faster walking speed may be used.

R306.3 *Accessible Walk Indication.* An *accessible* walk indication complying with R308.2 shall have the same duration as the *walk interval.*

Exception: Where the *pedestrian* signal rests in walk, the *accessible* walk indication may be limited to the first 7 seconds of the *walk interval.* If the *pedestrian* signal is resting in walk and there is sufficient time remaining to provide an *accessible walk interval* before the beginning of the *pedestrian change interval,* the *accessible* walk indication may be recalled by a button press.

R306.4 *Roundabouts.* Where *pedestrian circulation paths* are provided at *roundabouts,* they shall comply with R306.4.

R306.4.1 *Edge Detection.* The *street* side edge of the *pedestrian circulation path* at the approach and along the circulatory *roadway* of the *roundabout* shall comply with R306.4.1.1 where not attached to the *curb,* or R306.4.1.2 where attached to the *curb. Detectable warning surfaces* shall not be used for *roundabout* edge detection.

R306.4.1.1 *Separation.* Where *pedestrian* crossing is not intended, the *pedestrian circulation path* shall be separated from the *curb, crosswalk* to *crosswalk,* with landscaping or other nonprepared surface 24 inches (610 mm) wide minimum.

R306.4.1.2 *Vertical Edge Treatment.* Where *pedestrian* crossing is not intended, a *curb*-attached *pedestrian circulation path* shall have a continuous and detectable vertical edge treatment along the *street* side of the *pedestrian circulation path,* from *crosswalk* to *crosswalk.* The bottom edge of the vertical edge treatment shall be 15 inches (380 mm) maximum above the *pedestrian circulation path.*

R306.4.2 *Crosswalk Treatments.* Each multi-lane segment of the *roundabout* containing a *crosswalk* shall provide a *crosswalk* treatment consisting of one or more of the following: a traffic control signal with a *pedestrian signal head;* a *pedestrian hybrid beacon;* a *pedestrian* actuated rectangular rapid flashing beacon; or a raised crossing.

R306.5 *Channelized Turn Lanes. Crosswalks* at multi-lane channelized turn lanes shall provide treatments consisting of one or more of the following: a traffic control signal with a *pedestrian signal head;* a *pedestrian hybrid beacon;* a *pedestrian* actuated rectangular rapid flashing beacon; or a raised crossing.

R307 Pedestrian Push Buttons and Passive Pedestrian Detection

R307.1 *General. Pedestrian push buttons* and passive *pedestrian* detection devices shall comply with R307. *Operable parts* of *pedestrian push buttons* shall comply with R403.

R307.2 *Activation. Pedestrian push buttons* and passive detection devices shall activate the *accessible pedestrian signals* and, where applicable, the *walk interval.*

R307.3 *Extended Push Button Press.* Where an extended *push button* press is used to provide any additional features, a *push button* press of less than one second shall actuate only the *pedestrian* timing and any associated *accessible* walk indication, and a *push button* press of one second or more shall actuate the *pedestrian* timing, any associated *accessible* walk indication, and any additional features. If additional crossing time is provided by means of an extended pushbutton press, a sign so indicating shall be mounted adjacent to or integral with the pedestrian push button.

R307.4 *Location. Pedestrian push buttons* shall be located no greater than 5 feet from the side of a *curb ramp* run or the edge of the farthest associated *crosswalk* line from the center of the intersection. *Pedestrian push buttons* shall be located between 1.5 and 10 feet from the edge of the *curb* or pavement.

R307.4.1 *Two Pedestrian Push Buttons on Same Corner.* Where two *pedestrian push buttons* are provided on the same corner, they shall be 10 feet or more apart.

Exception: In *alterations,* where technically infeasible to provide 10 feet separation between *pedestrian push buttons* on the same corner, a *pedestrian push button* information message complying with R308.3.2 shall be provided.

R307.5 *Push Button Orientation.* The face of the *push button* shall be parallel to its associated *crosswalk.*

R307.6 *Audible and Vibrotactile Walk Indications for Pedestrian Signal Heads. Pedestrian push buttons* or passive detection devices shall activate audible and *vibrotactile* walk indications complying with R308.

R307.7 *Audible and Vibrotactile Indication for Pedestrian Activated Warning Devices Without a Walk Indication.* Where a *pedestrian push button* or a passive detection device is provided for *pedestrian activated warning devices,* such as rectangular rapid flashing beacons, the *pedestrian push button* or passive detection device shall activate a speech message that indicates the status of the beacon in lieu of an audible walk indication. The speech message volume shall comply with R308.4. Where a *pedestrian push button* is provided, it shall not include *vibrotactile* features indicating a *walk interval.*

R307.8 *Locator Tone. Pedestrian push buttons* shall incorporate a locator tone complying with R307.8.

R307.8.1 *Duration.* Locator tones shall have a duration of 0.15 seconds or less and repeat at one-second intervals except when another audible indication from the same device is active. When another audible indication from the same device is active, the locator tone shall be silenced.

Exception: A locator tone may be silenced if a passive detection system activates the locator tone when a *pedestrian* is within a 12-foot radius of the *pedestrian push button.*

R307.8.2 *Locator Tone in Response to Ambient Sound. Pedestrian push button locator tones* shall be intensity responsive to ambient sound and shall be audible 6 to 12 feet from the *push button,* or to the *building* line, whichever is less. The *push button locator tone* shall be louder than ambient sound up to a maximum volume of 5 dBA louder than ambient sound. Automatic volume adjustment in response to ambient traffic sound level shall be a maximum volume of 100 dBA.

R307.8.3 *Locator Tone and Audible Beaconing.* Where audible beaconing is used, the volume of the *push button locator tone* during the *pedestrian change interval* of the called *pedestrian* phase shall be increased and operated in one of the following ways:

A. The louder audible walk indication and louder locator tone comes from the far end of the *crosswalk,* as *pedestrians* cross the *street;*

B. The louder locator tone comes from both ends of the *crosswalk;* or

C. The louder locator tone comes from an additional speaker that is aimed at the center of the *crosswalk* and that is mounted on a *pedestrian signal head.*

R307.8.4 *Locator Tone and Traffic Control Signal in Flashing Mode.* When the traffic control signal is operating in a flashing mode, *pedestrian push button locator tones* shall remain active, and the *pedestrian push button* shall activate a speech message that communicates the operating mode of the traffic control signal. Where traffic control signals or *pedestrian hybrid beacons* are activated from a flashing or dark mode to a stop-and-go mode by *pedestrian* actuations, a speech message communicating the operating status of the traffic control signal is not required.

R307.9 *Tactile Arrow. Pedestrian push buttons* shall have a tactile arrow with high visual contrast that is aligned parallel to the direction of travel on their associated *crosswalks.*

R308 Accessible Pedestrian Signal Walk Indications

R308.1 *General. Accessible pedestrian signal* walk indications shall comply with R308.

R308.2 *Audible and Vibrotactile Walk Indications. Accessible pedestrian signal*s shall have an audible and *vibrotactile* walk indication during the *walk interval* only. The audible walk indication shall be audible from the beginning of the associated *crosswalk.* Following the audible and *vibrotactile* walk indication and during the *pedestrian change interval, accessible pedestrian signal*s shall revert to the *pedestrian push button locator tone.*

R308.3 *Audible Walk Indications.* Audible walk indications shall comply with R308.3.

R308.3.1 *Percussive Tone.* Where an *accessible pedestrian signal* is provided at a single crossing or where two *accessible pedestrian signal*s are 10 feet or greater from each other at a corner, the audible walk indication shall be a percussive tone and repeat eight to ten ticks per second with multiple frequencies and a dominant component at 880 Hz.

R308.3.2 *Speech Walk Message.* In *alterations,* where it is technically infeasible to provide 10 feet separation between *pedestrian push buttons* on the same corner, the audible walk indication for each signal shall be a speech walk message that complies with R308.3.2.

R308.3.2.1 *Speech Information Message when Walk Interval is Not Timing.* Where speech *push button* information messages are made available at a pretimed signal or by actuating the *accessible pedestrian push button* or passive detection device, they shall only be actuated when the *walk interval* is not timing. They shall begin with the term ''Wait,'' followed by intersection identification information modeled after: ''Wait to cross Broadway at Grand.'' If information on intersection signalization or geometry is also given, it shall follow the intersection identification information.

R308.3.2.2 *Speech Walk Message during Pedestrian Phasing Concurrent with Vehicular Phasing.* Speech walk messages that are used at intersections having *pedestrian* phasing that is concurrent with vehicular phasing shall be patterned after the model: ''Broadway. Walk sign is on to cross Broadway.''

R308.3.2.3 *Speech Walk Message during Exclusive Pedestrian Phasing.* Speech walk messages that are used at intersections having exclusive *pedestrian* phasing shall be patterned after the model: ''Walk sign is on for all crossings.''

R308.3.2.4 *Speech Walk Message and Pilot Light.* If a pilot light is used at an *accessible pedestrian signal* location, each actuation shall be accompanied by the speech message, ''Wait.''

R308.4 *Volume.* Audible walk indications shall be louder than ambient sound up to a maximum volume of 5 dBA louder than ambient sound. Automatic volume adjustment in response to ambient traffic sound level shall be a maximum volume of 100 dBA.

Exception: Where audible beaconing is provided in response to an extended *push button* press, the beaconing can exceed 5 dBA louder than ambient sound.

R308.5 *Vibrotactile Walk Indication.* The *pedestrian push button* shall vibrate during the *walk interval.*

R309 Transit Stops and Transit Shelters

R309.1 *Transit Stops. Transit stops* shall comply with R309.1.

R309.1.1 *Boarding and Alighting Areas.* Boarding and alighting areas at *sidewalk* or *street*-level *transit stops* must serve each *accessible* vehicle entry and exit and shall comply with R309.1.1 and R309.1.3.

R309.1.1.1 *Dimensions.* Boarding and alighting areas shall have a clear length of 96 inches (2440 mm) minimum, measured perpendicular to the face of the *curb* or *street* edge, and a clear width of 60 inches (1525 mm) minimum, measured parallel to the *street.*

R309.1.1.2 *Slope.* The slope of boarding and alighting areas measured parallel to the *street* shall be the same as the *grade* of the *street.* The slope of boarding and alighting areas measured perpendicular to the *street* shall be 1:48 (2.1%) maximum.

R309.1.2 *Boarding Platforms. Boarding platform*s at *transit stops* shall comply with R309.1.2 and R309.1.3.

R309.1.2.1 *Platform and Vehicle Floor Coordination. Boarding platform*s shall be positioned to coordinate with vehicles in accordance with the applicable requirements in 49 CFR parts 37 and 38.

R309.1.2.2 *Slope.* The slope of the *boarding platform* measured parallel to the track or *street* shall be the same as the *grade* of the track or *street.* The *slope* of the *boarding platform* measured perpendicular to the track or *street* shall be 1:48 (2.1%) maximum.

R309.1.3 *Common Requirements.* Boarding and alighting areas and *boarding platforms* shall comply with R309.1.3.

R309.1.3.1 *Surfaces.* The surfaces of boarding and alighting areas and *boarding platforms* shall comply with R302.6.

R309.1.3.2 *Connection to Existing Pedestrian Circulation Paths.* In *alterations,* boarding and alighting areas and *boarding platforms* shall be connected to existing *pedestrian circulation paths* by *pedestrian access routes* complying with R302.

R309.2 *Transit Shelters. Transit shelters* shall comply with R309.2.

R309.2.1 *Connection to Boarding and Alighting Areas. Transit shelters* shall be connected by *pedestrian access routes* complying with R302 to boarding and alighting areas complying with R309.1.1 or *boarding platforms* complying with R309.1.2.

R309.2.2 *Clear Space. Transit shelters* shall provide a minimum clear space complying with R404 entirely within the shelter. Where seating is provided within *transit shelters,* the clear space shall be located either at one end of a seat or so as to not overlap the area within 18 inches (455 mm) from the front edge of the seat.

R309.2.3 *Environmental Controls.* Where provided, environmental controls within *transit shelters* shall be proximity-actuated.

R309.2.4 *Protruding Objects.* Protruding objects within *transit shelters* shall comply with R402.

R310 On-Street Parking Spaces

R310.1 *General.* On-street parking spaces shall comply with R310.

R310.2 *Parallel On-Street Parking Spaces.* Parallel on-street parking spaces shall comply with R310.2.

R310.2.1 *Dimensions.* Parallel on-street parking spaces shall be 24 feet (7.3 m) long minimum and 13 feet (4.0 m) wide minimum. Parallel on-street parking spaces shall not encroach on the *traveled way.*

Exceptions: 1. Where parallel on-street parking spaces are *altered* but the adjacent *pedestrian circulation path* is not, any *accessible* parallel on-street parking spaces provided may have the same dimensions as the adjacent parallel on-street parking spaces if they are provided nearest the *crosswalk* at the end of the block face or nearest a midblock *crosswalk,* and a *curb ramp* or *blended transition* is provided serving the *crosswalk.*

2. In *alterations,* where providing parallel on-street parking spaces with the dimensions specified in R310.2.1 would result in an available right-of-way width less than or equal to 9 feet (2.7 m), measured from the *curb line* to the right-of-way line, the *accessible* parallel on-street parking spaces may have the same dimensions as the adjacent parallel on-street parking spaces if they are provided nearest the *crosswalk* at the end of the block face or nearest a midblock *crosswalk,* and a *curb ramp* or *blended transition* is provided serving the *crosswalk.*

R310.2.2 *Pedestrian Access Route Connection.* Parallel on-street parking spaces shall connect to *pedestrian access routes.* Where *curb ramps* and *blended transitions* are used, they shall not reduce the required width or length of the parking spaces and shall be located at either end of the parking space. Where two or more *accessible* parallel on-street parking spaces complying with the dimensions specified in R310.2.1 are contiguous on a block face, each *accessible* parallel on-street parking space shall have an independent connection to the *pedestrian access route. Curb ramps* and *blended transitions* shall be provided in accordance with R203.6.1.3 and shall comply with R304. *Detectable warning surfaces* are not required on *curb ramps* and *blended transitions* used exclusively to connect *accessible* on-street parallel parking spaces to *pedestrian access routes.*

Exception: In *alterations,* where parallel on-street parking spaces are provided in accordance with Exception 1 or 2 to R310.2.1, the parallel on-street parking space shall be connected to the *curb ramp* or *blended transition* serving the *crosswalk* by a *pedestrian circulation path* complying with R302.6, except that changes in level are not permitted.

R310.2.3 *Surfaces.* Surfaces of parking spaces shall comply with R302.6, except that changes in level are not permitted.

R310.2.4 *Clearance Adjacent to Parking Spaces.* The center 50 percent of the length of the *sidewalk,* or other surface, adjacent to an *accessible* parallel parking space shall be free of obstructions, including parking identification signs, parking pay meters, and parking pay stations, and shall comply with R302.6.

R310.2.5 *Identification.* Parallel on-street parking spaces shall be identified by signs displaying the International Symbol of Accessibility complying with R411. Signs shall be 60 inches (1525 mm) minimum above the ground surface measured to the bottom of the sign.

R310.3 *Perpendicular Parking Spaces.* Perpendicular parking spaces shall comply with R310.3.

R310.3.1 *Access Aisles.* Perpendicular on-street parking spaces shall have adjacent access aisles 96 inches (2440 mm) wide minimum extending the full length of the parking space. One access aisle shall be permitted to serve two parking spaces where front and rear entry parking are both permitted. Where an access aisle serves only one parking space and parking is restricted to either front entry or rear entry orientation, the access aisle shall be located on the passenger side of the vehicle.

R310.4 *Angled Parking Spaces. Accessible* angled parking spaces shall comply with R310.4.

R310.4.1 *Width.* The width of an angled parking space shall be 132 inches (3350 mm).

R310.4.2 *Access Aisles.* Each angled on-street parking space shall have an adjacent access aisle 60 inches (1525 mm) wide minimum extending the full length of the parking space on the passenger side.

R310.5 *Common Requirements for Perpendicular and Angled Parking Spaces.* Perpendicular and angled parking spaces shall comply with R310.5.

R310.5.1 *Access Aisle Markings.* The access aisle surface shall be marked to discourage parking in the access aisle.

R310.5.2 *Access Aisle Location.* Access aisles shall be located at the same level as the parking space they serve and shall not encroach on the *traveled way.*

R310.5.3 *Pedestrian Access Route Connection.* Access aisles shall connect to *pedestrian access routes.* Where *curb ramps* and *blended transitions* are used, they shall not reduce the required width or length of access aisles and parking spaces. *Curb ramps* and *blended transitions* shall be provided in accordance with R203.6.1.4 and shall comply with R304. A *detectable warning surface* is not required on a *curb ramp* or *blended transition* used exclusively to connect on-street parking access aisles to *pedestrian access routes.*

Exception: In *alterations,* the access aisle may connect to an existing *pedestrian circulation path* in accordance with R202.2.

R310.5.4 *Surfaces.* Surfaces of parking spaces and access aisles serving them shall comply with R302.6, except that changes in level are not permitted.

R310.5.5 *Identification.* Perpendicular or angled on-street parking spaces shall be identified by signs displaying the International Symbol of Accessibility complying with R411. The signs shall be located at the head of the parking space. Signs shall be 60 inches (1525 mm) minimum above the ground surface measured to the bottom of the sign.

R310.6 *Parking Meters and Parking Pay Stations.* Parking meters and parking pay stations that serve *accessible* parking spaces shall provide *operable parts* complying with R403. The clear space required by R403.2 shall be located so that displays and information on parking meters and pay stations are visible from a point located 40 inches (1015 mm) maximum above the center of the clear space in front of the parking meter or parking pay station.

R311 Passenger Loading Zones

R311.1 *General. Accessible passenger loading zones* shall comply with R311.

R311.2 *Vehicle Pull-Up Space. Accessible passenger loading zones* shall provide a vehicular pull-up space that is 96 inches (2440 mm) wide minimum and 20 feet (6.1 m) long minimum.

R311.3 *Access Aisle.* Vehicle pull-up spaces shall have adjacent access aisles complying with R311.3 that are 60 inches (1525 mm) wide minimum extending the full length of the vehicle pull-up space. Access aisles shall be at the same level as the vehicle pull-up space they serve and shall not encroach on the *traveled way.*

R311.3.1 *Clearance Adjacent to Passenger Loading Zone.* The center 50 percent of the length of the *sidewalk,* or other surface, adjacent to an *accessible passenger loading zone* shall be free of obstructions and comply with R302.6.

R311.3.2 *Marking.* Access aisle surfaces shall be marked to discourage parking in them.

R311.4 *Surfaces.* Surfaces of vehicle pull-up spaces and the access aisles serving them shall comply with R302.6, except that changes in level are not permitted.

R311.5 *Pedestrian Access Route Connection.* Access aisles shall connect to *pedestrian access routes.* Where *curb ramps* and *blended transition*s are used, they shall be provided in accordance with R203.6.1.4 and comply with R304, and shall not reduce the required width or length of access aisles. *Detectable warning surfaces* are not required on *curb ramps* and *blended transitions* used exclusively to connect access aisles to *pedestrian access routes.*

Exception: In *alterations,* the access aisle may connect to an existing *pedestrian circulation path* in accordance with R202.2.

Chapter 4: Supplemental Technical Requirements

R401 General

R401.1 *Scope.* The supplemental technical requirements in Chapter 4 shall apply where required by Chapter 2 or where referenced by a requirement in these guidelines.

R402 Protruding Objects and Vertical Clearance

R402.1 *General.* Protruding objects and vertical clearance shall comply with R402.

R402.2 *Protrusion Limits.* Objects with leading edges more than 27 inches (685 mm) and less than 80 inches (2030 mm) above the walking surface shall not protrude horizontally more than 4 inches (100 mm) into *pedestrian circulation paths.*

Exception: Handrails shall be permitted to protrude 4½ inches (115 mm) maximum.

R402.3 *Post-Mounted Objects.* Where objects are mounted on posts or pylons, they shall comply with R402.3.

Exception: The sloping portions of handrails serving *stairs* and *ramps* shall not be required to comply with R402.3.

R402.3.1 *Objects Mounted on Single Post or Pylon.* Where objects are mounted on a single post or pylon and the objects are more than 27 inches (685 mm) and less than 80 inches (2030 mm) above the walking surface, the objects shall not protrude into the *pedestrian circulation path* more than 4 inches (100 mm) measured horizontally from the post or pylon or more than 4 inches (100mm) measured horizontally from the outside edge of the base where the base height is 2½ inches (64 mm) minimum.

R402.3.2 *Objects Mounted Between Posts or Pylons.* Where objects are mounted between posts or pylons and the clear distance between the posts or pylons is greater than 12 inches (305 mm), the lowest edge of the object shall be 27 inches (685 mm) maximum or 80 inches (2030 mm) minimum above the walking surface.

Exception: Objects mounted with the lowest edge greater than 27 inches (685 mm) and less than 80 inches (2030 mm) above the walking surface are permitted if a barrier with its lowest edge at 27 inches (685 mm) maximum above the walking surface is provided between the posts or pylons.

R402.4 *Vertical Clearance.* Vertical clearance shall be 80 inches (2030 mm) high minimum. Guards or other barriers to prohibit *pedestrian* travel shall be provided where the vertical clearance is less than 80 inches (2030 mm) high above the walking surface. The lowest edge of the guard or barrier shall be located 27 inches (685 mm) maximum above the walking surface.

R402.5 *Required Clear Width.* Protruding objects shall not reduce the clear width required for *pedestrian access routes.*

R403 Operable Parts

R403.1 *General. Operable parts* shall comply with R403.

R403.2 *Clear Space.* A clear space complying with R404 shall be provided at *operable parts.*

R403.3 *Height. Operable parts* shall be placed within one or more of the reach ranges specified in R406.

R403.4 *Operation. Operable parts* shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate *operable parts* shall be 5 pounds (22.2 N) maximum.

R404 Clear Spaces

R404.1 *General.* Clear spaces shall comply with R404.

R404.2 *Surfaces.* Surfaces of clear spaces shall comply with R302.6. The slope of the clear space shall be 1:48 (2.1%) maximum in both directions.

Exception: Where the slope of the clear space would exceed 1:48 (2.1%) in either or both directions due to the *grade* of an adjacent *pedestrian access route* conforming to the requirements of R302.4, the slope of the clear space may be consistent with the slope of the *pedestrian access route.*

R404.3 *Size.* Clear spaces shall be 30 inches (760 mm) minimum by 48 inches (1220 mm) minimum.

R404.4 *Knee and Toe Clearance.* Unless otherwise specified, clear spaces shall be permitted to include knee and toe clearance complying with R405.

R404.5 *Position.* Clear spaces shall be positioned either for forward approach where the 30-inch side is nearest to the *element,* or for parallel approach where the 48-inch side is nearest to the *element.* Clear spaces shall not be located on *curb ramp* runs or flares.

R404.6 *Approach.* One full unobstructed side of a clear space shall adjoin a *pedestrian access route* or adjoin another clear space.

R404.7 *Maneuvering Clearance.* Where a clear space is confined on all or part of three sides, additional maneuvering clearance shall be provided in accordance with R404.7.1 and R404.7.2.

R404.7.1 *Forward Approach.* The clear space and additional maneuvering clearance shall be 36 inches (915 mm) wide minimum where the depth of the confined space exceeds 24 inches (610 mm) measured perpendicular to the *element.*

R404.7.2 *Parallel Approach.* The clear space and additional maneuvering clearance shall be 60 inches (1525 mm) wide minimum where the depth of the confined space exceeds 15 inches (380 mm) measured perpendicular to the *element.*

R405 Knee and Toe Clearance

R405.1 *General.* Where space beneath an *element* is included as part of a clear space, the space shall comply with R405. Additional space shall not be prohibited beneath an *element* but shall not be considered as part of the clear space.

R405.2 *Toe Clearance.* Toe clearance shall comply with R405.2.

R405.2.1 *General.* Space under an *element* between the ground surface and 9 inches (230 mm) above the ground surface shall be considered toe clearance and shall comply with R405.2.

R405.2.2 *Maximum Depth.* Toe clearance shall extend 25 inches (635 mm) maximum under an *element.*

R405.2.3 *Minimum Required Depth.* Where toe clearance is required at an *element* as part of a clear space, the toe clearance shall extend 17 inches (430 mm) minimum under the *element.*

R405.2.4 *Additional Clearance.* Space extending greater than 6 inches (150 mm) beyond the available knee clearance at 9 inches above the ground surface shall not be considered toe clearance.

R405.2.5 *Width.* Toe clearance shall be 30 inches (760 mm) wide minimum.

R405.3 *Knee Clearance.* Knee clearance shall comply with R405.3.

R405.3.1 *General.* Space under an *element* between 9 inches (230 mm) and 27 inches (685 mm) above the ground surface shall be considered knee clearance and shall comply with R405.3.

R405.3.2 *Maximum Depth.* Knee clearance shall extend 25 inches (635 mm) maximum under an *element* at 9 inches (230 mm) above the ground surface.

R405.3.3 *Minimum Required Depth.* Where knee clearance is required under an *element* as part of a clear space, the knee clearance shall be 11 inches (280 mm) deep minimum at 9 inches (230 mm) above the ground surface, and 8 inches (205 mm) deep minimum at 27 inches (685 mm) above the ground surface.

R405.3.4 *Clearance Reduction.* Between 9 inches (230 mm) and 27 inches (685mm) above the ground surface, the knee clearance shall be permitted to reduce at a rate of 1 inch (25 mm) in depth for each 6 inches (150 mm) in height.

R405.3.5 *Width.* Knee clearance shall be 30 inches (760 mm) wide minimum.

R406 Reach Ranges

R406.1 *General.* Reach ranges shall comply with R406.

R406.2 *Reach Range Limits.* For forward and parallel approaches, the high reach shall be 48 inches (1220 mm) maximum and the low reach shall be 15 inches (380 mm) minimum above the ground surface.

R406.3 *Obstructions.* Obstructed reach shall comply with R406.3.

R406.3.1 *Forward Reach.* Where the clear space is configured solely for a forward approach to an *element,* obstructions shall not be permitted between the clear space and the *element* for a forward reach.

R406.3.2 *Side Reach.* Where a clear space is configured for a parallel approach to an *element,* an obstruction shall be permitted between the clear space and the *element* where the depth of the obstruction is 10 inches (255 mm) maximum and the height of the obstruction is 34 inches (865 mm) maximum.

R407 Ramps

R407.1 *General. Ramps* shall comply with R407. R407 does not apply to *curb*

ramps or *pedestrian access routes* following the *grade* established for the adjacent *street* consistent with the requirements of R302.4.1.

R407.2 *Running Slope.* The *running slope* of each *ramp* run shall be 1:12 (8.3%) maximum.

R407.3 *Cross Slope.* The *cross slope* of *ramp* runs shall be 1:48 (2.1%) maximum.

R407.4 *Clear Width.* The clear width of a *ramp* run shall be 48 inches (1220 mm) minimum. Where handrails are provided, the clear width between handrails shall be 48 inches (1220 mm) minimum.

Exception: Where a *ramp* only serves a *building* entrance, the clear width of the *ramp* run shall be permitted to be 36 inches (915 mm) minimum. Where handrails are provided, the clear width between handrails shall be permitted to be 36 inches (915 mm) minimum.

R407.5 *Rise.* The rise for any *ramp* run shall be 30 inches (760 mm) maximum.

R407.6 *Landings. Ramps* shall have landings at the top and the bottom of each *ramp* run. Landings shall comply with R407.6.

R407.6.1 *Slope.* Landing slopes shall be 1:48 (2.1%) maximum parallel and perpendicular to the *ramp running slope.*

R407.6.2 *Width.* The landing clear width shall be at least as wide as the widest *ramp* run leading to the landing.

R407.6.3 *Length.* The landing clear length shall be 60 inches (1525 mm) long minimum.

R407.6.4 *Change in Direction. Ramps* that change direction between runs at landings shall have a clear landing 60 inches (1525 mm) minimum by 60 inches (1525 mm) minimum.

R407.7 *Surfaces.* Surfaces of *ramp* runs and landings shall comply with R302.6, except that changes in level are not permitted.

R407.8 *Handrails. Ramp* runs with a rise greater than 6 inches (150 mm) shall have handrails complying with R409.

R407.9 *Edge Protection.* Edge protection complying with R407.9.1 or R407.9.2 shall be provided on each side of *ramp* runs and each side of *ramp* landings except those serving an adjoining ramp run, stairway, or other *pedestrian circulation path.*

R407.9.1 *Extended Ramp Surface.* The surface of the *ramp* run or landing shall extend 12 inches (305 mm) minimum beyond the inside face of a handrail complying with R409.

R407.9.2 *Curb or Barrier.* A *curb* that is 4 inches (100 mm) high minimum, or a barrier that prevents the passage of a 4-inch (100 mm) diameter sphere, where any portion of the sphere is within 4 inches (100 mm) of the surface of the *ramp run* or landing, shall be provided.

R408 Stairs

R408.1 *General. Stairs* shall comply with R408.

R408.2 *Treads and Risers.* All steps on a flight of *stairs* shall have uniform riser heights and uniform tread depths. Risers shall be 4 inches (100 mm) high minimum and 7 inches (180 mm) high maximum. Treads shall be 11 inches (280 mm) deep minimum.

R408.3 *Open Risers.* Open risers are not permitted.

R408.4 *Tread Surface. Stair* treads shall comply with R302.6, except that changes in level are not permitted.

Exception: Treads shall be permitted to have a slope not steeper than 1:48 (2.1%).

R408.5 *Nosings.* The radius of curvature at the leading edge of the tread shall be ½ inch (13 mm) maximum. Nosings that project beyond risers shall have the underside of the leading edge curved or beveled. Risers shall be permitted to slope under the tread at an angle of 30 degrees maximum from vertical. The permitted projection of the nosing shall extend 1½ inches (38 mm) maximum over the tread below.

R408.6 *Visual Contrast.* The leading edge of each step tread and top landing shall be marked by a stripe. The stripe shall be 1 inch (25 mm) wide minimum and shall contrast visually with the rest of the step tread or circulation path surface either light-on-dark or dark-on-light.

R408.7 *Handrails. Stairs* shall have handrails complying with R409.

R409 Handrails

R409.1 *General.* Handrails required at *ramps* and *stairs,* and handrails provided on *pedestrian circulation paths* shall comply with R409. R409 does not apply to *curb ramps.*

R409.2 *Where Required.* Handrails shall be provided on both sides of *ramps* and *stairs.*

R409.3 *Continuity.* Handrails shall be continuous within the full length of each *ramp* run or *stair* flight. Inside handrails on switchback or dogleg *ramps* and *stairs* shall be continuous between *ramp* runs or *stair* flights.

R409.4 *Height.* The top of gripping surfaces of handrails shall be 34 inches (865 mm) minimum and 38 inches (965 mm) maximum vertically above walking surfaces, *ramp* surfaces, and *stair* nosings. Handrails shall be at a consistent height above walking surfaces, *ramp* surfaces, and *stair* nosings.

R409.5 *Clearance.* Clearance between handrail gripping surfaces and adjacent surfaces shall be 1½ inches (38 mm) minimum.

R409.6 *Gripping Surface.* Handrail gripping surfaces shall be continuous along their length and shall not be obstructed along their tops or sides. The bottoms of handrail gripping surfaces shall not be obstructed for more than 20 percent of their length. Where provided, horizontal projections shall occur 1½ inches (38 mm) minimum below the bottom of the handrail gripping surface.

R409.7 *Cross Section.* Handrail gripping surfaces shall have a cross section complying with R409.7.1 or R409.7.2. Where expansion joints are necessary for large spans of handrails, the expansion joint cross section is permitted to be smaller than the specified cross section diameters for 1 inch (25 mm) maximum in length.

R409.7.1 *Circular Cross Section.* Handrail gripping surfaces with a circular cross section shall have an outside diameter of 1¼ inches (32 mm) minimum and 2 inches (51 mm) maximum.

R409.7.2 *Non-Circular Cross Section.* Handrail gripping surfaces with a non-circular cross section shall have a perimeter dimension of 4 inches (100 mm) minimum and 6¼ inches (160 mm) maximum, and a cross-section dimension of 2¼ inches (57 mm) maximum.

R409.8 *Surfaces.* Handrail gripping surfaces and any surfaces adjacent to them shall be free of sharp or abrasive *elements* and shall have rounded edges.

R409.9 *Fittings.* Handrails shall not rotate within their fittings. Where expansion joints are necessary for large spans of handrails, the expansion joint is permitted to rotate in its fitting.

R409.10 *Handrail Extensions.* Handrail gripping surfaces shall extend beyond and in the same direction of *ramp* runs and *stair* flights in accordance with R409.10. Handrail extensions shall not extend into the *roadway or pedestrian circulation path.* In *alterations,* if handrail extensions complying with R409.10 would reduce the clear width of a *pedestrian access route,* they shall extend as far as possible without reducing the clear width of the *pedestrian access route.*

Exception: Extensions shall not be required for continuous handrails at the inside turn of switchback or dogleg *ramps* and *stairs.*

R409.10.1 *Top and Bottom Extension at Ramps. Ramp* handrails shall extend horizontally above the landing for 12 inches (305 mm) minimum beyond the top and bottom of *ramp* runs. Extensions shall return to a wall, guard, or the landing surface, or shall be continuous to the handrail of an adjacent *ramp* run.

R409.10.2 *Top Extension at Stairs.* At the top of a *stair* flight, handrails shall extend horizontally above the landing for 12 inches (305 mm) minimum beginning directly above the first riser nosing. Extensions shall return to a wall, guard, or the landing surface, or shall be continuous to the handrail of an adjacent *stair* flight.

R409.10.3 *Bottom Extension at Stairs.* At the bottom of a *stair* flight, handrails shall extend at the slope of the *stair* flight for a horizontal distance at least equal to one tread depth beyond the last riser nosing. Extensions shall return to a wall, guard, or the landing surface, or shall be continuous to the handrail of an adjacent *stair* flight.

R410 Visual Characters on Signs

R410.1 *General.* Visual characters on signs shall comply with R410.

R410.2 *Finish and Contrast.* Characters and their background shall have a non-glare finish. Characters shall contrast with their background with either light characters on a dark background or dark characters on a light background.

R410.3 *Case.* Characters shall be uppercase or lowercase or a combination of both.

R410.4 *Style.* Characters shall be conventional in form. Characters shall not be italic, oblique, script, highly decorative, or of other unusual forms.

R410.5 *Character Proportions.* Characters shall be selected from fonts where the width of the uppercase letter ''O'' is 55 percent minimum and 110 percent maximum of the height of the uppercase letter ''I''.

R410.6 *Character Height.* Minimum character height shall comply with Table R410.6. Viewing distance shall be measured

as the horizontal distance between the character and an obstruction preventing further approach towards the sign. Character height shall be based on the uppercase letter ''I''.

R410.6 VISUAL CHARACTER HEIGHT

Height to finish surface from baseline of character	Horizontal viewing distance	Minimum character height
40 inches (1015 mm) to less than or equal to 70 inches (1780 mm).	Less than 72 inches (1830 mm) ...	5/8 inch (16 mm).
40 inches (1015 mm) to less than or equal to 70 inches (1780 mm).	72 inches (1830 mm) and greater	5/8 inch (16 mm), plus ⅛ inch (3.2 mm) per foot (305 mm) of viewing distance above 72 inches (1830 mm).
Greater than 70 inches (1780 mm) to less than or equal to 120 inches (3050 mm).	Less than 180 inches (4570 mm)	2 inches (51 mm).
Greater than 70 inches (1780 mm) to less than or equal to 120 inches (3050 mm).	180 inches (4570 mm) and greater	2 inches (51 mm), plus ⅛ inch (3.2 mm) per foot (305 mm) of viewing distance above 180 inches (4570 mm).
Greater than 120 inches (3050 mm)	Less than 21 feet (6400 mm)	3 inches (75 mm).
Greater than 120 inches (3050 mm)	21 feet (6400 mm) and greater	3 inches (75 mm), plus ⅛ inch (3.2 mm) per foot (305 mm) of viewing distance above 21 feet (6400 mm).

R410.7 *Stroke Thickness.* Stroke thickness of the uppercase letter ''I'' shall be 10 percent minimum and 30 percent maximum of the height of the character.

R410.8 *Character Spacing.* Character spacing shall be measured between the two closest points of adjacent characters, excluding word spaces. Spacing between individual characters shall be 10 percent minimum and 35 percent maximum of character height.

R410.9 *Line Spacing.* Spacing between the baselines of separate lines of characters within a message shall be 135 percent minimum and 170 percent maximum of the character height.

R410.10 *Height from Ground Surface.* Visual characters shall be 40 inches (1015 mm) minimum above the ground surface.

R411 International Symbol of Accessibility

R411.1 *General.* The International Symbol of Accessibility shall comply with R411 and Figure R411.

R411.2 *Finish and Contrast.* The symbol and its background shall have a non-glare finish. The symbol shall contrast with its background with either a light symbol on a dark background or a dark symbol on a light background.

Figure R411—International Symbol of Accessibility

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Part III

Commodity Futures Trading Commission

17 CFR Parts 39 and 140
Reporting and Information Requirements for Derivatives Clearing Organizations; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 39 and 140

RIN 3038–AF12

Reporting and Information Requirements for Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending certain reporting and information regulations applicable to derivatives clearing organizations (DCOs). These amendments, among other things, update information requirements associated with commingling customer funds and positions in futures and swaps in the same account, revise certain daily and event-specific reporting requirements in the regulations, and codify in an appendix the fields that a DCO is required to provide on a daily basis under the regulations. In addition, the Commission is adopting amendments to certain delegation provisions in its regulations.

DATES:

Effective date: The effective date for this final rule is September 7, 2023.

Compliance date: DCOs must comply with the amendments to § 39.19 and appendix C by February 10, 2025; DCOs must comply with the amendments to all other rules by September 7, 2023.

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SUPPLEMENTARY INFORMATION:

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I. Background

In January 2020, the Commission adopted amendments to its part 39 regulations in order to, among other things, update DCO reporting requirements.[1] The Commission subsequently became aware of issues with the amended regulations that would benefit from further change or clarification. Thus, in November 2022, the Commission proposed to amend certain reporting and information regulations applicable to DCOs to address those issues.[2]

The Commission received a total of 11 substantive comment letters in response to the proposal.[3] After considering the comments, the Commission is largely adopting the rules as proposed, although there are some proposed changes that the Commission has determined to either revise or decline to adopt.

In the discussion below, the Commission highlights topics of particular interest to commenters and discusses comment letters that are representative of the views expressed on those topics. The discussion does not explicitly respond to every comment submitted; rather, it addresses the most significant issues raised by the proposed rulemaking and analyzes those issues in the context of specific comments.

II. Amendments to § 39.13(h)(5)

Regulation § 39.13(h)(5) requires a DCO to have rules that require its clearing members to maintain current written risk management policies and procedures; ensure that it has the authority to request and obtain information and documents from its clearing members regarding their risk management policies, procedures, and practices; and require its clearing members to make information and documents regarding their risk management policies, procedures, and practices available to the Commission upon the Commission's request. It also requires the DCO to review the risk management policies, procedures, and practices of each of its clearing members on a periodic basis.

It is the Commission's view that these requirements are unnecessary for clearing members that clear only fully collateralized positions, as fully collateralized positions do not expose the DCO to any credit or default risk stemming from the inability of a clearing member to meet a margin call or a call for additional capital. Therefore, and consistent with other amendments to part 39 to address fully collateralized positions,[4] the Commission proposed new § 39.13(h)(5)(iii), which would provide that a DCO that clears fully collateralized positions may exclude from the requirements of paragraphs (h)(5)(i) and (ii) those clearing members that clear only fully collateralized

[1] Derivatives Clearing Organization General Provisions and Core Principles, 85 FR 4800 (Jan. 27, 2020), available at *https://www.federalregister.gov/documents/2020/01/27/2020-01065/derivatives-clearing-organization-general-provisions-and-core-principles.*

[2] Reporting and Information Requirements for Derivatives Clearing Organizations, 87 FR 76698 (Dec. 15, 2022), available at *https://www.federalregister.gov/documents/2022/12/15/2022-26849/reporting-and-information-requirements-for-derivatives-clearing-organizations.*

[3] The Commission received comment letters submitted by the following: Better Markets; Chris Barnard; CME Group, Inc. (CME); Eurex Clearing AG (Eurex); Futures Industry Association (FIA); The Global Association of Central Counterparties (CCP12); Google Cloud (Google); Intercontinental Exchange, Inc. (ICE); Nodal Clear, LLC (Nodal); The Options Clearing Corporation (OCC); and World Federation of Exchanges (WFE). All comments referred to herein are available on the Commission's website, at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7343.*

[4] *See* 85 FR 4800, 4803–4805.

positions.[5] The requirements would still apply to clearing members that clear fully collateralized positions but also clear margined products.[6] The Commission did not receive any comments on the proposed changes to § 39.13(h)(5), and is therefore adopting the changes as proposed.

III. Amendments to § 39.15(b)(2)

Regulation § 39.15(b)(2) sets forth procedures a DCO must follow to obtain Commission approval to commingle customer positions and associated funds from two or more of three separate account classes—futures and options, foreign futures and options, and swaps—in either a futures or cleared swaps customer account. The Commission proposed several amendments to § 39.15(b)(2) to better reflect the information that the Commission needs to evaluate such a request.

OCC, Eurex, ICE, and Better Markets supported the proposal. OCC stated that the changes appear reasonably calibrated to achieve the Commission's policy objectives while providing useful guidance to DCOs on the required contents of a request. Eurex added that the proposed changes appropriately streamline the procedures and will help focus both DCOs seeking such relief, and the Commission in its review of such request for relief, on the information most relevant to a DCO's request.

Furthermore, recognizing that futures and swaps are typically commingled to allow for portfolio margining, the Commission proposed to add new § 39.15(b)(2)(vii) to require that a DCO provide an express confirmation that any portfolio margining will be allowed only as permitted under § 39.13(g)(4), which allows portfolio margining of positions only if the price risks with respect to such positions are ''significantly and reliably correlated.'' Although ICE generally supported the proposed changes to § 39.15(b)(2), ICE stated that the express confirmation under proposed new § 39.15(b)(2)(vii) is unnecessary, as § 40.5 already requires that a DCO analyze its proposal for compliance with the Commodity Exchange Act (CEA) and Commission regulations. The Commission notes, however, that because the DCO's submission would address commingling but not necessarily portfolio margining, the DCO's analysis may not take § 39.13(g)(4) into account. Thus, the Commission does not want approval of the submission to be misinterpreted as approval of the DCO's portfolio margining as well. Because a submission under § 40.5 is deemed approved by the Commission without any written form of approval, requiring the DCO to provide the express confirmation in § 39.15(b)(2)(vii) is meant to address that.

In response to the Commission's request for comment as to whether there is additional information that would be helpful to market participants and the public in evaluating a DCO's commingling rule submission, ICE does not believe that the Commission should require disclosure of additional information. ICE stated that the information already required, as proposed to be modified, will provide market participants with sufficient information to evaluate a commingling proposal.

In general, Better Markets believes the proposal would strengthen the existing requirements by requiring a DCO to provide not only an analysis of the risk characteristics of the products but also an analysis of any risk characteristics of products to be commingled that are *unusual in relation* to the other products the DCO clears, as well as how it plans to manage any identified risks. Better Markets stated that it supports this aspect of the proposal because adding the phrase ''unusual in relation to'' in § 39.15(b)(2)(ii) will allow the Commission and the public to better understand any increased risk posed to the DCO or its customers by the commingling of products that otherwise would be held in separate accounts. Better Markets further stated that this additional requirement will better enable the Commission to understand the DCO's ability to manage those risks. In response to a request for comment as to whether there is a better way to articulate this concept, Better Markets argued that the Commission should go a step further and specify that the analysis should cover products with margining, liquidity, default management, pricing, and volatility characteristics that differ from those currently cleared by the DCO. Better Markets believes this discussion is critical in the ever-changing derivatives markets, where new derivatives products are constantly being introduced. Better Markets urged the Commission to be forward-looking in its approach to receiving as much information as possible from a DCO's ''unusual in relation to'' analysis to determine whether to allow a DCO to commingle products in a single customer account. The Commission is persuaded that this provision should be more specific, and is therefore adding to § 39.15(b)(2)(ii) the requirement that a DCO's analysis address any characteristics that are unusual in relation to the other products cleared by the DCO, ''such as margining, liquidity, default management, pricing, or other risk characteristics.'' The Commission believes that this information would better assist the Commission in evaluating a DCO's request to commingle customer positions and its ability to manage any identified risks. The Commission is otherwise adopting the amendments to § 39.15(b)(2) as proposed, without any changes.[7]

IV. Amendments to § 39.18

Regulation § 39.18(g)(1) requires that a DCO promptly notify staff of the Division of Clearing and Risk (Division) of any hardware or software malfunction, security incident, or targeted threat that materially impairs, or creates a significant likelihood of material impairment of, automated system operation, reliability, security, or capacity. The Commission proposed to amend § 39.18(g)(1) to eliminate the materiality threshold, requiring DCOs to report all such events regardless of their magnitude. Better Markets supported the proposal to remove the materiality threshold, stating that both the Commission and DCOs would benefit from expanded reporting of such incidents. CME, OCC, ICE, Eurex, Nodal, CCP12, Google, and WFE opposed the proposal.

CCP12, CME, Eurex, ICE, Nodal, OCC, and WFE stated that the removal of the materiality threshold would lead to a significant increase in the number of reportable events, including events which have little or no impact on a DCO's operations or on market participants, or which are mitigated well before any impact, and thus of little or no value as the subject of a required notification. CCP12, CME, Eurex, Google, ICE, Nodal, OCC, and WFE commented that such an increase in reportable incidents would burden both DCOs and the Commission, and would

[5] By adopting this regulation, this requirement would be consistent with and would supersede a related interpretation issued by the Division of Clearing and Risk. *See* CFTC Letter No. 14–05 (Jan. 16, 2014).

[6] The Commission also proposed to combine paragraphs (h)(5)(i)(B) and (C) of § 39.13, which require, respectively, that a DCO have rules that: ensure that it has the authority to request and obtain information and documents from its clearing members regarding their risk management policies, and require its clearing members to make such information and documents available to the Commission upon request. These revisions are purely technical and are not meant to alter the requirements in any way.

[7] For a description of the proposed amendments to § 39.15(b)(2), see Reporting and Information Requirements for Derivatives Clearing Organizations (Dec. 15, 2022), supra note 2, at 76699–76700.

divert attention and resources away from incidents that deserve greater focus and planning, with little corresponding benefit to the Commission, the protection of market participants, or the risk management practices of DCOs. CCP12, CME, Google, and OCC further asserted that the proposal is inconsistent with notification regimes in analogous contexts, including similar Commission rules and reporting obligations to other agencies and authorities.

CCP12, CME, Eurex, ICE, Nodal, and OCC further stated that the Commission underestimated the increase in reporting obligations as a result of the proposal to eliminate the materiality threshold; CCP12, CME, and OCC similarly stated that the Commission underestimated the costs of such notifications. Such underestimates would, according to commenters, distort the Commission's cost-benefit considerations. The Commission received additional comments in opposition to the proposed removal of the materiality threshold, including statements regarding the costs and impacts on third-party contracts, the value of allowing DCOs to use their expertise to determine which events are material, and a request to alternatively allow for quarterly submission of reports for incidents deemed not material.

After considering the comments received, the Commission recognizes the concerns raised therein and declines at this time to adopt the proposal to remove the materiality threshold for the reporting of exceptional events under § 39.18(g). Better Markets supported the removal of the materiality threshold, stating that events might be material even when they do not have any effect on measurements often used to determine materiality, and that both the Commission and DCOs would benefit from clear reporting standards which would promote consistency in reporting across DCOs. However, given the rationale of comments opposed to the removal of the materiality threshold as described above, including arguments regarding increased cost, lack of informational benefit, and the volume of reports which would be required if the threshold were removed, and the lack of opportunity to solicit comment on potentially less costly or voluminous alternatives suggested by commenters, the Commission declines to move forward with the proposal at this time. The Commission understands that removing the materiality threshold altogether could result in a significant increase in the number of reportable events, including events which have little or no impact on a DCO's operations, or which are mitigated well before any impact, and thus could be of little or no value as the subject of a required notification. The Commission will continue to evaluate the effectiveness of the existing reporting standard in generating uniform and timely notification regarding events where notification would be of value to the Commission and will provide additional guidance, or further modify the standard, as appropriate. Better Markets also commented that the requirement in § 39.18(g) that notice of exceptional events be given ''promptly'' is vague and should be amended to a more specific timeframe in order to avoid undue delay in reporting. The Commission notes, however, that it did not propose to amend this requirement, as Commission staff has not had any issues with the timing of the notices that are made.

The Commission also proposed to amend § 39.18(g)(1) by adding ''operator error'' to the list of events that would require prompt notification to the Division. Better Markets expressed support for the addition of ''operator error'' to the list of potentially reportable events, and WFE, CME, OCC, and Nodal expressed opposition. Better Markets stated that ''operator error'' is appropriately included as an additional subject of reporting because such errors may impact or potentially impact the operation, reliability, security, or capacity of a DCO's automated systems. WFE, CME, OCC, CCP12, and Nodal expressed concern about the potential breadth of the term ''operator error,'' which is not defined in the regulation and which might be read to include de minimis, routine errors which would require reporting of events that have little or no impact on clearing and settlement functions and for which effective procedures are already in place to mitigate any potential impacts. OCC further stated that ''operator error'' might be read to include actions of clearing members or their agents and employees because they are responsible for providing information via applications, and OCC suggested adding certainty to the term ''operator error'' by providing examples.

After considering the comments received, the Commission recognizes the concerns raised therein and declines to adopt the proposal to include ''operator error'' to the list of events that would require prompt notification to the Division under § 39.18(g)(1). The Commission acknowledges that, as described by Better Markets, operator errors may impact a DCO's operations in the same way as other events described in § 39.18(g)(1). However, the Commission believes that such operator errors are already required to be reported under § 39.18(g)(1) as a ''security incident,'' which, as defined by § 39.18(a), is a cybersecurity or physical security event that actually jeopardizes or has a significant likelihood of jeopardizing automated system operation, reliability, security, or capacity, or the availability, confidentiality or integrity of data. The proposed addition of ''operator error'' was intended to specify this obligation more clearly. In light of comments which indicate that the proposal would result in confusion, particularly as to scope, the Commission will not adopt the proposal but will consider providing guidance, or further modifying § 39.18(g)(1), as appropriate.

The Commission further proposed to redesignate existing paragraph (g)(2) of § 39.18 as new paragraph (g)(3) (without any further revisions), and to move from existing paragraph (g)(1) to paragraph (g)(2) the requirement to report security incidents or threats (and not just ''targeted'' threats). Thus, as proposed, new § 39.18(g)(2) would require that a DCO promptly notify the Division of any security incident or threat that compromises or could compromise the confidentiality, availability, or integrity of any automated system or any information, services, or data, including, but not limited to, third-party information, services, or data, relied upon by the DCO in discharging its responsibilities.

Among comments received regarding this proposed amendment, OCC, Google, and ICE expressed opposition, and Better Markets commented in favor. Better Markets stated that non-targeted cyber attacks can be just as destructive as targeted attacks, and thus the reporting of non-targeted attacks may enhance the ability of the CFTC to assess emerging threats and alert DCOs. OCC, Google, and ICE stated that the inclusion of the language ''could compromise'' is overly broad and ambiguous and would dramatically increase the reach and burdens of the rule without providing regulatory benefit. OCC recommended removing ''could compromise'' from the proposal and stated that, as proposed, § 39.18(g)(2) would increase a DCO's costs of obtaining third-party services and may lead to termination of existing third-party relationships because of the additional costs and potential liability facing third parties as a result of the proposal. Google also expressed opposition to the removal of the ''targeted'' qualifier for threats, stating that it would result in overbroad and inefficient reporting. Google

additionally recommended that paragraph (g)(2) also incorporate a probabilistic reporting trigger by, for example, replacing ''could'' with ''reasonably likely to'' in order to exclude speculative incidents. After considering the comments received, and in light of the broad scope of attacks which comments indicate would be required to be reported under the proposal, the Commission recognizes the concerns raised therein and declines to adopt new § 39.18(g)(2) as proposed but will consider providing guidance, or further modifying § 39.18(g), as appropriate.

Finally, in connection with the proposed amendments to § 39.18(g), the Commission proposed to amend § 39.18(a) to define ''hardware or software malfunction'' and ''automated system.'' WFE, CME, OCC, and CCP12 expressed opposition to the proposed definition of ''automated system,'' and OCC, CCP12, Eurex and Nodal expressed opposition to the proposed definition of ''hardware or software malfunction.'' WFE, CME, OCC, and CCP12 stated that the definition of ''automated system'' is broad and overinclusive, and that most of a DCO's ancillary support systems would fall within the definition, resulting in a significant increase in reporting obligations under § 39.18(g) that are not related to a DCO's core clearing and settlement functions. OCC, CCP12, Eurex, and Nodal expressed opposition to the definition of ''hardware or software malfunction,'' stating that it is overly broad and would result in a significant increase in reach and burden of reporting requirements with little corresponding regulatory value to the Commission. OCC recommended that both definitions be refined to avoid reporting of incidents that pose no significant risk to a DCO's core functions and which do not impact or narrowly impact market participants. OCC further recommended limiting the definitions to systems or events that impact a DCO's market activities that are subject to the Commission's jurisdiction. After considering the comments received, the Commission recognizes the concerns raised therein and declines to adopt the proposed definitions for ''hardware or software malfunction'' and ''automated system'' but will consider providing guidance defining these terms, or further modifying § 39.18(g), as appropriate.

Based on the concerns raised in the comments received, the Commission is not adopting any of the proposed changes to § 39.18(g). Although the Commission continues to believe that the considerations that motivated the initial proposal are valid, it also recognizes the concerns and alternatives raised by commenters as requiring additional analysis that precludes adopting the proposal at this time. To that end, the Commission may choose to instead provide guidance to address these considerations, or to propose new modifications to § 39.18(g) reflecting both the motivations for the proposed rule and the concerns raised by commenters.

V. Amendments to § 39.19(c)

A. Daily Reporting of Variation Margin and Cash Flows—§ 39.19(c)(1)(i)(B) and (C)

Regulation § 39.19(c)(1) requires a DCO to report to the Commission on a daily basis initial margin, variation margin (VM), cash flow, and position information for each clearing member, by house origin, by each customer origin, and by individual customer account. The Commission proposed to amend § 39.19(c)(1)(i)(B) and (C) to remove the requirement that a DCO report daily VM and cash flows by individual customer account.[8]

FIA, CCP12, Eurex, OCC, and ICE supported the proposal; no commenters opposed it. CCP12 and ICE stated that many DCOs do not possess VM and cash flow information at the customer level. OCC confirmed that it does not collect VM and cash flow information at the individual customer account level in the ordinary course of business. FIA stated that DCOs would need to develop and implement new systems, processes, and controls, at significant cost, to accurately report customer level VM and cash flow information. FIA stated that because clearing members that are futures commission merchants (FCMs) currently do not provide DCOs with daily customer level VM and cash flow information, FCM clearing members would incur substantial upfront and ongoing costs to provide this information to DCOs. OCC stated that collecting this information would impose significant costs on OCC and its clearing members. FIA stated that daily reporting of customer VM and cash flow information would not be of meaningful benefit to the Commission, DCOs, clearing members or market participants, particularly when weighed against the associated costs. OCC believes that because it engages in VM netting at the customer origin level, VM and cash flow information at the individual customer account level would not necessarily reflect OCC's actual exposure to its clearing members.

In response to the Commission's request for comment on whether there are certain products or market segments where it may be appropriate to retain customer-level reporting requirements, FIA and ICE stated that there is no basis to differentiate between product categories, with FIA emphasizing the cost to DCOs and FCMs of developing new reporting processes to report VM and cash flow information by individual customer account, and the limited marginal benefit of reporting such information. Because many DCOs currently do not receive VM and cash flow information at the customer level, and a requirement to collect this information would impose significant costs on DCOs, the Commission is removing this requirement by adopting the amendments to § 39.19(c)(1)(i)(B) and (C) as proposed.

B. Codifying the Existing Reporting Fields for the Daily Reporting Requirements in New Appendix C to Part 39

The Commission proposed to add a new appendix to part 39 of the Commission's regulations that would codify the existing reporting fields for the daily reporting requirements in § 39.19(c)(1). Until now, the instructions, reporting fields, and technical specifications for daily reporting have been contained in the Reporting Guidebook, which the Division provides to DCOs to facilitate reporting pursuant to § 39.19(c)(1).[9] The Commission proposed to add a new appendix C to part 39 that would set out the relevant contents of the Reporting Guidebook, specifically the reporting fields for which a DCO is required to provide data on a daily basis, as well as additional optional data that DCOs may provide.[10] The Commission did not propose to codify the non-substantive technical and procedural aspects of the Reporting Guidebook that address the

[8] DCOs currently are not reporting VM and cash flow information by each individual customer account because the Division issued a no-action letter addressing compliance with the amended requirements in § 39.19(c)(1). *See* CFTC Letter No. 21–01 (Dec. 31, 2020); *see also* CFTC Letter No. 21–31 (Dec. 22, 2021); CFTC Letter No. 22–20 (Dec. 19, 2022). The amendments to § 39.19(c)(1)(i)(B) and (C) eliminate the requirement for which additional time was provided in the staff letter.

[9] Commodity Futures Trading Commission Guidebook for Part 39 Daily Reports, Version 1.0.1, Dec. 10, 2021 (Reporting Guidebook).

[10] Appendix C specifies whether a field is mandatory, optional, or conditional. In this context, fields that are ''conditional'' would be reported by the DCO if it collects or calculates the particular data element and uses the data element in the normal course of its risk management and operations, or if the field is subject to any row-level validation rule described in the Reporting Guidebook.

format and manner in which DCOs provide this information.[11]

Eurex, ICE, CCP12, and OCC supported the proposal to codify the existing daily reporting fields in new appendix C to part 39. Better Markets opposed the proposal, arguing that codifying the Reporting Guidebook will make it more difficult for the Commission to quickly update the reporting fields in response to new products or other financial innovations. In response to Better Markets, the Commission notes that it has drawn on its experience of more than a decade since § 39.19(c)(1) was first adopted to make certain it will receive the data it intended to be provided under this provision. However, in the unlikely event that the Commission identifies additional data it needs, the Commission could, if necessary, request from a DCO ''information related to its business as a clearing organization, including information relating to trade and clearing details'' pursuant to § 39.19(c)(5)(i). The Commission is therefore adopting the proposal to add new appendix C to part 39 of the Commission's regulations, to codify the existing reporting fields in the Reporting Guidebook, which includes both required and optional fields.[12]

C. Additional Reporting Fields for the Daily Reporting Requirements—§ 39.19(c)(1)

The Commission proposed to include in appendix C several new fields that do not appear in the Reporting Guidebook but would further implement the existing daily reporting requirements under § 39.19(c)(1). Eurex generally supported the proposal, while CME opposed it, stating that the Commission severely underestimated the time and costs associated with adding the proposed new fields, and that the costs to DCOs substantially outweigh the benefits that additional reporting provides to the Commission. The new fields and comments received are discussed in greater detail below.

1. Risk Metrics

The Commission proposed to include in appendix C a series of new fields applicable only to interest rate swaps, including the delta ladder, gamma ladder, vega ladder, zero rate curves, and yield curves that a DCO uses in connection with managing risks associated with interest rate swap positions. The Commission did not receive any comments on this proposal and therefore is adopting these fields as proposed. However, the Commission is amending the title of this section of appendix C to change it from ''Greek Ladder Reporting'' to ''Risk Metric Ladder Reporting'', which better reflects the contents of the section, since rate and yield curves technically are not ''Greeks,'' and to account for the possible addition of other non-Greek risk metrics in the future.

2. Timing of Variation Margin Calls and Payments

The Commission proposed to require a DCO to report timing information about VM calls and payments, including the time and amount of each VM call to each clearing member, the time and amount that VM is received from each clearing member, and the time and amount that VM is paid to each clearing member. There were no comments in support of the proposal.

CME, ICE, and OCC opposed the proposal, arguing that it would impose costs on DCOs and settlement banks because they would need to build systems for daily automated reporting of payment flow timestamps. ICE and OCC stated that the manner in which DCOs make and collect a margin call is unique to each DCO based on its own processes and, as a result, the information that would be reported under these proposed fields only would reflect individual DCOs' practices, with the information being too bespoke to be useful for surveillance. OCC further stated that clearing member payments to or from OCC at settlement times are made on a net basis, taking into account multiple categories of pay or collect obligations, in addition to the mark-to-market amounts. CME stated that not all settlement banks communicate with DCOs in automated and digestible file formats that can be used for daily reporting. Echoing comments by CME, CCP12 recommended that the Commission consider whether this proposal would require settlement banks to develop and deploy automated systems to communicate timestamps to DCOs, which could make compliance with this requirement unnecessarily complex. CME also stated that the information would not be useful for the Commission in real-time monitoring of DCO liquidity issues because it would be reported one day later, and because the timing of payments can vary from day to day for reasons unrelated to liquidity issues or other risks to DCOs or their clearing members. ICE stated that specific timing information is generally irrelevant, so long as the amounts are paid before the applicable DCO's deadline, and that the exact timing of payments is not indicative of the DCO's liquidity position or its ability to manage liquidity risks.

As an alternative to the proposal, CME recommended that the Commission require DCOs to report when clearing members are sufficiently late making VM payments that it results in an impactful delay to the completion of the settlement cycle. ICE stated that because the proposal does not account for different approaches to the payment and netting of VM, the proposed fields would need to be revised to reflect the variety of ways that DCOs deal with VM payments. CCP12 commented that reporting VM calls and payment as of the beginning, middle, and end of the day would avoid confusion that may accompany reporting of individual cash flows, and would simplify DCOs' reporting obligations.

The Commission understands that compliance with this requirement would be unnecessarily complex, given that the manner in which DCOs make and collect a margin call is unique to each DCO based on its own processes. The Commission is therefore persuaded by the comments that the timing information would not be particularly useful to it and therefore has determined not to require DCOs to report this information at this time.

3. Trade Date

The Commission proposed to require a DCO that clears interest rate swaps, forward rate agreements, or inflation index swaps to include in its daily reports the actual trade date for each position along with an event description. CCP12 supported the proposal, but requested that the Commission clarify whether the term ''actual trade date'' refers to the economically agreed date or the execution date. CME opposed the proposal, stating that the proposed requirement is duplicative of the recent amendments to part 45 of the Commission's regulations, under which DCOs already provide this information to the Commission. CME also stated that numerous dates for these products exist in the over-the-counter registers, and requested clarification as to which date should be reported. The Commission is adopting the proposal, albeit with one change. In response to commenters' requests for clarification, the Commission is modifying the description of ''trade date'' to read, the ''[d]ate a transaction was originally executed, resulting in the generation of

[11] The Division will issue a new version of the Reporting Guidebook that will contain only the non-substantive technical and procedural aspects to facilitate daily reporting by DCOs.

[12] The Commission is adding to § 39.19(c)(1)(i) a reference to appendix C to specify that daily reports are required to be submitted in accordance with the data fields set forth in the appendix.

a new USI [unique swap identifier]. For clearing swaps, the date when the DCO accepts the original swap.'' In response to CME's comment regarding part 45 reporting, the Commission acknowledges some overlap between the information DCOs report pursuant to part 45 and the information reported pursuant to § 39.19(c)(1), but notes that the two data streams have different albeit complimentary regulatory and supervisory uses within the Commission,[13] and are reported using different underlying technical specifications, sometimes with nuanced differences between substantive or technical definitions of individual data points, which then can affect whether and how the data changes in response to events, such as a compression exercise for swaps.

4. File Completeness

The Commission proposed to require a DCO to include in its daily reports information that reflects that the daily report is complete, with completeness information submitted either as a manifest file that contains a list of files sent by the DCO, or by including the file number and count information embedded within each report, where each Financial Information eXchange Markup Language (FIXML) file would indicate its position in the sequence of files submitted that day, *e.g.,* file 1 of 10. No commenters opposed the proposal. Eurex and Nodal supported the proposal that file completeness be reflected in a manifest file and opposed the proposal that files be sequentially numbered to indicate completeness. Eurex and Nodal both explained that submitting a manifest file is more efficient operationally. Specifically, Eurex noted that when files are sequentially numbered to reflect completeness, all of the files would need to be renumbered and resubmitted any time a file is added or removed. Nodal made a similar observation, and also noted that a manifest file can be submitted after the DCO ensures that its reporting for the day is complete and the DCO confirms internally that there will be no changes. OCC stated that sequential file numbering to indicate completeness is preferable to requiring a manifest file, because the former is more efficient given the manner in which OCC submits its daily reports. OCC requested that the Commission provide DCOs with the flexibility to use either a manifest file or sequential file numbering to indicate completeness, so that DCOs could use the method that works best with their processes.

Although the Commission acknowledges that for some DCOs, such as OCC, sequential file numbering to indicate completeness may be preferable, the Commission agrees with Eurex and Nodal that submitting a manifest file is operationally more efficient, especially for those DCOs that submit more complex or voluminous reports. Similarly, to ensure consistency and uniformity across all reports received, the Commission declines to provide DCOs with the option to choose between sequential file numbering and a manifest file to indicate completeness. Therefore, the Commission is adopting the proposal to require a DCO to include in its daily reports a manifest file that reflects that the daily report is complete.

5. Settlement Information for Contracts With No Open Interest

The Commission requested comment on whether it should require that a DCO provide the current settlement prices and related information published by DCMs for futures and options contracts with no open interest. No commenters supported this proposal.

CCP12, Nodal, OCC, ICE, and CME opposed the proposal. CCP12 stated that DCOs already calculate and report settlement prices for contracts with no open interest where they believe those prices provide a benefit to DCOs themselves or the marketplace, and requiring DCOs to report such data for all contracts with no open interest would be of questionable value for analytical or regulatory purposes. CCP12 recommended that DCOs continue to be afforded the discretion to choose to report such information on a voluntary basis. Nodal stated that, in addition to being impractical, the proposal would duplicate information that DCMs are required to report pursuant to part 16 of the Commission's regulations. CME argued that reporting data that is unused and not based on observed open interest would not help the risk surveillance process because it does not represent an actual transaction, and ICE argued that the information would not be reliable because it is not based on actual trading activity. OCC and ICE stated that this information would be of limited utility, with OCC adding that this information relates to contracts that do not impact the DCO's risk profile. CME stated that exchanges and DCOs list new products daily and that this reporting requirement would add complexity to the listing process. CME also questioned whether the Commission has the authority to require this information if it is not clear that this information is necessary to conduct oversight of the DCO since it does not reflect actual trades that are settled or cleared. Similarly, OCC argued that a requirement to report such information could be inconsistent with the scope of reporting required by DCO Core Principle L, which requires a DCO to disclose publicly and to the Commission daily settlement prices, volume, and open interest for each contract settled or cleared by the DCO. CME noted that an alternative would be to require reporting of contracts with no open interest, but without requiring pricing information.

The Commission is persuaded by the comments that settlement information for contracts with no open interest would not be particularly useful to it, given that it does not impact a DCO's risk profile, among other things. Therefore, the Commission has determined not to adopt the proposed requirement at this time.

D. Non-Substantive and Technical Edits to Appendix C to Part 39

The Commission has made a variety of non-substantive and technical edits to appendix C to part 39. Some of the edits are intended to ensure that, to the extent that a requirement appears in multiples places in appendix C, its title and description are uniform throughout. Other edits include the deletion of duplicate fields, the deletion of surplus language, formatting instructions, or technical instructions, or the replacement of abbreviations with complete words. Other edits rename fields or clarify, simplify, or rephrase descriptions. For example, the ''Universal Product Identifier'' field is being renamed ''Unique Product Identifier'' (UPI), and its description is being changed from ''Uniquely identifies the product of a security using ISO 4914 standard, Unique Product Identifier'' to ''[a] unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to 17 CFR 45.7.'' Another example is that the description for the Implied Volatility field is being changed from ''implied volatility'' to ''[t]he implied volatility and quotation style for the contract, typically in natural log percent or index points.''

[13] The information reported under § 39.19(c)(1) is intended to ensure that the Division is informed regarding both the risks that are present at each DCO as well as the DCO's management of those risks, which pursuant to § 39.19(c)(1)(ii) includes information about the risks associated the futures, options, swaps, and securities positions cleared at the DCO, in contrast with the part 45 data, which includes highly granular trade data related to both cleared and uncleared swaps.

E. Individual Customer Account Identification Requirements—§ 39.19(c)(1)(i)(A) and (D)

Regulation § 39.19(c)(1)(i)(D) requires the daily reporting of end-of-day positions for each clearing member, by house origin and by each customer origin, and by each individual customer account. In January 2020, the Commission amended this provision to require, among other things, that a DCO identify each individual customer account using both a legal entity identifier (LEI) and any internally-generated identifier, where available, within each customer origin for each clearing member.[14] The Commission intended that this requirement apply to all instances within § 39.19(c)(1) where a DCO is required to report information at the individual customer account level. However, this may not have been clear because paragraph (c)(1)(i)(D) addresses only the reporting of end-of-day positions. Therefore, the Commission proposed to amend § 39.19(c)(1)(i)(A) to clarify that the requirement that a DCO identify each individual customer account by LEI and internally-generated identifier was not intended to be limited to end-of-day position reporting under paragraph (c)(1)(i)(D), but rather to apply to all instances in § 39.19(c)(1) where a DCO is required to report information at the individual customer account level. Furthermore, the Commission also proposed a technical change to clarify that the requirement that a DCO identify each individual customer account using both an LEI and any internally-generated identifier, ''where available,'' is intended to mean this information is required, in either case, only if the DCO has the information associated with an account.

CCP12, OCC, CME, and Eurex supported this proposal. Eurex noted that in Europe there is no requirement that LEIs be provided to DCOs and that, consequently, not all Multilateral Trading Facilities or Approved Trade Sources transmit LEIs to DCOs. On the other hand, CME observed that LEI reporting to DCOs has become more routine. ICE opposed the requirement that a DCO identify each individual customer account by LEI because extensive systems changes would be required to add identifiers to the reportable data, and since DCOs are unlikely to have customer-level LEI information, the costs associated with implementing this requirement outweigh the benefits. In response to ICE's comment, the Commission further emphasizes that the requirement that a DCO identify each individual customer account using both an LEI and any internally-generated identifier, ''where available,'' is intended to mean this information is required, *in either case,* only when the DCO has the information associated with an account, and the information is both maintained and associated with the account in a reportable format, such that reporting will not impose a significant additional burden on the DCO.

F. Daily Reporting of Margin Model Backtesting—§ 39.19(c)(1)(i)

The Commission proposed to add to § 39.19(c)(1)(i) a requirement that a DCO include in its daily reports the results of the margin model backtesting that a DCO is required to perform daily pursuant to § 39.13(g)(7)(i). The Commission also proposed to add to new appendix C to part 39 the data fields it believes would be relevant and necessary to capture the backtesting results that would have to be reported under this provision. The Commission is adopting as proposed the amendment to § 39.19(c)(1)(i) to require that a DCO include in its daily reports its margin model backtesting results. As explained below, in response to concerns expressed by commenters, the Commission is modifying certain of the proposed data fields in new appendix C for reporting margin model backtesting results.[15]

Chris Barnard supported the proposal, stating that daily reporting of backtesting results will improve the Commission's oversight of DCOs and should work to increase the accuracy, relevance, and effectiveness of DCOs' margin calculations. Nodal generally supported requiring DCOs to provide the Commission with daily backtesting results, noting that it already provides such information to the Commission on a voluntary basis. CME requested that the Commission provide DCOs with ample time, preferably 18 months, to test and implement daily reporting of backtesting results. OCC stated that it has no objection to reporting its margin model backtesting results.

ICE opposed the proposal. ICE argued that the manner in which the Commission currently supervises DCO margin models, including the requirement in § 39.13(g)(3) that margin models be independently validated, and the requirement in § 39.19(c)(4)(xxiii) that a DCO report to the Commission regarding material issues with its margin model, is sufficient for the Commission to supervise margin model performance over time.

Nodal and Eurex argued that the Commission should collaborate with DCOs to determine the specific information needed and the data fields via which it should be reported to ensure that the Commission is receiving the data and information it needs, in a manner that is consistent across all DCOs, to provide effective oversight of the performance of DCOs' margin models.

Commenters expressed concern regarding the new fields that the Commission proposed to add to new appendix C for the purpose of reporting backtesting results, with commenters focusing on the fields for reporting detailed information related to margin model breaches. The Commission had proposed that breach details be reported using three fields: initial margin; VM; and breach amount, which was defined as the difference between the initial margin and VM. ICE, OCC, and Eurex argued that the proposed fields would not provide the Commission with meaningful information regarding margin model breaches. ICE stated that because initial margin requirements and VM payments may not be associated with the same set of positions, ''from a formal statistical (hypothesis testing) point of view, the backtesting of the initial margin model should consider fixed positions over the implemented margin period of risk.'' Similarly, OCC argued that the VM field should be replaced with a field titled ''Static Portfolio Profit/Loss,'' which would reflect ''profit or loss on the same portfolio against which the initial margin was assessed.'' OCC also argued that the Breach Amount field description be revised to delete the reference to VM and instead reflect the ''difference between the initial margin and static portfolio profit/loss.'' Along the same lines, Eurex argued that VM should be replaced as a measure for backtesting by a more general backtesting profit/loss, which would include further mandatory fields detailing how backtesting profit/loss is calculated (including profit/loss horizon, ''clean'' vs. ''dirty'' profit/loss, mark-to-market vs. mark-to-model profit/loss). Lastly, both Eurex and ICE emphasized the importance of the margin period of risk as a component of evaluating backtesting results.

In response to these comments, the Commission is amending the fields for reporting margin model backtesting results. The Commission is replacing the VM field with a new field titled

[14] 85 FR 4800, 4817.

[15] The Commission is also changing the term ''back testing'' to ''backtesting'' in all places that this term, or a variation thereof, appears in part 39 of the Commission's regulations.

''Backtesting Metric,'' which provides DCOs with the flexibility to designate the type of profit and loss calculation used for backtesting: VM; static portfolio profit and loss (also known as clean profit and loss); dirty profit and loss; mark to market profit and loss; or mark to model profit and loss. In connection with that change, the Commission is amending the Breach Amount field description to be the ''difference between the Initial Margin and Backtesting Metric Amount.'' Lastly, the Commission is adding a field titled ''Margin Period of Risk'', which is defined as the ''holding period for which the Backtesting Metric is calculated in days.''

G. Fully Collateralized Positions—§ 39.19(c)(1)(ii)

The Commission proposed to amend § 39.19(c)(1)(ii) to clarify that the daily reporting requirements of § 39.19(c)(1)(i) do not apply to fully collateralized positions. The Commission did not receive any comments on the proposal. The Commission is adopting the amendments to § 39.19(c)(1)(ii) as proposed.

H. Voluntary Reporting—§ 39.19(c)(1)(iii)

The Commission proposed to add, as new § 39.19(c)(1)(iii), the ability for a DCO to, after consultation with the Division, voluntarily submit any additional daily reporting data fields it believes would be necessary or appropriate. OCC supported the proposal. OCC recommended that the Commission remove the phrase ''consultation with'' and replace it with ''notification to,'' given the potential timing issues attendant to daily reporting generally, potential ambiguity regarding the extent and nature of the ''consultation'' required in the proposal, and to provide DCOs with greater flexibility. OCC also recommended that the Commission clarify that voluntarily reporting of additional information does not create an obligation to continue reporting the information, unless agreed to in writing by the DCO and Commission staff. No commenters opposed the proposal.

The Commission agrees with OCC that, absent any agreement to the contrary, voluntary reporting by a DCO of additional information does not create an obligation to continue reporting that information. As for the mechanics of how a DCO should proceed with voluntarily reporting additional information, the Commission believes that the best approach is for the DCO to coordinate with Division staff to ensure that any necessary accommodations are in place so that the Division has the ability to receive the additional information and to incorporate it into its analytics. The Commission therefore disagrees with OCC because it believes that the collaborative approach encompassed within the phrase ''consultation with'' is preferable to the unilateral approach described in the phrase ''notification to.'' The Commission is adopting new § 39.19(c)(1)(iii) as proposed.

I. Reporting Change of Control of the DCO—§ 39.19(c)(4)(ix)(A)(1)

The Commission proposed to amend § 39.19(c)(4)(ix)(A)(*1*) to require a DCO to report any change to the entity or person that holds a controlling interest, either directly or indirectly, in the DCO. Eurex supported the proposal. OCC also supported the proposal, but requested that the Commission clarify whether the phrase the ''entity . . . holding a controlling interest'' refers to the specific corporate entity holding an ownership interest in the DCO, or whether it refers to any parent entity of one or more owners that collectively own more than 50 percent of the DCO. Better Markets opposed the proposal, asserting that the Commission instead should reinstate the 2011 versions of this regulation and § 39.3(f) because, unlike the current requirements, the 2011 version referenced § 39.3(f), which required Commission approval of the transfer of a DCO registration in connection with any corporate change involving the transfer of all or substantially all of a DCO's assets to another legal entity.

In response to OCC's request for clarification, the Commission notes that the phrase the ''entity . . . holding a controlling interest'' is intended to refer to both the specific corporate entity holding an ownership interest in the DCO, as well as to any parent entity of one or more owners that collectively own more than 50 percent of the DCO. With respect to the comments from Better Markets, the Commission initially notes that the comments do not address the merits of the proposal, but instead focus on changes the Commission made to a different regulation in a different rulemaking.[16] In any event, the Commission does not believe that it is necessary to reconsider its 2020 amendment of § 39.3(f).[17] The Commission is adopting the amendments to § 39.19(c)(4)(ix)(A)(*1*) as proposed.

J. Reporting Changes to Credit Facility Funding and Liquidity Funding Arrangements—§ 39.19(c)(4)(xii) and (xiii)

The Commission proposed to amend § 39.19(c)(4)(xii) and (xiii), which require a DCO to report changes to credit facility funding arrangements and liquidity funding arrangements, respectively, to clarify that the reporting requirements include reporting new arrangements as well as changes to existing ones. Eurex and OCC supported both proposals, with OCC noting that they are consistent with its interpretation of the existing regulations. No commenters opposed the proposals. The Commission is adopting the amendments to § 39.19(c)(4)(xii) and (xiii) as proposed.

K. Reporting Issues With Credit Facility Funding Arrangements, Liquidity Funding Arrangements, and Custodian Banks—§ 39.19(c)(4)(xv)

The Commission proposed to amend § 39.19(c)(4)(xv) to require that a DCO report to the Commission within one business day after it becomes aware of any material issues or concerns regarding the performance, stability, liquidity, or financial resources of any credit facility funding arrangement, liquidity funding arrangement, custodian bank, or settlement bank used by the DCO or approved for use by the DCO's clearing members. The Commission proposed to extend the reporting requirement, which previously applied only to any settlement bank used by the DCO or approved for use by the DCO's clearing members, to apply as well to any credit facility funding arrangement, liquidity funding arrangement, or custodian bank used by the DCO or approved for use by the DCO's clearing members. The Commission also proposed to change the threshold that triggers a DCO's reporting obligations by replacing the requirement that a DCO report to the Commission within one business day after any material issues or concerns arise, with the requirement that a DCO report to the Commission within one business day after it becomes aware of any material issues or concerns.

Eurex, OCC, and ICE supported the proposal. OCC observed that the proposal properly addresses the variety

[16] 85 FR 4800, 4802–4803.

[17] In the 2020 amendment of this regulation, § 39.3(f) was renumbered as § 39.3(g), and was revised to provide that a DCO seeking to transfer its open interest would be required to submit rules for Commission approval pursuant to § 40.5, rather than submitting a request for a Commission order. The 2020 amendments were intended to, among other things, simplify the requirements for a DCO to request a transfer of open interest and to separate the process from the procedures used to report a change to a DCO's corporate structure or ownership. 85 FR 4800, 4802–4803.

of arrangements that DCOs use to meet their ongoing and situational funding requirements, and OCC also stated that DCOs should not be subject to potential enforcement action for not reporting an issue of which they are not even aware. With regard to the requirement to report material issues or concerns related to credit facility funding arrangements, ICE supported the proposal, but believes, as a technical matter, that it would be more accurate to refer to the provider of the arrangement, as opposed to the arrangement itself. No commenters opposed the proposal. Better Markets recommended that the Commission remove the materiality standard from the proposed requirement that DCOs report to the Commission regarding material issues with credit facility funding arrangements, liquidity funding arrangements, and custodian banks. Better Markets argued that because the subjective nature of materiality would result in inconsistent and inadequate reporting, the Commission instead should require DCOs to report whenever there are any issues or concerns.

With respect to ICE's comment that § 39.19(c)(4)(xv) should specify that a DCO must report material issues or concerns related to the provider of a credit facility funding arrangement, as opposed to reporting issues or concerns related to the arrangement itself, the Commission intends that the amended regulation apply to issues or concerns related to the provider as well as to the arrangement itself. The amended regulation is intended to ensure that the Division receives notice when a DCO learns that it may not be able to obtain the resources from the provider pursuant to the arrangement. The Commission disagrees with the suggestion from Better Markets that DCOs be required to report all issues or concerns regarding the performance, stability, liquidity, or financial resources of any credit facility funding arrangement, liquidity funding arrangement, custodian bank, or settlement bank used by the DCO or approved for use by the DCO's clearing members. Although Better Markets correctly noted the subjectivity inherent in a materiality standard, the Commission does not believe that it would be useful for it to be notified of all issues or concerns, especially since, in connection with its supervision of DCOs and engagement with DCO staff regarding reporting of issues or concerns related to settlement banks, Division staff has not found that the materiality standard impedes necessary reporting. Because the Commission believes that the threshold for reporting is properly calibrated, the Commission is adopting § 39.19(c)(4)(xv) as proposed.

L. Reporting of Updated Responses to the Disclosure Framework for Financial Market Infrastructures—§ 39.19(c)(4)(xxv)

The Commission proposed new § 39.19(c)(4)(xxv), which would set forth the requirement currently in § 39.37(b)(2) that, when a DCO updates its responses to the Disclosure Framework for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions in accordance with § 39.37(b)(1), the DCO shall provide notice of those updates to the Commission. Eurex and OCC supported the proposal, with OCC noting that it is a non-substantive change to existing DCO reporting obligations. No commenters opposed the proposal. ICE recommended that, to be consistent with § 39.37(b)(2), the Commission should state explicitly that the proposed reporting requirement only applies to material changes that a DCO makes to its disclosures under the PFMI Disclosure Framework. The Commission does not believe that such clarification is necessary, given that new § 39.19(c)(4)(xxv) simply references the reporting requirements in § 39.37(b)(2) without altering the substance of those requirements. The Commission is adopting new § 39.19(c)(4)(xxv) as proposed.

VI. Amendments to § 39.21(c)

Regulation § 39.21 requires a DCO to publish on its website a variety of information designed to enable market participants to make informed decisions about using the clearing services provided by the DCO. The Commission proposed several amendments to these requirements to better align a DCO's disclosure obligations with the type of clearing services that the DCO provides. Specifically, the Commission proposed to amend § 39.21(c)(3) and (4) to provide that a DCO that clears only fully collateralized positions is not required to disclose its margin-setting methodology, or information regarding the size and composition of its financial resource package for use in a default, if instead the DCO discloses that it does not employ a margin-setting methodology or maintain a financial resource package because it clears only fully collateralized positions. Additionally, the Commission proposed to amend § 39.21(c)(7) to provide that a DCO may omit any non-FCM clearing member that clears only fully collateralized positions, and therefore does not share in the mutualized risk associated with clearing activity, from its published list of clearing members. The Commission did not receive any comments on these proposed changes, and is therefore adopting them as proposed.

VII. Amendments to § 39.37(c) and (d)

Regulation § 39.37 requires each systemically important DCO (SIDCO) and each DCO that elects to comply with subpart C of part 39 of the Commission's regulations (subpart C DCO) to disclose certain information to the public and to the Commission. Regulation § 39.37(c) and (d) require, respectively, a SIDCO or subpart C DCO to ''disclose, publicly, and to the Commission'' transaction data, and information regarding the segregation and portability of customers' positions and funds. The Commission proposed to amend these provisions to clarify that public disclosure of the information is sufficient and a separate report directly to the Commission is not required. OCC supports and appreciates the proposal, stating that it would relieve DCOs of duplicative requirements to report this information both publicly and to the Commission. The Commission is adopting this amendment as proposed.

VIII. Amendments to § 140.94(c)(10)

Regulation § 140.94(c) is a delegation of authority from the Commission to the Director of the Division of Clearing and Risk to perform certain specific functions. The Commission proposed to amend § 140.94(c)(10) to delegate to the Director the authority in existing § 39.19(a) to require a DCO to provide to the Commission the information specified in § 39.19 and any other information that the Commission determines to be necessary to conduct oversight of the DCO, and in existing § 39.19(b)(1) to specify the format and manner in which the information required by § 39.19 must be submitted to the Commission.

OCC generally supported the proposed changes to § 140.94(c)(10), as OCC agreed that the proposed delegations would appropriately empower Commission staff to facilitate efficient administration of part 39, and ensure that the Commission and its staff can obtain relevant information in a timely manner. OCC stated that changes to a DCO's reporting obligations can pose significant technical or logistical challenges, and necessitate substantial investment of time and resources to effect compliance. Therefore, while OCC supported the proposed changes, it urged the Division to continue to engage

in open dialogue with DCOs prior to exercising the delegated authority to seek additional information pursuant to § 39.19 or to change the format or manner of any required reporting. The Commission takes notes of this comment, and expects that information collection or any changes to the format and manner of required reporting would continue to involve engagement with DCOs. The Commission is adopting these changes as proposed.

IX. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis on the impact.[18] The final rule adopted by the Commission will affect only DCOs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[19] The Commission has previously determined that DCOs are not small entities for the purpose of the RFA.[20] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule adopted herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) [21] provides that Federal agencies, including the Commission, may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number from the Office of Management and Budget (OMB). This final rulemaking contains reporting and recordkeeping requirements that are collections of information within the meaning of the PRA. Responses to the collections of information are required to obtain a benefit.

This final rulemaking modifies the existing information collection associated with part 39, ''Requirements for Derivatives Clearing Organizations, OMB control number 3038–0076.'' In accordance with the PRA, 44 U.S.C. 3507(d), the Commission has submitted these information collection requirements to OMB for its review.

[18] 5 U.S.C. 601 *et seq.*

[19] 47 FR 18618 (Apr. 30, 1982).

[20] *See* 66 FR 45604, 45609 (Aug. 29, 2001).

[21] 44 U.S.C. 3501 *et seq.*

1. Subpart B—Requirements for Compliance with Core Principles

a. Risk Management

The Commission is adopting as proposed new § 39.13(h)(5)(iii) to provide that a DCO that clears fully collateralized positions may exclude from the requirements of paragraphs (h)(5)(i) and (ii) those clearing members that clear only fully collateralized positions. The requirements would still apply to clearing members that clear fully collateralized positions but also clear margined products. This change will reduce the burden for DCOs that clear fully collateralized products, but does not affect the burden for the majority of DCOs that are subject to daily reporting requirements, as only four of the fifteen currently registered DCOs clear fully collateralized positions. As a result, the Commission believes that this reduction will have a negligible impact on the overall reporting burden for DCOs, and therefore the Commission is leaving the reporting burden for these reporting requirements unchanged.

b. Treatment of Funds

The Commission is amending § 39.15(b)(2), which applies when a DCO and its clearing members seek to commingle customer positions in futures, options, foreign futures, foreign options, and swaps, or any combination thereof, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of sections 4d(a) or 4d(f) of the CEA. The Commission is consolidating paragraphs (b)(2)(i) and (ii) and renumbering paragraphs accordingly. These changes pertain only to the structure and organization of the regulation and therefore do not impact the reporting requirement. The Commission is amending § 39.15(b)(2) to clarify that the requirement in paragraph (b)(2)(i)(G) that a DCO discuss the systems or procedures that the DCO has implemented to oversee its clearing members' risk management of eligible products may be addressed by describing why existing risk management systems and procedures are adequate, and to add language clarifying that the requirements and standard of review of § 40.5 apply to commingling rule submissions. Because these changes are mere clarifications of existing requirements, they also have no impact on the reporting burden.

Similarly, the Commission is removing existing paragraph (b)(2)(iii), which provides that the Commission may request additional information in support of a rule submission filed under existing paragraph (b)(2)(i) or (ii), and adding new paragraph (b)(2)(viii), which provides that the Commission may request supplemental information to evaluate the DCO's submission and requires a DCO to submit any other information necessary for the Commission to evaluate the DCO's rule's compliance with the CEA and the Commission's regulations. This does not impact the reporting burden because new paragraph (b)(2)(viii), like existing paragraph (b)(2)(iii), would ensure that the Commission can consider all information relevant to the rule submission. Although existing paragraph (b)(2)(iii) does not contain explicit language similar to new paragraph (b)(2)(viii)'s requirement that the DCO submit any other information necessary for the Commission to evaluate the rule's compliance with the CEA and the Commission's regulations, the fact that existing paragraph (b)(2)(iii) permits the Commission to request such information implies a DCO's obligation to supply it. Simply making this implication explicit does not impact the reporting burden.

The Commission is deleting paragraphs (b)(2)(i)(C), (E), (H), and (L) because they require a DCO to submit information the Commission can already access or has not needed in its review of commingling rule submissions. This change will decrease the reporting burden. In addition, the Commission is removing existing paragraph (b)(2)(i)(I), which requires the DCO to provide information related to its margin methodology, while adding related paragraph (b)(2)(vii), which will require that a DCO discuss whether it anticipates allowing portfolio margining of commingled positions, describe and analyze any margin reductions it would apply to correlated positions, and make an express confirmation that any portfolio margining will be allowed only as permitted under § 39.13(g)(4). These changes will collectively decrease the reporting burden because the requirements being removed through the deletion of paragraph (b)(2)(i)(I) are, as a whole, more burdensome than the requirements being added in paragraph (b)(2)(vii). Similarly, the Commission is removing the requirement in existing paragraph (b)(2)(i)(K) to discuss a DCO's default management procedures generally and maintaining only the requirement to address default management procedures unique to the products eligible for commingling and moving that requirement to paragraph (b)(2)(vi). This narrowing of the scope of

the requirement reduces the reporting burden on the relevant DCOs.

The Commission is amending paragraph (b)(2)(i)(B) (renumbered as paragraph (b)(2)(ii)), which requires the DCO to provide an analysis of the risk characteristics of the products that would be eligible for commingling, to specify that the DCO should address any risk characteristics of products to be commingled that are unusual in relation to the other products the DCO clears, such as margining, liquidity, default management, pricing, or other risk characteristics, and how the DCO plans to manage any risks identified. Because such analysis was not previously explicitly required, and because DCOs that would not otherwise have addressed such issues in their analysis of the risk characteristics of the eligible products will now be required to do so, this will increase the reporting burden. However, the Commission expects this increase to be negligible, as this provision would only apply when a DCO is considering a new commingling of customer positions in various products, and only when the risk characteristics of products to be commingled are unusual in relation to other products the DCO clears.

The Commission is amending paragraph (b)(2)(i)(F) (and renumbering it as paragraph (b)(2)(iv)), which currently requires the DCO to describe the financial, operational, and managerial standards or requirements for clearing members that would be permitted to commingle eligible products, to require only that the DCO describe any additional requirements that would apply to clearing members permitted to commingle eligible products. The Commission believes that this amendment will have no impact on the reporting burden. Although the new requirement that the DCO describe any additional requirements is broader than the current requirement to describe financial, operational, and managerial standards or requirements, the existing paragraph requires the DCO to report even if no additional requirements would apply. The amendment only requires reporting when additional requirements are, in fact, applicable.

The Commission believes that the reductions in the reporting burden resulting from the deletion of paragraphs (b)(2)(i)(C), (E), (H), and (L) and the narrowing of the reporting burden resulting from the deletions of paragraphs (b)(2)(i)(I) and (K) (even after giving effect to the addition of new paragraphs (b)(2)(vi) and (vii)) are at least as great as the increase in the reporting burden resulting from the amendments to paragraph (b)(2)(i)(B) (renumbered as paragraph (b)(2)(ii)). Because the Commission lacks the data to fully quantify each of these changes, it is conservatively estimating that these changes collectively do not alter the reporting burden. The Commission is of the view that to the extent that the cross-margining program would be submitted as part of a new rule or rule amendment filing pursuant to § 40.5, the changes are already covered by OMB control number 3038–0093 and there is no change in the burden estimates.

c. Daily Reporting

The Commission is adopting the proposed amendments to § 39.19(c)(1)(i)(A) that clarify that the existing requirement to identify individual customer accounts by LEI and internally-generated identifier was intended to apply to all instances in § 39.19(c)(1) where reporting is required at the individual customer account level, and not only to end-of-day positions. The Commission therefore is amending § 39.19(c)(1)(i)(A) to specify that when a DCO reports initial margin requirements and initial margin on deposit by each individual customer account as required, the DCO also must identify each individual customer account by LEI and internally-generated identifier, where available. The clarification will not affect the burden on DCOs because DCOs already provide this information and the impact of this amendment on the existing burden is negligible.

The Commission also is amending § 39.19(c)(1)(i)(B) and (C), which require a DCO to report daily variation margin and cash flow information by house origin and separately by customer origin and by each individual customer account, to remove the requirement that a DCO report daily variation margin and cash flows by individual customer account. This change is anticipated to result in a negligible decrease from the current burden of 0.5 burden hours per report.[22]

The Commission also is adopting new § 39.19(c)(1)(iii), as proposed, which will give a DCO the ability, after consultation with the Division, to voluntarily submit any additional data field in its daily reports that is necessary or appropriate to better capture the information that is being reported. The Commission believes that adding this provision to § 39.19(c)(1) does not affect the existing burden estimates for daily reporting. Although it is unclear at this time whether any DCOs will decide to voluntarily submit additional data fields in their daily reports and how frequently they will do so, the Commission believes that the impact of this new provision on the existing daily reporting burden is negligible. The Commission does not anticipate that DCOs will add information to their daily reports if doing so is a burden. The Commission instead anticipates that voluntary reporting by DCOs likely will consist only of data that already is maintained in reportable format and that can be included in the daily reports with minimal effort.

The Commission is also adding to part 39 an appendix that will codify the existing reporting fields for the daily reporting requirements in § 39.19(c)(1). The codification of existing reporting fields in new appendix C will not change the reporting burden.[23]

The Commission is adding new fields within new appendix C that would further implement the existing daily reporting requirements under § 39.19(c)(1). Specifically, the Commission is adopting a requirement that a DCO include in its daily reports, with regard to interest rate swaps only, the delta ladder, gamma ladder, vega ladder, zero rate curves, and yield curves that the DCO uses in connection with managing risks associated with interest rate swaps positions. The Commission also is adopting a requirement that a DCO that clears interest rate swaps, forward rate agreements, or inflation index swaps to include in its daily reports the actual trade date for each position, along with an event description. The Commission is not adopting a proposed requirement that each DCO include in its daily reports timing information about variation margin calls and payments, but is adopting a proposed requirement to include in its daily reports information that reflects that the daily report is complete. Lastly, in connection with adopting a new requirement in § 39.19(c)(1)(i) that a DCO include in its daily reports the results of its required daily margin model backtesting, the Commission also is adding to new appendix C amended versions of the additional data fields necessary to implement this requirement.

[22] DCOs currently are not reporting variation margin and cash flow information by each individual customer account because the Division issued a no-action letter addressing compliance with the amended requirements in § 39.19(c)(1). *See* CFTC Letter No. 21–01 (Dec. 31, 2020); *see also* CFTC Letter No. 21–31 (Dec. 22, 2021). As noted, the proposed amendments to § 39.19(c)(1)(i)(B) and (C) would eliminate the requirement for which additional time was provided in the staff letter.

[23] The current burden estimates for complying with the daily reporting requirements in § 39.19(c)(1) included in OMB Control No. 3038–0076 take into account the burden associated with reporting in accordance with the Reporting Guidebook.

With respect to adding new fields to new appendix C, and adding to § 39.19(c)(1)(i) a requirement that a DCO include in its daily reports the results of its required margin model backtesting, the Commission believes that the incremental capital investment costs associated with implementing these requirements would be negligible. In many cases, the new fields are data that are already being used for DCO risk management and operations, and in some cases are already being reported to the Commission on a voluntary basis. Further, the Commission believes that any capital investment implementation for the reporting of these fields would leverage the DCO's existing server architecture that could be scaled up to meet these requirements with negligible costs. However, to the extent that a DCO does not currently use any of the information that would be required under the new fields, or if that information is not accessible on an automated basis, then a DCO may incur start-up costs associated with reporting information pursuant to the new fields, specifically including costs for coding, as well as testing, quality assurance, and compliance review. As explained below in connection with its discussion of cost-benefit considerations, the Commission has estimated [24] that DCOs may incur other start-up costs of approximately $69,667.21 per DCO.[25]

[24] To estimate the start-up costs, the Commission relied upon internal subject matter experts in its Divisions of Data and Clearing and Risk to estimate the amount of time and type of DCO personnel necessary to complete the coding, testing, quality assurance, and compliance review. The Commission then used data from the Department of Labor's Bureau of Labor Statistics from May 2021 to estimate the total costs of this work. According to the May 2021 National Occupational Employment and Wage Estimates Report produced by the U.S. Bureau of Labor Statistics, available at *https://www.bls.gov/oes/current/oes_nat.htm,* the mean salary for a computer systems analyst in management companies and enterprises is $103,860. This number is divided by 1800 work hours in a year to account for sick leave and vacations and multiplied by 2.5 to account for retirement, health, and other benefits, as well as for office space, computer equipment support, and human resources support, all of which yields an hourly rate of $144.25. Similarly, a computer programmer has a mean annual salary of $102,430, yielding an hourly rate of $142.26; a software quality assurance analyst and tester has a mean annual salary of $99,460, yielding an hourly rate of $138.14; and a compliance attorney has a mean annual salary of $198,900, yielding an hourly rate of $276.25.

[25] The estimate of total start-up costs consists of the following: $14,101.10 for the delta ladder, gamma ladder, vega ladder, and the zero rate curves, based on 20 hours of systems analyst time, 40 hours of programmer time, and 40 hours of tester time; $7,248.61 for adding interest rate, forward rates, and end of day position fields, based on 8 hours of systems analyst time, 4 hours of programmer time, and 40 hours of tester time; $14,140.83 for the manifest file, based on 40 hours of systems analyst time, 40 hours of programmer time, and 20 hours of tester time; and $22,676.67 for adding the backtesting fields, based on 40 hours of systems analyst time, 80 hours of programmer time, and 40 hours of tester time. The estimate of total start-up costs also includes $11,500.00 for compliance attorney review. The amount that was estimated for the payment file in the proposal, $39,907.22, is not being included here, because the Commission did not adopt the proposal for the payment file.

CME commented that it believes the time required to implement the proposed changes would be ''an order of magnitude greater than predicted,'' which would add to the costs. However, CME did not quantify the amount by which it believes that costs would be increased, and as a result, the Commission is reluctant to adjust its estimates based on this comment. Furthermore, the Commission is not adopting all of the new fields that were proposed, which would reduce the costs that may be incurred by DCOs to implement the required changes relative to the initial proposal. Accordingly, the Commission believes that retaining its initial estimates of these costs in the proposal (excluding estimates of any proposals not being adopted in the final rule) addresses CME's concern that the Commission's initial estimates of the costs of implementation were not adequate, while accounting for the fact that costs were reduced by the Commission's decision not to adopt all of the relevant proposals.

Lastly, because the Commission understands that the preparation and submission of the daily reports required under § 39.19(c)(1)(i) is largely automated, the Commission estimates that adding the new fields to new appendix C, and adding to § 39.19(c)(1)(i) a requirement that a DCO include in its daily reports the results of the margin model backtesting, will result in a negligible increase to the current estimate of 0.5 burden hours per report. Accordingly, the Commission retains its existing estimate for the burden associated with daily reporting under § 39.19(c)(1).

The aggregate burden estimate for daily reporting remains as follows:

Estimated number of respondents: 13.

Estimated number of reports per respondent: 250.

Average number of hours per report: 0.5.

Estimated gross annual reporting burden: 1,625.

d. Event-Specific Reporting

Regulation § 39.19(c)(4) requires a DCO to notify the Commission of the occurrence of certain events; § 39.19(c)(4)(ix)(A)(*1*) requires a DCO to report any change in the ownership or corporate or organizational structure of the DCO or its parent(s) that would result in at least a 10 percent change of ownership of the DCO. The Commission is amending § 39.19(c)(4)(ix)(A)(*1*) to require the reporting of any change in the ownership or corporate or organizational structure of the DCO or its parent(s) that would result in a change to the entity or person holding a controlling interest in the DCO, whether through an increase in direct ownership or voting interest in the DCO or in a direct or indirect corporate parent entity of the DCO. This increases the reporting requirement. However, the changes of control contemplated by the amendment occur infrequently. In addition, DCOs have typically notified the Commission of such changes of control even if not technically required by the current regulations. Finally, although changes of control usually require the preparation of documents such as a purchase agreement and the amendment of corporate governance documents and organizational charts, those burdens are a result of the change in control itself and not of the reporting requirement. The administrative burden of notifying the Commission—preparing a notification, attaching relevant but pre-existing supporting documents such as the revised organizational chart, and submitting to the Commission—is negligible. Therefore, the increase in the reporting requirement resulting from this amendment is negligible.

Regulation § 39.19(c)(4)(xii) and (xiii) require notification of changes in a liquidity funding arrangement or settlement bank arrangement. The Commission is amending these regulations to clarify that the reporting requirements include reporting new arrangements as well as changes to existing ones. The clarification will not affect the burden on DCOs because such reporting is already implied in the regulation.

Separately, the Commission is amending § 39.19(c)(4)(xv) to add credit facility funding arrangements, liquidity funding arrangements, and custodian banks to the list of arrangements or banks for which the DCO must report to the Commission any issues or concerns of which the DCO becomes aware. Although this increases the number of entities or arrangements for which reporting may be required, given that a DCO is only required to report these issues when it becomes aware of them, and given that these events are not very common, any increase should be negligible.

The Commission proposed to revise § 39.18(g) to delete the materiality threshold. Proposed changes would also

have required notification of each security incident or threat that compromises or could compromise the confidentiality, availability, or integrity of any automated system, or any information, services, or data, including, but not limited to, third-party information, services, or data, relied upon by the DCO in discharging its responsibilities; as well as operator errors that may impair the operation, reliability, security, or capacity of an automated system. The Commission estimated that these changes would require DCOs to file an additional four reports per year, on average. The Commission received several comments stating that this estimate is too low. The Commission is not adopting these changes, however, and is therefore removing the proposed additional four reports per year from the reporting burden.

The Commission proposed modifying the reporting obligations under § 39.18(g)(1) and new § 39.18(g)(2) to specify that only events that impact, or potentially impact, a DCO's clearing operations must be reported under each subsection. The Commission is not adopting these changes.

Finally, the Commission is adding § 39.19(c)(4)(xxv) to centralize an existing reporting obligation under § 39.37(b)(2) in § 39.19. This does not create a new reporting obligation. The Commission is also revising § 39.37(c) and (d) to remove the requirement to make certain disclosures to the Commission while retaining a requirement to make such disclosures publicly. This will cause a negligible decrease in costs that will not affect the reporting burden. The reporting burden under existing § 39.37 is covered in the PRA estimate for that regulation.

The aggregate burden estimate of § 39.19(c)(4) adjusted for the changes described above is as follows:

Estimated number of respondents: 13.

Estimated number of reports per respondent: 14.

Average number of hours per report: 0.5.

Estimated gross annual reporting burden: 91.

e. Public Information

The Commission is revising § 39.21(c)(3) and (4) to exclude DCOs that clear only fully collateralized positions from the specific disclosure requirements of these paragraphs. Similarly, the Commission is amending § 39.21(c)(7), which requires a DCO to publish on its website a current list of its clearing members, to provide that a DCO may omit any clearing member that clears only fully collateralized positions and is not an FCM from the list of clearing members that it must publish on its website. Because such DCOs are still required to report per other parts of § 39.21, such as to disclose the terms and conditions of each contract cleared, the fees it charges its members, and daily settlement prices, volumes, and open interest for each contract, the number of respondents will remain unchanged. The changes do not affect the burden for the majority of DCOs that are subject to the public disclosure requirements. For fully collateralized DCOs, the changes would result in a negligible decrease in the amount of time required per report. The aggregate estimated burden for § 39.21 remains as follows:

Estimated number of respondents: 13.

Estimated number of reports per respondent: 4.

Average number of hours per report: 2.

Estimated gross annual reporting burden: 104.

C. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[26] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors (collectively referred to herein as section 15(a) factors).

The Commission recognizes that the final rule may impose costs. The Commission has endeavored to assess the expected costs and benefits of the final rule in quantitative terms, including PRA-related costs, where possible. In situations where the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the applicable rules in qualitative terms. The lack of data and information to estimate those costs is attributable in part to the nature of the final rule. Additionally, any initial and recurring compliance costs for any particular DCO will depend on the size, existing infrastructure, practices, and cost structure of the DCO.

To further the Commission's consideration of the costs and benefits imposed by the proposal, the Commission invited comments from the public on all aspects of its cost-benefit considerations, including the identification and assessment of any costs and benefits not discussed by the Commission; data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the costs and benefits of the proposed amendments; and substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's discussion. To the extent that the Commission received comments specific to the costs and benefits of the proposed changes, those comments are discussed in the relevant sections below.

2. Baseline

The baseline for the Commission's consideration of the costs and benefits of this final rule is: (1) the DCO Core Principles set forth in section 5b(c)(2) of the CEA; (2) the information requirements associated with commingling customer funds and positions in futures and swaps in the same account under § 39.15(b)(2); (3) the reporting obligations under § 39.18(g) related to a DCO's system safeguards; (4) daily reporting requirements under § 39.19(c)(1); (5) event-specific reporting requirements under § 39.19(c)(4); (6) public information requirements under § 39.21(c); (7) disclosure obligations for SIDCOs and subpart C DCOs under § 39.37; and (8) delegation of authority provisions under § 140.94.

The Commission notes that this consideration of costs and benefits is based on its understanding that the derivatives market regulated by the Commission functions internationally with: (1) transactions that involve U.S. entities occurring across different international jurisdictions; (2) some entities organized outside of the United States that are registered with the Commission; and (3) some entities that typically operate both within and outside the United States and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of the final rule on all relevant derivatives activity, whether based on their actual occurrence in the United

[26] 7 U.S.C. 19(a).

States or on their connection with, or effect on U.S. commerce.[27]

3. Amendments to § 39.13(h)(5)

a. Benefits

The Commission is adopting new § 39.13(h)(5)(iii), which provides that a DCO that clears fully collateralized positions may exclude from the requirements of paragraphs (h)(5)(i) and (ii), which concern clearing members' risk management policies and procedures, those clearing members that clear only fully collateralized positions. The requirements would still apply to clearing members that clear fully collateralized positions but also clear margined products.

Fully collateralized positions do not expose DCOs to many of the risks that traditionally margined products do. Full collateralization prevents a DCO from being exposed to credit or default risk stemming from the inability of a clearing member or customer of a clearing member to meet a margin call or a call for additional capital. This limited exposure and full collateralization of that exposure renders certain provisions of part 39 inapplicable or unnecessary, including § 39.13(h)(5). The Commission is adopting this provision in order to provide greater clarity to DCOs and future applicants for DCO registration regarding how § 39.13(h)(5) applies to DCOs that clear fully collateralized positions. Furthermore, the Commission believes that this amendment will provide a benefit to DCOs that clear fully collateralized positions, as they will no longer need to meet a requirement that does not apply to their clearing model.

b. Costs

The Commission does not anticipate any costs associated with this change, as it would codify the removal of requirements that need not apply to fully collateralized positions.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits in light of the specific considerations identified in section 15(a) of the CEA. In consideration of section 15(a)(2)(B) of the CEA, the Commission believes that § 39.13(h)(5)(iii) may increase operational efficiency for DCOs that clear fully collateralized positions. The provision should not impact the protection of market participants and the public, the financial integrity of markets, or sound risk management practices, as the requirements that the Commission is proposing to exclude for fully collateralized positions do not further these factors when applied to such positions. The Commission has considered the other section 15(a) factors and believes that they are not implicated by this provision.

4. Amendments to § 39.15(b)(2)

a. Benefits

The Commission is amending § 39.15(b)(2) to clarify its requirements and revise the information a DCO must provide to the Commission when it seeks to commingle customer positions and associated funds from different account classes. The Commission anticipates that the amendments will help DCOs, the Commission, and the public to focus on those issues that are most important in considering the submission, and will generally reduce compliance burdens on DCOs.

Based on its experience in reviewing commingling rule submissions, the Commission believes the changes to the information requirements would improve the quality of future submissions and enhance protection of market participants. The existing requirements often result in rule submissions that provide information the Commission already has and lack sufficient focus on the commingling itself, making it difficult for both the Commission and the public to properly assess the risks that commingling of customer funds may pose. The amendments would improve the quality of the submissions by providing the information needed to evaluate the risks posed to customers by commingling products that otherwise would be held in separate accounts.

The amendments would reduce compliance burdens for DCOs by removing existing paragraphs (b)(2)(i)(C), (E), (H), and (L), provisions that call for submission of information the Commission can otherwise access or has not needed in its review of commingling rule submissions. Replacing existing paragraph (b)(2)(i)(I) and adding the related § 39.15(b)(2)(vii) would focus DCO efforts on providing the most useful information on the topic of margin methodology, and eliminates a requirement to provide margin methodology information with which the Commission is already familiar. Similarly, by maintaining only that part of paragraph (b)(2)(i)(K) concerning default management procedures unique to the products eligible for commingling and moving that requirement to paragraph (b)(2)(vi), the amended regulation would focus the discussion of the DCO's default management procedures on changes necessitated by the commingling of eligible products rather than general information on default management procedures already available to the Commission.

b. Costs

As discussed above, the Commission expects that the amendments to § 39.15(b)(2) will decrease DCOs' costs associated with seeking commingling approval. These changes most meaningfully reduce costs by no longer requiring a DCO to produce certain information it was previously required to provide to the Commission. This is partly offset by the addition of new information requirements. Paragraph (b)(2)(vii), as amended, would require information concerning portfolio margining that is largely a subset of the margin methodology information required by existing paragraph (b)(2)(i)(I). The new requirement in this paragraph amounts to a one sentence confirmation of compliance with § 39.13(g)(4). Paragraph (b)(2)(viii), intended to ensure a DCO provides all information the Commission needs to evaluate a commingling rule submission, incorporates the requirements of existing paragraph (b)(2)(iii). Further, the amendment to existing paragraph (b)(2)(i)(B) on risk characteristics (renumbered as § 39.15(b)(2)(ii)), in addition to focusing the discussion on unusual characteristics, extends the analysis to include a discussion of the DCO's management of identified risk characteristics, which is information that should likely be readily available to DCOs. The Commission is adding to § 39.15(b)(2)(ii) the requirement that a DCO's analysis address any characteristics that are unusual in relation to the other products cleared by the DCO, such as margining, liquidity, default management, pricing, or other risk characteristics. The Commission believes that a DCO may incur additional minor costs, but only to the extent that the products do in fact have margining, liquidity, default management, pricing, or other risk characteristics that are unusual in relation to those currently cleared by the DCO. Lastly, to the extent paragraph (b)(2)(vi) on default management procedures extends beyond the scope of existing paragraph (b)(2)(i)(J) or (K), DCOs should already have this information.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the amendments to

[27] *See, e.g.,* 7 U.S.C. 2(i).

§ 39.15(b)(2) in light of the specific considerations identified in section 15(a) of the CEA. The Commission believes that the amendments will have a beneficial effect on the protection of market participants and on sound risk management practices. The amendments better focus the DCO submissions on risk management considerations that are relevant to address the commingling of customer positions and associated funds, and assure that DCOs provide the Commission with the information it needs to consider the regulatory adequacy of their efforts. These activities are ultimately directed towards protecting market participants whose accounts are exposed to risks the commingled positions introduce. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments to § 39.15(b)(2).

5. Notification of Exceptional Events—§ 39.18(g)

a. Benefits

For reasons discussed in greater detail above, the Commission is declining to adopt the proposal to amend § 39.18(g)(1) to expand the scope of hardware or software malfunctions for which a DCO must provide notice to the Division by deleting the materiality element from the requirement to report malfunctions that materially impair, or create a significant likelihood of material impairment of, the DCO's automated systems. Similarly, the Commission is also declining to adopt the remaining proposed changes to § 39.18(g), including the elimination of the materiality threshold for reporting of other exceptional events, the addition of new language regarding reporting for operator error, the addition of untargeted threats as a reporting event, and definitions for ''hardware or software malfunction'' and ''automated system.'' The retention of the current regulatory framework, including the reporting threshold which affords discretion to DCOs to report only material events, will benefit DCOs by allowing the expenditure of less time and fewer resources to report events of no significance, the knowledge of which would provide little or no informational value to the Division.

b. Costs

Commenters stated that the Commission underestimated the increase in reporting obligations as a result of the proposal to eliminate the materiality threshold for the reporting of exceptional events under § 39.18(g) (estimated at four reports per DCO per year) as well as the costs of such notifications (estimated at $152 per year). The Commission is not adopting the proposal to remove the materiality threshold or any of the other proposed changes to § 39.18(g).

c. Section 15(a) Factors

As the Commission is not adopting the proposed amendments to § 39.18(g), a consideration of costs and benefits under section 15(a) is not applicable for this subsection.

6. Removing the Requirement To Report Variation Margin and Cash Flow Information by Individual Customer Account in § 39.19(c)(1)(i)(B) and (C)

a. Benefits

The Commission is amending § 39.19(c)(1)(i)(B) and (C) to remove the requirement that DCOs report to the Commission on a daily basis variation margin and cash flows by individual customer account. In removing these requirements from § 39.19(c)(1)(i)(B) and (C), the Commission anticipates benefits to DCOs and their clearing members in that their operational, technological, and compliance burdens would be reduced. The Commission did not receive any comments on the costs or benefits associated with these changes.

b. Costs

The Commission expects that DCOs and their clearing members will not incur any costs related to the amendments to § 39.19(c)(1)(i)(B) and (C), as the Commission is eliminating the existing requirement that DCOs report to the Commission on a daily basis variation margin and cash flows by individual customer account.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the amendments to § 39.19(c)(1)(i)(B) and (C) in light of the specific considerations identified in section 15(a) of the CEA. The Commission believes that the amendments to § 39.19(c)(1)(i)(B) and (C) will have a moderately beneficial effect by reducing technological, operational, and compliance burdens of DCOs, and of their clearing members. The Commission also believes that the amendments will not have any effect on protection of market participants and the public or on sound risk management practices because, although the Commission is slightly reducing the amount of information that DCOs must report to the Commission, the Commission is confident that it will continue to receive from DCOs sufficient information to effectively and efficiently supervise and oversee DCOs and the derivatives markets. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments to § 39.19(c)(1)(i)(B) and (C).

7. Codifying the Existing Reporting Fields for the Daily Reporting Requirements in New Appendix C to Part 39

a. Benefits

The Commission is adding a new appendix C to part 39 that codifies the existing reporting fields for the daily reporting requirements in § 39.19(c)(1). Until now, the instructions, reporting fields, and technical specifications for daily reporting have been contained in the Reporting Guidebook, which the Division provides to DCOs to facilitate reporting pursuant to § 39.19(c)(1). Although codifying the Reporting Guidebook will not result in material benefit to currently registered DCOs, the Commission believes that it likely will benefit prospective DCO applicants, as well as members of the industry and general public, by providing a detailed list of DCO daily reporting obligations, in contrast to the more general requirements in § 39.19(c)(1). The Commission did not receive any comments on the costs or benefits associated with these changes.

b. Costs

The Commission does not expect that DCOs will incur increased costs related to codifying the reporting fields from the Reporting Guidebook in new appendix C to part 39. DCOs have been relying on the Reporting Guidebook for nearly a decade to satisfy their daily reporting obligations under § 39.19(c)(1). Codifying these requirements into a regulatory appendix does not alter the existing burden that DCOs have in complying with § 39.19(c)(1).

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of codifying the Reporting Guidebook as appendix C to part 39 in light of the specific considerations identified in section 15(a) of the CEA. The Commission has considered the section 15(a) factors and believes that adding new appendix C to part 39 to codify the reporting fields set forth in the existing Reporting Guidebook does not implicate the section 15(a) factors.

8. Additional Reporting Fields for the Daily Reporting Requirements—§ 39.19(c)(1)

a. Benefits

The Commission is adding several new reporting fields that will be incorporated into new appendix C to part 39.[28] The Commission is requiring that DCOs that clear interest rate swaps include in their daily reports the delta ladder, gamma ladder, vega ladder, zero rate curves, and yield curves that those DCOs use in connection with managing risks associated with interest rate swaps positions. Additionally, the Commission is requiring DCOs that clear interest rate swaps, forward rate agreements, or inflation index swaps to include in their daily reports the actual trade date for each position along with an event description. Additionally, the Commission is requiring DCOs to include in their daily reports information that reflects that the daily report is complete. Lastly, in connection the new requirement in § 39.19(c)(1)(i) that a DCO include in its daily reports the results of its required daily margin model backtesting, the Commission also is adding to new appendix C amended versions of the additional data fields necessary to implement this requirement.[29] This information, separately and in the aggregate, is expected to assist the Commission in conducting more effective oversight of DCOs, thereby enhancing the protections afforded to the markets generally. The Commission did not receive any comments on the benefits associated with these changes.

b. Costs

The Commission believes that the costs associated with adding these new daily reporting fields to appendix C are negligible. The Commission believes that DCOs already possess this information in read-ready format and use it in the ordinary course of business, and the regulation only requires that they transmit it to the Commission in a standardized format. Despite these beliefs and out of an abundance of caution, the Commission is estimating the cost of developing and producing the new daily reporting fields that would be incorporated into new appendix C.

The Commission estimates that the capital costs associated with the addition of new daily reporting fields in new appendix C, and the requirement that DCOs include information on their backtesting results in their daily reports are negligible. The Commission also estimates that any ongoing costs are negligible because the Commission understands that the preparation and submission of the daily reports required pursuant to § 39.19(c)(1)(i) is largely automated. However, to the extent that a DCO does not currently use any of the information that would be required under the new fields, or if that information is not accessible on an automated basis, then a DCO may incur start-up costs associated with reporting information pursuant to the new fields, specifically including costs for coding, as well as testing, quality assurance, and compliance review. To estimate these start-up costs, the Commission relied upon internal subject matter experts in its Divisions of Data and Clearing and Risk to estimate the amount of time and type of DCO personnel necessary to complete the coding, testing, quality assurance, and compliance review. The Commission then used data from the Department of Labor's Bureau of Labor Statistics from May 2021 to estimate the total costs of this work.[30] Using this method, the Commission estimates the total start-up costs to be approximately $69,667.21 per DCO.[31]

CME commented on the cost-benefit considerations related to the addition of these new daily reporting fields, arguing that the Commission severely underestimated the amount of time that would be required to comply with the requirement. Specifically, CME commented that it believes the time required to implement the proposed changes would be ''an order of magnitude greater than predicted,'' which would add to the costs. However, CME did not quantify the amount by which it believes that costs would be increased, and as a result, the Commission is reluctant to adjust its estimates based on this comment. Furthermore, the Commission is not adopting all of the new fields that were proposed, which would reduce the costs that may be incurred by DCOs to implement the required changes. Accordingly, the Commission believes that retaining its initial estimates of these costs in the proposal (excluding estimates of any proposals not being adopted in the final rule) addresses CME's concern that the Commission's initial estimates of the costs of implementation were not adequate, while accounting for the fact that costs were reduced by the Commission's decision not to adopt all of the relevant proposals.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of adding these daily reporting fields to new appendix C to part 39 in light of the specific considerations identified in section 15(a) of the CEA. Requiring DCOs to include in their daily reports delta ladder, gamma ladder, vega ladder, zero rate curve, and yield curve information for interest rates swaps, as well as trade dates for interest rate swaps, forward rate agreements, and inflation index swaps, are expected to provide information necessary for the Commission to improve its supervision and oversight of DCOs and the derivatives markets, which in turn is expected to result in improved protection of market participants and

[28] As noted previously, the Commission is not adopting the proposal that each DCO include in its daily reports timing information about VM calls and payments.

[29] Although the costs, benefits, and section 15(a) factors associated with the requirement in § 39.19(c)(1)(i) that a DCO include backtesting results in its daily report are addressed separately below, the costs associated with the implementation of this requirement via the amended new daily reporting fields in appendix C are addressed in this section.

[30] To estimate the start-up costs, the Commission relied upon internal subject matter experts in its Divisions of Data and Clearing and Risk to estimate the amount of time and type of DCO personnel necessary to complete the coding, testing, quality assurance, and compliance review. The Commission then used data from the Department of Labor's Bureau of Labor Statistics from May 2021 to estimate the total costs of this work. According to the May 2021 National Occupational Employment and Wage Estimates Report produced by the U.S. Bureau of Labor Statistics, available at *https://www.bls.gov/oes/current/oes_nat.htm,* the mean salary for a computer systems analyst in management companies and enterprises is $103,860. This number is divided by 1800 work hours in a year to account for sick leave and vacations and multiplied by 2.5 to account for retirement, health, and other benefits, as well as for office space, computer equipment support, and human resources support, all of which yields an hourly rate of $144.25. Similarly, a computer programmer has a mean annual salary of $102,430, yielding an hourly rate of $142.26; a software quality assurance analyst and tester has a mean annual salary of $99,460, yielding an hourly rate of $138.14; and a compliance attorney has a mean annual salary of $198,900, yielding an hourly rate of $276.25.

[31] The estimate of total start-up costs consists of the following: $14,101.10 for the delta ladder, gamma ladder, vega ladder, and the zero rate curves, based on 20 hours of systems analyst time, 40 hours of programmer time, and 40 hours of tester time; $7,248.61 for adding interest rate, forward rates, and end of day position fields, based on 8 hours of systems analyst time, 4 hours of programmer time, and 40 hours of tester time; $14,140.83 for the manifest file, based on 40 hours of systems analyst time, 40 hours of programmer time, and 20 hours of tester time; and $22,676.67 for adding the backtesting fields, based on 40 hours of systems analyst time, 80 hours of programmer time, and 40 hours of tester time. The estimate of total start-up costs also includes $11,500.00 for compliance attorney review. The amount that was estimated for the payment file in the proposal, $39,907.22, is not being included here, because the Commission did not adopt the proposal for the payment file.

the public, improved financial integrity of the futures markets, and potentially improved DCO risk management practices. The Commission has considered the other section 15(a) factors and believes that they are not implicated by this change.

9. Daily Reporting of Margin Model Backtesting—§ 39.19(c)(1)(i)

a. Benefits

The Commission is adding to § 39.19(c)(1)(i) a requirement that DCOs include in their daily reports the results of the margin model backtesting that DCOs are required to perform daily pursuant to § 39.13(g)(7)(i). Because margin model backtesting results are a crucial element of an effective risk surveillance program, obtaining this information will allow the Commission to conduct more effective oversight of DCOs, thereby enhancing the protections afforded to the markets generally. The Commission did not receive any comments on the costs or benefits associated with these changes.

b. Costs

The Commission expects that requiring DCOs to report backtesting results daily will impose only a negligible cost on DCOs because DCOs already possess this information, and they are being required only to transmit it to the Commission in a standardized format. Additionally, the Commission has revised the fields in new appendix C to part 39 for reporting backtesting results to address concerns expressed by commenters and better align those fields with the manner in which DCOs calculate their backtesting results, since DCOs do not perform backtesting and calculate the results in a uniform manner. However, to the extent that a DCO does not maintain the required information in the required standardized format, a DCO may incur initial costs related to modifying its systems to convert the information to the standardized format, specifically including costs for coding, as well as testing, quality assurance, and compliance review. An estimate of these start-up costs is included in the discussion of the estimated costs associated with reporting information pursuant to the new fields in appendix C. The Commission notes, however, that some DCOs are already voluntarily providing backtesting information to the Commission on a weekly or monthly basis.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of requiring DCOs to report backtesting results daily in light of the specific considerations identified in section 15(a) of the CEA. Requiring DCOs to report backtesting results daily is expected to improve the Commission's supervision of DCO risk management and, therefore, is expected to yield enhanced protection of market participants and the public, improved financial integrity of the futures markets, and also potentially improve DCO risk management practices. The Commission has considered the other section 15(a) factors and believes that they are not implicated by adding to § 39.19(c)(1)(i) a requirement that DCOs include in their daily reports the results of their daily margin model backtesting.

10. Fully Collateralized Positions—§ 39.19(c)(1)(ii)

a. Benefits

The Commission is amending § 39.19(c)(1)(ii) to clarify that this regulation does not apply to fully collateralized positions. Because § 39.19(c)(1)(ii) merely expands on § 39.19(c)(1)(i), which already does not apply to fully collateralized positions, and therefore has no independent force or effect, this amendment does not represent a substantive change. Making this change to § 39.19(c)(1)(ii) provides greater certainty to DCOs, their clearing members, and their customers, and may prevent them from having to request guidance on this matter from the Commission or the Division in the future. Further, the Commission believes that this amendment may increase operational efficiency for DCOs that clear fully collateralized positions. The Commission did not receive any comments on the costs or benefits associated with these changes.

b. Costs

The Commission does not anticipate any non-negligible change in costs resulting from amending § 39.19(c)(1)(ii) to clarify that it does not apply to fully collateralized positions.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of amending § 39.19(c)(1)(ii) to clarify that this regulation does not apply to fully collateralized positions in light of the specific considerations identified in section 15(a) of the CEA. The Commission believes that this amendment may increase operational efficiency for DCOs that clear fully collateralized positions, which is in the public interest. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendment.

11. Reporting Change of Control of the DCO—§ 39.19(c)(4)(ix)(A)(*1*)

a. Benefits

Regulation § 39.19(c)(4)(ix)(A)(*1*) requires a DCO to report any change in the ownership or corporate or organizational structure of the DCO or its parent(s) that would result in at least a 10 percent change of ownership of the DCO. The Commission is amending § 39.19(c)(4)(ix)(A)(*1*) to require a DCO to report any change in the ownership or corporate or organizational structure of the DCO or its parent(s) that would result in a change to the entity or person holding a controlling interest in the DCO, whether through an increase in direct ownership or voting interest in the DCO or in a direct or indirect corporate parent entity of the DCO. This amendment will ensure that the Commission has accurate knowledge of the individuals or entities that directly or indirectly control a DCO regardless of the corporate structures of the equity holders of the DCO. The Commission did not receive any comments on the costs or benefits associated with these changes.

b. Costs

The Commission expects the costs related to the amendment to § 39.19(c)(4)(ix)(A)(*1*) to be negligible. Specifically, the Commission expects a negligible cost burden with respect to the changes, in part because the changes of control contemplated by the amendment occur infrequently. In addition, DCOs have typically notified the Commission of such changes of control even if not technically required by the current regulations. The administrative burden of notifying the Commission—preparing a notification, attaching relevant but pre-existing supporting documents such as the revised organizational chart, and submitting to the Commission—is negligible.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the amendments to § 39.19(c)(4)(ix)(A)(*1*) in light of the specific considerations identified in section 15(a) of the CEA. The Commission believes that the amendments may have a moderately beneficial effect on protection of market participants and the public, as well as on the financial integrity of the futures markets, because the amendments are anticipated to provide the Commission with a better understanding of the

organizational structure of the ownership of the DCO, potentially illuminating whether any individuals or entities that directly or indirectly control a DCO also have ownership stakes in other registrants or registered entities. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments to § 39.19(c)(4)(ix)(A)(*1*).

12. Reporting Issues With Credit Facility Funding Arrangements, Liquidity Funding Arrangements, Custodian Banks, and Settlement Banks—§ 39.19(c)(4)(xv)

a. Benefits

The Commission is amending § 39.19(c)(4)(xv) to require that a DCO report to the Commission within one business day after it becomes aware of any material issues or concerns regarding the performance, stability, liquidity, or financial resources of any credit facility funding arrangement, liquidity funding arrangement, custodian bank, or settlement bank used by the DCO or approved for use by the DCO's clearing members. This amendment expands the reporting requirement, which previously applied only to any settlement bank used by the DCO or approved for use by the DCO's clearing members, to apply as well to any credit facility funding arrangement, liquidity funding arrangement, or custodian bank used by the DCO or approved for use by the DCO's clearing members. This amendment also changes the threshold that triggers a DCO's reporting obligations by replacing the requirement that a DCO report to the Commission within one business day after any material issues or concerns arise, with the requirement that a DCO report to the Commission within one business day after it becomes aware of any material issues or concerns. Given the importance of credit facility funding arrangements, liquidity funding arrangements, custodian banks, and settlement banks to both DCOs and clearing members, it is imperative that the Commission be informed of any known issues or concerns regarding these entities or arrangements, especially considering the broader impact that problems with these entities or arrangements could have on DCOs and clearing members, as well as the derivatives markets as a whole. As such, the reporting of this information is expected to improve the Commission's oversight and supervision of DCOs, clearing members, and the derivatives markets generally. The Commission did not receive any comments on the costs or benefits associated with these changes.

b. Costs

The Commission expects that the costs related to the amendments to § 39.19(c)(4)(xv) will be negligible. Specifically, because a DCO is only required to report these issues when it becomes aware of them, and given that these events are not very common, any cost increase is estimated to be negligible.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the amendments to § 39.19(c)(4)(xv) in light of the specific considerations identified in section 15(a) of the CEA. The Commission believes that the amendments to § 39.19(c)(4)(xv) may potentially have a beneficial effect on protection of market participants and the public, as well as on the financial integrity of the futures markets, because the amendments would provide the Commission with new, additional information that is anticipated to assist the Commission in its supervision of DCOs and oversight of the derivatives markets. Additionally, this information could be time-sensitive and critically important in times of market stress or broader economic upheaval. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments to § 39.19(c)(4)(xv).

13. Reporting of Updated Responses to the Disclosure Framework for Financial Market Infrastructures—§ 39.19(c)(4)(xxv)

a. Benefits

The Commission is adopting new § 39.19(c)(4)(xxv) to codify in § 39.19 the requirement in § 39.37(b)(2) that, when a DCO updates its responses to the Disclosure Framework for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions in accordance with § 39.37(b)(1), the DCO shall provide notice of those updates to the Commission. This amendment further centralizes within § 39.19 the obligations of DCOs to report information to the Commission, which benefits affected DCOs by consolidating their reporting obligations within one location. The Commission did not receive any comments on the costs or benefits associated with these changes.

b. Costs

The Commission does not anticipate any costs associated with the adoption of § 39.19(c)(4)(xxv) because it does not alter the existing reporting obligations of DCOs.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the adoption of § 39.19(c)(4)(xxv) in light of the specific considerations identified in section 15(a) of the CEA. The Commission has considered the section 15(a) factors and believes that they are not implicated by the adoption of § 39.19(c)(4)(xxv).

14. Publication of Margin-Setting Methodology and Financial Resource Package Information—§ 39.21(c)(3) and (4)

a. Benefits

The Commission is amending § 39.21(c)(3) and (4) to provide that a DCO that clears only fully collateralized positions is not required to disclose its margin-setting methodology, or information regarding the size and composition of its financial resource package for use in a default, if instead the DCO discloses that it does not employ a margin-setting methodology or maintain a financial resource package because it clears only fully collateralized positions. The Commission anticipates the public may benefit from increased clarity regarding the risks that market participants may face at such a DCO because the full collateralization requirement is intended to mitigate such risk.

b. Costs

The Commission does not anticipate any costs associated with the amendment to § 39.21(c)(3) and (4).

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the amendments to § 39.21(c)(3) and (4) in light of the specific considerations identified in section 15(a) of the CEA. The Commission believes that the amendments to § 39.21(c)(3) and (4) serve the broader public interest due to the increased clarity regarding the risks that market participants may face at such a DCO, as the full collateralization requirement is intended to mitigate such risk. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments to § 39.21(c)(3) and (4).

15. Excluding Eligible DCOs From the Requirement in § 39.21(c)(7) To Publish a List of Clearing Members

a. Benefits

The Commission is amending § 39.21(c)(7) to provide that a DCO may omit any non-FCM clearing member that clears only fully collateralized positions, and therefore does not share in the mutualized risk associated with clearing activity, from its published list of clearing members. The Commission anticipates that the amendment will reduce operational and compliance burdens on eligible DCOs. This is a significant benefit because, given the manner in which they engage directly with market participants, DCOs that provide for fully collateralized clearing may have a large number of non-FCM clearing participants and a high volume of turnover among such participants.

b. Costs

The Commission does not anticipate any costs associated with the amendments to § 39.21(c)(7), as the rule reduces the public disclosure requirements that apply to DCOs that provide for fully collateralized clearing.

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the amendments to § 39.21(c)(7) in light of the specific considerations identified in section 15(a) of the CEA. The Commission believes that the amendments to § 39.21(c)(7) will have a limited and rather moderately beneficial effect on the operations of the eligible DCOs themselves, because eligible DCOs would enjoy the reduced burden of being excused from including non-FCM clearing members that clear only fully collateralized positions in their published lists of clearing participants. Additionally, with respect to public interest considerations, the Commission believes that the amendments to § 39.21(c)(7) will have a moderately beneficial effect on non-FCM market participants that clear through eligible DCOs, because those market participants would benefit from the additional privacy afforded to them when they are not publicly listed as clearing members on the DCO's website. The Commission has considered the other section 15(a) factors and believes that they are not implicated by the amendments to § 39.21(c)(7).

16. Clarifying the Disclosure Obligations in § 39.37

a. Benefits

The Commission is amending § 39.37(c) and (d) to clarify that public disclosure of the information described in those paragraphs is all that is required. The changes to § 39.37(c) and (d) will provide a modest benefit to SIDCOs and subpart C DCOs by clarifying that a separate report directly to the Commission of information that the DCO discloses publicly pursuant to § 39.37(c) and (d) is not required.

b. Costs

The Commission has not identified any costs associated with the changes to § 39.37(c) and (d).

c. Section 15(a) Factors

In addition to the discussion above, the Commission has evaluated the costs and benefits of the amendment of § 39.37(c) and (d) in light of the specific considerations identified in section 15(a) of the CEA. The Commission has considered the section 15(a) factors and believes that they are not implicated by the changes.

17. Amendments to § 140.94(c)(10)

a. Benefits

The Commission is amending § 140.94(c)(10) to provide the Director of the Division with delegated authority to request additional information that the Commission determines to be necessary to conduct oversight of the DCO, and to specify the format and manner of the DCO reporting requirements. The Commission believes the delegation of authority will promote a more expedient process to address these aspects of the reporting requirements under § 39.19.

b. Costs

The Commission has not identified any costs associated with the amendments to § 140.94(c)(10).

c. Section 15(a) Factors

The Commission has considered the section 15(a) factors and believes that they are not implicated by this amendment.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation.[32]

[32] 7 U.S.C. 19(b).

The Commission believes that the public interest to be protected by the antitrust laws is the promotion of competition. In the proposal, the Commission requested comment on whether: (1) the proposed rulemaking implicates any other specific public interest to be protected by the antitrust laws; (2) the proposed rulemaking is anticompetitive and, if it is, what the anticompetitive effects are; and (3) whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting the proposed rule amendments. The Commission did not receive any comments in response.

The Commission has considered the final rule to determine whether it is anticompetitive and has identified no anticompetitive effects. Because the Commission has determined that the rules are not anticompetitive and have no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects

17 CFR Part 39

Reporting and recordkeeping requirements.

17 CFR Part 140

Authority delegations (Government agencies).

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR chapter I as follows:

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

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

Authority: 7 U.S.C. 2, 6(c), 7a–1, and 12a(5); 12 U.S.C. 5464; 15 U.S.C. 8325; Section 752 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, title VII, sec. 752, July 21, 2010, 124 Stat. 1749.

§ 39.2 [Amended]

■ 2. Amend § 39.2 by removing ''Back test'' and adding in its place ''Backtest''.

§ 39.5 [Amended]

■ 3. Amend § 39.5 in paragraph (b)(3)(vi) by removing ''back testing'' and adding in its place ''backtesting''.

■ 4. Amend § 39.13 as follows:

■ a. In paragraph (g)(7), remove ''Back tests'' and ''back tests'' wherever they appear and add in their places ''Backtests'' and ''backtests'', respectively.

■ b. In paragraph (h)(5)(i)(A), add the word ''and'' at the end of the paragraph;
■ c. Revise paragraph (h)(5)(i)(B);
■ d. Remove paragraph (h)(5)(i)(C); and
■ e. Add paragraph (h)(5)(iii).

The revision and addition read as follows:

§ 39.13 Risk management.

* * * * *

(h) * * *

(5) * * *

(i) * * *

(B) Require its clearing members to provide to the derivatives clearing organization or the Commission, upon request, information and documents regarding their risk management policies, procedures, and practices, including, but not limited to, information and documents relating to the liquidity of their financial resources and their settlement procedures.

* * * * *

(iii) A derivatives clearing organization that clears fully collateralized positions may exclude from the requirements of paragraphs (h)(5)(i) and (ii) of this section those clearing members that clear only fully collateralized positions.

* * * * *

■ 5. Amend 39.15 by revising paragraph (b)(2) to read as follows:

§ 39.15 Treatment of funds.

* * * * *

(b) * * *

(2) *Commingling.* In order for a derivatives clearing organization and its clearing members to commingle customer positions in futures, options, foreign futures, foreign options, and swaps, or any combination thereof, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of sections 4d(a) or 4d(f) of the Act, the derivatives clearing organization shall file rules for Commission approval pursuant to the requirements and standard of review of § 40.5 of this chapter. Such rule submission shall include, at a minimum, the following:

(i) Identification of the products that would be commingled, including product specifications or the criteria that would be used to define eligible products;

(ii) Analysis of the risk characteristics of the eligible products and of the derivatives clearing organization's ability to manage those risks, addressing any characteristics that are unusual in relation to the other products cleared by the derivatives clearing organization, such as margining, liquidity, default management, pricing, or other risk characteristics;

(iii) Analysis of the liquidity of the respective markets for the eligible products, the ability of clearing members and the derivatives clearing organization to offset or mitigate the risk of such eligible products in a timely manner, without compromising the financial integrity of the account, and, as appropriate, proposed means for addressing insufficient liquidity;

(iv) A description of any additional requirements that would apply to clearing members permitted to commingle eligible products;

(v) A description of any risk management changes that the derivatives clearing organization will implement to oversee its clearing members' risk management of eligible products, or an analysis of why existing risk management systems and procedures are adequate in connection with the proposed commingling;

(vi) An analysis of the ability of the derivatives clearing organization to manage a potential default with respect to any of the eligible products that would be commingled, including a discussion of any default management procedures that are unique to the products eligible for commingling;

(vii) A discussion of the extent to which the derivatives clearing organization anticipates allowing portfolio margining of commingled positions, including a description and analysis of any margin reduction applied to correlated positions and the language of any applicable clearing rules or procedures, and an express confirmation that any portfolio margining will be allowed only as permitted under § 39.13(g)(4); and

(viii) Any other information necessary for the Commission to determine the rule submission's compliance with the Act and the Commission's regulations in this chapter, which the Commission may request as supplemental information if not provided in the initial submission. The Commission may extend the review period for the rule submission in accordance with § 40.5(d) of this chapter in order to request and obtain supplemental information as necessary.

* * * * *

■ 6. Amend § 39.19 as follows:
■ a. Revise paragraph (c)(1)(i) and the introductory text of paragraph (c)(1)(ii);
■ b. Add paragraph (c)(1)(iii);
■ c. Revise paragraphs (c)(4)(ix)(A)(*1*) and (c)(4)(xii), (xiii), and (xv); and
■ d. Add paragraph (c)(4)(xxv).

The revisions and additions read as follows:

§ 39.19 Reporting.

* * * * *

(c) * * *

(1) * * *

(i) A derivatives clearing organization shall compile as of the end of each trading day, and submit to the Commission by 10 a.m. on the next business day, a report containing the results of the backtesting required under § 39.13(g)(7)(i), and the following information related to all positions, other than fully collateralized positions, in accordance with the data fields set forth in appendix C to this part:

(A) Initial margin requirements and initial margin on deposit for each clearing member, by house origin and by each customer origin, and by each individual customer account. The derivatives clearing organization shall identify each individual customer account, using both a legal entity identifier, where available, and any internally-generated identifier, within each customer origin for each clearing member;

(B) Daily variation margin, separately listing the mark-to-market amount collected from or paid to each clearing member, by house origin and by each customer origin;

(C) All other daily cash flows relating to clearing and settlement including, but not limited to, option premiums and payments related to swaps such as coupon amounts, collected from or paid to each clearing member, by house origin and by each customer origin; and

(D) End-of-day positions, including as appropriate the risk sensitivities and valuation data that the derivatives clearing organization generates, creates, or calculates in connection with managing the risks associated with such positions, for each clearing member, by house origin and by each customer origin, and by each individual customer account. The derivatives clearing organization shall identify each individual customer account, using both a legal entity identifier, where available, and any internally-generated identifier, within each customer origin for each clearing member.

(ii) The report shall contain the information required by paragraphs (c)(1)(i)(A) through (D) of this section for each of the following, other than fully collateralized positions:

* * * * *

(iii) Notwithstanding the specific fields set forth in appendix C to this part, a derivatives clearing organization may choose to submit, after consultation with staff of the Division of Clearing and Risk, any additional data field that is necessary or appropriate to better

capture the information that is being reported.

* * * * *

(4) * * *

(ix) * * *

(A) * * *

(*1*) Result in at least a 10 percent change of ownership of the derivatives clearing organization or a change to the entity or person holding a controlling interest in the derivatives clearing organization, whether through an increase in direct ownership or voting interest in the derivatives clearing organization or in a direct or indirect corporate parent entity of the derivatives clearing organization;

* * * * *

(xii) *Change in credit facility funding arrangement.* A derivatives clearing organization shall report to the Commission no later than one business day after the derivatives clearing organization enters into, terminates, or changes a credit facility funding arrangement, or is notified that such arrangement has changed, including but not limited to a change in lender, change in the size of the facility, change in expiration date, or any other material changes or conditions.

(xiii) *Change in liquidity funding arrangement.* A derivatives clearing organization shall report to the Commission no later than one business day after the derivatives clearing organization enters into, terminates, or changes a liquidity funding arrangement, or is notified that such arrangement has changed, including but not limited to a change in provider, change in the size of the arrangement, change in expiration date, or any other material changes or conditions.

* * * * *

(xv) *Issues with credit facility funding arrangements, liquidity funding arrangements, custodian banks, or settlement banks.* A derivatives clearing organization shall report to the Commission no later than one business day after it becomes aware of any material issues or concerns regarding the performance, stability, liquidity, or financial resources of any credit facility funding arrangement, liquidity funding arrangement, custodian bank, or settlement bank used by the derivatives clearing organization or approved for use by the derivatives clearing organization's clearing members.

* * * * *

(xxv) *Updates to responses to the Disclosure Framework for Financial Market Infrastructures.* A systemically important derivatives clearing organization or a subpart C derivatives clearing organization that updates its responses to the Disclosure Framework for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions pursuant to § 39.37(b)(1) must provide to the Commission, within ten business days after such update, a copy of the text of the responses that shows all deletions and additions made to the immediately preceding version of the responses, as required by § 39.37(b)(2).

* * * * *

■ 7. Amend § 39.21 by revising paragraphs (c)(3), (4), and (7) to read as follows:

§ 39.21 Public information.

* * * * *

(c) * * *

(3) Information concerning its margin-setting methodology, except that a derivatives clearing organization that clears only fully collateralized positions instead may disclose that it does not employ a margin-setting methodology because it clears only fully collateralized positions;

(4) The size and composition of the financial resource package available in the event of a clearing member default, updated as of the end of the most recent fiscal quarter or upon Commission request and posted as promptly as practicable after submission of the report to the Commission under § 39.11(f)(1)(i)(A), except that a derivatives clearing organization that clears only fully collateralized positions instead may disclose that it does not maintain a financial resource package to be used in the event of a clearing member default because it clears only fully collateralized positions;

* * * * *

(7) A current list of all clearing members, except that a derivatives clearing organization may omit any clearing member that clears only fully collateralized positions and is not a futures commission merchant;

* * * * *

■ 8. Amend § 39.25 by revising paragraph (c) to read as follows:

§ 39.25 Conflicts of interest.

* * * * *

(c) Have procedures for identifying, addressing, and managing conflicts of interest involving members of the board of directors.

■ 9. Amend § 39.37 by revising paragraph (c) and the introductory text of paragraph (d) to read as follows:

§ 39.37 Additional disclosure for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.

* * * * *

(c) Publicly disclose relevant basic data on transaction volume and values consistent with the standards set forth in the Public Quantitative Disclosure Standards for Central Counterparties published by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions;

(d) Publicly disclose rules, policies, and procedures concerning segregation and portability of customers' positions and funds, including whether each of:

* * * * *

■ 10. Add appendix C to part 39 to read as follows:

Appendix C to Part 39—Daily Reporting Data Fields

A. Daily Cash Flow Reporting

Field name	Description	House & customer origin	Individual customer account
Common Fields (Daily Cash Flow Reporting)			
Total Message Count	The total number of reports included in the file	M	M
FIXML Message Type	Financial Information eXchange Markup Language (FIXML) account summary report type	M	M
Sender ID	The CFTC-issued derivatives clearing organization (DCO) identifier	M	M
To ID	Indicate "CFTC"	M	M
Message Transmit Datetime	The date and time the file is transmitted	M	M
Report ID	A unique identifier assigned by the Commodity Futures Trading Commission (CFTC) to each clearing member report.	M	M
Report Date	The business date of the information being reported	M	M
Base Currency	Base currency referenced throughout report; provide exchange rate against this currency	M	M
Report Time (Message Create Time)	The report "as of" or information cut-off time	M	M
DCO Identifier	CFTC-assigned identifier for a DCO	M	M
Clearing Participant Identifier	DCO-assigned identifier for a particular clearing member	M	M

Field name	Description	House & customer origin	Individual customer account
Clearing Participant Name	The name of the clearing member	M	M
Fund Segregation Type	Clearing fund segregation type	M	M
Clearing Participant LEI	Legal entity identifier (LEI) for a particular clearing member per International Organization for Standardization (ISO) 17442.	C	C
Clearing Participant LEI Name	The LEI name associated with the clearing member LEI	C	C
Customer Position Identifier	Proprietary identifier for a particular customer position account	C	N/A
Customer Position Name	The name associated with the customer position identifier	M	N/A
Customer Position Account Type	Type of account used for reporting	C	N/A
Customer LEI	LEI for a particular customer; provide if available	N/A	C
Customer LEI Name	The LEI name associated with the customer position LEI	N/A	C
Margin Account	Margin account identifier	M	N/A
Customer Margin Name	The name associated with the customer margin identifier	N/A	C
Unique Margin Identifier	A single field that uniquely identifies the margin account. This field is used to identify associated positions.	M	M
Customer Margin Identifier	Proprietary identifier for a particular customer	N/A	M
Customer Margin Account Type	Account type indicator	N/A	M
Futures and Options (Daily Cash Flow Reporting)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/concentration charge if the charge is not included in the initial margin.	M	N/A
Concentration Risk	Risk factor component to capture costs associated with the liquidation of a large position	C	C
Delivery Margin	Margin collected to cover delivery risk	C	N/A
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons.	M	M
Liquidity Risk	Risk component to capture bid/offer costs associated with the liquidation of a large portfolio.	C	C
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date.	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO.	M	N/A
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin.	M	N/A
Market Move Risk	Margin amount associated with market move risk	C	C
Margin Savings	The margin savings amount for the clearing member where there is a cross-margining agreement with another DCO.	C	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement.	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller.	C	C
Net Option Value	The credit or debit amount based on the long or short options positions	C	C
Backdated Profit and Loss	The profit and loss (P&L) attributed to positions added that were novated on a prior date	O	N/A
Day Trading Profit and Loss	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark-to-market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L).	M	N/A
Customer Margin Omnibus Parent	The margin identifier for the omnibus account associated with the customer margin identifier. (Conditional on reported customer position being part of a separately reported omnibus account position.).	N/A	C
Commodity Swaps (Daily Cash Flow Reporting)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/concentration charge if the charge is not included in the initial margin.	M	N/A
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons.	M	M
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date.	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO.	M	M
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin.	M	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement.	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller.	C	N/A
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). E.g., profit/loss, price alignment interest, cash payments (fees, coupons, etc.).	C	N/A
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date	C	N/A
Day Trading Profit and Loss	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark to market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L).	M	N/A
Credit Default Swaps (Daily Cash Flow Reporting)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/concentration charge if the charge is not included in the initial margin.	M	N/A
Concentration Risk	Risk factor component to capture costs associated with the liquidation of a large position	C	C
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons.	M	M
Liquidity Risk	Risk component to capture bid/offer costs associated with the liquidation of a large portfolio.	C	C

Field name	Description	House & customer origin	Individual customer account
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date.	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO.	M	C
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin.	M	N/A
Spread Response Risk	Risk factor component associated with credit spread level changes and credit term structure shape changes.	C	C
Systemic Risk	Risk factor component to capture parallel shift of credit spreads	C	C
Curve Risk	Risk factor that captures curve shifts based on portfolio	C	C
Index Spread Risk	Risk factor component associated with risks due to widening/tightening spreads of credit default swap (CDS) indices relative to each other.	C	C
Sector Risk	Risk factor component to capture sector risk	C	C
Jump to Default Risk	Risk factor component to capture most extreme up/down move of a reference entity	C	C
Basis Risk	Risk factor component to capture basis risk between index and index constituent reference entities.	C	C
Interest Rate Risk	Risk factor component associated with parallel shift movements in interest rates	C	C
Jump to Health Risk	Risk factor component to capture extreme narrowing of credit spreads of a reference entity; also known as ''idiosyncratic risk''.	C	C
Other Risk	Any other risk factors included in the margin model	C	C
Recovery Rate Sensitivity Risk	Risk factor component to capture fluctuations of recovery rate assumptions	C	C
Wrong Way Risk	Risk that occurs when exposure to a counterparty is adversely correlated with the credit quality of that counterparty. It arises when default risk and credit exposure increase together.	C	C
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement.	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller.	C	N/A
Initial Coupon	Amount of coupon premium amount accrued from the start of the current coupon period through the trade date. (Indicate gross pay/collect amounts.).	O	N/A
Upfront Payment	The difference in market value between the standard coupon and the market spread as well as the coupon accrued through the trade date. (Indicate gross pay/collect amounts.).	O	N/A
Trade Cash Adjustment	Additional cash amount on trades. (Indicate gross pay/collect amounts.)	C	N/A
Quarterly Coupon	Regular payment of quarterly coupon premium amounts. (Indicate gross pay/collect amounts.)	O	N/A
Credit Event Payments	Cash settlement of credit events. (Indicate gross pay/collect amounts.)	C	N/A
Accrued Coupon	Coupon obligation from the first day of the coupon period through the current clearing trade date. The sum of accrued coupon for each position in the clearing member's portfolio (by origin)..	M	N/A
Final Mark to Market	Determined by marking the end-of-day position from par (100%) to the end-of-day settlement price.	M	N/A
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date	C	N/A
Day Trading Profit and Loss	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark-to-market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L).	M	N/A
Previous Accrued Coupon	Previous day's accrued coupon	M	N/A
Previous Mark to Market	Previous day's mark to market	M	N/A
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid.	M	N/A
Foreign Exchange (Daily Cash Flow Reporting)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/concentration charge if the charge is not included in the initial margin.	M	N/A
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons..	M	M
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date.	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO.	M	M
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin.	M	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement.	M	N/A
Other Payments	Includes any upfront and/or final/settlement payments made/received for the trade date. (Indicate gross pay/collect amounts.).	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller.	C	N/A
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid.	M	N/A
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date	C	N/A
Day Trading Profit and Loss	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark-to-market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L).	M	N/A
Interest Rate Swaps (Daily Cash Flow Reporting)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/concentration charge if the charge is not included in the initial margin.	M	N/A

Field name	Description	House & customer origin	Individual customer account
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons.	M	M
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date.	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO.	M	M
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin.	M	N/A
Cross-Margined Products Profit/Loss	P&L resulting from changes in value due to changes in the futures price. This P&L should only include changes to the cross-margined futures in the account.	C	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller.	C	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement.	M	N/A
Other Payments	Includes any upfront and/or final/settlement payments made/received for the trade date. (Indicate gross pay/collect amounts.).	C	N/A
Net Coupon Payment	Net amount of any coupon cash flows recognized on report date but actually occurring on currency's settlement convention date. (Indicate gross pay/collect amounts.).	M	N/A
Net Present Value	Net present value (NPV) of all positions by currency	M	N/A
Net Present Value Previous	Previous day's NPV by currency	M	N/A
PV of Other Payments	Includes the present value of any upfront and/or final/settlement payments that will be settled after the report date. Only include amounts that are affecting the NPV of current trades.	M	N/A
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid.	M	N/A
Accrued Coupon	Coupon obligation from the first day of the coupon period through the current clearing trade date. The sum of accrued coupon for each position in the clearing member's portfolio (by origin).	M	N/A
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date	C	N/A
Day Trading Profit and Loss	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark-to-market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L)..	M	N/A
Equity Cross Margin (Daily Cash Flow Reporting)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/concentration charge if the charge is not included in the initial margin.	M	N/A
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons resulting from liquidity/concentration charges.	M	M
Liquidity Risk	Risk component to capture bid/offer costs associated with the liquidation of a large portfolio	C	C
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date..	M	N/A
Total Margin	The total margin requirement for the origin. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO.	M	N/A
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin..	M	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement.	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller.	C	N/A
Net Option Value	The credit or debit amount based on the long or short options positions	C	C
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date.	C	N/A
Day Trading Profit and Loss	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark to market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L).	M	N/A
Consolidated (Daily Cash Flow Reporting)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/concentration charge if the charge is not included in the initial margin.	M	N/A
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons.	M	N/A
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date.	M	N/A
Total Margin	The consolidated non-U.S. margin requirement for the origin. The consolidated non-U.S. margin requirement should include the initial margin requirement plus any additional margin required by the DCO.	M	N/A
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin.	M	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement.	M	N/A
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller.	C	N/A
Backdated Profit and Loss	The P&L attributed to positions added that were novated on a prior date	C	N/A
Day Trading Profit and Loss	The P&L attributed to the day's trades	C	N/A
Position Profit and Loss	The P&L of the previous day's position with today's price movement	C	N/A
Total Profit and Loss	Unrealized P&L or mark-to-market value of position(s) including change in mark to market (Total P&L = Position P&L + Day Trading P&L + Backdated P&L).	M	N/A

Field name	Description	House & customer origin	Individual customer account
Exempt DCO (Daily Cash Flow Reporting)			
Additional Margin	Any additional margin required in excess of initial margin. For example, this figure should include any liquidity/concentration charge if the charge is not included in the initial margin.	M	N/A
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons.	M	N/A
Margin Calls	Any outstanding margin call that has been issued but not collected as of the end of the trade date.	M	N/A
Total Margin	The U.S. person margin requirement for the origin by currency contribution. If the traded currency's swaps (i.e., JY) offset risk of other currencies, include an amount of zero for that currency. This margin requirement should include the initial margin requirement plus any additional margin required by the DCO.	M	N/A
Variation Margin	Variation margin should include the net sum of all cash flows between the DCO and clearing members by origin.	M	N/A
Collateral on Deposit	The collateral on deposit for an origin. This amount should include all collateral after all haircuts that have been deposited to cover the total margin requirement.	M	N/A
Mark-to-Market	Determined by marking the end of day position(s) from par (100%) to the end of day settlement price.	M	N/A

M = mandatory C = conditional O = optional.

B. Daily Position Reporting

Field name	Description	Use
Common Fields (Daily Position Reporting)		
Total Message Count	The total number of reports included in the file	M
FIXML Message Type	FIXML account summary report type	M
Sender ID	The CFTC-issued DCO identifier	M
To ID	Indicate ''CFTC''	M
Message Transmit Datetime	The date and time the file is transmitted	M
Report ID	A unique identifier assigned by the CFTC to each clearing member report	M
Report Date	The business date of the information being reported	M
Base Currency	Base currency referenced throughout report; provide exchange rate against this currency	M
Report Time (Message Create Time)	The report ''as of'' or information cut-off time	M
Message Event	The event source being reported	M
Market Segment ID	Market segment associated with the position report	M
DCO Identifier	CFTC-assigned identifier for a DCO	M
Clearing Participant Identifier	DCO-assigned identifier for a particular clearing member	M
Clearing Participant Name	The name of the clearing member	M
Fund Segregation Type	Clearing fund segregation type	M
Clearing Participant LEI	LEI for a particular clearing member	C
Clearing Participant LEI Name	The LEI name associated with the clearing member LEI	C
Customer Position Identifier	Proprietary identifier for a particular customer position account	C
Customer Position Name	The name associated with the customer position identifier	M
Customer Position Account Type	Type of account used for reporting	C
Customer Position LEI	LEI for a particular customer; must be provided when available	C
Customer Position LEI Name	The LEI name associated with the Customer Position LEI	C
Customer Margin Identifier	Proprietary identifier for a particular customer	C
Customer Margin Name	The name associated with the customer margin identifier	C
Unique Margin Identifier	A single field that uniquely identifies the margin account. This field is used to identify associated positions	M
Futures and Options (Daily Position Reporting)		
Settlement Price/Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	M
Cross-Margin Entity	Name of the entity associated with a cross-margined account	C
Exchange Commodity Code	Contract commodity code issued by the exchange; *e.g.,* ticker symbol, the human recognizable trading identifier.	M
Clearing Commodity Code	Registered commodity clearing identifier. The code is for the contract as if it was traded in the form it is cleared. For example, if the contract was traded as a spread but cleared as an outright, the outright symbol should be used.	M
Product Type	Indicates the type of product with which the security is associated	C
Security Type	Indicates type of security	M
Maturity Month Year	Month and year of the maturity	M
Maturity Date	The date on which the principal amount becomes due	C
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Asset Subtype	Provides a more specific description of the asset type	C
Security Group (Sector)	A name assigned to a group of related instruments which may be concurrently affected by market events and actions.	C
Unit Leverage Factor	The multiplier needed to convert a change of one point of the quoted index into local currency P&L for a 1-unit long position.	M
Units	Unit of measure	M
Settlement Method	Method of settlement	C
Exchange Identifier (MIC)	Exchange where the instrument is traded, per ISO 10383	M
Security Description	Used to provide a textual description of a financial instrument	M
Unique Product Identifier	A single field that uniquely identifies a given product. All positions with this identifier will have the same price	M
Alternate Product Identifier—Spread Underlying Long.	When a contract represents a differential between two products, the product code that represents the long position in the spread for long position in the combined contract.	C

Field name	Description	Use
Alternate Product Identifier—Spread Underlying Short.	When a contract represents a differential between two products, the product code that represents the long position in the spread for short position in the combined contract.	C
Last Trading Date	The last day of trading in a futures contract	M
First Notice Date	The first date on which delivery notices are issued	C
Position (Long)	Long position size. If a position is quoted in a unit of measure (UOM) different from the contract, specify the UOM. If a position is measured in a currency, specify the currency.	M
Position (Short)	Short position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency.	M
Settlement FX Info	Settlement price foreign exchange conversion rate	M
Change in Settlement Price	The quoted price change between the prior trading day's settlement and today's settlement	M
Unit Currency P&L	The local currency P&L between the prior trading day's settlement and today's settlement for a 1-unit long position.	M
Outright Initial Margin	Initial margin for the position as if it were a stand-alone outright position	C
Option Exercise Style	Exercise style	C
Option Strike Price	Option strike price	C
Option Put/Call Indicator	Option type	C
Underlying Settlement Price/Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	C
Underlying Exchange Commodity Code	Underlying Contract code issued by the exchange	C
Underlying Clearing Commodity Code	Registered commodity clearing identifier. The code is for the contract as if it was traded in the form it is cleared. For example, if the contract was traded as a spread but cleared as an outright, the outright symbol should be used.	C
Underlying Product Type	Indicates the type of product the security is associated with	C
Underlying Security Type	Indicator which identifies the underlying derivative type	C
Underlying Security Group (Sector)	A name assigned to a group of related instruments which may be concurrently affected by market events and actions.	C
Underlying Maturity Month Year	Month and year of the maturity	C
Underlying Maturity Date	The date on which the principal amount becomes due	C
Underlying Asset Class	The underlying broad asset category for assessing risk exposure	C
Underlying Asset Subclass	The subcategory description of the asset class	C
Underlying Asset Type	Provides a more specific description of the asset subclass	C
Underlying Asset Subtype	Provides a more specific description of the asset type.	C
Underlying Exchange Code (MIC)	Exchange where the underlying instrument is traded	C
Underlying Security Description	Textual description of a financial instrument	C
Unique Underlying Product Code	A single field that is the result of concatenating relevant fields that create a unique product ID that is associated with a unique price.	C
Primary Options Exchange Code—Implied Volatility Quote.	This field identifies the main options chain for the future that provides the implied volatility quote	C
DELTA	Delta is the measure of how the option's value varies with changes in the underlying price	C
Implied Volatility	The implied volatility and quotation style for the contract, typically in natural log percent or index points	C
Customer Margin Omnibus Parent	The margin identifier for the omnibus account associated with the customer margin identifier. (Conditional on reported customer position being part of a separately reported omnibus account position).	C
Commodity Swaps (Daily Position Reporting)		
Settlement Price/Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	M
Exchange Commodity Code	Contract commodity code issued by the exchange; *e.g.,* ticker symbol, the human recognizable trading identifier.	M
Clearing Commodity Code	Registered commodity clearing identifier. The code is for the contract as if it was traded in the form it is cleared. For example, if the contract was traded as a spread but cleared as an outright, the outright symbol should be used.	M
Product Type	Indicates the type of product with which the security is associated	C
Security Group (Sector)	A name assigned to a group of related instruments which may be concurrently affected by market events and actions.	C
Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to 17 CFR 45.7.	O
Maturity Month Year	Month and year of the maturity	M
Maturity Date	The date on which the principal amount becomes due	C
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Unit Leverage Factor	The multiplier needed to convert a change of one point of the quoted index into local currency P&L for a 1-unit long position.	C
Minimum Tick	Minimum price tick increment	C
Units	Unit of measure	M
Settlement Method	Swap settlement method	C
Exchange Identifier (MIC)	Exchange where the instrument is traded	M
Security Description	Used to provide a textual description of a financial instrument	C
Security Type	Indicates type of security	M
Position (Long)	Long position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency.	M
Position (Short)	Short position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency.	M
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). *E.g.,* profit/loss, price alignment interest, cash payments (fees, coupons, etc.).	C
Settlement FX Info	Settlement price foreign exchange conversion rate	M
Universal (or Unique) Swap Identifier	Universal (or Unique) Swap Identifier (USI) namespace and USI. The USI namespace and the USI should be separated by a pipe "|" character.	M
Option Exercise Style	Exercise style	C
Option Put/Call Indicator	Option type	M
Option Strike Price	Option strike price	M
Underlying Settlement Price/Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	M
Underlying Exchange Commodity Code	Underlying Contract code issued by the exchange	C

Field name	Description	Use
Underlying Clearing Commodity Code	Registered commodity clearing identifier. The code is for the contract as if it was traded in the form it is cleared. For example, if the contract was traded as a spread but cleared as an outright, the outright symbol should be used.	M
Underlying Product Type	Indicates the type of product the security is associated with	C
Underlying Security Group (Sector)	A name assigned to a group of related instruments which may be concurrently affected by market events and actions.	C
Underlying Maturity Month Year	Month and year of the maturity	M
Underlying Maturity Date	The date on which the principal amount becomes due	C
Underlying Asset Class	The underlying broad asset category for assessing risk exposure	M
Underlying Asset Subclass	The subcategory description of the asset class	C
Underlying Asset Type	Provides a more specific description of the asset subclass	C
Underlying Exchange Code (MIC)	Exchange where the underlying instrument is traded	M
Underlying Security Type	Indicates type of security	M
Underlying Security Description	Textual description of a financial instrument	C
DELTA	Delta is the measure of how the option's value varies with changes in the underlying price	C
Credit Default Swaps (Daily Position Reporting)		
Settlement Price/Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	M
Exchange Security Identifier	Contract code issued by the exchange	O
Redcode	The code assigned to the CDS by Markit that identifies the referenced entity or the index, series and version. (Underlying instrument is required for Security Type = SWAPTION.).	M
Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to Commission regulation 17 CFR 45.7.	O
Security Type	Indicator which identifies the derivative type	M
Restructuring Type	This field is used if the index has been restructured due to a credit event	M
Seniority Type	The class of debt	M
Maturity Date	The date on which the principal amount becomes due	C
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Reference Entity Type (Sector)	Specifies the type of reference entity for first-to-default CDS basket contracts. The Markit sector code should be provided when available.	M
Coupon Rate	The coupon rate associated with this CDS transaction stated in Basis Points	M
Security Description (Reference Entity)	Name of CDS index or single-name or sovereign debt	M
Recovery Factor	The assumed recovery rate used to determine the CDS price	O
Position (Long)	Long position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency.	M
Position (Short)	Short position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency.	M
5 YR Equivalent Notional	The five-year equivalent notional amount for each risk factor/reference entity CDS contract	M
Accrued Coupon	Coupon obligation from the first day of the coupon period through the current clearing trade date	M
Profit and Loss	Unrealized P&L or mark to market value of position(s) including change in mark to market plus change in accrued coupon plus change in unsettled upfront fees. Does not include cash flows related to quarterly coupon payments, credit event payments, or price alignment interest.	M
Credit Exposure (CS01)	The credit exposure of the swap at a given point in time. CS01 = Spread DV01 = ''dollar'' value of a basis point = In currency (not percentage) terms, the change in fair value of the leg, transaction, position, or portfolio (as appropriate) commensurate with a 1 basis point (0.01 percent) instantaneous, hypothetical increase in the related credit spread curves. CS01/Spread DV01 may refer to non-dollar currencies and related curves. From the DCO's point of view: positive CS01 = gain in value resulting from 1 basis point increase, negative CS01 = loss of value resulting from 1 basis point increase.	C
Mark to Market	Determined by marking the end of day position(s) from par (100%) to the end of day settlement price	M
Price Value of a Basis Point (PV01)	Change in P&L of a position given a one basis point move in CDS spread value. May also be referred to as DV01, Sprd DV01.	M
Previous Accrued Coupon	Previous day's accrued coupon	M
Previous Mark to Market	Previous day's mark to market	M
Universal (or Unique) Swap Identifier	Universal (or Unique) Swap Identifier (USI) namespace and USI. The USI namespace and the USI should be separated by a pipe ''|'' character.	O
Option Strike Price	Option strike price	C
Settlement Method	Method of settlement	C
Option Exercise Style	Exercise style	C
Option Put/Call Indicator	Option type	C
Option Type	Specifies the option type	C
Option Start Date	The option adjusted start date	C
Option Expiration Date—Adjusted	The CDS option adjusted expiration date	C
Underlying Exchange Security Identifier	The underlying contract alias used by outside vendors to uniquely identify the contract	O
Underlying Clearing Security Identifier (Red Code).	The underlying code assigned to the CDS by Markit that identifies the referenced entity or the index, series and version.	C
Underlying Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to Commission regulation 17 CFR 45.7.	O
Underlying Security Type	Indicator which identifies the underlying derivative type	C
Underlying Restructuring Type	This field is used if the underlying index has been restructured due to a credit event	C
Underlying Seniority Type	The underlying class of debt	C
Underlying Maturity Date	The date on which the principal amount becomes due	C
Underlying Asset Class	The underlying broad asset category for assessing risk exposure	C
Underlying Asset Subclass	The subcategory description of the asset class	C
Underlying Asset Type	Provides a more specific description of the asset subclass	C
Underlying Reference Entity Type (Sector)	Specifies the type of underlying reference entity for first-to-default CDS basket contracts	C
Underlying Coupon Rate	The underlying coupon rate associated with this CDS transaction stated in basis points	C
Underlying Security Description	Textual description of a financial instrument	C
Underlying Recovery Factor	The assumed recovery rate used to determine the underlying CDS price	C
DELTA	Delta is the measure of how the option's value varies with changes in the underlying price	M
GAMMA	Gamma is the rate of change for delta with respect to the underlying asset's price	M
RHO	Rho measures the sensitivity of an option's price to a variation in the risk-free interest rate	M

Field name	Description	Use
THETA	Theta is the rate at which an option loses value as time passes	M
VEGA	Vega is the measurement of an option's sensitivity to changes in the volatility of the underlying asset	M
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller.	C
Option Premium Date	Date swaption premium is paid	C
Foreign Exchange (Daily Position Reporting)		
Settle Date	Settle date of the position	M
Settlement Price/Fixing Currency	Settlement price of the position	M
Discount Factor	Discount factor for the position. Use the factor for the Mark to Market (MTM) currency	M
Valuation Date	Valuation date of the position	M
Delivery Date	Delivery date of the position	M
Clearing Security Identifier	Code assigned by the DCO for a particular contract	M
Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to Commission regulation 17 CFR 45.7.	O
Security Type	Registered commodity clearing identifier. (Underlying instrument is required for Security Type = FXOPT | FXNDO.).	M
Maturity Month Year	Month and year of the maturity	C
Maturity Date (Expiration)	Specifies date of maturity (a calendar date). Used for FXFWD/FXNDF. For non-deliverable forwards (NDFs), this represents the fixing date of the contract.	C
Maturity Time (Expiration)	The contract expiration time. (Used for FXFWD/FXNDF.)	C
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Valuation Method	Specifies the type of valuation method applied	C
Security Description	Used to provide a textual description of a financial instrument	C
Foreign Exchange Type	Identifies the type of FX contract. Use Typ = 7 for direct FX (*e.g.,* EUR/USD). Use Typ = 16 for NDFWD contracts (*e.g.,* THB/INR settled in USD).	M
Currency One	Specifies the first or only reference currency of the trade	M
Currency Two	Specifies the second reference currency of the trade	M
Quote Basis	For foreign exchange quanto option feature	M
Fixed Rate	(FXFWD or FXNDF only). Specifies the forward FX rate alternative	C
Spot Rate	Specifies the FX spot rates the first or only reference currency of the trade	C
Forward Points	(FXFWD or FXNDF only) The interest rate differential in basis points between the base and quote currencies in a forward rate quote. May be a negative value. (The number of basis points added to or subtracted from the current spot rate of a currency pair to determine the forward rate for delivery on a specific value date.).	C
Delivery Type Indicator	Delivery type indicator	M
Position—Long	Gross long position. An affirmative zero value should be reported for the long position. (Both long and short positions are required.) For FXNDF use Typ = DLV for settlement currency.	M
Position—Short	Gross short position. An affirmative zero value should be reported for the short position. (Both long and short positions are required.) For FXNDF use Typ = DLV for settlement currency.	M
Final Mark to Market	Mark to market which includes the discount factor	M
Dollar Value of a Basis Point (DV01)—Long Currency.	The dollar value of a one basis point change (DV01) in the yield of the underlying security and that of the hedging vehicle.	M
Dollar Value of a Basis Point (DV01)—Short Currency.	The dollar value of a one basis point change (DV01) in the yield of the underlying security and that of the hedging vehicle.	M
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). *E.g.,* profit/loss, price alignment interest, cash payments (fees, coupons, etc.).	M
Undiscounted Mark to Market	Mark to market, which does not include the discount factor	M
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid.	M
Universal (or Unique) Swap Identifier	Universal (or Unique) Swap Identifier (USI) namespace and USI. The USI namespace and the USI should be separated by a pipe "|" character.	M
Option Put/Call Indicator	Option type	C
Strike Rate	Option strike rate	C
Option Exercise Style	Exercise style	C
Option Cut Name	The code by which the expiry time is known in the market	C
Underlying Settlement Price/Fixing Currency.	Settlement price for the position. (Underlying settlement is required for FXOPT, FXNDO.)	C
Underlying Exchange Security Code	Security code issued by the exchange; *e.g.,* ticker symbol, the human recognizable trading identifier	C
Underlying Clearing Security Identifier	Code assigned by the DCO for the underlying contract	C
Underlying Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to Commission regulation 17 CFR 45.7.	O
Underlying Security Type	Indicator which identifies the underlying derivative	C
Underlying Maturity Month Year	Month and year of the maturity	C
Underlying Maturity Date (Expiration)	For FXFWD/FXNDF, the date on which the principal amount becomes due. For NDFs, this represents the fixing date of the contract.	C
Underlying Exchange Identifier (MIC)	Exchange where the underlying instrument is traded	C
Underlying Security Description	Textual description of a financial instrument	C
Option Long/Short Indicator	Indicates whether the option is short or long	C
Option Expiration	Adjusted option expiration date	C
Notional Long/Short	FX currency notional long or short	M
Implied Volatility	The implied volatility and quotation style for the contract, typically in natural log percent or index points	C
DELTA	Delta is the measure of how the option's value varies with changes in the underlying price	M
GAMMA	Gamma is the rate of change for delta with respect to the underlying asset's price	M
RHO	Rho measures the sensitivity of an option's price to a variation in the risk-free interest rate	M
THETA	Theta is the rate at which an option loses value as time passes	M
VEGA	Vega is the measurement of an option's sensitivity to changes in the volatility of the underlying asset	M
Option Premium MTM	Premium mark to market, which includes the discount factor	C
Interest Rate Swaps (Daily Position Reporting)		
Cleared Date	Date on which the trade was cleared at the DCO	M

Field name	Description	Use
Position Status	Position status: active, or terminated. Terminated positions should only be reported on the day of termination	M
DCO Pays Indicator	Indicate which cash flow the DCO pays	M
DCO Receives Indicator	Indicate which cash flow the DCO receives	M
Clearing Participant Pays Indicator	Indicate which cash flow the clearing member pays	M
Clearing Participant Receives Indicator	Indicate which cash flow the clearing member receives	M
Clearing Security Identifier	Code assigned by the DCO for a particular contract	M
Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to Commission regulation 17 CFR 45.7.	O
Security Type	Registered commodity clearing identifier	M
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Swap Class	The classification or type of swap	M
Swap Subclass	The sub-classification or notional schedule type of the swap	C
Security Description	Used to provide a textual description of a financial instrument	M
Leg Type	Identifies if the leg is fixed or floating	M
Leg Notional	Notional amount associated with leg	M
Leg Notional Currency	Currency of the leg's notional amount	M
Leg Start Date Adj Bus Day Conv	If start date falls on a weekend or holiday, value defines how to adjust actual start date	C
Leg Start Date	Leg's effective date	M
Leg Maturity Date Adj Bus Day Conv	If the maturity date falls on a weekend or holiday, value defines how to adjust actual maturity date	C
Leg Maturity Date	The date on which the leg's principal amount becomes due	M
Leg Maturity Date Adj Calendar	Regarding the maturity date, this specifies which dates are considered holidays	C
Leg Calculation Period Adjusted Business Day Convention.	If a date defining the calculation period falls on a holiday, this adjusts the actual dates based on the definition of the input.	C
Leg Calculation Frequency	Calculation frequency, also known as the compounding frequency for compounded swaps	M
Leg First Reg Per Start Date	If there is a beginning stub, this indicates the date when the usual payment periods will begin	C
Leg Last Reg Per End Date	If there is an ending stub, this indicates the date when the usual payment periods will end	C
Leg Roll Conv	Indicates the day of the month when the payment is made	C
Leg Calc Per Adj Calendar	Regarding the calculation period, this specifies which dates are considered holidays	C
Leg Daycount	Defines how interest is accrued/calculated	C
Leg Comp Method	If payments are made on one timeframe but calculations are made on a shorter timeframe, this describes how to compound interest.	C
Leg Pay Adj Bus Day Conv	If cash flow pay or receive date falls on a weekend or holiday, value defines actual date payment is made	C
Leg Pay Frequency	Frequency at which payments are made	M
Leg Pay Relative To	Payment relative to the beginning or end of the period	C
Leg Payment Lag	Number of business days after payment due date on which the payment is actually made	C
Leg Pay Adj Calendar	Regarding dates on which cash flow payments/receipts are scheduled, this specifies which dates are considered holidays.	C
Leg Reset Relative To	Specifies whether reset dates are determined with respect to each adjusted calculation period start date or adjusted calculation period end date.	C
Leg Reset Date Adj Bus Day Conv	Business day convention to apply to each reset date if the reset date falls on a holiday	C
Leg Reset Frequency	Frequency at which resets occur. If the Leg Reset Frequency is greater than the calculation per frequency, more than 1 reset date should be established for each calculation per frequency and some form of rate averaging is applicable.	C
Leg Fixing Date Bus Day Conv	Business day convention to apply to each fixing date if the fixing date falls on a holiday	C
Leg Fixing Date Offset	Specifies the fixing date relative to the reset date in terms of a business days offset	C
Leg Fixing Day Type	The type of days to use to find the fixing date (*i.e.,* business days, calendar days, etc.)	C
Leg Reset Date Adj Calendar	Regarding reset dates, this specifies which dates are considered holidays	C
Leg Fixing Date Calendar	Regarding the fixing date, this specifies which dates are considered holidays	C
Leg Fixed Rate or Amount	Only populate if Leg1 is Type ''Fixed''. This should be expressed in decimal form (*e.g.,* 4% should be input as ''.04'').	C
Leg Index	If Stream is floating rate, this gives the index applicable to the floating rate	C
Leg Index Tenor	For the floating rate leg, the tenor of the leg. For the fixed rate leg, NULL	C
Leg Spread	Describes if there is a spread (typically an add-on) applied to the coupon rate	C
Leg Pmt Sched Notional	Variable notional swap notional values	C
Leg Initial Stub Rate	The interest rate applicable to the Initial Stub Period in decimal form (*e.g.,* 4% should be input as ''.04'')	C
Leg Initial Stub Rate Index 1	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.,* if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the first index.	C
Leg Initial Stub Rate Index 2 Tenor	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.,* if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the second index.	C
Leg Final Stub Rate	The interest rate applicable to the final stub period in decimal form (*e.g.,* 4% should be input as ''.04'')	C
Leg Final Stub Rate Index 1	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.,* if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the first index.	C
Leg Final Stub Rate Index 2 Tenor	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.,* if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the second index.	C
Accrued Coupon (Interest)	Net accrued coupon amount since the last payment in the leg currency. If reported by leg, indicate the associated stream (leg) description (*e.g.,* ''FIXED/FLOAT,'' ''FLOAT1/FLOAT2'').	M
Profit/Loss	Profit/loss resulting from changes in value due to changes in underlying curve movements or floating index rate resets. This should exclude impacts to NPVs from extraneous cash flows (price alignment interest, fees, and coupons).	M
Leg Current Period Rate	If leg is a floating leg, this indicates the current rate used to calculate the next floating Leg coupon in decimal form (*e.g.,* 4% should be input as ''.04'').	M
Leg Coupon Payment	Coupon amount for T + 1 in the leg currency. This should reflect the net cash flow that will actually occur on the following business day. Negative number indicates that a payment was made.	M
Dollar Value of Basis Point (DV01)	Change in value in USD if the relevant pricing curve is shifted up by 1 basis point. DV01 = ''dollar'' value of a basis point in currency (not percentage) terms, the change in fair value of the leg, transaction, position, or portfolio (as appropriate) commensurate with a 1 basis point (0.01 percent) instantaneous, hypothetical increase in the related zero-coupon curves. DV01 may refer to non-dollar currencies and related curves. From the DCO's point of view: positive DV01 = profit/gain resulting from 1 basis point increase, negative DV01 = loss resulting from 1 basis point increase.	M
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). *E.g.,* Profit/Loss, price alignment interest, cash payments (fees, coupons, etc.).	M

Field name	Description	Use
Net Present Value	Net present value (NPV) of all positions by currency	M
Present Value of Other Payments	Includes the present value of any upfront and/or final/settlement payments that will be settled after the report date. Only include amounts that are affecting the NPV of current trades.	M
Net Present Value Previous	Previous day's NPV by currency	C
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid.	M
Other Payments	Includes any upfront and/or final/settlement payments made/received for the trade date. (Indicate gross pay/collect amounts.).	C
Universal (or Unique) Swap Identifier	Universal (or Unique) Swap Identifier (USI) namespace and USI. The USI namespace and the USI should be separated by a pipe "|" character.	C
Leg Initial Exchange	Amount of any exchange of cash flow at initiation of trade being cleared	C
Leg Initial Exchange Date	Date that the initial exchange is set to occur	C
Leg Final Exchange	Amount of any exchange of cash flow at maturity of trade	C
Leg Final Exchange Date	Date that the final exchange is set to occur	C
Option Exercise Style	Exercise style	C
Option Type	Specifies the option type	C
Option Start Date	The option adjusted start date	C
Option Adjusted Expiration Date	The IRS swaption adjusted expiration date	C
Option Buy/Sell Indicator	Indicates the buyer or seller of a swap stream	C
Underlying Clearing Security Identifier	Code assigned by the DCO for the underlying contract	C
Underlying Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to 17 CFR 45.7.	C
Underlying Security Type	Indicator which identifies the underlying derivative	C
Underlying Asset Class	The underlying broad asset category for assessing risk exposure	C
Underlying Asset Subclass	The subcategory description of the asset class	C
Underlying Asset Type	Provides a more specific description of the asset subclass	C
Underlying Swap Class	The classification or type of swap	C
Underlying Swap Subclass	The sub-classification or notional schedule type of the swap	C
Underlying Security Description	Textual description of a financial instrument	C
Underlying Security Leg Type	Identifies if the leg is fixed or floating	C
Underlying Security Leg Notional	Notional amount associated with leg	C
Underlying Security Leg Currency	Currency of this leg's notional amount	C
Underlying Security Leg Index	If stream is floating rate, this gives the index applicable to the floating rate	C
Underlying Security Leg Index Tenor	For the floating rate leg, the tenor of the leg. For the fixed rate leg, NULL	C
Underlying Security Leg Fixed Rate Or Amount.	Only populate if Leg1 is type "Fixed". This should be in decimal form (*e.g.,* 4% should be input as ".04")	C
Underlying Security Leg Spread	Indicates whether there is a spread (typically an add-on) applied to the coupon rate	C
DELTA	Delta is the measure of how the option's value varies with changes in the underlying price	M
GAMMA	Gamma is the rate of change for delta with respect to the underlying asset's price	M
RHO	Rho measures the sensitivity of an option's price to a variation in the risk-free interest rate	M
THETA	Theta is the rate at which an option loses value as time passes	M
VEGA	Vega is the measurement of an option's sensitivity to changes in the volatility of the underlying asset	M
Option Premium	Premium registered on the given trading date. The amount of money that the options buyer must pay the options seller.	C
Option Premium Date	Date option premium is paid	C
Trade Date	Date a transaction was originally executed, resulting in the generation of a new USI. For clearing swaps, the date when the DCO accepts the original swap.	M
Event Description	Description for each position record	C
Forward Rate Agreements (Daily Position Reporting)		
Previous Business Date	Previous business date	M
Position Status	Position status: active or terminated. Terminated positions should only be reported on the day of termination	M
DCO Pays Indicator	Indicates which cash flow the DCO pays	M
DCO Receives Indicator	Indicates which cash flow the DCO receives	M
Clearing Participant Pays Indicator	Indicates which cash flow the clearing member pays	M
Clearing Participant Receives Indicator	Indicates which cash flow the clearing member receives	M
Clearing Security Identifier	Code assigned by the DCO for a particular contract	M
Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to 17 CFR 45.7.	O
Security Type	Registered commodity clearing identifier	M
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
FRA Type	Type of swap stream	M
Notional Amount	Stream notional amount	M
Notional Currency	Currency of leg notional amount	M
Start Date	Date the position was established	M
Maturity Date	The date on which the principal amount becomes due	M
Payment Day Count Convention	Defines how interest is accrued/calculated	M
Payment Accrual Days	Number of accrual days between the effective date and maturity date	M
First Payment Date	Date on which the payment is made. Always report the adjusted date	C
Reset Date Bus Day Convention	Business day convention to apply to each fixing date if the fixing date falls on a holiday	M
Reset Date Fixing Date	Date on which the payment is fixed. Always report the adjusted date	M
Fixed Rate	The fixed amount in decimal terms	M
Float Index	The index for the floating portion of the Forward Rate Agreement (FRA)	M
Float First Tenor	First tenor associated with the index	M
Float Second Tenor	Second tenor associated with the index	C
Float Spread	In basis point terms	M
Float Reference Rate	The fixed floating rate in decimal terms	M
PV01	Change in value in native currency if the relevant pricing curve is shifted up by 1 basis point	M

Field name	Description	Use
Dollar Value of Basis Point (DV01)	Change in value in USD if the relevant pricing curve is shifted up by 1 basis point. DV01 = ''dollar'' value of a basis point in currency (not percentage) terms, the change in fair value of the leg, transaction, position, or portfolio (as appropriate) commensurate with a 1 basis point (0.01 percent) instantaneous, hypothetical increase in the related zero-coupon curves. DV01 may refer to non-dollar currencies and related curves. From the DCO's point of view: positive DV01 = profit/gain resulting from 1 basis point increase, negative DV01 = loss resulting from 1 basis point increase.	M
Net Present Value	Net present value (NPV) of all positions by currency	M
Settlement FX Info	Settlement price foreign exchange conversion rate	M
Net Present Value Previous	Previous day's NPV by currency	M
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid.	M
Universal (or Unique) Swap Identifier	Universal (or Unique) Swap Identifier (USI) namespace and USI. The USI namespace and the USI should be separated by a pipe ''|'' character.	C
Settlement Amount	The amount paid/received on the Payment Date. Always report adjusted date. (The position pays on a negative amount.).	M
Other Payments	Includes any upfront and/or final/settlement payments made/received for the trade date. (Indicate gross pay/collect amounts.).	C
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). *E.g.,* profit/loss, price alignment interest, cash payments (fees, coupons, etc.).	C
Profit/Loss	Profit/Loss resulting from changes in value due to changes in underlying curve movements or floating index rate resets. Should exclude impacts to NPVs from extraneous cash flows (price alignment interest, fees, and coupons).	C
Present Value of Other Payments	Includes the present value of any upfront and/or final/settlement payments that will be settled after the report date. Only include amounts that are affecting the NPV of current trades.	C
Trade Date	Actual trade date for each position record (including specifically, the cleared date and the trade date)	M
Event Description	Description for each position record	C
Inflation Index Swaps (Daily Position Reporting)		
Cleared Date	Date on which the trade was cleared at the DCO	M
Position Status	Position's status: active or terminated. Terminated positions should only be reported on the day of termination	M
DCO Pays Indicator	Indicate which cash flow the DCO pays	M
DCO Receives Indicator	Indicate which cash flow the DCO receives	M
Clearing Participant Pays Indicator	Indicate which cash flow the clearing member pays	M
Clearing Participant Receives Indicator	Indicate which cash flow the clearing member receives	M
Clearing Security Identifier	Code assigned by the DCO for a particular contract	M
Unique Product Identifier	A unique set of characters that represents a particular swap. The Commission will designate a UPI pursuant to 17 CFR 45.7.	O
Security Type	Registered commodity clearing identifier	M
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Swap Class	The classification or type of swap	M
Swap Subclass	The sub-classification or notional schedule type of the swap	C
Security Description	Used to provide a textual description of a financial instrument	M
Leg Type	Identifies if the leg is fixed or floating	M
Leg Notional	Notional amount associated with leg	M
Leg Notional Currency	Currency of the leg's notional amount	M
Leg Start Date Adj Bus Day Conv	If start date falls on a weekend or holiday, value defines how to adjust actual start date	C
Leg Start Date	Leg's effective date	M
Leg Maturity Date Adj Bus Day Conv	If the maturity date falls on a weekend or holiday, value defines how to adjust actual maturity date	C
Leg Maturity Date	The date on which the leg's principal amount becomes due	M
Leg Maturity Date Adj Calendar	Regarding the maturity date, this specifies which dates are considered holidays	C
Leg Calc Per Adj Bus Day Conv	If a date defining the calculation period falls on a holiday, this adjusts the actual dates based on the definition of the input.	C
Leg Calc Frequency	Calculation frequency, also known as the compounding frequency for compounded swaps	M
Leg Roll Conv	Describes the day of the month when the payment is made	C
Leg Calc Per Adj Calendar	Regarding the calculation period, this specifies which dates are considered holidays	C
Leg Stream Daycount	Defines how interest is accrued/calculated	M
Payment Stream Comp Method	If payments are made on one timeframe but calculations are made on a shorter timeframe, this describes how to compound interest.	C
Payment Stream Business Day Conv	If cash flow pay or receive date falls on a weekend or holiday, value defines actual date payment is made	C
Payment Stream Frequency	Frequency at which payments are made	M
Payment Stream Relative To	Specifies the anchor date when the payment date is relative to that date	C
Payment Stream First Date	The unadjusted first payment date	C
Payment Stream Last Regular Date	The unadjusted last regular payment date	C
Payment Leg Calendar	Regarding dates on which cash flow payments/receipts are scheduled, this specifies which dates are considered holidays.	C
Leg Reset Date Bus Day Conv	Business day convention to apply to each reset date if the reset date falls on a holiday	C
Leg Reset Date Relative To	Specifies the anchor date when reset date is relative to that date	C
Leg Reset Frequency	Frequency at which resets occur. If the Leg Reset Frequency is greater than the calculation per frequency, more than 1 reset date should be established for each calculation per frequency and some form of rate averaging is applicable.	C
Leg Reset Fixing Date Offset	Specifies the fixing date relative to the reset date in terms of a business days offset	C
Leg Fixing Day Type	The type of days to use to find the fixing date (*i.e.,* business days, calendar days, etc.)	C
Leg Reset Date Calendar	Regarding reset dates, this specifies which dates are considered holidays	C
Leg Fixing Date Bus Day Conv	Business day convention to apply to each fixing date if the fixing date falls on a holiday	C
Leg Fixing Date Calendar	Regarding the fixing date, this specifies which dates are considered holidays	C
Fixed Leg Rate or Amount	Only populate if Leg1 is Type ''Fixed''. This should be expressed in decimal form (*e.g.,* 4% should be input as .04).	C
Floating Leg Inflation Index	If leg is floating rate, this gives the index applicable to the floating rate	C
Floating Leg Spread	Describes if there is a spread (typically an add-on) applied to the coupon rate	C
Floating Leg Payment Inflation Lag	Number of business days after payment due date on which the payment is actually made	C

Field name	Description	Use
Floating Leg Payment Inflation Interpolation Method.	The method used when calculating the inflation index level from multiple points. The most common is the linear method.	C
Floating Leg Inflation Index Initial Level	Initial known index level for the first calculation period	C
Floating Leg Inflation Index Fallback Bond Ind.	Indicates whether a fallback bond as defined in the 2006 International Swaps and Derivatives Association (ISDA) Inflation Derivatives Definitions, sections 1.3 and 1.8, is applicable or not. If not specified, the default value is ''Y'' (True/Yes).	O
Leg Pmt Sched Notional	Variable notional swap notional values	C
Leg Stub Type	Stubs apply to initial or ending periods that are shorter than the usual interval between payments	C
Leg Initial Stub Fixed Rate	The interest rate applicable to the Initial Stub Period in decimal form (*e.g.,* 4% should be input as ''.04'')	C
Leg Final Stub Fixed Rate	The interest rate applicable to the final stub period in decimal form (*e.g.,* 4% should be input as ''.04'')	C
Leg Initial Stub Floating Rate Index 1 Tenor	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.,* if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the first index.	C
Leg Initial Stub Floating Rate Index 2 Tenor	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.,* if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the second index.	C
Leg Final Stub Floating Rate Index 1 Tenor	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.,* if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the first index.	C
Leg Final Stub Rate Floating Index 2 Tenor	Stub rate can be a linear interpolation between two floating rate tenors. *E.g.,* if the stub period is 2 months, rate is linear interpolation of 1-month and 3-month reference rates. Specify the second index.	C
Leg First Reg Per Start Date	If there is a beginning stub, this describes the date when the usual payment periods will begin	C
Leg Last Reg Per End Date	If there is an ending stub, this describes the date when the usual payment periods will end	C
Leg Accrued Interest (Coupon)	The net accrued coupon amount since the last payment in the leg currency. If reported by leg, indicate the associated stream (leg) description (*e.g.,* ''FIXED/FLOAT,'' ''FLOAT1/FLOAT2'').	M
Profit/Loss	Profit/Loss resulting from changes in value due to changes in underlying curve movements or floating index rate resets. This should exclude impacts to NPVs from extraneous cash flows (price alignment interest, fees, and coupons).	M
Leg Coupon Amount	Coupon amount for T + 1 in the leg currency. This should reflect the net cash flow that will actually occur on the following business day. A negative number indicates payment was made.	M
Leg Current Period Coupon Rate	If leg is a floating leg, this indicates the current rate used to calculate the next floating leg coupon in decimal form (*e.g.,* 4% should be input as ''.04'').	M
I01	Change in value in native currency if the relevant pricing curve is shifted up by 1 basis point	M
Dollar Value of Basis Point (DV01)	Change in value in native currency of the swap/swaption/floor/cap if relevant pricing curve is shifted up by 1 basis point. DV01 = ''dollar'' value of a basis point in currency (not percentage) terms, the change in fair value of the leg, transaction, position, or portfolio (as appropriate) commensurate with a 1 basis point (0.01 percent) instantaneous, hypothetical increase in the related zero-coupon curves. DV01 may refer to non-dollar currencies and related curves. From the DCO's point of view: positive DV01 = profit/gain resulting from 1 basis point increase, negative DV01 = loss resulting from 1 basis point increase.	M
Net Cash Flow	Net cash flow recognized on report date (with actual settlements occurring according to the currency's settlement conventions). *E.g.,* profit/loss, price alignment interest, cash payments (fees, coupons, etc.).	M
Net Present Value	Net present value (NPV) of all positions by currency	M
Present Value Of Other Payments	Includes the present value of any upfront and/or final/settlement payments that will be settled after the report date. Only include amounts that are affecting the NPV of current trades.	M
Net Present Value Previous	Previous day's NPV by currency	C
Price Alignment Interest	To minimize the impact of daily cash variation margin payments on the pricing of swaps, the DCO will charge interest on cumulative variation margin received and pay interest on cumulative variation margin paid.	M
Universal or Unique) Swap Identifier	Universal (or Unique) Swap Identifier (USI) namespace and USI. Enter the USI Namespace and the USI separated by a pipe ''|'' character..	C
Stream Initial Exchange	Amount of any exchange of cash flow at initiation of trade being cleared	C
Stream Initial Exchange Date	Date that the initial exchange is set to occur	C
Stream Final Exchange	Amount of any exchange of cash flow at maturity of trade	C
Stream Final Exchange Date	Date that the final exchange is set to occur	C
Other Payments	Includes any upfront and/or final/settlement payments made/received for the trade date. (Indicate gross pay/collect amounts.).	C
Trade Date	Actual trade date for each position record (including specifically, the cleared date and the trade date)	M
Event Description	Description for each position record	C
Equity Cross Margin (Daily Position Reporting)		
Exchange Security Identifier	Contract code issued by the exchange	M
Clearing Security Identifier	Code assigned by the DCO for a particular contract	M
Product Type	Indicates the type of product the security is associated with	C
Security Type	Indicates type of security	M
Maturity Month Year	Month and year of the maturity	M
Maturity Date	The date on which the principal amount becomes due. For NDFs, this represents the fixing date of the contract.	C
Asset Class	The broad asset category for assessing risk exposure	M
Asset Subclass	The subcategory description of the asset class	C
Asset Type	Provides a more specific description of the asset subclass	C
Security Description	Used to provide a textual description of a financial instrument	M
Position (Long)	Long position size. If a position is quoted in a unit of measure (UOM) different from the contract, specify the UOM. If a position is measured in a currency, specify the currency.	M
Position (Short)	Short position size. If a position is quoted in a UOM different from the contract, specify the UOM. If a position is measured in a currency, specify the currency.	M
Settlement Price/Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	M
Option Strike Price	Option strike price	C
Option Put/Call Indicator	Option type	C
Underlying Exchange Commodity Code	Underlying Contract code issued by the exchange	C
Underlying Clearing Commodity Code	Registered commodity clearing identifier. The code is for the contract as if it were traded in the form it is cleared. For example, if the contract was traded as a spread but cleared as an outright, the outright symbol should be used.	C
Underlying Product Type	Indicates the type of product the security is associated with	C
Underlying Security Type	Indicator which identifies the underlying derivative	C
Underlying Maturity Month Year	Month and year of the maturity	C
Underlying Maturity Date	The date on which the principal amount becomes due	C
Underlying Asset Class	The underlying broad asset category for assessing risk exposure	C

Field name	Description	Use
Underlying Asset Subclass	The subcategory description of the asset class	C
Underlying Asset Type	Provides a more specific description of the asset subclass	C
Underlying Settlement Price/Currency	Settlement price, prior settlement price, settlement currency, and final settlement date	C

M = mandatory C = conditional O = optional.

C. Risk Metric Ladder Reporting

Field name	Description	Use
Common Fields (Risk Metric Ladder Reporting)		
Total Message Count	The total number of reports included in the file	M
FIXML Message Type	FIXML account summary report type	M
Sender ID	The CFTC-issued DCO identifier	M
To ID	Indicate ''CFTC''	M
Message Transmit Datetime	The date and time the file is transmitted	M
Report ID	A unique identifier assigned by the CFTC to each clearing member report	M
Report Date	The business date of the information being reported	M
Base Currency	Base currency referenced throughout report; provide exchange rate against this currency	M
Report Time (Message Create Time)	The report ''as of'' or information cut-off time	M
Message Event	The event source being reported	M
Ladder Indicator	Indicator that identifies the type of risk metric ladder	M
DCO Identifier	CFTC-assigned identifier for a DCO	M
Clearing Participant Identifier	DCO-assigned identifier for a particular clearing member	M
Clearing Participant Name	The name of the clearing member	M
Fund Segregation Type	Clearing fund segregation type	M
Clearing Participant LEI	LEI for a particular clearing member	M
Clearing Participant LEI Name	The LEI name associated with the clearing member LEI	M
Customer Identifier	Proprietary identifier for a particular customer position account	C
Customer Name	The name associated with the customer position identifier	C
Customer Account Type	Type of account used for reporting	C
Customer LEI	LEI for a particular customer; provide if available	C
Customer LEI Name	The LEI name associated with the customer position LEI	C
Unique Margin Identifier	A single field that uniquely identifies the margin account. This field us used to identify associated positions	C
Delta Ladder (Daily Reporting)		
Currency	ISO 4217 currency code	M
FX Rate	Rate used to convert the currency to USD	M
Curve Name	Name of the reference curve	M
Tenor	Number of days from the report date	M
Sensitivity	Theoretical profit and loss with a single upward basis point shift	M
Gamma Ladder (Daily Reporting)		
Currency	ISO 4217 currency code	M
FX Rate	Rate used to convert the currency to USD	M
Curve Name	Name of the reference curve	M
Tenor	Number of days from the report date	M
Sensitivity	Theoretical profit and loss with a single upward basis point shift	M
Vega Ladder (Daily Reporting)		
Currency	ISO 4217 currency code	M
FX Rate	Rate used to convert the currency to USD	M
Curve Name	Name of the reference curve	M
Tenor	Number of days from the report date	M
Sensitivity	Theoretical profit and loss with a single upward basis point shift	M

M = mandatory C = conditional O = optional.

D. Curve Reference Reporting

Field name	Description	Use
Common Fields (Curve Reference Reporting)		
Total Message Count	The total number of reports included in the file	M
FIXML Message Type	FIXML account summary report type	M
Sender ID	The CFTC-issued DCO identifier	M
To ID	Indicate ''CFTC''	M
Message Transmit Datetime	The date and time the file is transmitted	M
Report ID	A unique identifier assigned by the CFTC to each clearing member report	M
Report Date	The business date of the information being reported	M
Base Currency	Base currency referenced throughout report; provide exchange rate against this currency	M
Report Time (Message Create Time)	The report ''as of'' or information cut-off time	M
Message Event	The event source being reported	M
DCO Identifier	CFTC-assigned identifier for a DCO	M

Field name	Description	Use
	Currency Curve (Daily Reporting)	
Curve	Reference curve name	M
Currency	ISO 4217 currency code	M
Maturity Date	The date on which the principal amount becomes due	M
Par Rate	Rate such that the maturity will pay in order to sell at par today	M
	Zero Rate Curve (Daily Reporting)	
Currency	ISO 4217 currency code	M
Curve	Reference curve name	M
Maturity Date	The date on which the principal amount becomes due	M
Offset	The difference in days between the maturity date and reporting date	M
Accrual Factor	The difference in years between the maturity date and reporting date	M
Discount Factor	Value used to compute the present value of future cash flows values	M
Zero Rate	Averages of the one-period forward rates up to their maturity	M

M = mandatory C = conditional O = optional.

E. Backtesting Reporting

Field name	Description	Use
	Common Fields (Backtesting Reporting)	
Total Message Count	The total number of reports included in the file	M
FIXML Message Type	FIXML account summary report type	M
Sender ID	The CFTC-issued DCO identifier	M
To ID	Indicate ''CFTC''	M
Message Transmit Datetime	The date and time the file is transmitted	M
Report ID	A unique identifier assigned by the CFTC to each clearing member report	M
Report Date	The business date of the information being reported	M
Base Currency	Base currency referenced throughout report; provide exchange rate against this currency	M
Report Time (Message Create Time)	The report ''as of'' or information cut-off time	M
Message Event	The event source being reported	M
Breach Indicator	Indicates the breach file	M
DCO Identifier	CFTC-assigned identifier for a DCO	M
Clearing Participant Identifier	DCO-assigned identifier for a particular clearing member	M
Clearing Participant Name	The name of the clearing member	M
Fund Segregation Type	Clearing fund segregation type	M
Clearing Participant LEI	LEI for a particular clearing member	M
Clearing Participant LEI Name	The LEI name associated with the clearing member LEI	M
Customer Identifier	Proprietary identifier for a particular customer position account	C
Customer Name	The name associated with the customer position identifier	C
Customer Account Type	Type of account used for reporting	C
Customer LEI	LEI for a particular customer; provide if available	C
Customer LEI Name	The LEI name associated with the customer position LEI	C
Unique Margin Identifier	A single field that uniquely identifies the margin account. This field us used to identify associated positions	C
	Breach Details (Daily Reporting)	
Initial Margin	Margin requirement calculated by the DCO's margin methodology. Unless an integral part of the margin methodology, this figure should not include any additional margin add-ons.	M
Backtesting Metric	Indicates the type of profit and loss calculation used for backtesting: • VM—Variation Margin • STATIC—Static Portfolio P/L (Clean P/L) • DIRTY—Dirty P/L • MTMA—Mark to Market P/L • MTMO—Mark to Model P/L • OTHER	M
Backtesting Metric Amount	Amount on the positions for which Initial Margin is computed	M
Breach Amount	Difference between the Initial Margin and Backtesting Metric Amount	M
Margin Period of Risk	Holding period for which the Backtesting Metric is calculated in days	M
	Breach Summary (Daily Reporting)	
Total Instance	Total number of testing dates for the account	M
Number of Breaches	Total number of breaches in the testing period	M
Test Range Start	Beginning date of the test	M
Test Range End	End date of the test	M

M = mandatory C = conditional O = optional.

F. Manifest Reporting

Field name	Description	Use
	Manifest Reporting	
Total Message Count	The total number of reports included in the file	M
FIXML Message Type	FIXML account summary report type	M

Field name	Description	Use
Sender ID	The CFTC-issued DCO identifier	M
To ID	Indicate ''CFTC''	M
Message Transmit Datetime	The date and time the file is transmitted	M
Filenames	List of files to be sent	M

M = mandatory C = conditional O = optional.

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ 11. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2(a)(12), 12a, 13(c), 13(d), 13(e), and 16(b).

■ 12. Amend § 140.94 by revising paragraph (c)(10) to read as follows:

§ 140.94 Delegation of authority to the Director of the Division of Swap Dealer and Intermediary Oversight and the Director of the Division of Clearing and Risk.

* * * * *

(c) * * *

(10) All functions reserved to the Commission in § 39.19(a), (b)(1), (c)(2), (c)(3)(iv), and (c)(5) of this chapter;

* * * * *

Issued in Washington, DC, on July 31, 2023, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Reporting and Information Requirements for Derivatives Clearing Organizations—Commission Voting Summary and Chairman's and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Support of Chairman Rostin Behnam

Today the Commission considered a final rule addressing reporting and information requirements for derivatives clearing organizations (DCOs). As with the proposal, the final rule provides greater transparency, clarity, and certainty to our DCOs and market participants. It also streamlines how the Commission receives information necessary to carry out its supervisory role. By periodically updating our regulations, the agency can incorporate our experiences with the industry and market participants directly into our ruleset. We can also use these opportunities to respond to emerging technologies, issues, and risks with responsive and targeted regulation. This both creates efficiencies and a level playing field, and provides a forum to address ongoing compliance concerns on each of our respective sides through open dialogue.

I fully support the final rule. Ensuring our regulations are operating as intended is paramount. DCOs play a critical role in U.S. derivatives markets. Any lapse in their duties or even the perception that compliance is nothing more than window dressing puts our markets and the larger financial system at risk, especially when it comes to entities that have been designated as systemically important by the Financial Stability Oversight Council known as ''SIDCOs.''

The majority of the proposed Part 39 amendments—with the exception of those addressing system safeguards—were considered today. Several amendments in the final rule, codify existing staff letters and Commission practices and interpretations with the goal of ensuring that DCOs understand their reporting obligations and the Commission receives the information it needs to perform its supervisory responsibilities in the most effective and least burdensome manner. For example, an amendment to Rule 39.19 will codify an existing staff letter [1] providing for no-action relief by removing the requirement that a DCO report daily variation margin and cash flows by individual customer account. The final rule will also codify existing reporting fields for the daily reporting requirements in new appendix C to Part 39.[2] Additional amendments will update information requirements associated with commingling customer funds and positions in futures and swaps in the same account.

Acknowledging that different risk profiles require more tailored consideration, the final rule will adopt specific obligations for fully collateralized positions which specify that certain requirements for risk management, daily reporting, and website publication do not apply to DCOs that clear fully collateralized positions. In addition, to ensure that the Commission maintains unfettered access to data, an amendment to Part 140 of the Commission rules will delegate to the Director of the Division of Clearing and Risk (DCR) existing authority to require a DCO to provide to the Commission the information specified in Rule 39.19 and any other information that the Commission determines to be necessary to conduct oversight of the DCO, and to specify the format and manner in which the information required must be submitted to the Commission.

Given that what we do as regulators is as important as what we do not do, based on the concerns raised regarding the system safeguards proposals, the Commission did not vote on the adoption of any of the proposed amendments. This determination does not alter the current landscape or diminish Commission concerns regarding cyber resilience. However, significant and important concerns and meaningful alternatives raised by commenters require additional consideration and analysis. The Commission will continue to consider how best to address the issues targeted in the proposed rule while incorporating additional information gained through this rulemaking process and additional examination.

Appendix 3—Statement of Support of Commissioner Kristin N. Johnson

Today, the Commission considers several amendments to Part 39 regulations. In January of 2020, the Commission amended a number of the provisions in Part 39 to enhance certain risk management and reporting obligations and clarify the meaning of certain provisions including registration and reporting requirements.[1] Last November, the Commission considered a proposed rulemaking seeking to further update certain Part 39 regulations to reflect developments in risk management. I support the Commission's consideration of these amendments designed to improve derivatives clearing organizations' (DCO) risk management practices and clarify reporting requirements set out in Part 39.

The Dodd-Frank Wall Street Reform and Consumer Protection Act set out to implement reforms to mitigate systemic risk and promote transparency and stability.[2] DCOs play a significant role in mitigating risk and facilitating stability in our markets by providing essential clearing and settlement market infrastructure. Clearinghouses enhance visibility, introduce and enforce uniform contractual obligations, and establish standards for critical risk management tools such as initial and variation margin. They facilitate dispute resolution among counterparties, ensure the maintenance of necessary liquidity reserves,

[1] *See* CFTC Letter No. 21–01, Request for Temporary No-Action Relief from the Reporting Requirements in Commission Regulation 39.19(c)(1) (Dec. 31, 2020), *https://www.cftc.gov/csl/21-01/download;* CFTC Letter no. 21–31, Extension of Temporary No-Action Relief from the Reporting Requirements in Commission Regulation 39(c)(1) (Dec. 22, 2021), *https://www.cftc.gov/csl/21-31/download;* and CFTC Letter No. 22–20, Extension of No-Action letter Regarding Reporting Requirements in Commission Regulation 39.19(c)(1) (Dec. 19, 2022), *https://www.cftc.gov/csl/22-20/download.*

[2] Commodity Futures Trading Commission Guidebook for Part 39 Daily Reports, Version 1.0.1, Dec. 10, 2021 (Reporting Guidebook).

[1] Derivatives Clearing Organization General Provisions and Core Principles, 85 FR 4800 (Jan. 27, 2020), *https://www.federalregister.gov/documents/2020/01/27/2020-01065/derivatives-clearing-organization-general-provisions-and-core-principles.*

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

introduce important operating systems and cyber-risk management measures, and implement governance measures that mitigate conflicts of interest and monitor systems safeguards.[3]

In light of the role of DCOs in our markets, we must provide a framework that not only supports market stability but is functional and can be practically integrated. The implementation of the proposed final amendments to existing regulations will address gaps in reporting data to the Commission.

Cyber Security

We live in a digital age, and our dependence on technology, digital operational infrastructure systems, and software is increasingly undeniable. The security and integrity of cyber systems is important for the effective functioning of individual firms. Interconnectedness in financial markets creates the possibility that a cyber-threat that impacts certain actors in our markets may also impact the safety and soundness of counterparties or customers. In some instances, these cyber events will lead to more significant disruption, impeding clearing and settlement of transactions or impacting price discovery. Just a few months ago, ION, a significant service provider in global derivatives markets, experienced a cybersecurity event that triggered concerning effects across derivatives markets. The ION cybersecurity event underscores the importance of cyber security monitoring, prevention, and reporting.

Under DCO Core Principle I, DCOs must ''establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures . . . .'' [4] In accord with this Core Principle, the Commission adopted Regulation 39.18(g) requiring DCOs to promptly notify the Division of Clearing and Risk (DCR) of any cyber security event or targeted threat that materially impairs, or creates a significant likelihood of material impairment of automated system operation, reliability, security, or capacity.[5]

In November of 2022, DCR proposed amendments to Regulation 39.18(g), recommending improvements to certain cyber-event reporting requirements. The proposed amendment would have eliminated the materiality threshold, which would have required DCOs to report all such events regardless of magnitude.[6] The amendment would have increased reporting of DCO cyber events and automated system impairments, including impairments concerning third-party provided services.

While I appreciate the Commission's careful response to public comments received regarding proposed amendments to Regulation 39.18(g), it is important to balance thoughtful consideration of cyber regulation with the emergent need for action. Our markets cannot afford to wait for continued attacks or delayed action over a significant period of time. The potential disruption that may be created by cyber-events requires a timely response.

As market participants integrate, adopt, and partner with significant technology firms and adopt software and technology that facilitates the technical operations for their businesses, it is imperative that our regulation focus on monitoring, reporting, transparency and the development of cyber recovery and resilience programs.

Four months ago, the Market Risk Advisory Committee (MRAC) that I sponsor held a meeting in this room. The director of national cybersecurity at the White House's Office of the National Cyber Director and others joined a thoughtful dialogue focused on preventing or mitigating the threat of cyber events and cyber security threats. In addition to valuable dialogue during the MRAC meeting, my staff and I traveled to the White House executive offices to meet with the Office of the National Cyber Director. Our discussions and dialogue continue.

DCR is correctly focused on refining and updating Regulation 39.18(g). There is a clear need for immediate and careful study of the cyber-risk issues that present for DCOs. To this end, an MRAC subcommittee focused on technical and operational resilience will begin to examine several of the issues raised in the proposed amendment and comment letters. Hopefully, our collective efforts will enhance cyber resilience of the registrants in our markets as well as the critical third- and fourth-party service providers that registrants may depend on.

Segregation of Customer Funds

DCO Core Principle F and requires DCOs to establish standards and procedures for protecting and ensuring the safety of clearing member and customer funds. In addition, Core Principle F requires DCOs to establish standards and procedures that are designed to protect and to ensure the safety of funds and assets held in custody, to hold such funds and assets in a way designed to minimize risk, and to limit investment of such funds and assets to instruments with minimal credit, market, and liquidity risks. The DCO risk mitigation function is imperative for the segregation and safekeeping of clearing member and customer funds and assets.

Today, DCR proposes amendments that seek to close a gap with respect to DCO regulations that govern segregation of customer assets.

While there are robust regulations governing segregation of customer funds by futures commission merchants (FCMs),[7] those same protections may not reach all DCO customers. In some instances, the divergence in our rules is based on the history and structure of the markets for certain assets and products. As innovative financial products and market structures proliferate, we must be mindful of the consequences of the lack of parallelism in our customer protection regulations.

I support the Commission's adoption of the proposed amendments that enhance customer protections, namely segregation of customer funds, treatment of customer funds, and the introduction of financial resource requirements for certain DCOs.

Liquidity Reserves

The amendments today also include updates addressing liquidity-related transparency. When market participants fail to manage liquidity risk effectively, enterprise risk management failures may occur and, depending on the size and significance of the market participants experiencing risk management failures, the effects may trigger disruption across global financial markets.

The transparency amendments proposed today, enhance reporting requirements for credit and liquidity facilities. Specifically, Regulation 39.19(c)(4)(xv) will require DCOs to report within one business day after becoming aware of any material issues or concerns regarding the performance, stability, liquidity, or financial resources of any credit facility funding arrangement, liquidity funding arrangement, custodian bank, or settlement bank used by the DCO or approved for use by the DCO's clearing members. These amendments will improve the Commission's risk surveillance of DCOs and clearing members. Prudent risk management—the management of liquidity needs, in particular—is critical to DCO resilience. I support the amendments to enhance transparency. Each adds value to the Core Principles we uphold and our mandate to the protect customers and preserve the integrity of the financial markets that we regulate.

I want to thank the staff of DCR—Eileen Donovan, August Imholtz, Gavin Young, and Parisa Nouri—for their diligent and thoughtful work on these amendments.

Appendix 4—Statement of Support of Commissioner Christy Goldsmith Romero

Clearinghouses play an important public interest role—they are critical market infrastructure intended to foster financial stability, trust, and confidence in U.S. markets. Dodd-Frank Act reforms increased central clearing, thereby increasing financial stability. Those reforms also concentrated risk in clearinghouses. With that concentrated risk, it is critical that the Commission maintain vigilance in its oversight over clearinghouses to identify and monitor risk and promote financial stability. This is most important for the CFTC's monitoring of systemic risk.

[3] *Statement of Commissioner Kristin N. Johnson in Support of Notice of Proposed Amendments to Reporting and Information Requirements for Derivatives Clearing Organizations,* Nov. 10, 2022, *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement060723d.*

[4] 7 U.S.C. 7a–1(c)(2)(I)(i).

[5] 17 CFR 39.18(g).

[6] Reporting and Information Requirements for Derivatives Clearing Organizations, 87 FR 76698, 76700 (Dec. 15, 2022), *https://www.cftc.gov/sites/default/files/2022/12/2022-26849a.pdf.*

[7] Section 4d(a)(2) of the CEA requires each FCM to segregate from its own assets all money, securities, and other property deposited by futures customers to margin, secure, or guarantee futures contracts and options on futures contracts traded on designated contract markets. 7 U.S.C. 6d(a)(2). In addition, Section 4d(a)(2) requires an FCM to treat and deal with futures customer funds as belonging to the futures customer, and prohibits an FCM from using the funds deposited by a futures customer to margin or extend credit to any person other than the futures customer that deposited the funds. *Id.*

Clearinghouse reporting is a cornerstone to the Commission's oversight, including monitoring risk and promoting financial stability. I support this rule because it strengthens and improves certain clearinghouse reporting requirements.

Strengthening Reporting on Risk Characteristics of Unusual Products To Be Commingled Facilitates Effective Commission Oversight in Areas of Emerging Risk

First, the final rule strengthens requirements for reporting the risk characteristics of products to be commingled that are unusual in relation to other products that the clearinghouse clears. A clearinghouse must obtain CFTC approval to commingle customer positions and associated funds of products that would otherwise be held in separate customer accounts.

This rule facilitates effective Commission oversight, as clearinghouses will provide better information for the CFTC to evaluate a request to commingle customer positions across asset classes. This practice can be used to reduce margin requirements for customers with offsetting positions. Margin requirements are an important element of financial stability, so any reduction should be carefully considered.

In addition to providing the CFTC an analysis of risk characteristics of the products to be commingled, this rule adds an analysis of any risk characteristics that are *unusual in relation* to the products that clearinghouse clears, as well as how it plans to manage any identified risk. This addition will help the Commission better understand the risks posed by the commingling arrangement.

I also appreciate that the final rule incorporates the suggestion by a public interest group that the Commission go further and add that the analysis should specifically address the commingled products' margining, liquidity, default management, pricing, and volatility risks that are unusual in relation to those currently cleared by the clearinghouse. This is particularly important given that the derivatives industry is seeing a change with emerging products such as digital assets for example, that can carry emerging risk in each of these areas.

Expanding Reporting of Change of Control of the Clearinghouse

I support the expansion of the rule requiring a clearinghouse to report *any* change to the entity or person that holds a controlling interest, either directly or indirectly, rather than the existing rule of reporting a change that would result in at least a 10 percent change of ownership. The existing rule could mean that there would be no reporting when an entity increases its ownership stake in a clearinghouse from 45 percent to 51 percent. That would leave the Commission blind to important changes of control. This proposed rule would provide the CFTC with better understanding of the organizational structure of the clearinghouse, including control and ownership. This is a critical change.

I read with interest the comment about changes to Regulation 39.19(c)(4) during the last Administration regarding Commission approval when a clearinghouse seeks to transfer its registration and open interest in connection with a corporate change. While that is not the subject of this rule, I would be interested in learning more about the effects of those amendments and what is needed for the Commission to have greater control over a transfer of registration. This is an issue that arose when it became apparent that LedgerX would be sold in FTX's bankruptcy.

Strengthening the Enforceability of Reporting Fields

Clearinghouses report information daily to the Commission such as initial margin, variation margin, cash flow, and position information for each clearing member, by house origin, and by each customer origin and customer account. Over time, the Commission has provided detailed instructions and technical specifications in the Reporting Guidebook. The whole purpose of the Reporting Guidebook was to ensure uniformity in clearinghouse reporting, as well as to ensure that the Commission received the right information for its surveillance and oversight of clearinghouses and the derivatives markets.

I am pleased to support the Commission now requiring the reporting fields, rather than just serving as a guide, which will strengthen the enforceability of reporting fields and aid in clearinghouse accountability. First, the Reporting Guidebook contains some reporting fields that are only optional, not required, but that would help the Commission in its oversight. It is important to require these fields, removing a clearinghouse's option not to report them. Second, the types of clearinghouses registering with or applying to register with the Commission are changing. Recently, for example, we have seen digital asset companies registering or applying to register, some with no history of being regulated. It has become increasingly important that we have rules and regulations, rather than guides that can be ignored by new clearinghouses.

However, I do agree with the comment from a public interest group that it is important for the Commission to be nimble, particularly in light of emerging products and emerging risk. I urge the staff to consider how we can both implement this new rule requiring the reporting fields, while also staying ahead of the risk curve in gathering the information needed or releasing additional guidance or rules.

Continuing Concerns Over Cyber and Other Incident Reporting

When it comes to expanding the reporting of cyber incidents and other incidents, the final rule dropped proposed requirements for expanded Commission reporting. Let me start by saying that drafting new regulation is a process that works best with public input from the full range of interested parties. While I supported this requirement at the proposal stage, I also understand the importance of listening to commenters about the practical effect of our regulations.[1]

However, the concern that caused us to propose the rule still exists. The cyber threat is pervasive and increasing. In fact, since the Commission issued this proposal last November, cyber incidents have continued to threaten the derivatives markets. Notably, in January 2023, a third-party service provider, ION Markets, suffered a ransomware attack that disrupted trade processing at affected brokers.

Early notification is key for the Commission's ability to protect markets, including working with registrants and all those affected to coordinate a response. The original proposal was based on CFTC staff finding a troubling lack of uniformity in how clearinghouses were reporting cyber incidents or incidents of other disruptions. As discussed in the open meeting on the proposed rule, there were 120 reports of an incident made in fiscal year 2022. Examination staff have learned of about perhaps as many incidents that they considered material where the CFTC should have been notified.[2] They found that some clearinghouses did an excellent job of reporting, while others lagged way behind.[3]

The goal of the rule was to improve the uniformity of reporting incidents to the CFTC. While I appreciate the commenters' concerns about the consequences of removing the limitation that the incident be material, as well as other proposed changes, we still need to address the underlying problem in some way.

Additionally, the proposal also clarified that incidents requiring notification were not just those caused by cyber attackers, but also those triggered by accidents or malfunctions. At the recent Technology Advisory Committee meeting, TAC member Professor Hilary Allen of American University Washington College of Law described how by some estimates, losses from accidental tech glitches exceed those from cyberattacks.[4] I appreciate the discussion in the rule's preamble, which reminds clearinghouses that the existing notification requirements already cover many instances of operator error.

Ultimately, given the experiences of the CFTC staff, the Commission needs to find the right fix that improves notifications. I am pleased to see a commitment here to addressing this urgent need as cyber threats are the threats of our day. The Technology Advisory Committee's Cybersecurity Subcommittee is working on advising the Commission on how best to promote cyber resilience.

I am thankful for the Commission's continued attention to this topic and I urge

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[1] Commissioner Christy Goldsmith Romero, ''Statement of Commissioner Christy Goldsmith Romero on Proposed Rule on Cybersecurity Incident Reporting'' (Nov. 10, 2022), *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement111022*.

[2] *See* ''CFTC to Hold an Open Commission Meeting November 10'' at 1:15:00 (posted Nov. 15, 2022), *https://youtu.be/hZn2Vv5uNRE*.

[3] *See Id.*

[4] *See* CFTC Technology Advisory Committee (July 18, 2023) *https://www.youtube.com/watch?v=8ro4Iu0N17I*.

the staff to continue engaging with commenters, financial regulators, and the public, and to then propose new requirements. In the interim, the Commission should also continue to work closely with clearinghouses to maintain two-way communication, and use our supervision and enforcement tools to ensure that we are staying on top of cyber and other incidents so that we can fulfill our responsibility in protecting markets.

Appendix 5—Statement of Support of Commissioner Caroline D. Pham

I support the final rule on reporting and information requirements for derivatives clearing organizations (DCOs) (DCO Reporting Final Rule) because of its careful attention and response to public comments received. I would like to thank Clark Hutchison, Eileen Donovan, Parisa Nouri, August Imholtz, Gavin Young, Theodore Polley, and Elizabeth Arumilli of the Division of Clearing and Risk (DCR) for their work on the DCO Reporting Final Rule. I appreciate the staff addressing my concerns.

The Commission has a great deal to be proud of with respect to its DCO registration and oversight regimes. Mandatory clearing for swaps was a pillar of the G20 reforms, and the U.S. was one of the first jurisdictions to adopt a clearing requirement pursuant to the directive.[1] Since then, the CFTC has amended its rules to keep them up to date and ensure they reflect changes that take place in the industry.[2]

I am pleased that the DCO Reporting Final Rule is appropriately responsive to industry concerns that the Commission's existing rules were unworkable.[3] I continue to stress the need that the Commission evaluate its rules to ensure they are functioning as intended, and propose workable solutions to any operational or implementation challenges to enable firms to more effectively achieve compliance, particularly for technical issues that do not meaningfully impact our oversight or systemic risk concerns.

In this instance, Regulation 39.19(c)(1) required a DCO to report to the Commission on a daily basis initial margin, variation margin, cash flow, and position information for each clearing member, by house origin, by each customer origin, and by individual customer account.[4] Since providing certain information by individual customer account was unworkable, the Commission proposed amending Regulation 39.19(c)(1)(i)(B) and (C) to remove the requirement that a DCO report daily variation margin and cash flows by individual customer account.[5] In response to commenters, all of whom supported removing this part of the requirement, the Commission is removing the unfeasible part of the requirement.

There are other instances of the Commission responding to overwhelming support from commenters on unworkable proposals. These include significant amendments the Commission had proposed to the system safeguards rules for DCOs. To highlight one, Regulation 39.18(g)(1) requires that a DCO promptly notify DCR staff of any hardware or software malfunction, security incident, or targeted threat that materially impairs, or creates a significant likelihood of material impairment of, automated system operation, reliability, security, or capacity.[6]

The Commission had proposed amending Regulation 39.18(g)(1) to eliminate the materiality threshold, requiring DCOs to report all such events regardless of their magnitude.[7] Eight out of nine commenters opposed this proposal, and took the time to detail the compliance issues the proposal created. Reasons included that DCOs would report events that do not impact the DCO; the requirement would divert attention and resources away from incidents that deserve greater focus and planning, with little corresponding benefit to the Commission; and the requirement would be inconsistent with other notification regimes, including similar Commission rules and reporting obligations to other agencies and authorities. In general, the commenters' position was that the CFTC underestimated the increase in reporting the amended rule would create.

Speaking from personal experience, I think that if we had removed the materiality requirement, there would be a nonstop flood of notifications coming in to the staff because there are operational issues that occur all the time, many of which are insignificant and are resolved with de minimis impact. But nonetheless, without a materiality threshold then all such incidents would need to be reported promptly. So, I am pleased that we are taking the time to consider this aspect of the proposed rule further, particularly since there is ongoing work around the world on international standards, and the Fed and the Securities and Exchange Commission (SEC) are also both updating their incident reporting requirements. There is no doubt that the maintenance of strong incident reporting regimes is critical to CFTC oversight, but I also believe that it is important for the Commission to harmonize it's reporting regime with other similar regulatory approaches.

The SEC's Reg SCI is most analogous to our DCO systems safeguards and systems incident reporting requirements.[8] It was promulgated in 2014 after our system safeguard rules, and after a joint CFTC–SEC advisory committee examined the cause of the 2010 flash crash, which showed the interconnectedness between the stock and futures markets and made recommendations for market structure reforms. Many firms operate DCOs that are either dually registered, or have affiliates that are registered as SEC clearing agencies, and have already implemented policies, procedures, and processes to comply with Reg SCI. Accordingly, it should be simpler and faster for them to apply the same SEC reporting framework to the DCOs if we are considering an update to our system safeguards requirements.

In looking at the preamble to the NPRM for Reg SCI, I note that it dates back to two policy statements by the SEC on ''Automated Systems for Self-Regulatory Organizations'' dated 1989 and 1991.[9] And, these policy statements are based on SEC reports dating back to 1986. Ultimately these policy statements established the initial framework for what would later become Reg SCI.

Both the securities and futures markets experienced the same shift to electronic trading and reliance on automated systems in the wake of rapid technological advance, and given how these developments dominated the industry, I believe it is reasonable to infer that the contemporaneous use of the term ''automated systems'' in CFTC regulations would have similar meaning to the SEC's use of that term in the context of securities regulation.[10] If the CFTC revisits these rules, I would be interested in learning more about the genesis of the DCO systems safeguards and reporting requirements, and reviewing the original CFTC rulemakings, to confirm whether that was the case.

[1] G20 Pittsburgh Summit (Sept. 24–25, 2009); Clearing Requirement Determination Under Section 2(h) of the CEA, 77 FR 74283 (Dec. 13, 2012).

[2] Derivatives Clearing Organization General Provisions and Core Principles, 85 FR 4800 (Jan. 27, 2020).

[3] In January 2020, as part of updates to its DCO regulations, the CFTC amended the daily reporting requirements for DCOs to require, among other things, the reporting of margin and position information by each individual customer account. The Commission then learned of concerns about futures commission merchants' ability to provide this information to DCOs. As a result, CFTC staff issued a no-action letter extending the compliance date for this reporting requirement in order to resolve this issue. *See* CFTC Letter No. 21–01, United States Commodity Futures Trading Commission (Dec. 31, 2020), *https://www.cftc.gov/csl/21-01/download; see also* CFTC Letter No. 21–31, United States Commodity Futures Trading Commission (Dec. 22, 2021), *https://www.cftc.gov/csl/21-31/download*; CFTC Letter No. 22–20, United States Commodity Futures Trading Commission (Dec. 19, 2022) (further extending the compliance date), *https://www.cftc.gov/csl/22-20/download.*

[4] 17 CFR 39.19(c)(1).

[5] Reporting and Information Requirements for Derivatives Clearing Organizations, 87 FR 76698 (Dec. 15, 2022).

[6] 17 CFR 39.18(g)(1).

[7] *See* footnote 5, *supra.*

[8] *See generally* Regulation Systems Compliance and Integrity, 79 FR 72251 (Dec. 5, 2014) (codified at 17 CFR 240).

[9] Automated Systems of Self-Regulatory Organizations, 54 FR 48703 (Nov. 16, 1989); Automated Systems of Self-Regulatory Organizations, 56 FR 22490 (May 15, 1991).

[10] Regulation Systems Compliance and Integrity, 79 FR 72251, 72272 (codified at 17 CFR 240) (noting the definition of SCI systems to include ''all computer, network, electronic, technical, automated, or similar systems of, or operated by or on behalf of, an SCI entity that, with respect to securities, directly support trading, clearance and settlement, order routing, market data, market regulation, or market surveillance'').

Therefore, I think it would make sense to evaluate whether to adopt essentially the same definition for ''automated systems'' as the SEC definition of ''SCI systems'' because I think the intent and scope would be the same. In fact, the SEC explicitly acknowledged the similarities in the securities and U.S. commodities markets with respect to systems issues and incidents in its preamble to the final rule.[11]

[11] *See id*. at 72256 (''Systems issues are not unique to the U.S. securities markets, with similar incidents occurring in the U.S. commodities markets as well as foreign markets.'').

Overall, this rule is an example of how good government works, and I am pleased to support it. Thank you.

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 122 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area; Pacific Cod Trawl Cooperative Program; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 230728–0179]

RIN 0648–BL08

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 122 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area; Pacific Cod Trawl Cooperative Program

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 122 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). Amendment 122 establishes the Pacific Cod Trawl Cooperative Program (PCTC Program or Program), a limited access privilege program (LAPP) to harvest Pacific cod in the BSAI trawl catcher vessel (CV) sector. The PCTC Program allocates Pacific cod harvest quota to qualifying groundfish License Limitation Program (LLP) license holders and qualifying processors and requires participants to form cooperatives to harvest the quota. This action is necessary to increase the value of the fishery, minimize bycatch to the extent practicable, provide for the sustained participation of fishery-dependent communities, ensure the sustainability and viability of the resource, and promote safety and stability in the harvesting and processing sectors. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the BSAI FMP, and other applicable law.

DATES: This rule is effective on September 7, 2023.

ADDRESSES: Electronic copies of the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Social Impact Analysis (collectively referred to as the ''Analysis''), and the Finding of No Significant Impact (FONSI) prepared for this final rule may be obtained from *https://www.regulations.gov* in docket number NOAA–NMFS–2022–0072 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 final rule may be submitted to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Gretchen Harrington; and to *www.reginfo.gov/public/do/PRAMain.* Find the particular information collection by using the search function.

FOR FURTHER INFORMATION CONTACT: Stephanie Warpinski, 907–586–7228 or *stephanie.warpinski@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS published a Notice of Availability for Amendment 122 in the **Federal Register** on December 30, 2022 (87 FR 80519), with public comments invited through February 28, 2023. NMFS published a proposed rule to implement Amendment 122 in the **Federal Register** on February 9, 2023 (88 FR 8592) with public comments invited through March 13, 2023. The Secretary of Commerce approved Amendment 122 on March 24, 2023 after considering information from the public and determining that Amendment 122 is consistent with the BSAI FMP, the Magnuson-Stevens Act, and other applicable laws. NMFS received 16 comment letters on Amendment 122 and the proposed rule. A summary of the comments and NMFS' responses are provided under the heading ''Comments and Responses'' below.

Background

The following background sections describe the PCTC Program and this final rule. A detailed description of the PCTC Program and its development is provided in the preamble to the proposed rule and in the Analysis.

I. Pacific Cod Management in the BSAI

Pacific cod (*Gadus macrocephalus*) is one of the most abundant and valuable groundfish species harvested in the BSAI. Vessels harvest Pacific cod using trawl and non-trawl gear. Vessels harvesting BSAI Pacific cod operate as CVs that harvest and deliver the fish for processing or as catcher/processors (CPs) that harvest and process the catch on board.

The overfishing level (OFL), acceptable biological catch (ABC), and total allowable catch (TAC) for BSAI groundfish are specified through the annual harvest specification process. A detailed description of the annual harvest specification process is provided in the final 2023 and 2024 harvest specifications for groundfish of the BSAI (88 FR 14926, March 10, 2023). For Pacific cod, the harvest specifications establish separate OFLs, ABCs, and TACs for the Bering Sea (BS) subarea and the Aleutian Islands (AI) subarea of the BSAI. Allocations of Pacific cod to the Community Development Quota (CDQ) Program sector and to the non-CDQ fishery sectors are further apportioned by seasons. Season dates for the CDQ and non-CDQ fishery sectors are established at 50 CFR 679.23(e)(5). In general, regulations apportion trawl gear allocations among three seasons that correspond to January 20–April 1 (A season), April 1–June 10 (B season), and June 10–November 1 (C season).

The trawl CV sector is apportioned 22.1 percent of the BSAI Pacific cod non-CDQ TAC, which is further divided into seasonal allowances between the A, B, and C seasons. A season is issued 74 percent of the trawl CV sector's total apportionment, B season is issued 11 percent, and C season is issued 15 percent. After NMFS deducts estimated incidental catch from the trawl CV sector apportionment, each seasonal allowance is assigned to the trawl CV sector as a BSAI directed fishing allowance (DFA).

NMFS implemented the Groundfish License Limitation Program (LLP) in 1998 (63 FR 52642, Oct. 1, 1998) and issued LLP licenses to qualifying participants based on historical participation in the Federal groundfish fisheries off Alaska. A groundfish LLP license authorizes a vessel to participate in a directed fishery for groundfish in the BSAI in accordance with specific area and species endorsements, vessel and gear designations, and the maximum length overall (MLOA), or any exemption from the MLOA, specified on the license. All Federal Pacific cod harvesting activity in the BSAI requires an LLP license and the correct endorsements.

AI endorsements issued to certain LLP licenses under Amendment 92 to the BSAI FMP were intended to facilitate shoreside deliveries of Pacific cod to AI communities and provide additional harvest opportunities for non-American Fisheries Act (AFA) trawl vessels who had demonstrated a dependence on AI groundfish resources. The AI endorsements issued to LLP licenses used by non-AFA trawl CVs less than 60 ft (18.3 m) length overall (LOA) are severable from the LLP license and transferable to another LLP licenses with a MLOA under 60 ft (18.3 m) LOA. The transferability provision was intended to allow smaller vessels operational flexibility and avoid stranding an AI endorsement on an LLP

license being used by a vessel that no longer fished in the AI. No other area endorsement in the LLP can be transferred separately from an LLP license.

II. PCTC Program Overview

The PCTC Program implements a complex suite of measures to improve fishery conditions for all participants. This Program establishes criteria for harvesters and processors in the BSAI trawl CV sector Pacific cod fishery to qualify for and receive quota share (QS), criteria for allocating QS in the initial year of implementation, and criteria for the transfer of QS. QS holders are required to join a cooperative (harvesters) or associate with a cooperative (processors). The aggregate QS of cooperative members and associated processors yields an exclusive harvest privilege for PCTC Program cooperatives, which NMFS will issue as cooperative quota (CQ) each year. CQ represents a portion of the A and B season BSAI trawl CV sector Pacific cod DFA. Of the total annual CQ, 77.5 percent is derived from QS issued to LLP licenses, and 22.5 percent is derived from QS issued to processors. The DFA for the C season remains available for harvest as a limited access fishery open to all CVs with the required trawl gear and area endorsements on the LLP license assigned to the vessel.

The PCTC Program includes ownership and use caps to prevent a permit holder from acquiring an excessive share of the fishery as required under Magnuson-Stevens Act section 303A(c)(5)(D). No person is permitted to hold more than 5 percent of harvester-issued QS or 20 percent of processor-issued QS. In addition, no vessel is allowed to harvest more than 5 percent of the annual CQ, and no company is allowed to process more than 20 percent of the annual CQ. The PCTC Program also includes legacy exemptions for persons over these ownership and use caps at the time of PCTC Program implementation, allowing participants to maintain levels of historical participation rather than forcing divestiture.

The PCTC Program reduces the halibut and crab Prohibited Species Catch (PSC) limits for participating trawl CVs during the A and B seasons. NMFS will apportion halibut and crab PSC limits to PCTC Program cooperatives during the annual harvest specifications process based on the percentage of total BSAI Pacific cod CQ allocated to each cooperative.

To support the sustained participation of AI communities in the Pacific cod trawl CV fishery, cooperatives are required to collectively set-aside 12 percent of the A season CQ for delivery to an Aleutian Islands shoreplant (AI CQ set-aside) during years in which an AI community representative notifies NMFS of their intent to process Pacific cod.

The following sections describe the primary management measures included in the PCTC Program. Each Program element is discussed in further detail in the preamble to the proposed rule prepared for this action (88 FR 8592, February 9, 2023).

III. Quota Share for Harvesters and Processors

NMFS established a PCTC Program official record containing all necessary information concerning legal landings of Pacific cod during the qualifying period, vessel and processor ownership, LLP license holdings, and any other information needed for assigning QS. NMFS will use the PCTC Program official record as of December 31, 2022 to establish the initial pool of QS that will be distributed to eligible harvesters and processors.

A. Initial Allocation of Quota Share for Harvesters

Under the PCTC Program, NMFS will assign QS to eligible LLP licenses. ''Eligible PCTC Program LLP license'' means an LLP license that has qualifying catch history (*i.e.,* was assigned to a vessel that made qualifying legal landings) of targeted trawl CV BSAI Pacific cod during the qualifying years. The amount of QS allocated to individual LLP licenses is determined by historic participation relative to other LLP licenses, as described below.

''Legal landings'' means the retained catch of Pacific cod caught by a CV using trawl gear in the BSAI during the directed fishing season for Pacific cod that was: (1) made in compliance with state and Federal regulations in effect at that time, (2) recorded on a State of Alaska fish ticket or shoreside logbook for shoreside deliveries or in observer data for mothership deliveries, and (3) was the predominately retained species on the fishing trip (*i.e.,* Pacific cod was targeted). A legal landing must have been authorized by either (1) an LLP license participating in the A or B season of a Federal or parallel State water groundfish fishery during the qualifying years 2009 to 2019, or (2) an LLP license with a transferable AI endorsement that, prior to receiving that AI endorsement, participated in the AI parallel fishery from January 20, 2004 through September 13, 2009. NMFS determines which LLP license(s) were assigned to CVs that harvested and offloaded Pacific cod that met all legal landings requirements. Legal landings for the PCTC Program do not include landings in the CDQ fishery, in the State of Alaska Guideline Harvest Level fishery, or made during the C season by vessels participating in a Federal or parallel State water fishery.

Under this final rule, the Regional Administrator will allocate PCTC Program QS to an LLP license holder who submits a timely Application for PCTC Program QS that is approved by NMFS. For each LLP license without a transferable AI endorsement, NMFS will assign a specific number of PCTC Program QS units based on the BSAI trawl CV Pacific cod legal landings of that LLP license using information from the PCTC Program official record according to the following procedures:

(1) Determine the BSAI trawl CV Pacific cod legal landings authorized by an LLP license for each calendar year from 2009 through 2019.

(2) Drop from consideration the calendar year in which the LLP license had the least amount of legal landings. If an LLP license had one or more years with zero harvest, drop one of those years.

(3) Sum the Pacific cod legal landings for the 10 years in which each LLP license had the most landings. This yields the QS units for each LLP license.

For each LLP license with a transferable AI endorsement, NMFS will assign a specific number of PCTC Program QS units based on the legal landings of each vessel that was used to generate the transferable AI endorsement and subsequent legal landings authorized by the LLP license associated with the endorsement using information from the PCTC Program official record according to the following procedures:

(1) Determine the BSAI trawl CV Pacific cod legal landings for each vessel used to generate the transferable AI endorsement from January 20, 2004 through September 13, 2009 and the LLP license associated with that transferable AI endorsement from September 14, 2009 through the end of 2019.

(2) Drop from consideration the calendar year which the vessel used to generate the transferable AI endorsement (January 20, 2004–September 13, 2009) or the associated LLP license (2009–2019) and during which the vessel had the least amount of legal landings. If a vessel or LLP license had one or more years with zero harvest, drop one of those years.

(3) Sum the Pacific cod legal landings of the highest fifteen years for each LLP license with transferable AI endorsement. This yields the QS units for each LLP license with a transferable AI endorsement.

After the QS units for the LLP licenses with and without transferable AI endorsements are determined under part 3 of each scenario above, NMFS sums all harvester QS units to calculate the harvesters' total QS pool. NMFS will then determine what portion of the 77.5 percent of the A and B season DFA allocated as harvester QS is represented by each LLP license's QS units. To do so, NMFS will divide each LLP license's total QS units by the sum (Σ) of all QS units for all eligible LLP licenses based on the PCTC Program official record as presented in the following equation:

LLP license's QS units/(Σ QS units for all LLP licenses) × 100 = Percentage of the total harvester QS pool allocated to that eligible LLP license.

The result (quotient) of this equation is the percentage of the total harvesters' portion of PCTC Program QS allocation (which is 77.5 percent of the A and B season DFA) that a QS holder can assign to a cooperative each year.

NMFS will not divide QS among LLP licenses. The current LLP license owner is entitled to all QS derived from the LLP license and transferable AI endorsement catch history, unless compensation was required by a private agreement associated with the sale of the LLP license.

Some legal landings during 2009 through 2019 were made by vessels with two or more associated LLP licenses. In these cases, NMFS will assign the qualifying catch history to a single LLP license in one of two ways. First, the LLP license owners may come to an agreement regarding the division of qualifying catch history and submit this agreement to NMFS when they apply for QS. Second, if no agreement is provided by the LLP license holders, the owner of the vessel that made the qualifying catch can assign the history to one of the LLP licenses that authorized the catch.

B. Initial Allocation of Quota Share for Processors

''Eligible PCTC Program processor'' means a processing facility with an active Federal Fisheries Permit (FFP) or Federal Processing Permit (FPP) (subject to eligibility requirements under Amendment 120 to the BSAI FMP to limit CPs acting as mothership) that has historically received Pacific cod legal landings during the PCTC Program qualifying years. NMFS will issue QS to the owner of an eligible PCTC Program processor based on deliveries of legal landings in the Federal BSAI Pacific cod trawl fishery in the A and B seasons for each calendar year from 2009 through 2019, with the calendar year in which the processor received the least amount of legal landings dropped from the calculation. Owners of eligible PCTC Program processors must submit a timely and complete Application for PCTC Program QS.

Processors that are no longer active (*i.e.,* no longer hold an FPP or FFP upon the effective date of this final rule) will not be issued QS. The processing history associated with those processors will be deducted from the total amount of eligible processing history during the qualifying years when calculating the distribution of QS to processors.

NMFS will assign a specific number of PCTC Program QS units to each processor's PCTC Program QS permit based on the qualifying legal landings delivered to the processor using information from the PCTC Program official record according to the following procedures:

(1) Determine the BSAI trawl CV Pacific cod legal landings in the A and B seasons delivered to each eligible processor for each calendar year from 2009 through 2019.

(2) Drop from consideration the calendar year in which the processor received the least amount of legal landings. If a processor had one or more years with zero processing of Pacific cod legal landings, drop one of those years.

(3) Sum the Pacific cod legal landings of the highest 10 years for each eligible processor. This yields the QS units for each processor.

(4) Divide the QS units for each eligible processor by the sum (Σ) of all QS units for all processors based on the PCTC official record as presented in the following equation:

Processor's QS units/Σ all processor QS units × 100 = Percentage of the total processor QS allocation for that processor.

The result (quotient) of this equation is the percentage of the total processors' portion of PCTC Program QS allocation (which is 22.5 percent of the A and B season DFA) that a QS holder can assign to a cooperative each year.

TABLE 1—PCTC PROGRAM INITIAL QS POOL IN UNITS

Species	PCTC Program initial QS pool in units
Pacific cod (Holders of LLP Licenses with no transferable AI endorsement).	Σ highest 10 years of BSAI Pacific cod catch history in metric tons in the PCTC official record as of December 31, 2022 for LLP license holders.
Pacific cod (Holders of LLP licenses with a transferable AI endorsement).	Σ highest 15 years of BSAI Pacific cod catch history in metric tons in the PCTC official record as of December 31, 2022 for holders of LLP licenses with a transferable AI endorsement.
Pacific cod (All processors)	Σ highest 10 years BSAI Pacific cod processing history in metric tons in the PCTC official record as of December 31, 2022 for that BSAI Pacific cod for eligible processors.

C. Application for PCTC Program QS

A person must submit an Application for PCTC Program QS in order to receive an initial allocation of PCTC QS. NMFS requires an application to ensure that QS is assigned to the appropriate person(s) and to provide a process for resolving claims of legal landings that are contrary to the PCTC Program official record. Once a person submits an Application for PCTC Program QS that is approved by NMFS, that person will not need to resubmit an application for QS in future years. NMFS will post a list of the eligible PCTC Program LLP license holders and the eligible PCTC Program processors on the NMFS Alaska Region web page (see **ADDRESSES**).

NMFS will mail an application package to the address on record for all potentially eligible LLP license holders and processors. This package will include a letter informing potentially eligible LLP license holders and processors whether NMFS has determined they are eligible to receive QS, and if so, the amount of QS calculated by NMFS based on qualifying catch or processing history from the PCTC Program official record.

Applications will also be available on the NMFS Alaska Region web page (see

ADDRESSES), and interested persons can also contact NMFS RAM to request an application package.

An Application for PCTC Program QS can be submitted electronically or by mail as indicated in the instructions provided on the application. A completed Application for PCTC Program QS must be received by NMFS no later than 1700 hours AKST on October 10, 2023, or if sent by U.S. mail, postmarked by that time. Objective written evidence of timely application will be considered proof of a timely application. If participants do not submit an application by the deadline, they will forfeit their PCTC Program QS.

If a participant agrees with the PCTC Program official record summary, they still must submit an Application for PCTC Program QS by the deadline.

If a participant did not receive an application package from NMFS, they may still apply for QS by submitting an Application for PCTC Program QS and providing evidence of qualifying participation in the BSAI trawl CV sector Pacific cod fishery by the application deadline.

If a participant would like to receive QS and does not agree with the PCTC Program official record summary, they must complete an Application for PCTC Program QS by the application deadline and provide evidence of any claims of participation that are contrary to the official record.

If an LLP license holder's PCTC Program official record summary includes shared catch history, the participants with shared catch history must execute an agreement specifying the amount of shared catch history to assign to each LLP license. If NMFS does not receive an agreement, the owner of the catcher vessel designated on the LLP licenses at the time of harvest will determine the amount of QS assigned to each permit.

D. QS Application Review and Appeals

If any applicant disagrees with NMFS's initial calculations and provides documentation with their Application for PCTC Program QS to support a claim of catch history that is different from the PCTC Program official record, NMFS will determine whether such documentation is sufficient to amend the official record. If so, NMFS will issue QS to the applicant. If not, NMFS will inform the applicant that the submitted documentation was insufficient and provide the applicant with a 30-day evidentiary period to further support their claims. After the close of the 30-day evidentiary period, NMFS will make its final decision about the official record and issue an initial administrative determinations (IAD) to the applicant. Applicants who disagree with the IAD may appeal NMFS's decision through the NOAA National Appeals Office according to the procedures found at 50 CFR 679.43.

NMFS will identify in an IAD any deficiencies or discrepancies in the application, including any deficiencies in the information or evidence submitted to support an applicant's claims challenging the official record. NMFS's IAD will state which claims cannot be approved based on the available information or evidence and provide information on how an applicant can appeal an IAD. An applicant who appeals an IAD will not receive QS for contested landings data unless and until the appeal is resolved in the applicant's favor. Once NMFS has approved an Application for PCTC Program QS in its entirety, NMFS will assign QS units to an applicant's LLP license or issue a processor a PCTC Program QS permit with a specified number of QS units.

For the 2024 fishing season, NMFS will issue CQ to cooperatives based on the QS held by cooperative members at the time of CQ issuance. Any ongoing appeals or QS transfers allowed under the 90-day transfer window for AFA non-exempt CVs will apply to subsequent fishing years.

E. Transferring QS

Under the PCTC Program, QS holders may transfer QS concurrently with the transfer of the LLP license, AI endorsement, or processor PCTC Program QS permit. In order to transfer QS, a QS holder must submit to NMFS an Application for Transfer of License Limitation Program Groundfish/Crab License or the Application for Transfer of Pacific Cod Trawl Cooperative Program Quota Share (QS) for Processors. Transfer of QS requires approval by NMFS to properly track ownership caps. For harvesters, QS may be transferred with an LLP license or a transferable AI endorsement to another person through the existing LLP transfer provisions described in regulations at 50 CFR 679.4(k)(7). Each application must include any additional information needed for the transfer of QS, including amount of QS to be transferred (generally all QS attached to the license), the transferee, and the sale price of QS. Applications are available on the NMFS Alaska Region web page (see **ADDRESSES**). Complete applications can be submitted to NMFS electronically.

To facilitate cooperative formation under the PCTC Program in the first year, QS transfers submitted after November 1 and prior to the start of PCTC Program fishing season will be applied to the following year, meaning if a transfer was submitted in December 2023, the transfer would not be applied until after the PCTC Program fishing season ends in 2024.

Under Amendment 92, the AI endorsements issued to LLP licenses used by non-AFA trawl CVs less than 60 ft (18.3 m) LOA are severable from the LLP license they were initially issued and transferable to another LLP licenses with a MLOA under 60 ft (18.3 m) LOA. NMFS modified the LLP license transfer regulations to clarify the process for transferring an AI endorsement independent of the LLP license. As part of the application process, a person must specify the LLP license to which the transferred AI area endorsement will be assigned.

Once PCTC Program QS is issued, the QS units will remain attached to the associated LLP license or processor's PCTC Program QS permit in most circumstances and cannot be severed or otherwise transferred independently. There are several limited exceptions to non-severability: (1) QS can be fully or partially transferred during the limited 90-day transfer provision for non-exempt AFA CVs; (2) QS attached to LLP licenses with a transferable AI endorsement can be transferred along with the endorsement to another LLP license that meets the criteria for a transferable AI endorsement (endorsements cannot be stacked on a single LLP); (3) if a participant qualifies for a legacy exemption and receives an initial allocation of QS in excess of the ownership cap, that participant's QS can be split during a transfer to prevent any recipient from exceeding a cap; and (4) QS can be separated from a processor QS permit in any transfer of processor-held QS if necessary to prevent any transferee from exceeding an ownership or use cap.

Ninety Day Transfer Window for Non-Exempt AFA LLP Holders

For LLP licenses associated with AFA non-exempt vessels, within 90 days of initial issuance of QS, the owner of the LLP license may transfer QS to another LLP license associated with an AFA non-exempt vessel. These QS transfers are subject to the QS ownership cap. This provision allows LLP license holders that engaged in AFA sideboard harvesting agreements during the qualifying period to transfer resulting QS back to the originating LLP license.

The transferor and the transferee must submit to NMFS a letter, signed by both persons, as evidence of their agreement to transfer the QS in this one-time

opportunity. In the letter, they must explain how much QS will be transferred and to which LLP license or licenses. If only one party submits evidence of an agreement, the QS will remain with the LLP license to which it was initially assigned.

F. QS Ownership Caps

The PCTC program includes QS ownership caps to prevent a permit holder from acquiring an excessive share of the fishery as required under Magnuson-Stevens Act Section 303A(c)(5)(D). Individual ownership caps for both harvesters and processors are calculated using the ''individual and collective rule'' which means a person is deemed to own QS in the same percentage that person owns or uses the relevant license, permit, or vessel. If a person owns QS equal to the cap, NMFS will not approve a transfer of additional QS to that person. The PCTC Program also includes CQ use caps, described in sections IV.E and IV.F.

Harvester QS Ownership Cap—5 Percent

With the exception of persons qualifying for the legacy exemption, no person is permitted to individually or collectively own more than 5 percent of the aggregate QS units initially assigned to eligible LLP licenses. The number of QS units is based on the PCTC Program official record. When QS is transferred, the person receiving the transfer is prohibited from holding or using QS over the 5 percent cap. This QS ownership cap limits the amount of QS assigned to an LLP license that can be held or controlled by a single entity. Processor QS does not count toward this ownership cap.

Processor QS Ownership Cap—20 Percent

With the exception of persons qualifying for the legacy exemption, no person is permitted to individually or collectively own more than 20 percent of the aggregate QS units initially assigned to QS permits held by eligible processors. Processor QS ownership caps are necessarily higher than harvester-held QS caps because the total number of eligible processors is significantly less than the number of harvesters. This cap is applied at the aggregate company or firm level (not the individual facility level). The processor QS ownership cap limits the amount of processor-held QS that can be held or controlled by a single entity.

Legacy Exemption From the Ownership Caps

Under the PCTC Program, persons over the cap at the time of QS issuance are granted non-transferable legacy exemptions. Because the ownership caps fall well short of excessive shares in the fishery and allocating QS based on status quo levels of participation would not result in any participant holding an excessive share of limited access privileges, the Program grants legacy exemptions to participants whose initial QS allocations exceed the ownership caps. The legacy exemptions are intended to preserve stability in the fishery rather than force longtime participants to divest and reduce their reliance on the fishery. However, legacy exemptions are unique to persons receiving initial QS allocations and cannot be transferred. All future purchasers of QS would be subject to the ownership caps.

G. Transferring QS in Excess of the Ownership Caps

NMFS will not approve transfers of an LLP license with QS or a PCTC Program QS permit if the transfer would cause a person to exceed the 5 percent harvester QS ownership cap or the 20 percent processor QS ownership cap.

For LLP licenses and PCTC Program QS permit holders that are initially issued QS greater than the ownership cap (*i.e.,* for persons granted a legacy exemption from the ownership cap), the LLP license holder or QS permit holder may sever the amount of QS over the cap from the permit (and, once severed, transfer to one or more buyers) at the time of transfer. This provision allows the transfer of an LLP license or PCTC Program QS permit subject to a legacy exemption without the transferee exceeding a QS ownership cap. In addition, for QS assigned to a processor holding a PCTC Program QS permit—even if the transferor does not hold QS in excess of any cap—QS can be divided or transferred separately from that processor permit if a sale will otherwise result in the transferee exceeding an ownership cap.

If a QS holder has a legacy exemption from the QS ownership cap, NMFS will not approve a QS transfer to that person unless and until that person's holdings of QS are reduced to an amount below the QS ownership cap.

IV. PCTC Program Cooperatives

The PCTC Program is a cooperative-based program that requires harvesters to join a cooperative each year and processors to associate with a cooperative each year to benefit from QS holdings. NMFS will issue cooperatives annual CQ derived from the QS held by the harvesters that join the cooperative and associated processors. Under the Program, cooperative members are expected to coordinate their fishing operations, potentially reduce operational expenses, and increase the quality and revenue from the product, among other benefits.

A. Requirements for Forming a Cooperative

Under the PCTC Program, forming a cooperative requires at least three LLP licenses with QS. Annually, each cooperative must associate with at least one permitted processor. There is no limitation on the number of LLP licenses that may join a single cooperative, the number of processors a cooperative can associate with, or on the amount of QS a single cooperative can control. There is also no limit on the number of cooperatives that may form, but each LLP license may only be assigned to one cooperative. A person may hold multiple LLP licenses, meaning that an individual who holds three or more LLP licenses may form a cooperative in association with a processor.

An LLP license holder may change cooperatives and processor associations may change annually without penalty. However, an LLP license holder with QS may not change cooperatives and cooperatives may not change their processor associations during the PCTC Program fishing season. If an LLP license is sold or transferred during the season, it will remain with the cooperative until the end of the season. Inter-cooperative formation is allowed and an inter-cooperative agreement (see section IV.B) is required to implement the AI set-aside and to allow for efficient transfer of CQ or PSC limits between cooperatives.

NMFS will issue annual CQ to each cooperative based on the aggregate QS held by all cooperative members and associated processors. CQ constitutes an exclusive harvest privilege for the A and B seasons. NMFS will issue CQ by season and rely on the cooperatives to ensure the seasonal limits are not exceeded. Any unused A season CQ may be harvested during the B season. Cooperative members will determine their own harvest strategy, including which vessels can harvest the CQ.

CQ is not designated for the BS or AI subareas separately, but may be harvested from either area because the non-CDQ Pacific cod sector allocations are BSAI wide. If the non-CDQ Pacific cod TAC is or will be reached in either the BS or the AI subareas, NMFS will

prohibit non-CDQ directed fishing for Pacific cod in that subarea as provided at § 679.20(d)(1)(iii). However, NMFS will annually establish a separate AI DFA to support the calculation of the AI set-aside. For more information, see Section VI of this preamble. Under certain conditions, cooperatives would be required to collectively set aside 12 percent of the A season CQ for delivery to an AI shoreplant as described further under the AI Community Protections section below.

Cooperatives are limited in the manner in which they distribute CQ derived from processor-held QS for harvest by cooperative vessels. To address vertically integrated companies where a processing company may also own LLP licenses or CVs within a cooperative, CQ derived from processor-held QS must be divided among cooperative harvesting CVs proportionately to the QS attached to LLP licenses on board the CVs. In other words, a cooperative should not allow a CV or LLP license owned by a processor to harvest a greater proportion of the CQ resulting from processor-held QS than the LLP license will have brought into the cooperative absent any processor-held QS. Each cooperative will monitor this provision and include reporting on harvest of CQ resulting from processor-held QS in the PCTC Program cooperative annual report to the North Pacific Fishery Management Council (Council).

B. Application for PCTC Program Cooperative Quota (CQ)

All participants in the Program must organize into cooperatives, and the cooperative must submit a complete Application for PCTC Program CQ prior to the November 1 deadline each year to receive an annual CQ permit. If the cooperative fails to submit a timely application for CQ, NMFS will not issue CQ to the cooperative for that fishing year.

NMFS will process the application for CQ and, if approved, issue a CQ permit and apportioned amounts of annual crab PSC and halibut PSC limits to the cooperative. NMFS will use these applications to issue CQ permits, establish annual cooperative accounts for catch accounting purposes, and identify specific harvester vessels for each cooperative. As with other LAPPs, the information received in this application is annually used to review ownership and control information for various QS holders to ensure that QS and CQ use caps are not exceeded. Processors that receive deliveries of CQ but do not hold a QS permit do not need to be listed on the application for CQ.

The Application for PCTC Program CQ is available on the NMFS Alaska Region website and may be submitted electronically through the NMFS online system or the NMFS Alaska Region website. The following list summarizes the information that is required:

- PCTC Program LLP license identification numbers;
- Processor-held PCTC Program QS permit number(s) and name of the processor that holds that each QS permit;
- PCTC Program QS ownership documentation;
- PCTC Program cooperative business address or identifier identification;
- Members of the PCTC Program cooperative and the associated processor that holds a QS permit;
- Trawl vessel identification, including the name(s) and USCG documentation number of vessel(s) eligible to harvest the CQ issued to the PCTC Program cooperative;
- A copy of the business license issued by the state in which the PCTC cooperative is registered as a business entity;
- A copy of the articles of incorporation or partnership agreement of the PCTC Program cooperative;
- A list of the names of all persons, to the individual level, holding an ownership interest in the LLP licenses that join the cooperative and the percentage ownership each person and individual holds in each LLP license;
- A list of trawl CVs eligible to harvest a portion of that cooperative's CQ;
- A copy of the cooperative agreement signed by the members of the PCTC Program cooperative, which must include, at a minimum, the following terms: (1) QS holders affiliated with processors cannot participate in price setting negotiations except as permitted by antitrust law; (2) monitoring provisions, including sideboard protections in the GOA, sufficient to ensure compliance with the PCTC Program; and (3) a provision that specifies the obligations of PCTC QS holders who are members of the cooperative to ensure the full payment of cost recovery fees that may be due;
- A copy of the inter-cooperative agreement that provides the plan for coordinating harvest and delivery of the AI CQ set-aside;
- Designated representative and cooperative members' signatures and certification; and
- Authorization for the designated representative to act on behalf of the cooperative to complete the application.

C. Issuing PCTC CQ

NMFS will review the CQ applications for accurate information, including cooperative and inter-cooperative agreements, ownership and use caps, and payment of any fees, including cost recovery. If approved, NMFS will issue a CQ permit to the cooperative. NMFS will issue CQ permits after the annual harvest specifications are recommended by the Council for the upcoming year. Permits will generally be issued in early January for the fishing year starting January 20. The CQ permit will list the metric tons of Pacific cod by A and B season that the cooperative may harvest, the metric tons of apportioned halibut PSC, and the number of each species of crab PSC that the cooperative may use during the fishing year.

NMFS will issue CQ for A and B seasons separately, with total CQ issued to all cooperatives in each season equal to the DFA. The remaining TAC for the trawl CV sector will be the incidental catch allowance (ICA) for Pacific cod caught as bycatch in other fisheries, such as pollock.

D. Processors in Cooperatives

A person holding a PCTC Program QS permit is required to associate with a cooperative to use their QS. This creates an economic incentive for the processors that hold QS to either associate with a cooperative on an annual basis or sell their permit to a processor that will associate with a cooperative. Processor-held QS that is not associated with a specific cooperative will be distributed as CQ among all the cooperatives that form in a given year in the same proportion as the CQ assigned to each cooperative. A cooperative may associate with a processor that does not hold QS.

E. Vessel CQ Use Cap—5 Percent

A vessel use cap restricts the CQ that can be consolidated and harvested by one vessel during the year. The PCTC Program includes a 5 percent vessel use cap for CVs. With the exception of persons qualifying under the legacy exemption, no vessel is permitted to harvest more than 5 percent of the annual CQ issued in the fishery. A vessel designated on an LLP license that receives QS in excess of the QS ownership cap at the time of QS issuance will be granted a legacy exemption from the vessel use cap because that vessel would have harvested over 5 percent of the total A and B season trawl CV sector Pacific cod allocation during the qualifying years. The legacy exemption applies to the

vessel designated on an LLP license that yields more than 5 percent of the QS at the time of initial allocation. This legacy exemption is not transferable if the LLP license is transferred to a new owner.

F. Processor CQ Use Cap—20 Percent

A processor's CQ use cap protects against excessive consolidation of processing activity by limiting a person (*i.e.,* company or firm) to processing no more than 20 percent of the annual CQ using the individual and collective rule, with the exception of persons qualifying under the legacy exemption. The processor CQ use cap is calculated based on the total CQ issued under the PCTC Program and not just QS initially issued to processors. This ensures that a processing company is limited to processing a specific percentage of the total PCTC Program allocation. A person over the cap at the time of QS issuance—*i.e.,* a processor that, on average, processed more than 20 percent of the total A and B season trawl CV sector Pacific cod allocation during the qualifying years—is granted a non-transferable legacy exemption.

G. CQ and PSC Transfers

Under this Program, a cooperative may transfer all or part of its CQ to another cooperative for harvest subject to the limitations imposed by the use caps. Transfers of CQ are for a single year's annual allocation. The underlying QS remains with the LLP license. This CQ transfer provision provides flexibility for cooperatives to transfer Pacific cod for harvest or PSC to support cooperative fishing. The ability to transfer PSC allows cooperatives to account for unforeseen circumstances, but the incentive to avoid hitting a cooperative PSC limit remains because of the cost of acquiring PSC from another cooperative.

This final rule allows post-delivery transfers of CQ, but all transfers must be completed prior to August 1, after the close of the B season. At the end of the fishing season, remaining CQ may be consolidated into fewer cooperatives (and for harvest by fewer vessels) due to the requirement that a vessel may not begin a fishing trip without unharvested CQ. Consolidation of CQ to a smaller number of cooperatives toward the end of the fishing season facilitates ''sweep up'' trips to complete the season's harvests.

To transfer CQ and associated PSC limits between cooperatives, the cooperative must use the NMFS online system on the NMFS Alaska Region website, which allows for automated review and approval of transfer requests within use cap constraints. NMFS will not approve a CQ transfer if the transfer would result in a CV exceeding the use cap. A transfer of CQ is not effective until approved by NMFS.

H. Cooperative Reports

Under the PCTC Program, the Council has requested cooperatives to provide voluntary annual reports. Consistent with other cooperative programs developed by the Council, these reports shall include specific information on the structure, function, and operation of the cooperatives.

Each year, the Council will receive reports outlining the cooperatives' performance at one of its regularly scheduled meetings. These reports will be used by the Council and NMFS to ensure the program is functioning as intended and to solicit timely information on issues that may need to be addressed by the Council. The Council requested that each cooperative report include information on CQ leasing activities and any penalties issued, harvest of CQ resulting from processor-held QS, cooperative membership, cooperative management, and performance (including implementation of the AI CQ set-aside when in effect).

V. Prohibited Species Catch Limits

NMFS will annually apportion halibut and crab PSC limits to PCTC Program cooperatives based on the percentage of total CQ allocated to their cooperative. During the A and B seasons, NMFS will monitor PSC use at the sector level, and cooperatives will manage PSC use at the cooperative level. Cooperative vessels are prohibited from fishing under the Program if a halibut PSC limit is reached for the cooperative or from fishing in a crab bycatch limitation zone if a crab PSC limit is reached in that relevant area. PSC limits may be transferred between cooperatives using the NMFS online system to cover any overages or to allow a cooperative to continue harvesting Pacific cod.

A. Halibut PSC

Annually, NMFS will apportion the halibut PSC limit assigned to the BSAI trawl limited access sector Pacific cod fishery to the trawl CV and AFA CP sectors; 98 percent will be apportioned to the trawl CV sector and 2 percent will be apportioned to AFA CP sector. The specific percentage of the total halibut PSC limit assigned to the trawl limited access sector may change annually. NMFS will then apportion the halibut PSC limit to the trawl CV sector for the A, B, and C season. Of the halibut PSC limit apportioned to the trawl CV sector, 95 percent will be available for the PCTC Program in the A and B seasons and 5 percent is available for the C season.

To implement the halibut PSC reduction under the Program, NMFS will annually apply a fixed percentage reduction to the A and B season PSC apportionment derived from the overall trawl CV sector halibut PSC apportionment. The total halibut PSC reduction under the Program is 25 percent, which will be phased in over two years. In the first year of the Program, NMFS will apply a 12.5 percent reduction to the A and B season trawl CV sector halibut PSC apportionment in the annual harvest specifications after the Council recommends and NMFS approves the BSAI trawl limited access sector's PSC limit apportionments to fishery categories. In the second year of the Program and every year thereafter, NMFS will apply a 25 percent reduction to the A and B season trawl CV sector halibut PSC apportionment. Any amount of the PCTC Program PSC limit remaining after the B season will be reallocated to the trawl CV limited access fishery in the C season. Because the annual halibut PSC limit for the Program is not a fixed amount established in regulation and, instead, is determined annually through the harvest specification process, NMFS must apply the 25 percent reduction to the A and B season apportionment of the trawl CV sector apportionment to implement the overall PSC reductions under the Program.

B. Crab PSC

The annual crab PSC limits available to the BSAI trawl limited access sector Pacific cod fishery category will be apportioned between the trawl CV sector and the AFA CP sector based on the proportion of BSAI Pacific cod allocated to the two sectors: 90.6 percent to BSAI trawl CVs and 9.4 percent to AFA CPs. Of the crab PSC limit apportioned to the trawl CV sector, 95 percent will be available for the PCTC Program (A and B seasons) and 5 percent will be available for the C season. NMFS will then reduce the crab PSC limits by 35 percent during the A and B seasons for the PCTC Program. As with halibut PSC, any amount of the PCTC Program PSC limit remaining after the B season will be reallocated to the C season trawl CV limited access fishery.

VI. AI Community Protections

Under the PCTC Program, cooperatives are required to collectively set aside an amount of CQ equal to 12

percent of the overall A season CQ for delivery to an Aleutian Islands shoreplant (AI CQ set-aside) during years in which an AI community representative notifies NMFS of their intent to process Pacific cod. The term ''Aleutian Islands shoreplant'' means a processing facility that is physically located on land west of 170° W. longitude within the State of Alaska. The rationale and need for this provision is explained in detail in the preamble to the proposed rule and in Section 2.9.6 of the Analysis prepared for this action (see **ADDRESSES**).

The AI CQ set-aside provides additional incentives for harvesters to deliver AI Pacific cod to an Aleutian Islands shoreplant. The AI CQ set-aside is designed to provide benefits and stability to fishery-dependent fishing communities in the AI when a shoreplant is operating and is responsive to lingering effects caused by changes in management regimes such as rationalization programs. Without the AI CQ set-aside, AI harvesters, shoreplants, and fishing communities could be preempted from the fishery by the offshore sector. The AI CQ set-aside is especially beneficial to AI communities in low TAC years when harvest can otherwise fully occur in the BS, preventing any cod deliveries in the AI.

This final rule does not affect any sector's BSAI Pacific cod allocation or the CDQ Pacific cod allocation in the AI. Non-CDQ sectors continue to receive annual allocations as established under Amendment 85 to the BSAI FMP (72 FR 50787, September 4, 2007). The performance of this AI CQ set-aside provision will be evaluated in the periodic reviews of the Program.

A. Managing the AI CQ Set-Aside

The AI CQ set-aside provision for AI processors requires cooperatives to set-aside an amount of annual CQ for delivery to an Aleutian Islands shoreplant if the city of Adak or Atka files a notice of intent to process that year. The AI CQ set-aside is in effect and available for delivery to an Aleutian Islands shoreplant during the A and B seasons unless all notices of the intent to process are withdrawn by the AI communities. If all notices of intent to process are withdrawn, any remaining portion of the AI CQ set-aside will be available for cooperatives to deliver to any processor.

Cooperatives will manage the AI CQ set-aside through an inter-cooperative agreement. This agreement will ensure annual coordination between the cooperatives and shoreplants that are operating in the AI and guarantee that the AI CQ set-aside is available for delivery to the Aleutian Islands shoreplants. This reduces the management burden on NMFS and relies on the cooperatives to organize annual fishing activity.

Each year, the cooperative must submit a copy of the inter-cooperative agreement with the Application for PCTC Program CQ to NMFS that describes (1) how the AI CQ set-aside would be administered by the cooperatives, (2) how the cooperatives intend to harvest the AI CQ set-aside, and (3) how cooperatives would ensure that CVs less than 60 ft (18.3 m) LOA assigned to an LLP license with a transferable AI endorsement have the opportunity to harvest 10 percent of the AI CQ set-aside for delivery to an Aleutian Islands shoreplant. Each cooperative is required to provide the cooperative's plan for coordinating harvest and delivery of the AI CQ set-aside to an Aleutian Islands shoreplant regardless of whether that cooperative intends to harvest any amount of the AI CQ set-aside.

For the calendar year 2023, to provide for implementation of the Program during its first year, NMFS will allow each cooperative to submit the inter-cooperative agreement on or before December 31, 2023, after the November 1 deadline for the Application for PCTC Program CQ.

B. Intent To Process and Eligibility for AI CQ Set-Aside

This final rule allows the representative of the City of Adak or the City of Atka to submit an annual notice of intent to process PCTC Program Pacific cod in the upcoming fishing year to the NMFS Regional Administrator no later than October 15 of the year prior to fishing. Submission of the notice of intent by October 15 provides NMFS inseason management with the timely information it needs to manage the upcoming fisheries and notify the cooperatives that the AI CQ set-aside is in effect for the upcoming year. If neither Adak nor Atka submit a notice of intent to process by October 15, cooperatives are not required to set aside CQ for delivery to an Aleutian Islands shoreplant in the subsequent fishing season.

A city's notice of intent to process Pacific cod must contain the following information: date, name of city, a statement of intent to process Pacific cod, statement of calendar year during which the city intends to process Pacific cod, and the contact information for the city representative where the relevant shoreplant is located.

On or before November 30, the Regional Administrator will notify the representative of Adak or Atka confirming receipt of their notice of intent to process Pacific cod. Shortly after receipt of a notice of intent to process Pacific cod, NMFS will announce through notice in the **Federal Register** whether the AI CQ set-aside is in effect for the upcoming fishing year.

Even if Adak or Atka is uncertain at the time the notice of intent is due as to whether an Aleutian Islands shoreplant will be operational, there would be no penalty to Adak or Atka or the shoreplant for stating their intention to process but then later withdrawing that notice of intent. Adak or Atka would be allowed to withdraw their notice of intent at any time after submitting it to NMFS. In the event that both Adak and Atka withdraw their notices of intent to process during the A or B season, NMFS will publish a notice in the **Federal Register** announcing that the AI CQ set-aside is no longer in effect and remove the delivery requirement. The remaining portion of the AI CQ set-aside would be available for harvest without restrictions on delivery location.

NMFS will monitor the implementation of the AI CQ set-aside throughout the A and B seasons. NMFS will consider the number and frequency of deliveries to Aleutian Islands shoreplants as well as the season timing and remaining CQ to be harvested. As soon as practicable, if the Regional Administrator determines that Aleutian Islands shoreplants authorized under the PCTC Program will not process the entire AI set-aside, the Regional Administrator may publish a notice in the **Federal Register** to remove the delivery requirement for some or all of the projected unused AI CQ set-aside.

C. AI DFA

The Council and NMFS annually establish separate OFLs, ABCs, and TACs for the AI and BS subareas; however, the non-CDQ sector allocations (including the PCTC Program allocations) remain BSAI-wide allocations. Each year, during the annual harvest specifications process described at § 679.20(c), NMFS will specify an ICA and a DFA derived from the AI non-CDQ TAC. The amount of AI Pacific cod that NMFS estimates will be taken as incidental catch when directed fishing for non-CDQ groundfish other than Pacific cod in the AI subarea will be the AI ICA. The amount of the AI ICA may vary from year to year, and in future years, NMFS will specify the AI ICA in the annual harvest specifications based on recent and anticipated

incidental catch of AI Pacific cod in other AI non-CDQ directed groundfish fisheries. The amount of the AI non-CDQ TAC remaining after subtraction of the AI ICA will be the AI DFA.

NMFS will specify the AI ICA and DFA so that NMFS can clearly establish the amount of the AI CQ set-aside. It will also aid the public in knowing how much of the AI non-CDQ TAC is available for directed fishing prior to the start of fishing to aid in the planning of fishery operations.

The amount of the annual AI CQ set-aside for delivery to an Aleutian Islands shoreplant is equal to the lesser of either the AI Pacific cod non-CDQ DFA or 12 percent of the A season CQ and is in effect during the A and B seasons. When the AI CQ set-aside is equal to the AI DFA, directed fishing for Pacific cod in the AI may be conducted only by PCTC Program vessels that deliver their catch of AI Pacific cod to an Aleutian Islands shoreplant. However, if the AI DFA is greater than the AI CQ set-aside (and thus the set-aside is equal to 12 percent of the A season CQ), the difference between the AI DFA and the AI CQ set-aside may be available for directed fishing by all PCTC Program vessels with no restrictions on where that CQ must be delivered and processed.

VII. C Season Limited Access Fishery

The C season apportionment—which is 15 percent of the total annual allocation to the BSAI Pacific cod trawl CV sector—remains a limited access fishery open to all trawl CVs with LLP license endorsements to harvest Pacific cod in the BS and/or AI with trawl gear. The C season limited access fishery, which occurs June 10 through November 1, continues to be managed as it is under status quo conditions and remains unchanged by this final rule.

Although directed fishing for Pacific cod in the C season is an important part of the annual fishing plan for some trawl CVs, most of the trawl CV C season catch is incidental to other directed fishing. In the fall, as directed fishing for Pacific cod that opens on September 1 for the hook-and-line and pot sectors progresses, NMFS estimates any BSAI trawl CV C season allocation, including any unused amounts of PCTC Pacific cod and PSC limits rolled over to the C season, will be available for reallocation to other sectors. In some years, projected unused amounts of the trawl CV Pacific cod TAC will be available to reallocate, and NMFS may make a reallocation in late September or October. In other years, there may not be any projected unused amounts, and NMFS will wait until after directed fishing for pollock and Pacific cod by the trawl CV sector closes. In that circumstance, reallocations will occur in November or December. When the BS and AI Pacific cod TACs are higher, trawl CV C season Pacific cod may go unused and can be reallocated to other sectors. For projected unused PSC limits, the Regional Administrator may reallocate a portion of crab PSC or halibut PSC to Amendment 80 cooperatives if the amount assigned to the BSAI trawl limited access sector is not projected to be harvested or used (§ 679.91(f)).

To help ensure efficient allocation management, NMFS may rollover any unused portion of a seasonal apportionment from any non-CDQ fishery sector (except the jig sector) to that sector's next season during the current fishing year (§ 679.20(a)(7)(iv)(B) and (C)).

Under the PCTC Program, the cooperatives are granted harvest privileges in the A and B seasons of the BSAI Pacific cod fishery. Those harvest privileges alter the reallocation structure from the trawl CV sector prior to the C season since rollovers of unused CQ and PSC limits to other sectors will not occur until the close of the annual PCTC fishing year (the end of the B season).

VIII. Additional PCTC Program Provisions

A. Sideboard Limits in the PCTC Program

The PCTC Program modifies existing GOA sideboard limits and associated GOA halibut PSC limits for non-exempt AFA vessels and LLP license holders and closes directed fishing where sideboard limits are too small to support a directed fishery. All GOA non-exempt AFA CVs and associated AFA LLP licenses are sideboarded in aggregate for all GOA groundfish fishing activity and for GOA halibut PSC based on their GOA catch history during the qualifying period, except when participating in the Central Gulf of Alaska (CGOA) Rockfish Program. The existing sideboards apply to non-exempt AFA vessels as defined at § 679.64(b)(2). The PCTC Program modifies the calculation of the existing sideboard limits for these non-exempt AFA CVs based on the GOA catch history. LLP licenses associated with non-exempt AFA CVs are also subject to the revised sideboard limits regardless of which vessel is named on the LLP.

GOA sideboards are currently calculated for non-exempt AFA CVs based on the ratio of catch to the TAC during the years 1995–1997. The PCTC Program modifies the calculation of the sideboard ratios for non-exempt AFA CVs that will be used in the annual GOA harvest specifications, looking at the ratio of catch to the TAC in the qualifying years of 2009–2019 (as shown in Table 2).

Table 2–GOA groundfish sideboard ratios (aggregate retained catch/TAC) for all non-exempt AFA CVs and LLP licenses based on the PCTC Program qualifying period

Target Species	Apportionments by season/gear	Area/component	Existing Sideboard Ratio	New Sideboard Ratio
Pollock	A Season Jan 20 - May 31	Shumagin (610)	0.6047	0.057
		Chirikof (620)	0.1167	0.064
		Kodiak (630)	0.2028	0.091
	B Season Sep 1 - Nov 1	Shumagin (610)	0.6047	0.057
		Chirikof (620)	0.1167	0.064
		Kodiak (630)	0.2028	0.091
	Annual	WYK (640)	0.3495	0.026
		SEO (650)	0.3495	0.000
Pacific cod	A Season Jan 1 - Jun 10	W	0.1331	0.009
		C	0.0692	0.011
	B Season Sept 1 - Dec 31	W	0.1331	0.009
		C	0.0692	0.011
Shallow-water flatfish	Annual	W	0.0156	0.000
		C	0.0587	0.011
Deep-water flatfish	Annual	C	0.0647	0.002
		E	0.0128	0.000
Rex sole	Annual	C	0.0384	0.014
Arrowtooth flounder	Annual	C	0.028	0.011
Flathead sole	Annual	C	0.0213	0.007
Pacific ocean perch	Annual	E	0.0466	0.001

In addition, the ratio used to apportion GOA halibut PSC limits is modified and the five seasonal apportionments based on that sideboard ratio is reduced to a single aggregate annual amount. Providing an aggregate annual halibut PSC limit provides greater flexibility for the AFA vessels and LLP licenses to assign halibut PSC limits to those GOA groundfish sideboard fisheries that have the greatest value. Table 3 shows the new aggregate GOA halibut PSC limit ratio based on catch history during the qualifying period 2009–2019 that will be used annually in the GOA harvest specifications table after the effective date of this final rule.

TABLE 3—GOA HALIBUT PSC LIMIT RATIO AGGREGATED AT THE SEASON AND COMPLEX LEVEL FOR ALL AFA NON-EXEMPT CVS AND ASSOCIATED LLP LICENSES UNDER THE QUALIFYING PERIOD

GOA Halibut PSC Limit	Qualifying period (2009–2019)
PSC Limit Ratio	.072

Additionally, this final rule closes directed fishing to all GOA non-exempt AFA CVs and LLP licenses for the following species categories: Southeast Outside district of the Eastern GOA pollock, Western GOA shallow-water flatfish, Central and Eastern GOA deep-water flatfish, Central GOA dusky rockfish, and Eastern GOA and Central GOA Pacific ocean perch. NMFS will no longer publish AFA Program sideboard limits for these specific species or species groups in the **Federal Register** as part of the annual groundfish harvest specifications and instead this final rule specifies in regulation at § 679.64(b)(4)(ii) that directed fishing for these species is closed to non-exempt AFA CVs.

The Council directed cooperatives to (1) ensure GOA AFA exempt and non-AFA CVs and CVs assigned to under 60 ft (18.3 m) LLP licenses with AI transferrable endorsements do not lease their CQ as a condition of benefiting from a GOA sideboard exemption, (2) implement a penalty structure for violations, and (3) report leasing activities and penalties issued in the cooperative's annual report to the Council. The cooperative can allow leasing for (1) AFA GOA-exempt CVs, non-AFA CVs, and CVs assigned to under 60 ft (18.3 m) LOA LLP licenses with a transferable AI endorsement with less than 300 metric tons of average annual qualifying catch history, and (2) CVs assigned to the LLP license that only fishes in the CGOA Rockfish Program during the calendar year. Additionally, NMFS requires cooperatives to include information about the cooperative's plan to monitor CQ leasing activities, including into

GOA fisheries, in the Application for PCTC Program CQ.

B. Changes to Existing BSAI Sideboard Limits for AFA CVs

This final rule revises the BSAI Pacific cod and halibut PSC sideboard limits for AFA trawl CVs specified at § 679.64(b)(4)(i) and in Table 40 to part 679 to only apply in the C season. The BSAI Pacific cod sideboard limit is no longer necessary in the A and B seasons because directed fishing in the BSAI for Pacific cod is now managed under the PCTC Program. NMFS removes the halibut PSC sideboard limits for AFA trawl CVs because the PCTC Program establishes lower PSC limits for PCTC Program participants. This final rule does not change the BSAI crab PSC sideboard limit for AFA trawl CVs specified at § 679.64(b)(4)(i) and Table 41 to part 679.

C. At-Sea Processing Sideboard Limit

This final rule implements a sideboard limit on the amount of CQ that can be processed by a CP designated on a groundfish LLP license with a BSAI Pacific cod trawl mothership endorsement. This sideboard limit is assigned to each LLP license with a BSAI Pacific cod trawl mothership endorsement that authorizes the CP to act as a mothership in the BSAI Pacific cod fishery as listed in Table 57 to part 679. The Council recommended that each eligible CP acting as a mothership can process up to 125 percent of the eligible CP's processing history during the qualifying years (with no drop year). This at-sea processing sideboard limit is permanently attached to the associated LLP license and applies to the processing activity of any associated vessel.

The data used to calculate the at-sea processing sideboard limits and the resulting sideboard limit assigned to each LLP license is confidential. Each LLP license holder is responsible for coordinating with any cooperative to ensure the applicable processing limit is not exceeded. The at-sea processing sideboard limit is not an allocation and the PCTC Program does not require that this amount be delivered to CPs acting as a mothership, but it provides an upper bound on how much CQ may be delivered.

The at-sea processing sideboard limit is consistent with Amendment 120 (84 FR 70064, December 20, 2019) that restricted the number of CPs that are eligible to operate as a mothership receiving and processing Pacific cod from CVs in the BSAI non-CDQ Pacific cod directed fishery using trawl gear. Under Amendment 120, NMFS issued a BSAI Pacific cod trawl mothership endorsement to two LLP licenses but did not include a limit on the amount of BSAI Pacific cod that can be processed because it was not thought that any one processor could increase their capacity significantly under the LLP management system. However, under this rationalized, slower paced, cooperative fishing Program, the Council and NMFS determined it may be possible for continued mothership processing growth beyond historical patterns, so the Council recommended that a processing limit be established for each LLP license listed in Table 57 to part 679. For more information on processing limits for the mothership sector, please see section 2.9.5 of the Analysis (see **ADDRESSES**).

Annually, NMFS will calculate the at-sea processing sideboard limit, expressed as a percentage of the aggregate CQ that would apply to each LLP license with a BSAI Pacific cod trawl mothership endorsement and notify the LLP license holder upon issuance of initial allocations. This final rule does not change the regulations pertaining to the transfer of LLP licenses as specified at § 679.4(k)(7) nor the process to change the designated vessel on an LLP license as specified at § 679.4(k)(7)(vii). Each LLP license subject to this at-sea processing sideboard limit is prohibited from exceeding the processing limit as specified in regulations at § 679.133(b)(2).

D. Cost Recovery

The PCTC Program is a LAPP established under the provisions of Section 303A of the Magnuson-Stevens Act. The Magnuson-Stevens Act requires that NMFS collect fees from limited access privilege holders to cover the actual costs of management, data collection and analysis, and enforcement activities associated with LAPPs. Cost recovery fees may not exceed three percent of the ex-vessel value of the fish harvested under the LAPP. NMFS will assess a fee on the ex-vessel value of PCTC Program Pacific cod harvested by cooperatives in the BSAI. Halibut and crab PSC are not subject to a cost recovery fee because PSC cannot be retained for sale and, therefore, does not have an ex-vessel value.

The annual PCTC Program cost recovery process builds on other existing cost recovery requirements implemented under other programs. NMFS annually receives information used to calculate Pacific cod standard prices in the existing BSAI Pacific cod Ex-vessel Volume and Value Report, which is submitted in early November of each year. NMFS will use this existing data source to calculate standard prices used to determine the annual PCTC Program fishery value, which will be used to calculate the annual PCTC Program cost recovery fee percentage. NMFS will begin tracking PCTC Program management costs upon the effective date of this final rule. PCTC Program landings will be made in the A and B seasons, which extends from January 20 to June 10.

The following is an example to illustrate the data NMFS will use in the annual PCTC Program cost recovery process using the year 2025. The PCTC Program fishing year will have landings subject to cost recovery starting on January 20, 2025 and ending on June 10, 2025. NMFS will calculate standard prices derived from the volume and value report submitted by November 10, 2024 for landings made in 2024. Finally, NMFS will use the management costs from July 2024 through June 2025 to calculate the 2025 fee percentage. By no later than July 31, 2025, the Regional Administrator will publish a notice announcing the standard prices and fee percentage in the **Federal Register** and send invoices to cooperatives.

NMFS will send each cooperative a fee liability letter to inform each cooperative of the fee percentage applied to the current year's landings and the total amount due (fee liability). The letter will include a summary explaining the fee liability determination including the current fee percentage and details of CQ pounds debited from CQ allocations by permit, date, and prices.

Fees must be paid by August 31 of each year. NMFS requires that all payments be submitted electronically in U.S. dollars through the NMFS Alaska Region website. Instructions for electronic payment are made available on the payment website and through a fee liability summary letter NMFS will mail to the cooperative.

Each cooperative is responsible for paying cost recovery fees assessed on cooperative landings. Failure to pay cost recovery fee liabilities on time will result in NMFS not approving a cooperative's application for a CQ permit the following year until full payment of the fee liability is received by NMFS. NMFS will not issue a CQ permit until NMFS receives a complete application for CQ and confirmation of the full payment of any cost recovery fee liability. Communication with NMFS using the contact information provided in the fee liability letter will provide ample opportunity for cooperative to

reconcile accounts. However, if the account is not reconciled and the individual does not pay, NMFS will send an IAD to the cooperative. The IAD would state that the cooperative's estimated fee liability due from the cooperative had not been paid. The cooperative may appeal the IAD. The appeals process is described at § 679.43. A cooperative who appeals an IAD would not receive a new CQ permit unless the appeal was resolved in the applicant's favor.

The agency may pursue collection of the unpaid fees if the formal determination is not appealed and the account remains unpaid or under-paid 30 days after fees are due (August 31 of each year). The Regional Administrator will continue to prohibit issuance of a CQ permit for any subsequent calendar years until NMFS receives the unpaid fees.

E. Monitoring Provisions

This final rule establishes requirements for observer coverage and other monitoring and enforcement provisions to ensure that fleet-wide harvests under the PCTC Program are effectively monitored and that catches remain within allocations. These requirements include full observer coverage for CVs harvesting CQ (except for CVs delivering unsorted codends to motherships, as explained below) and requirements for communications equipment to facilitate observer data entry and electronic transmission to NMFS. These monitoring provisions are designed to maximize the quality of data used to estimate PCTC Program catch and bycatch, including PSC. Shoreside processors are required to report landings data to NMFS electronically through eLandings. Estimates of at-sea discards and PSC would be derived solely from observer data.

All vessels used to harvest CQ are required to carry equipment to facilitate at-sea electronic transmission of observer data to NMFS. This final rule modifies regulations at § 679.51(e)(1)(iii)(A) to explicitly require vessel operators to allow an observer to use the vessel's existing communications equipment for confidential entry, transmission, and receipt of work-related messages.

All vessels participating in the PCTC Program are required to provide an onboard computer that meets minimum specifications for use by an observer. Currently, NMFS uses and installs custom software (ATLAS) on the vessel's computer, and this software application is used by observers to enter the data they collect. The ATLAS software contains business rules that perform many quality control and data validation checks automatically, which dramatically increases the quality of the preliminary data. After the observer data are entered into the ATLAS software, they are transmitted to NMFS.

At-sea transmission of observer data improves data quality. To minimize impacts to small vessel operators, the requirements for non-AFA trawl CVs to install equipment necessary to facilitate at-sea observer data transmission become effective three years after the effective date of this final rule. Though the installation of equipment to facilitate at-sea data transmission on non-AFA vessels will not be required immediately upon implementation of the Program, this final rule clarifies that if a vessel already has equipment capable of facilitating at-sea data transmission, that equipment must be made available to the observer for use in transmitting work-related messages including collected data.

This final rule requires motherships receiving unsorted codends from a PCTC Program CV to comply with catch monitoring requirements specified at § 679.93(c) for Amendment 80 vessels and CPs. These requirements are already applicable to Amendment 80 CPs acting as motherships and would continue to apply when acting as a mothership to process PCTC Program CQ. This final rule does not alter existing observer coverage requirements for trawl CVs delivering unsorted codends to a mothership in the BSAI. A trawl CV delivering unsorted codends to a mothership is not required to carry an observer because the catch is not brought on board the CV and not available for observer sampling. Rather, the catch is sorted and sampled by observers aboard the mothership.

Motherships receiving deliveries from PCTC Program CVs are required to have at least two observers aboard the mothership, at least one of whom will be required to be endorsed as a lead level 2 observer. More than two observers are required to be aboard if the observer workload restriction would otherwise preclude sampling as required. All PCTC Program catch, except halibut sorted on deck by vessels participating in the halibut deck sorting described at § 679.120, must be weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately and all catch made available for sampling by an observer.

This Program establishes catch monitoring requirements for all shoreside processors receiving deliveries from CVs harvesting PCTC Program CQ. All groundfish landings made to a shoreside processors must be sorted; weighed on a scale approved by the State of Alaska as described at § 679.28(c); and be made available for sampling by an observer, NMFS staff, or any individual authorized by NMFS. Any of these persons must be allowed to test any scale used to weigh groundfish to determine its accuracy.

F. PCTC Program Review

The Council will review the PCTC Program five years after implementation to determine if the Program is functioning as intended, as required by the Magnuson-Stevens Act. This review and evaluation by the Council will include an assessment of the program objectives. Specifically, the Council will review whether the allocation of Pacific cod is fair and equitable given participation in the fishery, historical investments in and dependence upon the fishery, and employment in the harvesting and processing sectors. The Council will also assess performance of the Program based on changes in annual cooperative formation, changes in product value, the number and distribution of processing facilities, and stability or use of annual processor associations with harvesting cooperatives. The focus of these reviews will be the impact of this action on the harvesting and processing sectors, as well as on fishery dependent communities. The Council will also assess whether the needs for management and enforcement, as well as data collection and analysis, are adequately met.

Comments and Responses

NMFS received 16 comment letters on the NOA and the proposed rule. NMFS has summarized and responded to the 55 unique comments below. The comments were from individuals, local government representatives, Alaska Native corporations, and industry participants including harvesters and processors.

Comments in Support

Comment 1: Several commenters expressed support for Amendment 122 and timely implementation of the PCTC Program in 2024. The PCTC Program will maintain or improve harvesting and processing participation in the Pacific cod fishery, it provides fair and equitable allocation of QS to harvesters and processors. It will reduce environmental impacts of the fishery, and it will promote conservation and sustainability.

Response: NMFS acknowledges this comment.

Comment 2: This rule is important to recover and conserve our mammals. This rule will help ensure the productivity and sustainability of fisheries.

Response: NMFS acknowledges this comment.

Comment 3: Limiting the amount of Pacific cod that fisheries are allowed to harvest is good because it balances economics with the sustainability of the environment.

Response: NMFS specifies the OFL, ABC, and TAC for BSAI Pacific cod through the annual harvest specification process as further explained in Section I of this preamble. For Pacific cod, the harvest specifications establish separate OFLs, ABCs, and TACs for the BS subarea and the AI subarea of the BSAI. Allocations of Pacific cod to the CDQ Program and to the non-CDQ fishery sectors are further apportioned by seasons. The PCTC Program allocates the available Pacific cod to the various trawl harvesters during the A and B season; this action does not change the overall amount of Pacific cod that is expected to be harvested annually.

Comment 4: Amendment 122 and the efforts by the Council to establish the PCTC Program are supported because they recognize processing history as well as investments in the fishery and acknowledge what a shift a catch share program can have on relationships between harvesters and processors. The qualifying years are appropriate and were well-supported throughout the Council's lengthy process to establish Amendment 122. The commenter supports actions by the Council that do the least amount of harm to the overall participants in the BSAI cod fishery.

Response: NMFS acknowledges this comment.

Conservation

Comment 5: Pelagic, or midwater, trawlers use nets within the water column between the surface and seabed. Pelagic trawling is considered more sustainable because of the belief that their nets do not make contact with the seabed, but pollock midwater trawlers make contact with the seabed 40–70 percent of the time they are completing a trawl. The Council is focusing on Pacific cod because of the impact of benthic trawls (also known as nonpelagic or bottom trawls) on the seabed and non-target species without fully considering whether pelagic trawls in more ecologically sensitive areas may have a more significant overall impact.

Response: Under the PCTC Program, vessels will use nonpelagic trawl gear, as defined at § 679.2, to harvest CQ. Nonpelagic trawl gear—trawl gear that targets fish species near the ocean floor—is different than pelagic trawl gear, which targets fish species in the water column. This comment addresses management issues that are beyond the scope of Amendment 122 and this regulatory action. This action is not intended to modify authorized gear types, including nonpelagic trawl gear used in the PCTC Program, or address their use in sensitive areas. Modifications to authorized gear types or use in sensitive areas would need to be addressed in a separate regulatory action developed through the Council process. Section 3.1.2 of the Analysis states that previous analyses have found no substantial adverse effects to habitat in the BSAI caused by fishing activities. Any effects continue to be limited by the amount of the groundfish TACs and by the existing habitat conservation and protection measures. Overall, the combination of the direct, indirect, and cumulative effects on habitat for both living and non-living substrates, benthic biodiversity, and habitat suitability are not likely to be significant under this action.

Comment 6: It is important to understand the destruction of trawling despite its efficiency. Effort can be made to fish more sustainably. Trawling in Alaska should be done less in order to protect Pacific cod, other species, and the ocean floor.

Response: NMFS manages the BSAI Pacific cod fishery based on the best scientific information available. To ensure conservation of the resource, the status of the Pacific cod stock is reviewed by NMFS and the Council each year through a public scientific review process before the TAC is allocated. The Council and NMFS analyzed the environmental impacts of Amendment 122 and concluded that it would not result in a significant impact on the human environment as presented in the Analysis and FONSI prepared for this action (see **ADDRESSES**). This action is not intended to modify authorized gear types.

Quota Share for Harvesters and Processors

Comment 7: In recommending Amendment 122 and this Program, the Council intended for NMFS to consider specific area endorsements on each LLP license at the time of harvest in determining how to attribute qualifying catch history to an LLP license in the situation when there were two or more LLP licenses associated with the vessel. The language in the proposed rule does not clearly indicate that only the LLP license with the appropriate area endorsement would receive the resulting qualifying catch history.

Response: NMFS agrees and clarifies that specific area endorsements are considered when determining how to attribute qualifying catch history to LLP licenses. In determining how to attribute catch history when two or more LLP licenses were associated with a vessel, NMFS considers the area endorsements on each of the LLP licenses at the time fishing occurred.

An LLP license will only be eligible for qualifying catch history in an area if it had the endorsement for that area at the time of harvest. In the event more than one LLP license associated with a vessel had the area endorsement for where the catch occurred, the vessel owner will decide how to assign QS to the LLP licenses. In the event only one LLP license associated with a vessel had the area endorsement for where the catch occurred, despite there being more than one LLP license associated with the vessel at the time fishing began, only the LLP license with the correct area endorsement will receive the resulting qualifying catch history. The vessel owner would not decide how this portion of the QS would be assigned between LLP licenses. For example, say a vessel had qualifying catch history in the BS and AI and was named on two LLP licenses at the time the landing occurred. One LLP license had a BS endorsement and the other LLP license had BS and AI endorsements. In this scenario, fishing history in the BS would be considered shared catch between the two LLP licenses (because both LLP licenses had the appropriate endorsements authorizing the fishing activity) and fishing history in the AI is considered qualifying catch history only for LLP license with the AI endorsement.

Comment 8: NMFS should use ''target'' catch in the official record to determine initial QS issued to harvesters and processors.

Response: NMFS agrees. Under the PCTC Program, NMFS determines QS allocations based on legal landings of target Pacific cod. The trawl CV sector can have significant incidental catch of Pacific cod in other fisheries like pollock and yellowfin sole, and historical amounts of incidental catch have been variable. The Council recommended that the PCTC Program not include incidental catch in the calculations for QS.

Comment 9: Will NMFS issue a PCTC Program QS permit to the owner of a processing facility that is no longer operational, based on the qualifying processing history at that facility?

Response: No. NMFS will not issue a PCTC Program QS permit to the owner of an inactive processing facility (*i.e.,* the facility is not authorized by an FPP or FFP upon the effective date of this final rule) based on the qualifying processing history at that facility. Upon approval of an Application for PCTC Program QS, NMFS will issue a PCTC Program QS permit to the owner of a processing facility with an active FPP or qualifying FFP. For a person (*i.e.* processing firm) to receive a PCTC Program QS permit, it requires two things: (1) processing history in the fishery during the qualifying years and (2) a currently valid FPP or FFP (in the case of an eligible CP with a Pacific cod mothership endorsement).

Comment 10: Does the firm that operated the Adak facility in 2013 get credit for the Adak facility's processing history if the firm does not hold an FPP for that facility now, but does operate one or more facilities in the BS each with its own FPP?

Response: No. Processing history is facility specific. A firm will not receive a PCTC Program QS permit for a facility that does not have a current FPP. The processing history associated with that facility will be deducted from the total amount of eligible processing history during the qualifying years when calculating the distribution of QS to processors.

A person may own more than one processing facility with qualifying processing history and an FPP or FFP and therefore may receive more than one PCTC Program QS permit. A firm that operated a processing facility that is no longer active would be eligible to receive a PCTC QS permit for a different facility if it holds a valid FPP for that facility and that facility has qualifying processing history.

Comment 11: How would a new processor become eligible to receive a PCTC Program QS permit in order to annually associate with a cooperative?

Response: A processor would need to have an active FPP and purchase QS from an existing PCTC Program QS permit holder under the QS transfer provisions in this final rule.

Note that any processor with an FPP can process CQ. There is not a requirement to hold a PCTC Program QS permit or associate with a cooperative for a processor to receive deliveries and process CQ. Further, any shoreside processor, stationary floating processor, or mothership, including an eligible CP with a BSAI Pacific cod trawl mothership endorsement, may associate with a cooperative regardless of whether or not the processor holds a PCTC Program QS permit. For PCTC Program QS permit holders, the only way to receive benefits from a PCTC Program QS permit is to associate annually with a cooperative.

Comment 12: Include the years 2004 through 2009 in the PCTC Program official record to determine an initial QS allocation to an Aleutian Islands shoreplant, similar to the catch history for determining initial allocations to CV LLP licenses with a transferable AI endorsement.

Response: Even if the PCTC Program included 2004 through 2009 in the qualifying years, the Aleutian Islands shoreplant is ineligible for an initial QS allocation because it does not have an active FPP.

The QS issued to processors is divided among eligible processors based on the percentage of legal landings of Pacific cod they processed during the A and B seasons during the qualifying years compared to the total legal landings of BSAI Pacific cod processed by all eligible processors. Because processing facilities will be issued QS based on deliveries of this catch history, the Council chose to award QS based on processing history by considering the time frame of 2009–2019, the same time frame used for the majority of CVs. The Council did not recommend a variation in the qualifying years for any processor either in the BS or AI.

The Council and NMFS considered several different options for the range of qualifying years including an option that would have included catch history years from 2004 through 2019. The Council selected 2009 through 2019 as representative of history for the vast majority of CVs because these years reflect current and historical participation and are consistent with the Council's approach to awarding QS based on catch history in other rationalization programs. The Council decided against history earlier than 2009 for the majority of catch history because that was prior to the implementation of Amendment 85 to the BSAI FMP. Amendment 85 established sector allocations for Pacific and separate TAC splits for the Pacific cod stock, which changed fishery management and operations.

The one exception to the qualifying years is for LLP licenses with a transferable AI endorsement that, prior to receiving that AI endorsement through Amendment 92 to the BSAI FMP, participated in the AI parallel fishery from January 20, 2004 through September 13, 2009 without an LLP license. Eight vessels met the criteria for eligibility to receive these transferable AI endorsements based on their fishing activity in parallel fisheries where they did not qualify for an LLP license but still fished in federal waters.

Comment 13: The degree to which an LLP license holder will benefit from dropping a year of catch history from the calculation for initial QS allocations will depend upon the consistency of their annual participation in the fishery. An LLP holder with one or more years of low or no legal landings will benefit from dropping that year more than an LLP license holder with consistently high annual participation.

Response: The Council and NMFS considered a range of drop years from zero to two years. The range of qualifying years is 11 years, and unforeseen events have occurred for many fishery participants. The Council recommended and NMFS is implementing a provision to drop one year of catch history from the initial allocation as a fair way to remove one year that may not be representative of typical participation in the fishery.

Comment 14: Clarify that QS can only be used if the QS holder annually joins or associates with a cooperative.

Response: QS holders must annually join or associate with a cooperative in order for their QS to generate the CQ necessary to harvest Pacific cod in the BSAI trawl sector.

Comment 15: To acquire QS that would attract vessels to deliver to a processor that does not receive an initial allocation of QS (such as an Aleutian Islands shoreplant), a processor would need to purchase an LLP license with attached QS. This creates a barrier to entry into the PCTC Program because LLP licenses have a very high market price and QS is only a small portion of that value. Because QS is only a small part of an LLP license's value, this makes it functionally impossible for an Adak processor to purchase QS that it would need to use in lieu of an initial allocation of QS to attract vessels.

Response: A new entrant may acquire either harvester QS by purchasing an LLP license with associated QS or by purchasing a processor-held PCTC Program QS permit. It is not yet clear what the market may be for processor PCTC Program QS permits. Generally, QS is non-severable from the LLP license or PCTC Program QS permit except in situations where an ownership cap would be exceeded upon transfer. Regulations specifying transfer provisions and limitations for QS are specified in regulations at § 679.130(j) and ownership caps are at § 679.133.

This PCTC Program does not create a closed class of processors who may process CQ. Any shoreside processor, stationary floating processor, mothership, and eligible CPs with a

BSAI Pacific cod trawl mothership endorsement, may receive and process CQ. A processor is not required to associate with a cooperative to receive deliveries and process CQ.

Aleutian Islands CQ Set-Aside

Comment 16: Establish a minimum annual AI CQ set-aside amount equal to 5,000 metric tons. This is the amount of Pacific cod determined to be the minimum amount necessary to support a processing plant in the AI under Amendment 113 to the BSAI FMP. Amendment 113 was implemented in 2016 to provide a 5,000 metric tons set-aside delivery requirement of Pacific cod for shoreplants in the communities of Adak and Atka, considered to be the minimum necessary to support the regional economy. Without a floor of 5,000 metric tons of Pacific cod, the volume of fish may not meet the minimum viable amount for the processing plant to operate in Adak.

Response: Shortly after the court's vacatur of Amendment 113, the Council initiated action to rationalize the BSAI trawl CV Pacific cod fishery and included options to meet the objective of supporting sustained participation by AI communities in the Pacific cod trawl CV fishery. The Council recommended and this final rule implements community protections for Adak and Atka in the form of a set-aside provision. Under the PCTC Program, cooperatives are required to collectively set-aside 12 percent of the A season CQ for delivery to an Aleutian Islands shoreplant during years in which a community representative notifies NMFS of their intent to process Pacific cod. The AI CQ set-aside provides opportunity for Pacific cod landings to support an Aleutian Islands shoreplant that, in conjunction with other fishery landings and allocations, such as the AI pollock fishery, benefit the communities of Adak and Atka. This final rule strikes a balance between supporting fishery-dependent communities and ensuring that the fishery sectors have a meaningful opportunity to fully harvest their allocations by including several measures to prevent AI Pacific cod from going unharvested.

This provision is different from the set-aside implemented under Amendment 113 but is intended achieve a similar goal. The Council considered maintaining the 5,000 metric tons floor similar to Amendment 113, but ultimately decided against it to maintain the same allocation criteria for all processors and to address concerns about leasing the 5,000 metric tons floor in years when there was not an active Aleutian Islands shoreplant. In addition, all the allocations under the PCTC Program are based on percentages of the TAC, not static numbers. This allows for flexibility in years of low TAC.

Comment 17: Clarify regulations at § 679.132(c)(4) governing the AI CQ set-aside provision to direct the Regional Administrator to remove the delivery requirement rather than allow the Regional Administrator to remove the delivery requirement if the Regional Administrator determines that Aleutian Islands shoreplants will not process the entire AI CQ set-aside.

Response: NMFS agrees that the proposed regulatory language needed to be clarified. NMFS removed language at § 679.132(c)(4) regarding reallocating the projected unused AI set-aside to PCTC Program cooperatives in proportion to the amount of CQ that each PCTC Program cooperative received in the initial allocation of CQ for the remainder of the A and B seasons. This language is not applicable to the PCTC Program because the cooperatives manage the AI CQ set-aside.

However, NMFS maintained in the regulations that the Regional Administrator may remove the delivery requirement for some or all of the projected unused AI CQ set-aside if the Regional Administrator determines that Aleutian Islands shoreplants will not process the entire AI CQ set-aside. NMFS will monitor the cooperative's implementation of the AI CQ set-aside throughout the A and B seasons. NMFS will consider the number and frequency of deliveries to Aleutian Islands shoreplants as well as the season timing and remaining CQ to be harvested. The Regional Administrator will use this information to determine if it is appropriate to remove the delivery requirement for some or all of the projected unused AI CQ set-aside.

Comment 18: Modify regulations at § 679.132(c)(4) to clarify that if both communities of Adak and Atka file a notice of intent to process, the delivery requirement would be in effect until both communities withdraw their notice of intent.

Response: NMFS agrees and has modified regulations at § 679.132(c)(5) and (6). In the event all notices of intent to process are withdrawn, the Regional Administrator will remove the AI CQ set-aside delivery requirement for that calendar year by publishing a notice in the **Federal Register**.

Comment 19: Reject the AI CQ set-aside as inconsistent with National Standard 4. All cooperative members get the benefit of both A and B season CQ allocations. However, an Aleutian Islands shoreplant only gets a ''reservation'' for 12 percent of the A season CQ. This takes care of the issue of giving a disproportionate share of processor-held CQ to company boats, but it still allows processors to attract new vessels with volume rather than price using CQ off a company boat to attract independent boats with a double share of CQ, which an Adak processor cannot do because it does not get any CQ. This means an Adak processor cannot offer a single share match, let alone a double share, leaving the Adak plant operator at an insurmountable competitive disadvantage.

Response: NMFS disagrees that the allocations of QS under the PCTC Program are inconsistent with National Standard 4. National Standard 4 states that ''Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (a) fair and equitable to all such fishermen; (b) reasonably calculated to promote conservation; and (c) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privilege.''

In considering whether an allocation is fair and equitable under National Standard 4, NMFS assesses whether the allocation is rationally connected to achieving OY in the fishery, would maximize overall net benefits, and achieve the objectives of the FMP. In addition, NMFS considers the relative impacts of various allocations in light of status quo conditions. Here, the PCTC Program allocates QS to processors based on two objective criteria: (1) historic participation in the fishery and (2) an active processing license that demonstrates ongoing participation. This second criteria provides some reasonable assurance any allocated privileges will be utilized and OY will continue to be achieved in the fishery. There is currently no active processor (with an active FPP) in Adak that could be allocated QS based on historic participation, and operations at the Adak plant have been inconsistent. As a result, under the processor-held QS eligibility criteria alone, AI communities would not receive QS under this program.

However, the Council and NMFS recognize that providing some degree of support to AI communities remains a management objective. Therefore, this rule includes a set-aside for AI communities that would require cooperatives to deliver an amount of annual CQ equal to the lesser of either 12 percent of their A season CQ or the

AI DFA, to an Adak or Atka if, in the future, there is an active shoreplant in the AI capable of receiving deliveries of Pacific cod. The AI CQ set-aside provision is rationally connected to a management objective of supporting AI fishing communities, while recognizing that there is currently no active processing facility in Adak to which NMFS could allocate privileges.

NMFS disagrees that the PCTC Program allocations are not fair and equitable because they do not place AI communities on the same footing as active processors. The fact that the AI CQ set-aside is based on total A season CQ is immaterial to fairness and equity—that simply provides a basis for calculating the amount of the set-aside in any given year. The set-aside remains in effect through the B season, and it is intended to mandate deliveries of an amount of Pacific cod to Aleutian Islands shoreplants through the B season whenever Aleutian Islands shoreplants are operating.

Comment 20: Given the historic uncertainty that AI communities have faced when trying to access fish, it is good that the Council ensured protections for Aleutian Islands shoreplants within the PCTC Program. However, there should be more clarity over whether processors in the western Aleutian Islands, including Adak, would be required to join a cooperative after signaling the Adak's intention to process fish in a given year. It appears that Adak would not be required to join a cooperative to receive the AI CQ set-aside, but rather that cooperatives are responsible for delivering the set-aside to AI processors. Adak should not be required to join a cooperative to receive fish for processing.

Response: An Aleutian Islands shoreplant is not required to associate with a cooperative to receive deliveries of CQ. An Aleutian Islands shoreplant may choose to associate with a cooperative, but that is not required to receive the benefits of processing Pacific cod under the AI CQ set-aside provision of the PCTC Program. An Aleutian Islands shoreplant with an active FPP may purchase QS in the future and associate with a cooperative by bringing the QS into the cooperative.

Comment 21: Correctly describe all references to the amount of the AI CQ set-aside as 12 percent of the PCTC Program A season CQ rather than 12.5 percent.

Response: In the preamble to the proposed rule describing the PRA requirements needed for this Program, NMFS erroneously described the AI CQ set-aside as 12.5 percent instead of 12 percent and has corrected the issue in the final rule. All other references to the AI CQ set-aside in the proposed and final rule correctly described it as 12 percent of A season CQ or the AI DFA, whichever is less.

Comment 22: For the community of Adak, the 5 year PCTC Program review is more likely to be an autopsy report unless there are significant changes to the AI CQ set-aside component prior to publication of a final rule. Access to Pacific cod is crucial for the economic success of the Aleutian Islands shoreplant. Access to Pacific cod means the Aleutian Islands shoreplant can support AI harvesters of multiple species. Without Aleutian Islands shoreplant access to Pacific cod, these harvesters are essentially stranded. There is no other community or processing facility in Alaska that is more dependent on Pacific cod than Adak. Pacific cod has accounted for the overwhelming majority of landings in Adak since the plant opened in 1999. Adak is unique in this regard; the pollock fishery (not Pacific cod) is the primary fishery for Bering Sea processors.

Response: The Aleutian Islands shoreplants have a unique processing history for many reasons, and their remote coastal location is a challenge both for plant operations and harvester deliveries. NMFS understands that Pacific cod has been crucial to the economic success of Aleutian Islands shoreplants, but Aleutian Islands shoreplants have not always been open to accept deliveries, as shown in the past few years. Without an active AI processor, there is no entity to which NMFS could allocate QS on the same terms as other processors. The PCTC Program instead implements an AI CQ set-aside element that provides an opportunity for AI communities to benefit from the PCTC Program in years when an active processor is able to accept deliveries.

Comment 23: The recommendation by the Council to adopt an AI CQ set-aside instead of a QS allocation fails to meet National Standard 8 and does not adequately respond to the problem statement relative to the dependence of the community of Adak on the AI Pacific cod fishery.

Response: NMFS disagrees that the AI CQ set-aside is inconsistent with National Standard 8. National Standard 8 states ''Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirement of paragraph (2) [*i.e.,* National Standard 2], in order to (a) provide for the sustained participation of such communities, and (b) to the extent practicable, minimize adverse economic impacts on such communities.''

The AI CQ set-aside is intended to provide for the sustained participation of AI communities in the event there is an operational Aleutian Islands shoreplant in future years. Currently, no operating shoreplant is open to accept deliveries of Pacific cod. Even if the plant were open, without the PCTC Program AI CQ set-aside vessels, would have no obligation to deliver Pacific cod to AI communities. Compared to current conditions, the PCTC Program will provide for the sustained participation of AI communities and minimize adverse economic impacts on AI communities to the extent practicable by ensuring these communities will receive deliveries of Pacific cod in years when an Aleutian Islands shoreplant is in operation and able to take deliveries.

The Council and NMFS took into account the importance of fishery resources to fishing communities, including but not limited to Adak. The PCTC Program is designed to provide for the sustained participation of many different fishing communities (*i.e.,* those communities substantially engaged in and/or dependent on the fishery), and features a history-based approach for initial allocation of QS that would be made in proportion to historical levels of participation in the fishery during the qualifying period.

Comment 24: The recommendation by the Council to adopt an AI CQ set-aside instead of a QS allocation fails to meet the Magnuson-Stevens Act 303A LAPP standards.

Response: NMFS disagrees that the PCTC Program fails to meet the Magnuson-Stevens Act 303A LAPP standards. The PCTC Program is authorized by section 303A of the MSA. The QS issued under the PCTC Program would qualify as a permit (per MSA 303A(b)(1)) and would give the permittee exclusive access to those fish while the permit is held.

The Magnuson-Stevens Act LAPP provisions in Section 303A(c)(5)(A) require that the Council ensure fair and equitable initial allocations, including consideration of (1) current and historical harvests, (2) employment in the harvesting and processing sectors, (3) investments in and dependence on the fishery, and (4) the current and historical participation of fishing communities. The Council developed and NMFS implemented the PCTC Program after considerable debate and

review of the Analysis prepared to support Amendment 122 and this final rule. Any harvesters based in AI communities will receive QS allocations just like other participants. And all processors are subject to the same objective criteria for initial allocations of QS. The AI CQ set-aside was a means of providing some support to AI communities despite there being no active processor with history in the fishery to which NMFS could allocate QS. No communities are being allocated QS under the PCTC program.

Comment 25: Disapprove Option 6.1 (a CQ set-aside to Aleutians Islands shoreplants) and instead adopt the structure of Option 6.2 (an allocation to Aleutian Islands shoreplants). Adak currently does not have a processor operating the facility. It has not been possible to attract an operator, in large part because of the lack of leverage and barriers to entry inherent in the PCTC Program. The Council's recommendation of Option 6.1 rather than 6.2 creates a fundamental structural flaw.

Response: The Council recommended Amendment 122, including option 6.1, due to the unique characteristics of the AI communities and the difficulties in maintaining an open plant each year. Option 6.1 creates the set-aside of 12 percent of the A season CQ for delivery to AI shoreplants. The AI CQ set-aside is designed to be in place during the trawl CV sector Pacific cod A and B seasons. Cooperatives are responsible for submitting a plan to coordinate the harvest and delivery of the set-aside. The Council did not select Option 6.2 based, in part, on concerns about ability to lease CQ in years that the Aleutian Islands shoreplant was not operational, which was not the intent of the Council in providing processing opportunities for the AI communities. The Aleutian Islands shoreplants are the only processing plants that have a set-aside mechanism.

Similarly to other business relationships between harvesters and processors, a processing plant will need to offer competitive prices to harvesters. This is true for processing plants in all of Alaska's federal fisheries.

Comment 26: An Adak entity needs to be able to associate with a cooperative to have a seat at the table. Vessels have disincentives to work with Adak because those vessels would be walking away from their pro-rata share of the 22.5 percent processor CQ. This is asymmetrical and probably disadvantages Adak. There is no limit on the number of LLP licenses that may join a single cooperative, the number of processors a cooperative could associate with, nor on the amount of QS a single cooperative could control.

Response: An Aleutian Islands shoreplant is not required to associate with a cooperative, but it may associate with a cooperative whether or not it holds a PCTC Program QS permit. In addition, CVs harvesting CQ may deliver to any shoreside processor, including an Aleutian Islands shoreplant, regardless of whether or not that processor holds a PCTC Program QS permit and regardless of whether or not the processor is associated with a PCTC Program cooperative.

Cooperatives may form annually in association with a federally permitted processor to harvest their CQ. That processor must hold an active FPP or FFP, but they are not required to also hold QS. This extends to all active processors, including potential Aleutian Islands shoreplants. However, processors do not form cooperatives and will not be members of cooperatives under the PCTC Program. In addition, associating with a processor in Adak would not require a cooperative to forego access to processor-held QS. Though each cooperative is required to associate with at least one processor, there is no limit on the number of processors with which a cooperative may associate.

Regarding incentives to deliver to an Aleutian Islands shoreplant, cooperatives are required to annually submit an inter-cooperative agreement that describes, (1) how the AI CQ set-aside would be administered by the cooperatives; (2) how the cooperatives intend to harvest the AI CQ set-aside; and (3) how cooperatives would ensure that CVs less than 60 ft (18.3 m) LOA assigned to an LLP license with a transferable AI trawl endorsement have the opportunity to harvest 10 percent of the AI CQ set-aside for delivery to an Aleutian Islands shoreplant. In years the AI CQ set-aside is in effect, refusing to work with an Aleutian Islands shoreplant could mean the cooperatives forfeit 12 percent of their A season CQ. Therefore, NMFS expects the cooperatives will have an incentive to work with an Aleutian Islands shoreplant.

Comment 27: Each cooperative is required to set aside 12 percent of its CQ (independent of where the members' catch history was earned or whether they have AI LLP endorsements). This is unnecessarily burdensome for all parties; an Adak processor will have to deal with each cooperative individually under some very constrained deadlines.

Response: The cooperatives are required to collectively set aside 12 percent of the A season CQ and come up with a delivery strategy through an inter-cooperative agreement. The cooperatives will have an incentive to come up with a plan that works for all parties to ensure CQ would not go unharvested when the set-aside is in effect. Aleutian Islands shoreplants will need to work with cooperatives but the cooperative system allows the flexibility to work with one cooperative or with all cooperatives. It is possible the inter-cooperative agreement could designate one cooperative (or more) to coordinate deliveries with Adak so long as 12 percent of the total A season CQ is delivered to the Aleutian Islands shoreplants.

Comment 28: The definition of an Aleutian Islands shoreplant needs to recognize that the Aleut Corporation's lease to an operator includes buildings and land connecting to the dock as well as the dock itself. The final rule should affirm that a stationary floating processor that is moored to a dock that is physically integrated into processing operations on land qualifies as being ''land based'' west of 170 degrees.

Response: The Council selected a specific definition for an Aleutian Islands shoreplant, similar to Amendment 113, based on public testimony and the analysis to prevent stationary floating processors from relocating to Adak and competing with the shoreplant. The definition of an Aleutian Islands shoreplant does not include a stationary floating processor at this time.

Comment 29: Use caps apply at the firm level, as they should. However, the analysis shows that the fishery will be dominated by a couple major companies who will be grandfathered over the cap. Meanwhile Aleutian Islands shoreplants will be effectively capped at 12 percent by the structure of the cooperative AI CQ set-aside. Because the AI CQ set-aside is not an allocation, the structure of the program means the 12 percent is also very likely to be a ceiling with Aleutian Islands shoreplants effectively capped at 12 percent, which is far less than their historical average.

Response: NMFS disagrees that the 12 percent AI CQ set-aside is a ceiling. The Council designed the community protection measures to benefit Adak and Atka if their plant is operational and accepting deliveries for that year. The 12 percent AI CQ set-aside is a minimum delivery requirement in years when an Aleutian Islands shoreplant is operational. Defining the set-aside as a percentage of CQ rather than a fixed amount avoids disproportionate impacts on other PCTC Program participants in years of low TAC (as opposed to the

static 5,000 metric tons delivery requirement under Amendment 113).

The Magnuson-Stevens Act requires use caps in development of a LAPP to prevent any person from holding, acquiring, or using an excessive share of limited access privileges. One of the use caps in the PCTC Program is a firm level processor cap that no company may process more than 20 percent of the CQ (§ 679.133(a)(4) and (5)). This processing cap does not apply to Aleutian Islands shoreplants when the AI intent to process is in effect.

Comment 30: Without a tag identifying whether a unit of CQ was designated as part of the AI CQ set-aside, it will be difficult for the Regional Administrator to know inseason whether the AI CQ set-aside will be harvested. If any Pacific cod delivered to an AI shoreplant is assumed to accrue against the set-aside until the 12 percent amount has been delivered, that introduces further complexities that serve to make the 12 percent a de-facto cap.

Response: All CQ caught in the PCTC Program will be accounted for at the dock, except deliveries to motherships, and NMFS would consider all CQ landed to an Aleutian Islands shoreplant to count toward the AI CQ set-aside. There is no need to tag each unit of CQ as part of the set-aside or not part of the set-aside, because NMFS will track all deliveries of Pacific cod, and cooperatives will not be able to deliver more than 88 percent of A season CQ to anywhere other than an Aleutian Islands shoreplant.

Once 12 percent of A season CQ has been landed at an Aleutian Islands shoreplant, cooperatives could continue to deliver to AI communities but would no longer be required to. In contrast, once 88 percent of A season CQ had been delivered elsewhere, vessels could deliver CQ only to an Aleutian Islands shoreplant. If the cooperatives fail to deliver 12 percent of A season CQ to an Aleutian Islands shoreplant, the remainder of the set-aside would remain in place for the B season rather than being rolled over as CQ with no restrictions on delivery. The operating Aleutian Islands shoreplant may accept deliveries of CQ harvested in either the BS or the AI. The cooperatives would monitor the conditions and terms of the inter-cooperative agreement to ensure those provisions are followed.

Comment 31: The proposed rule appears to only limit CVs in the BS, implying that the CVs could erode the AI CQ set-aside by fishing in the AI. Section 679.132(a)(4) outlines the DFA limitations and seems to deal with that by indicating CVs delivering to an Aleutian Islands shoreplant are the only vessels allowed to access the DFA. NMFS should take a very careful review of the text to confirm that the language captures the intent of the AI CQ set-aside.

Response: When the AI CQ set-aside is in effect and set equal to the AI non-CDQ DFA, directed fishing for Pacific cod in the AI may be conducted only by PCTC Program CVs that deliver their catch to an Aleutian Islands shoreplant. However, when the AI DFA is greater than the set-aside (*i.e.* greater than 12 percent of A season CQ), the amount of the DFA in excess of the set-aside could be harvested by vessels delivering to any processor. That would not erode the set-aside, which would remain at 12 percent of A season CQ and apply to all CVs. Cooperatives may not deliver more than the A season CQ minus the AI CQ set-aside established under § 679.132 to processors in the BS subarea when the AI CQ set-aside is in effect.

Comment 32: When the AI CQ set-aside is equal to the AI DFA, directed fishing for Pacific cod in the AI may be conducted only by CVs that deliver their catch of AI Pacific cod to Aleutian Islands shoreplants. This is a crucial element of making the AI CQ set-aside work under either set-aside option.

Response: NMFS acknowledges the comment in support of the AI CQ set-aside structure. In years when the AI CQ set-aside is equal to the AI DFA, all CQ harvested in the AI must be delivered to an Aleutian Islands shoreplant unless the Regional Administrator removes the AI CQ set-aside because there is no operational processor.

Comment 33: How can NMFS guarantee that the cooperatives will comply with the AI CQ set-aside and what are the consequences if the cooperatives fail to comply? Who negotiates and must submit to the inter-cooperative agreement?

Response: The Council recommended, and this final rule implements, a requirement for all PCTC Program cooperatives to form an inter-cooperative agreement that includes an AI CQ set-aside delivery agreement. It is the intention of the Council and NMFS that cooperatives will negotiate with one another to ensure delivery occurs consistent with the AI CQ set-aside provision.

Failure to come to any agreement would result in NMFS withholding CQ. NMFS will not issue CQ to cooperatives until the inter-cooperative agreement is submitted to NMFS with the cooperative application.

If cooperatives fail to implement the agreement and do not deliver the AI CQ set-aside, the cooperatives would lose access to that portion of the CQ in that year, as it could only be harvested and delivered to an AI shoreplant.

Antitrust Concerns With the AI CQ Set-Aside

Comment 34: The AI CQ set-aside may have antitrust implications between the processing plant operators and the cooperatives because it would force the Aleutian Islands shoreplant to expose its fish prices and marketing plans to its competitors prior to the season. Amendment 122 creates an opportunity for competitively sensitive information to flow back to competing processors, and it may also align the cooperatives' incentives with those of competing processors (and lead to other strategic behavior that undermines competition). The opportunity for collusion is so significant that this may rise to the level of a ''per se'' violation of the Sherman Act.

Response: NMFS disagrees that the PCTC Program would result in per se antitrust violations. These same concerns were raised prior to the publication of the proposed action to the Department of Justice (DOJ) Antitrust Division, which has expertise in the administration of federal antitrust laws. DOJ did not inform NMFS that the Program would result in any per se antitrust violations. All catch share programs create some potential for anticompetitive behavior, but participants are required to comply with antitrust laws in order to retain their fishing privileges. Pursuant to Magnuson-Stevens Act section 303A(c)(1)(K), NMFS would revoke the limited access privileges of any participant found to have violated federal antitrust laws.

Comment 35: Explain how the Council and NMFS intend to manage the cooperatives to avoid potential antitrust law violations. The difference between direct allocation and AI CQ set-aside is competitively significant if Adak is required to join a cooperative to receive fish for processing. An inter-cooperative agreement controls the terms for how a set-aside for Aleutian Islands shoreplants will be administered, clearly putting the Aleut Corporation at a competitive disadvantage and raising antitrust concerns. Further, the proposed plan does not provide any active governmental supervision of the market-allocation arrangement to ensure fair treatment of the Aleut Corporation. The Aleut Corporation plant would be a loser in this unlawful market allocation agreement and would be forced to accept products delivered under an inter-cooperative agreement.

Response: The cooperatives are responsible for management of the cooperative system. All cooperatives are intended to only conduct and coordinate harvest activities of members and are not Fishermen's Collective Marketing Act (FCMA) cooperatives. An Aleutian Islands shoreplant would not be required to join a cooperative to receive CQ for processing. And, because cooperatives would be required to deliver a fixed percentage of CQ to an Aleutian Islands shoreplant when operational, it is possible that shoreplant may have some leverage in negotiating deliveries. NMFS does not regulate market prices. However, as stated above, the Magnuson-Stevens Act allows for NMFS to revoke and redistribute any LAPP held by any person found to have violated the antitrust laws of the United States.

Impacts to Adak

Comment 36: Reject the FONSI prepared for the EA analyzing the impacts of Amendment 122 and conduct an Environmental Impact Statement (EIS). There are real impacts to the human environment of Adak from the lack of processing in the community. The most recent major positive impact to the economy was the implementation of Amendment 113. The loss of Amendment 113 and the closure of the Adak plant have already led to the collapse of the local economy and the likely closure of the Adak school in 2024. This loss of the processing facility and its prolonged closure will have sociological impacts on the community. Each year that fish processing does not occur, the community loses residents, including families with school-age children.

Amendment 122 will not likely restore plant operations, revive the local economy, or reopen the school. NMFS must adequately analyze a solution to provide relief and the environment to allow fish processing to occur in Adak to ensure consequences of existing conditions are identified and mitigated. Amendment 122 will have negative impacts and likely lead to prolonged closure of the processing facility.

The FONSI is incorrect when it states that Amendment 122 would not have any effect on the health of minority or low-income communities. Adak is a small, remote, island community with significant Unangaŝ population and heritage. According to the Internal Revenue Service, Adak is a Qualified Opportunity Zone, which is defined as ''an economically distressed community.'' It would be difficult to argue that Adak is not a ''minority or low-income community.''

These effects should be well-documented in an EIS as these impacts need to be studied in detail in order for NMFS and the Council to know the full and true impacts Amendment 122 will have on Adak.

Response: The PCTC Program includes provisions designed to facilitate processing activity that could benefit the economy in Adak and Atka. With respect to providing for the sustained participation of fishing communities (*i.e.,* those communities substantially engaged in and/or dependent on the fishery), the PCTC Program features a history-based approach for initial allocation of QS in proportion to historical levels of participation in the fishery to address fairness and equity.

NMFS acknowledges that there are circumstances unique to Adak and that the processing facility, which is important to the local economy, was relying on Amendment 113. However, after a court struck down Amendment 113 and the plant closed, the Council had to consider means of providing some benefits in the future if a plant were to open again while recognizing there is no operating business that could currently hold QS.

NMFS prepared an Analysis in compliance with the National Environmental Policy Act (NEPA) to determine whether the environmental impact of the proposed action was significant. The Analysis also analyzed social and economic impacts of the alternatives, including access to fishing activity, compared to status quo conditions. Section 2.10.5 of the Analysis discussed the impact of the proposed action on fishing communities. Based on the Analysis, NMFS concluded that Amendment 122 and this final rule will not have a significant impact on the human environment. NMFS has determined that Amendment 122 will not have significant adverse impacts on the City of Adak.

NMFS anticipates there will be beneficial economic effects compared to status quo because the AI CQ set-aside provision is designed to provide Pacific cod deliveries to Adak and Atka in years when there is an operational processor. Because the EA demonstrates there will be no significant impacts on the human environment compared to current conditions—as opposed to in comparison to a different program not currently under consideration—NMFS is not required to prepare an EIS under the requirements of NEPA. Additionally, the Council on Environmental Quality regulations implementing NEPA state in 40 CFR 1502.16(b) that economic or social effects by themselves do not require preparation of an EIS.

Comment 37: The success or failure of the Aleut Corporation owned processing plant has direct and real impacts to all 4,000 of the shareholders; the economic impact of decisions made for Adak reach far wider than the community alone. Harm to the economic stability for the population of Adak would result in significant health impacts.

Response: NMFS anticipates beneficial effects on the health and the environment of minority or low-income communities like Adak may be expected as a result of this action, compared to status quo. For Adak specifically, the AI CQ set-aside provision is designed to provide Pacific cod deliveries to Adak and Atka in years when there is an operational processor. As a result, this action includes provisions designed to facilitate processing activity that might not otherwise occur and could benefit the economy in Adak and Atka. Sections 2.10.5 and 2.10.8 of the Analysis prepared for this action provide additional detail (See **ADDRESSES**).

PCTC Program Cooperatives

Comment 38: Clarify that a cooperative can associate with any permitted processor regardless of whether that processor holds QS, subject to some limitations on CPs acting as motherships.

Response: NMFS agrees with this clarification. There is nothing that precludes cooperatives from associating with a permitted processor that does not hold QS. Additionally, cooperatives may deliver Pacific cod harvested with CQ to any federally-permitted processor, whether or not it is associated with the cooperative.

Comment 39: Only target catch should count against CQ. Taking the ICA off the top gives extra fish to boats that have Pacific cod bycatch in other fisheries.

Response: NMFS concurs that only target catch counts against CQ. Pacific cod caught incidentally in other target fisheries contribute to the Pacific cod ICA. The Regional Administrator will annually determine the amount of the A and B season ICA needed in other trawl CV target fisheries and deduct that amount from the trawl CV TAC. The ICA is determined based on the ICA rates in previous years and the projected amount necessary for the current year. After deducting the ICA, the remaining TAC is the DFA, which will be fully allocated as Pacific cod CQ for the A and B season under the PCTC Program.

Comment 40: For clarity, modify the last sentence of § 679.131(j)(3)(i) to

mirror the preamble and Council motion to clarify that all processors with an eligible FPP or FFP are eligible to process CQ under this program (regardless of whether or not they are issued processor-held QS), subject to eligibility requirements under Amendment 120 to limit CPs acting as motherships and subject to the at-sea processing limits placed on such CPs under § 679.133(b)(2) of this rule.

Response: NMFS agrees and has modified language at § 679.131(j)(3)(i) to include this clarifying change. The specific modification in the table adds that ''all processors'' would include processors with an FFP subject to eligibility requirements under Amendment 120 to limit CPs acting as motherships as described at § 679.133(b)(2).

Comment 41: Clarify whether (1) a vessel can be listed as eligible to harvest in a cooperative other than the cooperative to which it assigned its QS and (2) a vessel can deliver its CQ to a processor if it is a member of another processor's cooperative?

Response: NMFS agrees that a vessel (as identified by its FFP) can be listed on multiple cooperative applications as an eligible harvester despite the vessel owner not holding QS as a member of each cooperative. Each LLP license and associated QS may only be listed on one cooperative application and the LLP license holder is therefore a ''member'' of that cooperative.

Vessels may deliver CQ to a different processor than the processor associated with their cooperative. There is not a closed class of processors eligible to receive deliveries of CQ, meaning a vessel may deliver some or all of the CQ to multiple processors.

Comment 42: Cooperative reports must be mandatory to provide accountability, as cooperatives must 'ensure/guarantee' the PCTC Program achieves its objective of supporting sustained participation by fishery dependent communities as stated in the problem statement.

Response: There is precedent in other programs, such as the Rockfish Program, for relying on voluntary cooperative reporting to the Council, and several reasons to maintain that practice here. The annual cooperative reports to the Council contain the information that the Council requested to determine whether the PCTC Program is meeting its goals and objectives. Voluntary reports reduce the reporting burden on cooperatives and their members without sacrificing providing critical data to the Council.

NMFS separately collects the information that it needs to manage the fishery. Voluntary cooperative reports to the Council also reduce the time NMFS spends collecting and storing the annual reports and eliminates the need to modify regulations for a mandatory report that are burdensome and do not provide information necessary to manage the fishery.

Comment 43: In terms of use of the CQ held in the cooperative, the preamble of the proposed rule is correct and explicit that a cooperative cannot assign a greater proportion of the CQ resulting from processor-held QS to an LLP license owned by that processor for harvest by a vessel owned by that processor than the LLP license would have brought into the cooperative absent any processor-held QS. Part II.F of the preamble to the proposed rule also states the Council intended processor-held QS to be divided among cooperative CVs proportionately to the QS attached to LLP licenses on board the harvesting vessel, but the only restriction in the Council's preferred alternative is relative to processor-held QS used on vessels that are owned by the processor. In all other cases, it is up to the cooperative, in partnership with its associated processor, to determine how best to optimize harvest within the cooperative to meet the objectives of the program.

Response: This final rule establishes use caps to limit the amount of CQ a vessel can harvest at § 679.133. To address vertically integrated companies where a processing company may also own LLP licenses or CVs, the Council intended processor held QS to be divided among cooperative CVs proportionately to the QS attached to LLP licenses onboard the harvesting vessel. In other words, a cooperative should not allow a CV or LLP license owned by that processor to harvest a greater proportion of the CQ resulting from processor-held QS than the LLP license would have brought into the cooperative absent any processor-held QS. The Council specified that the cooperative will monitor this provision and include reporting on harvest of CQ resulting from processor-held QS in the PCTC Program cooperative annual report.

The Council also directed that each cooperative's annual report provide information on CQ leasing activities and any penalties issued and harvest of CQ resulting from processor-held QS. Additionally, NMFS requires cooperatives to include information about the cooperative's plan to monitor CQ leasing activities and the use of CQ derived from processor held QS within the cooperative, in the Application for PCTC Program CQ.

Comment 44: Clarify the terms ''affiliated with'' and ''ownership of a vessel'' with respect to the use of CQ derived from processor-held QS.

Response: NMFS defines affiliation and control at § 679.2 Affiliation for the purpose of defining AFA, Rockfish Program, and PCTC Program. See the response to Comment 43 for more discussion about processor-held QS used in a cooperative with a processor owned vessel.

Prohibited Species Catch Limits

Comment 45: There is no requirement that the cooperatives will set aside a proportionate amount of PSCs for the CVs that agree to take on the obligation of harvesting the AI CQ set-aside for delivery to an Aleutian Islands shoreplant. NMFS should make it explicit that initial distribution of PSC limits include pro-rata amounts to the AI CQ set-aside and require that the inter-cooperative agreement and each cooperative agreement contain provisions mandating initial distribution of PSC pro-rata to the individual's QS percentage.

Response: NMFS requires an inter-cooperative agreement signed by all cooperatives prior to issuing CQ each year. The cooperatives must agree in the inter-cooperative agreement which cooperatives will deliver the AI CQ set-aside to the Aleutian Islands shoreplants. In that agreement, cooperatives should confirm that there would be sufficient CQ and PSC set aside to accomplish deliveries. The Council recommended a cooperative system to manage the CQ and PSC limits allocated within the PCTC Program. NMFS anticipates that each cooperative will maximize its usage of CQ and PSC limits to the extent practicable, including adhering to delivery requirements to Aleutian Islands shoreplants in years the AI CQ set-aside is in effect.

Comment 46: Be explicit that the total halibut PSC limit reduction is 25 percent, but in the first year, NMFS will apply a 12.5 percent reduction. This is consistent with the Council motion.

Response: NMFS clarified this change in the final rule preamble and confirms that this provision aligns with the Council's description of the PSC limit reduction described in the analysis. To clarify, the total halibut PSC reduction is 25 percent, phased in over two years. NMFS will reduce the halibut PSC for the PCTC Program by 12.5 percent in the first year of the Program, and will apply a 25 percent reduction to halibut PSC in the second year and each year thereafter.

Comment 47: An Aleutian Islands shoreplant needs to be able to associate with a cooperative in order to be able to access transfers of PSC limits.

Response: NMFS disagrees. Cooperatives can process their Pacific cod at any processor, subject to the at-sea processing sideboard limit specified at § 679.133(b)(2). Processors do not need access to PSC limits; only harvesters do.

Inter-Cooperative Agreement

Comment 48: NMFS should make the PCTC Program official record or a list of LLP license holder information available to the inter-cooperative manager when application packages are sent out.

Response: NMFS will publish a list of LLP license holders and processors who are expected to qualify for QS under the PCTC Program on the Alaska Region website with the publication of this final rule in the **Federal Register**.

Comment 49: The proposed rule states that all participants in the Program would be required to organize a cooperative prior to the November 1 deadline each year. Does the inter-cooperative agreement need to be in place by November 1st? Where are the application requirements for the inter-cooperative agreement? In the proposed rule, it appears that the individual cooperative applications would simply include a copy of the inter-cooperative agreement that defines how the AI CQ set-aside will be harvested.

Response: Inter-cooperative formation needs to occur prior to November 1. There are no application requirements for the inter-cooperative agreement; however, cooperatives must include a copy of the inter-cooperative agreement in order for their CQ application to be approved, and that agreement must specify how the AI CQ set-aside would be harvested.

For the first year, NMFS is making a change to the deadline to accommodate timing concerns. For the calendar year 2023 only, each cooperative must submit the inter-cooperative agreement to NMFS prior to December 31, 2023, described at § 679.131 (a)(4)(viii). Inter-cooperative formation would be allowed and an inter-cooperative agreement would be required to implement the AI set-aside and to allow for efficient transfers of CQ or PSC limits between cooperatives.

Comment 50: The proposed rule does not provide any guidance on how an inter-cooperative agreement would be agreed upon by the cooperative members.

Response: The Council recommended a cooperative-based structure for implementation of the PCTC Program based on public testimony. NMFS interprets this to mean that the cooperatives will structure their inter-cooperative agreement in a way that satisfies the AI CQ set-aside requirements without further guidance from NMFS on cooperative management. There is precedent set for cooperative systems using agreements like this, including in other North Pacific catch share programs. Because an inter-cooperative agreement will be required in order for NMFS to approve applications for CQ, NMFS does not anticipate additional procedural guardrails are necessary to encourage cooperatives to negotiate this required agreement.

Use Caps

Comment 51: It is problematic to provide information down to the individual ownership level for certain types of ownerships structures, such as publicly-held companies. In order to effectively enforce ownership and use caps, the preamble to the proposed rule would require a list of all persons, to the individual level, holding an ownership interest in the LLP licenses that join the cooperative. The classic case is a publicly traded owner. Because individual ownership is constantly changing and there is little public disclosure of individual owners, it would be impossible for a publicly traded company to submit an ownership list to the individual level. Similarly, a company such as American Seafoods, with a complex ownership structure and private equity investment, does not have access to ownership information to the individual level.

Revise the proposed standard to require the same information down to the individual level for any person having an ownership interest in excess of five percent. If based on that information NMFS has any concerns about compliance with ownership and use caps, the Agency can be authorized to request additional ownership information.

Response: The Application for PCTC CQ, the Application for Transfer of LLP Groundfish/Crab License, and the Application for Transfer of PCTC QS for Processors include fields to enter the names of all persons, to the individual level, holding an ownership interest in the LLP licenses or QS permit. Federal regulations at § 697.2 defines person as any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other non-individual entity (whether or not organized, or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such aforementioned governments.

This collection of information is necessary to monitor compliance with the use caps on CQ and the ownership caps on QS. NMFS does not currently monitor ownership of publicly traded companies beyond the person (*i.e.,* beyond the company level), consistent with other Alaska catch share programs. Collections of information remain unmodified from the proposed rule.

At-Sea Processing Sideboard Limit

Comment 52: A mothership vessel operator receiving an unsorted codend or ''haul'' should be allowed to assign the appropriate management program code rather than NMFS determining that the catch would be assigned to the PCTC Program based on the retained catch composition as proposed in regulations at § 679.20. Allowing the vessel operator to designate which hauls are PCTC Program hauls would be consistent with the current practice of evaluating the catch composition prior to determining if a haul is CDQ or non-CDQ (open access).

Response: NMFS agrees. Based on this comment, NMFS changed § 679.5(c)(6)(v)(J) in the final rule. Rather than considering any unsorted codend that is delivered to a mothership to be CQ during the applicable PCTC Program season that is in the Pacific cod target fishery, the final rule implements a method similar to how catch in an unsorted codend is assigned to a CDQ group. The mothership will have 2 hours after completion of weighing all catch in the haul on the mothership to assign a haul to the PCTC Program.

Comment 53: The two CPs acting as motherships to process CQ should be allowed to share processing sideboards within a cooperative or by an inter-cooperative agreement. In Amendment 122, the Council adopted further restrictions on these two vessels, limiting each vessel to processing no more than 125 percent of its average Pacific cod processing history over the years 2009–2019. However, the Council did not address the issue of flexibility between the two motherships with respect to sideboard usage.

It is critical that final rule include this flexibility. It is critical that the second mothership be able to provide markets if the first mothership breaks down. It is critical that the two motherships be able to work together as either of them nears its sideboard limit to provide at least a single market for those fishermen who have no delivery alternatives.

The solution is to include in the final rule a provision that allows either of the

two motherships to exceed its individual sideboard based on a written agreement submitted to NMFS transferring a portion of its annual sideboard to the other mothership. The result would be that the total mothership sideboard would remain in full effect but the individual sideboards could be shared on a voluntary basis between the two motherships in the same manner that CQ can be shared within and among different cooperatives.

Response: The PCTC Program does not limit who may process Pacific cod, but it does place specific limits on the amount of CQ that may be processed by different operation types. This final rule includes the sideboard limit on the amount of CQ that can be delivered by trawl CVs to a CP designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement. This final rule establishes an at-sea processing sideboard limit of 125 percent of the eligible CP's processing history which allows some opportunity for additional offshore processing relative to the historical annual average for each operation. This provision allows two eligible CPs acting as a mothership to process up to 125 percent of their individual average Pacific cod processing history during the qualifying years of 2009 through 2019 with no years dropped.

This provision is not an allocation, and the Council did not recommend a sideboard that would function as a joint processing sideboard limit for the CP sector. Rather, any remaining CQ that exceeds a vessel's at-sea processing sideboard limit may be delivered to any other processor, including a shoreside processor.

Comment 54: Issue the at-sea processing sideboard limit applicable to a CP designated on a groundfish LLP license with a BSAI Pacific cod trawl mothership endorsement as a new permit or as a transferable endorsement that could be transferred separately from the LLP license (*i.e.,* similar to the provisions that currently apply to certain AI transferable endorsements for smaller vessels).

Response: The Council recommended maintaining the long-standing policy that sideboard limits are not sector allocations and therefore should not be transferable.

Comment 55: Revise the regulations at § 679.133(b)(2) to accurately reflect how at-sea processing sideboards are determined. The first option sets the sideboard at 125 percent of the relevant processing history. The second option sets it to 125 percent of the catch history of certain catcher vessels but only up to 125 percent of the processor's relevant processing history. In effect, the outcome under each option will always be that each mothership's sideboard will equal 125 percent of that vessel's relevant processing history. For drafting simplicity, ease of future analysis and implementation, we recommend that the proposed language to determine sideboard amounts be revised to reflect only option 1.

Response: NMFS agrees and has revised regulations at § 679.133(b)(2) to reflect that NMFS will establish a sideboard limit for each LLP license with a BSAI Pacific cod trawl mothership endorsement not to exceed 125 percent of a CP's processing history. Processing Pacific cod by a CP acting as a mothership is limited by eligibility requirements under Amendment 120 and subject to the at-sea processing limits placed on such CPs under § 679.133(b)(2).

Changes From Proposed Rule to Final Rule

This final rule includes the following substantive changes from the proposed to final rule to address public comment, clarify regulatory language, or to correct inadvertent errors in the proposed regulations. Throughout the regulatory text, NMFS also made technical and grammar edits to correct regulatory cross references, use consistent terms, remove redundancy, and promote clarity.

At § 679.2, NMFS modified the definition for *PCTC Program cooperative* to add that a cooperative associates with a processor under the requirements at § 679.131. NMFS also modified the definition for *PCTC Program participants* to include those harvesters and processors who receive, hold, or use PCTC Program QS. This change was necessary to include future Program participants who do not receive initial allocations. NMFS removed the definition for *PCTC Program CQ* because it was duplicative and the content is covered by the definition of *Cooperative Quota (CQ).*

At § 679.5(c)(6)(v)(J)(*1*), NMFS clarified the timing requirements for a mothership to designate a haul as PCTC Program management code based on comment 52 and added a requirement to record the observer's haul number in the mothership daily cumulative production logbook (DCPL). The final rule implements a method similar to the regulation that is used for assigning an unsorted codend to a CDQ group. The mothership will have 2 hours after completion of weighing all catch in the haul on the mothership to assign a haul to the PCTC Program. Also, NMFS changed the final rule to require the mothership to report the observer's haul number in the Mothership DCPL by 2400 hours, A.l.t., each day to record the previous day's delivery information. This change is necessary to accurately account for PCTC catch separate from other management programs.

At § 679.7(m)(2)(i), NMFS removed the phrase ''while fishing under a CQ permit issued to a PCTC Program cooperative'' to ensure that motherships and shoreside processors would not be excluded from the prohibition against failing to follow the catch monitoring requirements. At § 679.7(m)(4)(ii), NMFS clarified that it is unlawful for the manager of a shoreside processor or stationary floating processor to process any groundfish delivered by a CV fishing under the authority of a CQ permit not weighed on a scale approved by the State of Alaska. NMFS removed § 679.7(m)(5)(i), Fail to retain any Pacific cod caught by a vessel when that vessel is fishing under the authority of a CQ permit, because improved retention/improved utilization (IR/IU) regulations at § 679.27(c)(2) already apply. NMFS removed § 679.7(m)(5)(iv) Operate a vessel fishing under the authority of a CQ permit issued to a PCTC Program cooperative and have any Pacific cod aboard the vessel unless those fish were harvested under the authority of a CQ permit, because this prohibition would prevent a mothership from possessing CDQ Program Pacific cod onboard the vessels at the same time as participating in the PCTC Program. This is not necessary because this final rule allows each haul delivered to a mothership to be assigned a management program code. NMFS also removed references to joint and several liability for violations because existing agency regulations at 15 CFR 904.107 address joint and several liability for any civil penalties issued.

NMFS changed to Table 56 to part 679 to include Central GOA dusky rockfish and Central GOA Pacific ocean perch sideboard limits for non-exempt AFA CVs. This regulatory change was inadvertently left out in the proposed rule; however it was correctly described in the preamble to the proposed rule at Section VIII.A and in Table 3.

The proposed rule had erroneously removed the harvesting sideboards for AFA vessels at § 679.64(b)(3)(ii), (iv), and (4)(ii). In the final rule, NMFS added these paragraphs back in the regulations. At § 679.64(b)(3)(ii), NMFS specified that the BSAI Pacific cod harvesting sideboard applies only to C season. At §§ 679.64(b)(3)(iv) and 679.64(b)(4)(ii), NMFS corrected the regulation to state that non-exempt AFA

CVs and the associated LLP licenses are also sideboarded upon implementation of the PCTC Program. At § 679.64(b)(4)(ii), NMFS also corrected the Gulf of Alaska halibut PSC limit for the non-exempt AFA CVs and associated LLP licenses.

At § 679.130(e), NMFS added that a PCTC Program processor eligible to receive an initial allocation of QS includes a processor that holds a valid FFP and an LLP license with a BSAI Pacific cod trawl mothership endorsement.

NMFS moved the paragraphs on the non-severability of Pacific cod legal landings and the exception provisions from § 679.130(f)(4) to § 679.130(i)(5), and made changes to the headings for consistency and convention. NMFS added that Pacific cod legal landings are non-severable from transferable AI endorsements. NMFS clarified in § 679.130(i)(5)(i) that, if multiple LLP licenses authorized catch by a vessel, the LLP license holders must submit to NMFS an agreement specifying the amount of shared catch history to assign to each LLP license with the application for PCTC Program QS.

At § 679.130(j)(3), NMFS clarified several transfer requirements for processor-held PCTC Program QS permits. First, processors that received an initial QS allocation must have an active FPP or FFP to receive benefits from their QS through associating with a cooperative. Second, any transfer of QS in excess of the ownership cap must be to another PCTC Program QS permit holder who remains below the ownership cap or a new processor with an active FPP. PCTC Program QS permits issued to shoreside processors can only be transferred to other shoreside processors that hold an FPP.

NMFS also added language to specify transfer restrictions for PCTC Program QS permits initially issued to an FFP holder. CPs acting as motherships may transfer their QS permit to the onshore or offshore sector, subject to eligibility requirements under Amendment 120 to limit CPs acting as motherships (*i.e.* may transfer QS permits to processors that hold a valid FPP or a valid FFP in addition to an LLP license with a BSAI Pacific cod trawl mothership endorsement).

At § 679.131(a)(1)(i), NMFS clarified that QS assigned to LLP licenses and PCTC Program QS permits held by a processor must be assigned to a cooperative through a CQ permit to use the CQ derived from that QS to catch Pacific cod, crab PSC, or halibut PSC assigned to the PCTC Program. NMFS removed the terms ''process or receive'' because the PCTC Program does not require a processor to hold QS or CQ to process or receive Pacific cod from cooperatives.

At § 679.131(a)(4)(viii), NMFS modified the text to accommodate cooperative formation prior to the first year of the PCTC Program in response to comment 49. NMFS will allow, for the calendar year 2023 only, for each cooperative to submit the inter-cooperative agreement to NMFS prior to December 31, 2023. This single year variation will give cooperatives additional time to come to an agreement after publication of the final rule. In all years after 2023, the inter-cooperative agreement must be submitted with the cooperative application no later than November 1 of each calendar year. The inter-cooperative agreement is required before NMFS issues CQ to each cooperative and fishing begins in A season (January 20). The inter-cooperative agreement must be submitted regardless of whether an Adak or Atka files a notice of intent to process with NMFS per § 679.132(b).

At § 679.131(i), NMFS modified language to reflect language in other catch share programs when referring to the NMFS online system used for inter-cooperative transfers. Instead of being specific to the current program, eFish, NMFS used ''online system'' to account for any future application naming conventions.

At § 679.131(j)(3)(i), NMFS clarified that in order for a cooperative to associate with a processor with an FFP, the vessel must be named on an LLP license with a BSAI Pacific cod trawl mothership endorsement in response to comment 40.

At § 679.132(b)(5)(ii), NMFS modified this text to clarify that cooperatives must ensure that the PCTC Program harvests from the BS do not exceed the minimum AI CQ set-aside.

At § 679.132(c)(3) and (4), NMFS clarified language pertaining to the Regional Administrator removing the delivery requirement and the process for withdrawing a notice of intent to process, in response to comments 17 and 18. NMFS removed language at § 679.132(c)(4) regarding removing the projected unused AI set-aside to PCTC Program cooperatives in proportion to the amount of CQ that each PCTC Program cooperative received in the initial allocation of CQ for the remainder of the A and B seasons. NMFS maintained in the regulations that the Regional Administrator may remove the delivery requirement for some or all of the projected unused AI CQ set-aside if the Regional Administrator determines that Aleutian Islands shoreplants will not process the entire AI CQ set-aside.

NMFS also removed language limiting when the City of Adak or City of Atka could withdraw their notice of intent to process. A notice of intent to process may be withdrawn at any time after it is submitted to NMFS. NMFS clarified that all notices of intent must be withdrawn for NMFS to remove the delivery requirements applicable when the AI CQ set-aside is in effect.

At § 679.133(a)(6)(iv), NMFS added language to exempt an Aleutian Islands shoreplant from processor use caps when the AI CQ set-aside is in effect.

At § 679.133(b)(2), based on comment 55, NMFS modified the text to reflect the Council recommendation that NMFS establish a sideboard limit for each LLP license with a BSAI Pacific cod trawl mothership endorsement not to exceed 125 percent of the CP's processing history. Processing Pacific cod by a CP acting as a mothership is limited by eligibility requirements under Amendment 120.

At § 679.135(d)(2)(iv), NMFS clarified that if a cooperative does not pay its cost recovery fees and a member of that cooperative leaves and joins another cooperative, NMFS will withhold any CQ generated by that person's QS until the original cooperative pays its delinquent cost recovery fee.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator (AA) has determined that this final rule is consistent with Amendment 122 to the BSAI FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

NMFS prepared an environmental assessment (EA) for this action and the AA concluded that there will be no significant impact on the human environment as a result of this rule. This action creates a LAPP to rationalize the BSAI Pacific cod trawl CV sector A and B seasons but will not result in significant changes to amount, timing, or location of total harvest, or result in other changes that would significantly impact the quality of the human environment. A copy of the EA is available from NMFS (see **ADDRESSES**).

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

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory

flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preambles to the proposed rule and this final rule include a detailed description of the actions necessary to comply with this rule, and as part of this rulemaking process, NMFS included on its website a summary of compliance requirements that serves as the small entity compliance guide: *https://www.fisheries.noaa.gov/alaska/commercial-fishing/pacific-cod-trawl-cooperative-program*. This action does not require any additional compliance from small entities that is not described in the small entity compliance guide or the preambles to the proposed rule and this final rule. Copies of the proposed rule and this final rule are available from the NMFS website at *https://www.fisheries.noaa.gov/region/alaska*.

Final Regulatory Flexibility Analysis (FRFA)

This FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support this action.

Section 604 of the Regulatory Flexibility Act (RFA) requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. Section 604 describes the required contents of a FRFA: (1) a statement of the need for and objectives of the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A description of this final rule and the need for and objectives of this rule are contained in the preamble to this final rule and the preamble to the proposed rule (88 FR 8592, February 9, 2023) and are not repeated here.

Public and Chief Counsel for Advocacy Comments on the IRFA

An IRFA was prepared in the Classification section of the preamble to the proposed rule. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule. NMFS received no comments specifically on the IRFA.

Number and Description of Small Entities Regulated by This Final Rule

This final rule directly regulates owners and operators of harvesters and processors that participate in the BSAI trawl CV Pacific cod fishery including (1) trawl CVs, (2) shoreside processors, (3) floating processors, (4) trawl CPs acting as motherships, and (5) small government jurisdictions in the AI. This rule may also impact observer providers that support the BSAI trawl CV Pacific cod fishery, but they are indirectly impacted. Therefore, observer providers are not considered directly regulated entities in the IRFA prepared for this action.

A small business includes any firm that is independently owned and operated and not dominant in its field of operation. Businesses classified as primarily engaged in commercial fishing are considered small entities if they have less than 11 million dollars in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411). The RFA requires consideration of affiliations between entities for the purpose of assessing whether an entity is classified as small. The AFA pollock cooperatives, which make up a subset of the entities regulated under this final rule, are types of affiliation between entities. All of the AFA cooperatives have gross annual revenues that are substantially greater than 11 million dollars. Therefore, NMFS considers members in these cooperatives to be ''affiliated'' large (non-small) entities for RFA purposes. The eligible AFA entities are large entities based on those affiliations. The remaining 13 trawl CVs would be considered small entities. This count includes five trawl CVs that are greater than 60 ft (18.3 m) LOA and eight CVs that are less than 60 ft (18.3 m) LOA with a transferable AI endorsement.

Though CPs engage in both fish harvesting and fish processing activities, since at least 1993, NMFS Alaska Region has considered CPs to be predominantly engaged in fish harvesting rather than fish processing. Under this classification, the threshold of 11 million dollars in annual gross receipts is the appropriate threshold to apply to identify any CPs that are small entities. All the CPs that are directed regulated by this action do not meet the SBA definition of a small entity due to cooperative affiliation.

Under the SBA's size standard for ''seafood product preparation and packaging'' (NAICS code 311710), seafood processors are considered small entities if they are independently owned and operated, not dominant in their field of operation, and have a combined annual employment of fewer than 750 employees. Of the plants that took deliveries of Pacific cod from 2017 through 2019 that are currently in business, one firm would be considered a small entity.

The RFA defines ''small governmental jurisdiction'' as the government of a city, county, town, school district or special district with a population of less than 50,000 people. Two small governmental jurisdictions are directly regulated under the action. Adak and Atka would be required to submit a notice of their intent to process to NMFS to receive a portion of the AI CQ set-aside described in Section V of this preamble. The set-aside amount is intended to benefit the AI communities, and participation by these communities is voluntary.

Recordkeeping, Reporting, and Other Compliance Requirements

This action implements new recordkeeping, reporting, and compliance requirements and revises existing requirements. These requirements are necessary for the management and monitoring of the PCTC Program.

All PCTC program participants are required to provide additional

information to NMFS for management purposes. Each harvester is required to track harvests to avoid exceeding their allocation. As in other North Pacific rationalized fisheries, processors provide catch recording data to managers to monitor harvest of allocations. Processors are required to record deliveries and processing activities to aid in the Program administration.

To participate in the Program, persons are required to complete application forms, transfer forms, reporting requirements, and monitoring requirements. These requirements impose costs on small entities in gathering the required information and completing the information collections.

NMFS has estimated the costs of complying with the requirements based on information such as the burden hours per response, number of responses per year, and wage rate estimates from industry or the Bureau of Labor Statistics. Persons are required to complete many of the requirements at the start of the Program, such as the application to participate in the Program. Persons are required to complete some requirements every year, such as the cooperative application. Additionally, reporting for purposes of catch accounting or transfer of CQ among cooperatives is completed more frequently. The impacts of these changes are described in more detail in Sections 2.10.7 and 2.10.12 of the Analysis prepared for this final rule (see **ADDRESSES**).

New requirements for the PCTC Program include the Application for PCTC Program QS, applications for transfer of QS during the 90-day transfer window, the Application for PCTC Program CQ, the Application for Transfer of PCTC Program QS for Processors, the AI notice of intent to process, inter-cooperative transfers, the appeals process, and cost recovery fee.

The initial allocation process requires all eligible harvesters and processors who want to participate in the PCTC Program to submit an Application for PCTC Program QS to receive QS. This application is needed to determine the allocation of QS to eligible LLP licenses and to eligible processors. For harvesters, NMFS will use the Catch Accounting System data to determine how much Pacific cod was harvested using the LLP license authorizing a CV and ask the current LLP license holder to verify the catch estimate. For processors NMFS will use the Catch Accounting System data to determine the amount of qualifying Pacific cod delivered to the processor, and the processors will verify the estimates. That information will also be used to determine whether the QS holder complies with the ownership and use cap limitations imposed under the program. Allowing persons to harvest a given percentage of the fishery is anticipated to allow harvesters to avoid fishing in bad weather conditions, improving safety of the fleet. The fleet is also expected to be able to deliver a consistently higher quality product. Quality improvements are expected to result from shorter times between harvest and processing and less damage to the fish in the holds by not fishing in bad weather.

In addition, the initial allocation process has a 90-day transfer window to allow persons to transfer QS between non-exempt AFA LLP licenses under certain conditions to honor private contracts and agreements associated with harvest of the AFA Pacific cod sideboard limits. This transfer window allows persons to resolve any disputes or request QS transfers between LLP licenses. After the 90-day window for these transfers has closed, QS cannot be separated from an LLP license or transferable AI endorsement unless necessary to prevent exceedances of the ownership or use caps, or if required by an operation of law.

The PCTC Program includes a standardized appeals process. The appeals process provides participants the required opportunity to dispute the catch and processing history records in the Catch Accounting System that are used to determine a person's allocation of QS. The appeals process is in addition to the 90-day transfer window discussed above and open to all participants.

Each year the cooperative manager for each cooperative will be required to submit an Application for PCTC Program CQ that identifies the LLP licenses and processor QS permits named to the cooperative and the vessels allowed to harvest the CQ. This application includes the inter-cooperative agreement that defines how the AI CQ set-aside will be harvested during years it is in effect. The Council requests that cooperatives submit an annual cooperative report to the Council.

The Application of Transfer of PCTC Program QS for Processors will be required for eligible processors to transfer their QS to other processors. Processor QS assigned to a processor-held PCTC Program QS permit established under the PCTC program may be transferred through the NMFS online system with approval by NMFS.

The PCTC program requires the cooperatives to set aside 12 percent of their A season CQ allocation for delivery to Aleutian Islands shoreplants in years that a representative from the City of Adak or the City of Atka files a valid intent to process with NMFS. The notice of intent to process is necessary for NMFS and the cooperatives to know whether the regulations established for the set-aside are in effect during the A and B seasons. If a notice of intent to process is filed, it also triggers additional reporting in the cooperative report to the Council.

The PCTC Program is a LAPP, and therefore NMFS is required to collect fees for the PCTC Program under sections 303A and 304(d)(2) of the Magnuson-Stevens Act. Section 304(d)(2) of the Magnuson-Stevens Act limits the cost recovery fee so that it may not exceed 3 percent of the ex-vessel value of the Pacific cod harvested under the PCTC Program. Ex-vessel volume and value reports currently being used to establish an average annual price for BSAI trawl caught Pacific cod will be used to establish the standard price, and no additional collection of price data will be necessary. NMFS uses this information to meet the required provisions in sections 303A and 304(d) of the Magnuson-Stevens Act that require NMFS to collect these fees associated with recoverable costs.

In addition to the new requirements, the PCTC Program revises existing requirements.

If LLP license holders want to transfer their LLP license or transferable AI endorsement and the associated PCTC Program QS, they must fill out an Application to Transfer a Groundfish or Crab LLP License. This form is revised to collect information on the PCTC QS transaction, including QS prices, amount transferred, and whether there are multiple transferees in the event ownership caps would otherwise be exceeded. Information is added to the LLP license transfer form identifying how PCTC QS would be distributed to the other LLP licenses if the original holder of the LLP license was assigned QS that was over the 5 percent ownership cap and qualified for the legacy exemption.

The PCTC Program requires updating ATLAS data transmission to enable the timely electronic entry, archival, and transmission of observer data for at-sea operations and shorebased processing plants.

This rule requires that all vessels submit logbooks when fishing in the PCTC program. All CVs greater than or equal to 60 ft (18.3 m) LOA currently submit logbooks. Some CVs that participate in the AI Pacific cod fishery

are less than 60 ft (18.3 m) LOA and may already file logbooks when fishing for Pacific cod. Many already complete logbooks based on their participation in other programs. However, a small number of CVs less than 60 ft (18.3 m) LOA that do not currently submit a logbook will need to begin submitting a logbook if they choose to participate in the PCTC Program.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The Council and NMFS considered an extensive and elaborate suite of alternatives, options, and sub-options as it designed and evaluated a quota share program for the BSAI Pacific cod trawl CV sector, including a ''no action'' alternative. The Analysis presents the complete set of alternatives, in various combinations with the complex suite of elements and options. The Council selected a preferred alternative that includes a suite of elements and options to manage the BSAI trawl CV Pacific cod sector. The alternatives included no action (Alternative 1) and action to implement a cooperative-style LAPP for the BSAI Pacific cod trawl CV sector (Alternatives 2a and 2b and Alternative 3, which is the Council's recommended action).

In general, the recommended LAPP includes allocations of QS to groundfish LLP licenses based on the legal landings of targeted BSAI Pacific cod in a Federal fishery during a range of qualifying years included in the options. The action also allocates QS to a processors based on processing history of legal landings of BSAI Pacific cod harvested in a Federal fishery and deducted from the BSAI trawl CV sector apportionment during the qualifying years. One alternative considered but not selected included gear conversion, which would have authorized BSAI Pacific cod quota associated with trawl CV LLP licenses to be fished annually by CVs using pot gear. In the end, the Council did not include the gear conversion element in its preferred alternative due to concerns over the possibility of high crab PSC in pot gear for red king crab (Zone 1) and *C. opilio*.

A second option considered but removed was a cooperative formation approach based on existing AFA and non-AFA membership. The AFA vessels and non-AFA vessels would have formed their cooperatives independently of each other. A person owning both an AFA vessel and non-AFA vessel would have been required to join the AFA cooperative for the AFA vessel and the non-AFA cooperative for the non-AFA vessel. Allowing only an AFA and non-AFA cooperative was rejected by the Council after considering the obstacles it would create under the various program elements being considered by the Council and withdrawal of industry support for the option. Integrating multiple processors, the potential limitation on competition, and reduced cooperative formation choice were ultimately the issues associated with the two cooperative approach that led to it being removed from consideration. The recommended action allows a cooperative to associate with one or more processor(s). This approach reduces antitrust concerns that were raised to the Council under the AFA and non-AFA cooperative structure.

The alternatives discussed in this section constitute the suite of ''significant alternatives,'' under this action, for purposes of the RFA. Based upon the best available scientific data, and consideration of the objectives of this action, NMFS did not identify alternatives to the action that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the rule on small entities. After public process, the Council concluded that the PCTC Program would best accomplish the stated objectives articulated in the problem statement and applicable statutes, and minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

Paperwork Reduction Act

This final rule contains collection of information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This final rule contains new collections of information for the PCTC Program under new OMB Control Number 0648–0811 and revises requirements for collections of information under existing OMB Control Numbers 0648–0213 (Alaska Region Logbook and Activity Family of Forms); –0318 (North Pacific Observer Program); –0334 (Alaska License Limitation Program for Groundfish, Crab, and Scallops); –0711 (Alaska Cost Recovery and Fee Programs); –0678 (North Pacific Fishery Management Council Cooperative Annual Reports); and –0515 (Alaska Interagency Electronic Reporting System). However, because the collection of information authorized by OMB Control Number 0648–0515 is concurrently being revised in a separate action, the revisions to that collection of information in this rule will be assigned a temporary control number, 0648–0812, that will later be merged into 0648–0515. The existing collections of information under OMB Control Numbers 0648–0330 (NMFS Alaska Region Scale & Catch Weighing Requirements) and 0648–0445 (NMFS Alaska Region Vessel Monitoring System (VMS) Program) will also provide information needed to implement the PCTC Program and will continue to apply. This rule does not make changes to these two collections of information. The public reporting burden estimates provided below for these collections of information 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 0648–0811

This rule creates new collection of information requirements to implement PCTC Program. The new collections of information authorize applications and processes used by the PCTC Program cooperatives, processors, LLP license holders, and community representatives to apply for permits, to transfer CQ and QS, to manage fishing and processor activity, and to appeal agency decisions. These new collections are necessary for NMFS to implement, monitor, and enforce the PCTC Program. The data is used to ensure that program participants adhere to all harvesting, processing, ownership, and use limits.

The public reporting burden per individual response is estimated to average 2 hours for the Application for Pacific Cod Trawl Cooperative Program Quota Share, 2 hours for the Application for Pacific Cod Trawl Cooperative Program Cooperative Quota, 2 hours for the Application for Transfer of Pacific Cod Trawl Cooperative Program Quota Share for Processors, 10 minutes for the Application for Inter-Cooperative Transfer of Cooperative Quota, 30 minutes for the notification of intent to process Aleutian Islands Pacific cod, 2 hours for the application to transfer QS during the 90-day transfer window for non-exempt AFA LLP license holders, and 4 hours for appeals.

OMB Control Number 0648–0213

This rule revises the existing requirements for the collection of information 0648–0213 related to logbooks because CVs participating in the PCTC Program are required to submit a CV trawl gear daily fishing logbook. Some CVs less than 60 ft (18.3 m) LOA that do not currently submit this logbook will need to begin doing so

to participate in the PCTC Program. The revision to this collection of information adds as new respondents the CVs less than 60 ft (18.3 m) LOA that will need to start using the CV trawl gear daily fishing logbook. CVs participating in the PCTC Program have the option of using either the paper logbook approved under this collection or the electronic option, which is approved under OMB Control Number 0648–0515. The PCTC Program does not change the information collected by this logbook. This rule requires CPs and shoreside processors authorized as processors in the PCTC Program to submit a product transfer report. However, no changes are needed to the respondents or responses for this report because all expected respondents are currently submitting it. The public reporting burden per individual response is estimated to average 18 minutes for the Catcher Vessel Trawl Daily Fishing Log and 20 minutes for the Product Transfer Report.

OMB Control Number 0648–0318

This rule revises the existing requirements for the collection of information 0648–0318 related to the North Pacific Observer Program because all vessels participating in the PCTC program are required to have a computer onboard and use ATLAS to submit observer data to NMFS. This increases the number of vessels that need to provide observers access to a computer with ATLAS installed. PCTC Program participants have up to three years to install communication equipment to facilitate electronic transmission of observer data to NMFS. Most vessels comply with this requirement by allowing NMFS to install ATLAS on an existing computer on the vessel. Many, if not all, of the vessels that will need to install ATLAS already have a computer that meets the minimum requirements, and they will incur costs only if they choose to purchase an additional computer. Estimated costs to purchase and install the data transmission system vary from about $5,000 to $37,000, depending on what a vessel needs to install. This rule also revises the existing requirements in this collection because CVs that choose to participate in the PCTC Program are required to be in the full observer coverage category instead of the partial observer coverage category. These CVs will no longer be required to use ODDS to log fishing trips; therefore, this decreases the number of respondents that log trips in ODDS. The public reporting burden per individual response is estimated to average 15 minutes to log a trip in ODDS.

OMB Control Number 0648–0334

This rule revises the existing requirements for the collection of information 0648–0334 related to the LLP license and the transferable AI endorsement to include PCTC Program QS information on the groundfish/crab LLP license transfer application form. The public reporting burden per individual response is estimated to average 1 hour for the Application for Transfer LLP Groundfish/Crab License.

OMB Control Number 0648–0812

This rule revises the collection of information under OMB Control Number 0648–0515 associated with electronic reporting. However, due to multiple concurrent actions for that collection, the collection-of-information requirements will be assigned a temporary control number, 0648–0812, that will later be merged into OMB Control Number 0648–0515.

PCTC Program participants need to use eLandings to submit landings and production information, which is approved under control number OMB 0648–0515. CVs participating in the PCTC Program are required to submit a CV trawl gear daily fishing logbook and may use either the electronic logbook approved under OMB Control Number 0648–0515 or the paper logbook approved under OMB Control Number 0648–0213. CVs greater than 60 ft (18.3 m) LOA are already required to maintain logbooks but this is a new requirement for CVs less than 60 ft (18.3 m) LOA. Some CVs less than 60 ft (18.3 m) LOA that do not currently submit the logbook will need to begin doing so. The temporary control number covers the revisions necessary to –0515 for the CVs that choose to submit electronic logbooks. The PCTC Program does not change the information collected by this logbook but does increase the number of participants required to submit it. The public reporting burden per individual response is estimated to average 15 minutes for the CV electronic logbook.

A change from the proposed rule to the final rule adds a new reporting requirement for the mothership daily cumulative production logbook, which is approved under OMB Control Number 0648–0515. This revision to –0515 for the mothership logbook is included in this temporary control number. No changes are needed to the respondents or responses for the mothership logbook because all expected respondents are currently submitting it. No change was made to the public reporting burden because the estimate allows for differences in the time needed to complete and submit the information. The public reporting burden per individual response is estimated to average 15 minutes for the mothership logbook.

OMB Control Number 0648–0678

This rule revises the existing collection of information under 0648–0678 because the Council requests PCTC Program cooperatives submit a voluntary annual cooperative report to the Council. This revision adds the PCTC Program cooperatives as new respondents that will submit an annual cooperative report. The public reporting burden per individual response is estimated to average 18 hours for the PCTC Program annual report.

OMB Control Number 0648–0711

This rule revises the existing requirements for the collection of information 0648–0711 related to cost recovery because the PCTC Program is a LAPP that is subject to a cost recovery fee under Magnuson-Stevens Act 303A. This revision adds the PCTC Program cooperatives as new respondents that will submit a cost recovery fee to NMFS. The rule requires PCTC Program processors to submit an annual Pacific Cod Ex-vessel Volume and Value Report; however, this does not change the respondents or responses for this report because all expected respondents are currently submitting it. The public reporting burden per individual response is estimated to average 1 minute for the PCTC cost recovery fee and 1 minute for the Pacific Cod Ex-vessel Volume and Value Report.

Public Comments

We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for these information collections should be submitted on the following website: *www.reginfo.gov/public/do/PRAMain.* Find the particular information collection by using the search function and entering either the title of the collection or the OMB Control Number.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 28, 2023.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR part 679 as follows:

Title 15—Commerce and Foreign Trade

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

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

■ 2. Amend § 902.1, in the table in paragraph (b), under ''50 CFR'', by:

■ a. Revising the entry for ''679.4'';

■ b. Adding in numerical order an entry for ''679.5(x)'';

■ c. Revising the entry for ''679.7'';

■ d. Adding in numerical order an entry for ''679.7(m)'';

■ e. Revising the entry for ''679.51''; and

■ f. Adding in numerical order entries for ''679.130'' through ''679.132'', ''679.134'', and ''679.135''.

The revisions and additions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* *	* * * * * * *
50 CFR	
* *	* * * * * * *
679.4	–0206, –0272, –0334, –0393, –0513, –0545, –0565, –0665, and –0811.
* *	* * * * * * *
679.5(x)	–0811.
* *	* * * * * * *
679.7	–0206, –0269, –0272, –0316, –0318, –0330, –0334, –0393, –0445, –0513, –0514, –0545, –0565, and –0811.
* *	* * * * * * *
679.7(m)	–0811
* *	* * * * * * *
679.51	–0206, –0269, –0272, –0318, –0401, –0513, –0545, –0565, and –0811.
* *	* * * * * * *
679.130	–0811.
679.131	–0811.
679.132	–0811.
679.134	–0811.
679.135	–0811.
* *	* * * * * * *

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 3. The authority citation for 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.

■ 4. Amend § 679.2 by:

■ a. Removing the definition of ''Affiliation for the purpose of defining AFA and the Rockfish Program'';

■ b. Adding in alphabetical order a definition for ''Affiliation for the purpose of defining AFA, Rockfish Program, and PCTC Program'';

■ c. Republishing the definition of ''Aleutian Islands shoreplant'';

■ d. Revising the definitions of ''Cooperative quota (CQ)'' and ''CQ permit''; and

■ e. Adding in alphabetical order definitions for ''NMFS Alaska Region website,'' ''Pacific Cod Trawl Cooperative (PCTC) Program,'' ''PCTC Program cooperative,'' ''PCTC Program harvester QS pool,'' ''PCTC Program official record,'' ''PCTC Program participants,'' ''PCTC Program processor QS pool'', ''PCTC Program QS unit,'' and ''PCTC Program quota share (QS)''.

The additions and revisions read as follows:

§ 679.2 Definitions.

* * * * *

Affiliation for the purpose of defining AFA, Rockfish Program, and PCTC Program means a relationship between two or more individuals, corporations, or other business concerns, except CDQ groups, in which one concern directly or indirectly owns a 10 percent or greater interest in another, exerts control over another, or has the power to exert control over another; or a third individual, corporation, or other business concern directly or indirectly owns a 10 percent or greater interest in both, exerts control over both, or has the power to exert control over both.

(1) *What is 10 percent or greater ownership?* For the purpose of determining affiliation, 10 percent or greater ownership is deemed to exist if an individual, corporation, or other business concern directly or indirectly owns 10 percent or greater interest in a

second corporation or other business concern.

(2) *What is an indirect interest?* An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

(3) *What is control?* For the purpose of determining affiliation, control is deemed to exist if an individual, corporation, or other business concern has any of the following relationships or forms of control over another individual, corporation, or other business concern:

(i) Controls 10 percent or more of the voting stock of another corporation or business concern;

(ii) Has the authority to direct the business of the entity that owns the fishing vessel or processor. The authority to direct the business of the entity does not include the right to simply participate in the direction of the business activities of an entity that owns a fishing vessel or processor;

(iii) Has the authority in the ordinary course of business to limit the actions of or to replace the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of an entity that holds 10 percent or greater interest in a fishing vessel or processor. Standard rights of minority shareholders to restrict the actions of the entity are not included in this definition of control provided they are unrelated to day-to-day business activities. These rights include provisions to require the consent of the minority shareholder to sell all or substantially all the assets, to enter into a different business, to contract with the major investors or their affiliates, or to guarantee the obligations of majority investors or their affiliates;

(iv) Has the authority to direct the transfer, operation, or manning of a fishing vessel or processor. The authority to direct the transfer, operation, or manning of a vessel or processor does not include the right to simply participate in such activities;

(v) Has the authority to control the management of or to be a controlling factor in the entity that holds 10 percent or greater interest in a fishing vessel or processor;

(vi) Absorbs all the costs and normal business risks associated with ownership and operation of a fishing vessel or processor;

(vii) Has the responsibility to procure insurance on the fishing vessel or processor, or assumes any liability in excess of insurance coverage;

(viii) Has the authority to control a fishery cooperative through 10 percent or greater ownership or control over a majority of the vessels in the cooperative, has the authority to appoint, remove, or limit the actions of or replace the chief executive officer of the cooperative, or has the authority to appoint, remove, or limit the actions of a majority of the board of directors of the cooperative. In such instance, all members of the cooperative are considered affiliates of the individual, corporation, or other business concern that exerts control over the cooperative; or

(ix) Has the ability through any other means whatsoever to control the entity that holds 10 percent or greater interest in a fishing vessel or processor.

* * * * *

Aleutian Islands shoreplant means a processing facility that is physically located on land west of 170° W. longitude within the State of Alaska.

* * * * *

Cooperative quota (CQ)—(1) *For purposes of the Amendment 80 Program* means:

(i) The annual catch limit of an Amendment 80 species that may be caught by an Amendment 80 cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut and crab PSC that may be used by an Amendment 80 cooperative while fishing under a CQ permit.

(2) *For purposes of the Rockfish Program* means:

(i) The annual catch limit of a rockfish primary species or rockfish secondary species that may be harvested by a rockfish cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut PSC that may be used by a rockfish cooperative in the Central GOA while fishing under a CQ permit (see rockfish halibut PSC in this section).

(3) *For purposes of the PCTC Program* means:

(i) The annual catch limit of Pacific cod that may be caught by a PCTC Program cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut and crab PSC that may be used by a PCTC Program cooperative while fishing under a CQ permit.

* * * * *

CQ permit means a permit issued to an Amendment 80 cooperative under § 679.4(o)(2), a rockfish cooperative under § 679.4(n)(1), or a PCTC Program cooperative under § 679.131(a).

* * * * *

NMFS Alaska Region website means *https://www.fisheries.noaa.gov/region/alaska.*

* * * * *

Pacific Cod Trawl Cooperative (PCTC) Program means the Pacific Cod Trawl Cooperative Program as implemented under subpart L of this part.

* * * * *

PCTC Program cooperative means a group of eligible Pacific cod harvesters who have chosen to form a cooperative and associate with a processor under the requirements at § 679.131 in order to combine and harvest fish collectively under a CQ permit issued by NMFS.

PCTC Program harvester QS pool means the sum of Pacific cod QS units assigned to LLP licenses established for the PCTC Program fishery based on the PCTC Program official record.

PCTC Program official record means information used by NMFS necessary to determine eligibility to participate in the PCTC Program and assign specific harvest privileges or limits to PCTC Program participants based on Pacific cod legal landings as defined at § 679.130.

PCTC Program participants means those PCTC Program harvesters and processors who receive, hold, or use PCTC Program QS.

PCTC Program processor QS pool means the sum of PCTC Program QS units assigned to processor permits issued under the PCTC Program based on the PCTC Program official record.

PCTC Program QS unit means a single share of the PCTC Program QS pool based on Pacific cod legal landings.

PCTC Program quota share (QS) means QS units issued by NMFS expressed in metric tons, derived from the Pacific cod legal landings assigned to an LLP license or PCTC Program QS permit held by a processor and used as the basis for the issuance of annual CQ.

* * * * *

■ 5. Amend § 679.4 by adding paragraphs (a)(1)(xvi), (k)(16), and (q) to read as follows:

§ 679.4 Permits.

(a) * * *

(1) * * *

If program permit or card type is:	Permit is in effect from issue date through the end of:	For more information, see . . .
* * * * * * *		
(xvi) PCTC Program:		
(A) PCTC Program QS permit (for processors)	10 Years	Paragraph (q) of this section.
(B) PCTC Program CQ permit	Until expiration date shown on permit	Paragraph (q) of this section.

* * * * *

(k) * * *

(16) *PCTC Program.* In addition to other requirements of this part, an LLP license holder must have PCTC Program QS assigned to their groundfish LLP license to join a PCTC Program cooperative to harvest Pacific cod.

* * * * *

(q) *PCTC Program permits*—(1) *PCTC Program cooperative quota permits.* (i) A CQ permit is issued annually to a PCTC Program cooperative that submits a complete and timely application for CQ as described at § 679.131 that is approved by the Regional Administrator. A CQ permit authorizes a PCTC Program cooperative to participate in the PCTC Program. The CQ permit will indicate the amount of Pacific cod that may be harvested by the PCTC Program cooperative, and the amount of halibut PSC and crab PSC that may be used by the PCTC Program cooperative. The CQ permit will list the members of the PCTC Program cooperative, the trawl catcher vessels that are authorized to fish under the CQ permit for that cooperative, and the PCTC Program processor(s) with whom that cooperative is associated.

(ii) A CQ permit is valid only until the end of the BSAI Pacific cod B season for the year in which the CQ permit is issued;

(iii) A legible copy of a valid CQ permit must be carried on board the vessel(s) used by the PCTC Program cooperative.

(2) *PCTC Program quota share permits for processors.* (i) NMFS will issue PCTC Program QS permits to eligible processors if the owner(s) submits to the Regional Administrator a completed application for PCTC Program QS as described at § 679.130 that is subsequently approved.

(ii) A processor may associate the QS assigned to the PCTC Program QS permit with a PCTC Program cooperative as described at § 679.131.

■ 6. Amend § 679.5 by:

■ a. Adding paragraph (a)(1)(iii)(G);

■ b. Revising paragraph (a)(4)(i)

■ c. Adding paragraph (c)(6)(v)(J)(*1*) and reserved paragraph (c)(6)(v)(J)(*2*); and

■ d. Adding paragraph (x).

The additions and revision read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(1) * * *

(iii) * * *

If harvest made under . . . program	Record the . . .	For more information, see . . .
* * * * *		
(G) PCTC Program	Cooperative number	subpart L to this part.

* * * * *

(4) * * *

(i) *Catcher vessels less than 60 ft (18.3 m) LOA.* Except for vessels using pot gear as described in paragraph (c)(3)(i)(B)(*1*) of this section or vessels participating in the PCTC Program as described in paragraph (x) of this section, the owner and operator of a catcher vessel less than 60 ft (18.3 m) LOA are not required to comply with the R&R requirements of this section, but must comply with the vessel activity report described at paragraph (k) of this section.

* * * * *

(c) * * *

(6) * * *

(v) * * *

(J) * * *

(*1*) For the PCTC Program, enter the observer's haul number for each catcher vessel delivery of an unsorted codend by 2400 hours, A.l.t., each day to record the previous day's delivery information.

(*2*) [Reserved]

* * * * *

(x) *PCTC Program.* The owners and operators of catcher vessels and processors authorized as participants in the PCTC Program must comply with the applicable R&R requirements of this section and must assign all catch to a PCTC Program cooperative at the time of catch or receipt of groundfish. Owners of catcher vessels and processors authorized as participants in the PCTC Program must ensure that their designated representatives or employees comply with applicable R&R requirements as described at § 679.134.

■ 7. Amend § 679.7 b adding paragraph (m) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(m) *PCTC Program*—(1) *General.* (i) Name an LLP license in more than one Application for PCTC Program CQ in a fishing year.

(ii) Use a vessel to catch or receive a PCTC Program cooperative's Pacific cod when that vessel was not listed on the Application for PCTC Program CQ.

(iii) Fail to comply with any other requirement or restriction specified in this part or violate any provision of this part.

(2) *Vessel owners and operators participating in the PCTC Program.* (i) Fail to follow the catch monitoring requirements detailed at § 679.134.

(ii) Operate a vessel that is subject to a sideboard limit detailed at § 679.133, as applicable, and fail to follow the catch monitoring requirements detailed at § 679.134.

(iii) Exceed the ownership or use caps specified at § 679.133.

(3) *VMS.* (i) Operate a vessel in a PCTC Program cooperative and fail to use functioning VMS equipment as described at § 679.134.

(ii) Operate a vessel that is subject to a sideboard limit detailed at § 679.133 and fail to use functioning VMS equipment as described at § 679.134.

(4) *PCTC Program processors.* (i) Take deliveries of, or process, PCTC Program Pacific cod harvested by a catcher vessel fishing under the authority of a CQ permit unless the processor has an FPP or FFP and LLP license with a BSAI Pacific cod trawl mothership endorsement.

(ii) For the manager of a shoreside processor or stationary floating processor to process any groundfish delivered by a catcher vessel fishing under the authority of a CQ permit not weighed on a scale approved by the State of Alaska.

(iii) Fail to submit a timely and complete Pacific cod Ex-vessel Volume and Value Report as required under § 679.5(u)(1).

(iv) Use a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement to sort, process, or discard any species, except halibut sorted on deck by vessels participating in halibut deck sorting described at § 679.120, before the total catch is weighed on a

scale that meets the requirements of § 679.28(b).

(v) Use a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement to process Pacific cod in excess of the at-sea processing sideboard limit defined at § 679.133(b)(2) and assigned to the LLP license.

(vi) Process an amount of Pacific cod that exceeds use caps specified at § 679.133.

(5) *PCTC Program cooperatives.* (i) Harvest PCTC Program Pacific cod, use halibut PSC, or use crab PSC assigned to a PCTC Program cooperative in the BSAI without having on board a legible copy of valid CQ permit.

(ii) Begin a fishing trip for PCTC Program Pacific cod with any vessel named in a PCTC Program cooperative if the total amount of unharvested PCTC Program Pacific cod on a CQ permit currently held by that cooperative is zero or less.

(iii) Have a negative balance in a CQ account after the end of the calendar year for which a CQ permit was issued.

(iv) Fail to submit a PCTC Program cost recovery fee payment as required under § 679.135.

* * * * *

■ 8. Amend § 679.20 by revising paragraph (a)(7)(viii) and adding paragraph (e)(3)(vi) to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(7) * * *

(viii) *Aleutian Islands CQ set-aside provisions.* During the annual harvest specifications process, the Regional Administrator will establish the PCTC Program Aleutian Islands CQ set-aside through the process set forth at § 679.132.

* * * * *

(e) * * *

(3) * * *

(vi) For a catcher/processor with a BSAI Pacific cod trawl mothership endorsement that receives an unsorted codend delivered by a catcher vessel authorized to harvest and that is assigned to PCTC Program Pacific cod, the maximum retainable amount for each species or species group applies at any time for the duration of the fishing trip and must be applied to only the PCTC Program hauls during a fishing trip.

* * * * *

■ 9. Amend § 679.21 by revising paragraphs (b)(1)(ii)(B) introductory text, (b)(1)(ii)(B)(*5*), (b)(2)(iii)(A) and (B), (b)(4)(i)(B), (e)(3)(iv) introductory text, and (e)(3)(iv)(E) and adding paragraph (e)(7)(v) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) *Trawl fishery categories.* For purposes of apportioning the trawl PSC limit set forth under paragraph (b)(1)(ii)(A)(*1*) of this section among trawl fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species or species groups for which a TAC has been specified under § 679.20.

* * * * *

(*5*) *Pacific cod fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Pacific cod that is greater than the retained amount of any other groundfish fishery category defined under this paragraph (b)(1)(ii)(B). This Pacific cod fishery is further apportioned between the PCTC Program, the trawl catcher vessel limited access C season, and AFA catcher/processors as established at § 679.131(c) and (d).

* * * * *

(2) * * *

(iii) * * *

(A) *Unused seasonal apportionments.* Unused seasonal apportionments of trawl fishery PSC allowances made under this paragraph (b)(2) will be added to the respective fishery PSC allowance for the next season during a current fishing year except for the Pacific cod fishery apportionment to the PCTC Program, which follows the regulations at § 679.131(c) and (d).

(B) *Seasonal apportionment exceeded.* If a seasonal apportionment of a trawl fishery PSC allowance made under this paragraph (b)(2) is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the respective apportionment for the next season during a current fishing year except for the Pacific cod fishery apportionment to the PCTC Program, which follows the regulations at § 679.131(c) and (d).

* * * * *

(4) * * *

(i) * * *

(B) *Closures.* Except as provided in paragraph (b)(4)(i)(A) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (b)(1)(ii)(B)(*2*) through (*6*) of this section will catch the halibut PSC allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b)(1)(i) or (ii) of this section, NMFS will publish in the **Federal Register** a document to close the entire BSAI to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season. This does not apply to allocations to the PCTC Program specified at § 679.133(b).

* * * * *

(e) * * *

(3) * * *

(iv) *Trawl fishery categories.* For purposes of apportioning trawl PSC limits for crab and herring among fisheries, other than crab PSC CQ assigned to an Amendment 80 cooperative, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species or species groups for which a TAC has been specified under § 679.20.

* * * * *

(E) *Pacific cod fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Pacific cod that is greater than the retained amount of any other groundfish fishery category defined under this paragraph (e)(3)(iv). The Pacific cod fishery is further apportioned between the PCTC Program, the trawl catcher vessel limited access C season, and AFA catcher/processors as established at § 679.131(d).

* * * * *

(7) * * *

(v) This paragraph (e)(7) does not apply to apportionments to the PCTC Program as described at § 679.130.

* * * * *

■ 10. Amend § 679.51 by:

■ a. Revising paragraph (a)(2)(i)(C)(*4*);

■ b. Adding paragraphs (a)(2)(i)(C)(*5*) and (a)(2)(vi)(G);

■ c. Revising paragraphs (e)(1)(iii)(A) and (e)(1)(iii)(B) introductory text; and

■ d. Adding paragraph (e)(1)(iii)(D).

The revisions and additions read as follows:

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

(a) * * *

(2) * * *

(i) * * *

(C) * * *

(*4*) Using trawl gear in the BSAI if the vessel has been placed in the full observer coverage category under paragraph (a)(4) of this section; or

(*5*) Participating in the PCTC Program.

* * * * *

(vi) * * *

(G) *PCTC Program motherships.* A mothership that receives unsorted codends from catcher vessels harvesting Pacific cod under the PCTC Program must have at least two observers aboard the mothership, at least one of whom must be endorsed as a lead level 2 observer. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(A) *Observer use of equipment.* Allow an observer to use the vessel's communications equipment and personnel, on request, for the confidential entry, transmission, and receipt of work-related messages (including electronic transmission of data), at no cost to the observer or the United States.

(B) *Equipment, software, and data transmission requirements.* The operator of a catcher/processor (except for a catcher/processor placed in the partial observer coverage category under paragraph (a)(3) of this section), mothership, catcher vessel 125 ft (38.1 m) LOA or longer (except for a catcher vessel fishing for groundfish with pot gear), or a catcher vessel participating in the PCTC Program (except for paragraph (e)(1)(iii)(D) of this section) must provide the following equipment, software and data transmission capabilities:

* * * * *

(D) *PCTC Program.* The operator of a non-AFA catcher vessel participating in the PCTC Program is not required to comply with paragraph (e)(1)(iii)(B)(*3*) of this section to provide data transmission capability until September 7, 2026. However, once any non-AFA catcher vessel in the PCTC Program is capable of at-sea data transmission, the operator must comply.

* * * * *

■ 11. Amend § 679.64 by revising paragraphs (b)(3)(ii) and (iv), removing and reserving paragraph (b)(4)(i), and revising paragraph (b)(4)(ii).

The revisions read as follows:

§ 679.64 Harvesting sideboard limits in other fisheries.

* * * * *

(b) * * *

(3) * * *

(ii) *BSAI Pacific cod.* The AFA catcher vessel groundfish harvest limit for BSAI Pacific cod will be equal to the retained catch of BSAI Pacific cod in 1997 by AFA catcher vessels not exempted under paragraph (b)(2)(i)(A) of this section divided by the BSAI Pacific cod TAC available to catcher vessels in 1997; multiplied by the BSAI Pacific cod TAC available to catcher vessels in the year or season in which the harvest limit will be in effect. This limit is in effect only for C season.

* * * * *

(iv) *GOA groundfish.* The non-exempt AFA catcher vessels and the associated LLP licenses groundfish harvest limit for each GOA groundfish species or species group will be equal to the aggregate retained catch of that groundfish species or species group from 2009 through 2019 by AFA catcher vessels not exempted under paragraph (b)(2)(ii) of this section; divided by the sum of the TACs of that species or species group available to catcher vessels from 2009 through 2019; multiplied by the TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

* * * * *

(4) * * *

(ii) The non-exempt AFA catcher vessels and the associated LLP licenses PSC bycatch limit for halibut in the GOA will be an annual amount based on a static ratio of 0.072 derived from the aggregate retained groundfish catch by non-exempt AFA CVs in each PSC target category from 2009 through 2019.

* * * * *

■ 12. Add subpart L, consisting of §§ 679.130 through 679.135, to read as follows:

Subpart L—Pacific Cod Trawl Cooperative Program

Sec.

Subpart L—Pacific Cod Trawl Cooperative Program

§ 679.130 Allocation, use, and transfer of PCTC Program QS permits.

(a) *Applicable areas and seasons.* (1) The PCTC Program applies to the Pacific cod trawl catcher vessel sector in the BSAI as defined at § 679.20(a)(7)(ii)(A).

(2) The following fishing seasons apply to fishing under this subpart subject to other provisions of this part:

(i) Fishing by vessels participating in a cooperative is authorized for the PCTC Program A season from 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., April 1.

(ii) Fishing by vessels participating in a cooperative is authorized for the PCTC Program B season from 1200 hours, A.l.t., April 1 through 1200 hours, A.l.t., June 10.

(iii) The PCTC Program does not apply to the Pacific cod trawl catcher vessel C season, as defined at § 679.23(e)(5)(ii)(C)(*1*).

(b) *Pacific cod legal landings.* Pacific cod legal landings means the retained catch of Pacific cod caught using trawl gear in a management area in the BSAI by a catcher vessel during the directed fishing season for Pacific cod that:

(1) Was made in compliance with State and Federal regulations in effect at that time; and

(2) Was recorded on a State of Alaska fish ticket for shoreside deliveries or in observer data for mothership deliveries; and

(3) Was the predominately retained species on the fishing trip; and

(4) Was authorized by:

(i) An LLP license and caught in the A or B season of a Federal or parallel groundfish fishery during the qualifying years 2009 through 2019; or

(ii) An LLP license with a transferable AI endorsement prior to receiving the AI endorsement and was caught in a parallel fishery between January 20, 2004, and September 13, 2009; and

(5) Was not made in a CDQ fishery; and

(6) Was not made in a State of Alaska GHL fishery.

(c) *Eligible PCTC Program harvesters.* NMFS will assign Pacific cod legal landings to an LLP license only if the qualifying Pacific cod legal landings of BSAI trawl catcher vessel Pacific cod were made under the authority of a fully transferable LLP license endorsed for BS or AI Pacific cod with a trawl gear designation from 2009 through 2019 or under the authority of an LLP license endorsed for Pacific cod with a trawl gear designation prior to earning a transferable AI endorsement from 2004 through September 13, 2009;

(d) *Assigning trawl catcher vessel Pacific cod legal landings to an LLP license.* (1) NMFS will assign Pacific cod legal landings to an LLP license in the form of PCTC Program QS only if the holder of the LLP license that authorized those landings submits a timely and complete application for PCTC Program QS under paragraph (h) of this section that is approved by NMFS.

(2) NMFS will assign Pacific cod legal landings to an LLP license that meets the requirements of paragraph (b) of this section.

(3) NMFS will reissue LLP licenses to eligible harvesters that specify the number of PCTC Program QS units assigned to their LLP licenses.

(e) *Eligible PCTC Program processors.* NMFS will assign legal landings to an eligible PCTC Program processor if the processor operates under the authority of either a valid FPP or FFP and holds an LLP license with a BSAI Pacific cod trawl mothership endorsement, and received deliveries of legal landings of Pacific cod from the trawl catcher vessel sector from 2009 through 2019. A processor is ineligible to receive PCTC Program QS if it does not hold an active FFP or FPP as of September 7, 2023.

(f) *Assigning Pacific cod processing history to an eligible processor.* (1) NMFS will assign Pacific cod processing history to a processor in the form of PCTC Program QS only if the FFP or FPP holder submits a timely and complete application for PCTC Program QS that is approved by NMFS pursuant to paragraph (h) of this section.

(2) NMFS will assign Pacific cod processing history based on legal landings delivered to a processor authorized by an FPP or FFP that meets the requirements of this section.

(3) For the initial allocation of PCTC Program QS, qualifying processing history is attached to the processor at the time legal landings were received.

(4) An eligible processor will be issued a PCTC Program QS permit that specifies the number of QS units assigned to that processor.

(g) *PCTC Program official record.* (1) The PCTC Program official record will contain information used by the Regional Administrator to determine:

(i) The amount of Pacific cod legal landings as defined at in this section assigned to an LLP license;

(ii) The amount of Pacific cod processing history of legal landings as defined at § 679.130 assigned to an FPP or FFP;

(iii) The amount of PCTC Program QS resulting from Pacific cod legal landings assigned to an LLP license held by an eligible harvester, or QS resulting from Pacific cod processing history assigned to an FPP or FFP held by an eligible processor;

(iv) The amount of Pacific cod sideboard ratios assigned to LLP licenses;

(v) Eligibility to participate in the PCTC Program; and

(vi) QS assigned to PCTC Program participants.

(2) The PCTC Program official record is presumed to be correct. An applicant participating in the PCTC Program has the burden to prove otherwise.

(3) Only Pacific cod legal landings and processing history of legal landings, as described in paragraph (b) of this section, shall be used to establish an allocation of PCTC Program QS. Evidence of legal landings shall be limited to documentation of state or Federal catch reports that indicate the amount of Pacific cod harvested, the groundfish reporting area in which it was caught, the vessel and gear type used to catch it, and the date of harvesting, landing, or reporting.

(h) *Application for PCTC Program quota share*—(1) *Submission of an application for PCTC Program quota share.* A person who wishes to receive QS to participate in the PCTC Program as an eligible harvester or an eligible processor must submit a timely and complete application for PCTC Program QS. An application form will be provided by NMFS or available from NMFS Alaska Region website as defined at § 679.2. The acceptable submittal methods will be described on the application form.

(2) *Deadline.* A completed application for PCTC Program QS must be received by NMFS no later than 1700 hours, A.l.t., on October 10, 2023, or if sent by U.S. mail, postmarked by that time. Objective written evidence of timely application will be considered proof of a timely application.

(3) *Contents of application.* A timely and complete application must contain the information specified on the application for PCTC Program QS with all required documentation attached.

(i) Additional required documentation for LLP license holders. Vessel names, ADF&G vessel registration numbers, and USCG documentation numbers of all vessels that fished under the authority of each LLP license, including dates when landings were made under the authority of an LLP license from 2009 through 2019 or under the authority of an LLP license prior to earning a transferable AI endorsement from 2004–2019;

(ii) Additional required documentation for processors. Processor name, FFP or FPP number, and location of processing plant, including dates when landings were made under the authority of an LLP license from 2009 through 2019;

(iii) The applicant must sign and date the application certifying under penalty of perjury that all information is true and correct. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(4) *Application evaluation.* The Regional Administrator will evaluate applications and compare all claims of catch history or processing history in an application with the information in the PCTC Program official record. Application claims that are consistent with information in the PCTC Program official record will be approved by the Regional Administrator. Application claims that are inconsistent with the PCTC Program official record will not be approved unless supported by documentation sufficient to substantiate such claims. An applicant who submits claims of catch history or processing history that are inconsistent with the official record without sufficient evidence, or an applicant who fails to submit the information specified in paragraph (d) of this section, will be provided a single 30-day evidentiary period to submit the specified information, submit evidence to verify their claims of catch or processing history, or submit a revised application consistent with information in the PCTC Program official record. An applicant who claims catch or processing history that is inconsistent with information in the PCTC Program official record has the burden of proving that the submitted claims are correct. Any claims that remain unsubstantiated after the 30-day evidentiary period will be denied. All applicants will be notified of NMFS's final application determinations by an initial administrative determination (IAD), which will inform applicants of their appeal rights under 15 CFR part 906.

(5) *Appeals.* An applicant may appeal an IAD under the provisions in 15 CFR part 906.

(i) *Assigning PCTC Program QS to Harvesters and Processors.* The Regional Administrator will assign PCTC Program QS only to an eligible harvester or eligible processor who submits a timely application for PCTC Program QS that is approved by NMFS.

(1) *Calculation of PCTC Program QS allocation to LLP licenses without a transferable AI endorsement.* NMFS will assign a specific amount of PCTC Program QS units to each LLP license based on the Pacific cod legal landings of each LLP license using information from the PCTC Program official record according to the following procedures:

(i) Determine the Pacific cod legal landings for each LLP license for each calendar year from 2009 through 2019.

(ii) Select the 10 calendar years from the qualifying time period with the highest amount of legal landings for each LLP license, including years with zero metric tons if necessary.

(iii) Sum the Pacific cod legal landings of the highest 10 years for each LLP license. This yields the PCTC

Program QS units (in metric tons) for each LLP license.

(2) *Calculation of PCTC Program QS allocation to LLP licenses with a transferable AI endorsement.* NMFS will assign a specific amount of PCTC Program QS units to each LLP license with a transferable AI endorsement based on the Pacific cod legal landings of each using information from the PCTC Program official record according to the following procedures:

(i) Determine the Pacific cod legal landings for each LLP license with a transferable AI endorsement for each calendar year from 2004 through 2019.

(ii) Select the fifteen calendar years that yield the highest amount of legal landings for each LLP license, including years with zero metric tons if necessary.

(iii) Sum the Pacific cod legal landings of the highest fifteen years for each LLP license with transferable AI endorsement. This yields the PCTC Program QS units (in metric tons) for each LLP license with a transferable AI endorsement.

(3) *Official record date.* The initial PCTC Program QS pool for all LLP licenses, with and without a transferable AI endorsement, is the sum of the sum of the PCTC Program QS units assigned to all LLP licenses in metric tons based on the PCTC Program official record as of December 31, 2022.

(4) *Calculation of PCTC Program QS allocation to processors.* NMFS will assign a specific amount of PCTC Program QS units to each eligible processor based on the Pacific cod legal landings delivered to each FPP or FFP using information from the PCTC Program official record according to the following procedures:

(i) Sum the Pacific cod legal landings delivered to each FPP or FFP for each calendar year from 2009 through 2019;

(ii) Select the ten calendar years that yield the highest amount of legal landings delivered to each FPP or FFP, including years with zero metric tons if necessary;

(iii) Sum the Pacific cod legal landings of the highest 10 years for each FPP or FFP. This yields the QS units for each eligible processor, which will be specified on a PCTC Program QS permit for that processor;

(iv) The PCTC Program QS pool for processors is the sum of all QS units assigned to processors in metric tons based on the PCTC official record as of December 31, 2022.

(5) *Non-severability and exceptions.* Pacific cod legal landings are non-severable from the LLP license, transferable AI endorsement, or FPP to which those Pacific cod legal landings are assigned in the PCTC Program official record except under the following provisions:

(i) If multiple LLP licenses authorized catch by a vessel, the LLP license holders must submit to NMFS an agreement specifying the amount of shared catch history to assign to each LLP license with the application for PCTC Program QS. In the absence of an agreement, the owner of the vessel that made the catch will assign qualifying catch history to each LLP license.

(ii) For the LLP licenses associated with non-exempt AFA catcher vessels, within 90 days of initial issuance of PCTC Program QS, the owners of the LLP licenses that are associated with AFA non-exempt catcher vessels that engaged in fish transfer agreements during the qualifying periods may transfer PCTC Program QS to other LLP licenses associated with AFA non-exempt vessels, subject to the ownership cap at § 679.133.

(A) NMFS will execute permanent transfers of PCTC Program QS between eligible LLP licenses during the 90-day transfer provision upon request. The transferor and transferee must show they agree to the one-time permanent transfer of PCTC Program QS, or show a transfer is authorized by an operation of law (*e.g.,* a court order). Requests to transfer PCTC Program QS must specify which LLP license is transferring PCTC Program QS, which LLP license is receiving PCTC Program QS, and the amount of PCTC Program QS to be transferred.

(B) After the expiration of the 90-day transfer provision, PCTC Program QS will no longer be severable from the LLP license to which it is assigned unless authorized by the transfer rules specified in paragraph (j) or modification is supported by an operation of law.

(j) *Transfer of PCTC Program QS.* (1) Transfer of an LLP license with PCTC Program QS. A person may transfer an LLP license and the PCTC Program QS assigned to that LLP license under the provisions at § 679.4(k)(7), provided that the LLP license is not assigned PCTC Program QS in excess of the ownership cap specified at § 679.133 at the time of transfer.

(2) Transfer of PCTC Program QS assigned to LLP licenses that exceeds PCTC Program QS ownership caps.

(i) If an LLP license receives an initial allocation of PCTC Program QS that exceeds an ownership cap specified at § 679.133(a), upon transfer of the LLP license, the LLP license holder may transfer the amount of PCTC Program QS in excess of the ownership cap separately from the LLP license and assign it to one or more LLP licenses. However, a transfer will not be approved by NMFS if that transfer would cause the receiving LLP license to exceed an ownership cap specified at § 679.133(a).

(ii) Prior to the transfer of an LLP license that received an initial allocation of PCTC Program QS that exceeds an ownership cap specified at § 679.133(a), the LLP license holder must transfer the PCTC Program QS that is in excess of the ownership cap separately from that LLP license and assign it to one or more LLP licenses. On completion of the transfer of PCTC Program QS, the LLP license that was initially allocated an amount of PCTC Program QS in excess of the ownership cap may not exceed any ownership cap specified at § 679.133(a).

(iii) Any PCTC Program QS associated with the LLP license that is in excess of the ownership cap may be assigned to another LLP license through the application used to transfer LLP licenses, and only if the application is approved as specified at § 679.4(k)(7).

(iv) PCTC Program QS that is transferred from an LLP license that was initially allocated an amount of PCTC Program QS in excess of the ownership cap specified at § 679.133(a) and assigned to another LLP license may not be severed from the receiving LLP license.

(3) Transfer of processor PCTC Program QS Permits. A person may transfer a PCTC Program QS permit to another processor with an active FPP issued under § 679.4. A transfer of processor-held PCTC Program QS may not cause the receiver of the permit to exceed the ownership cap specified at § 679.133(a) at the time of transfer. A PCTC Program QS permit held by a processor and associated QS may be transferred only if the application for transfer of PCTC Program QS permit is filled out entirely. A PCTC Program QS permit initially issued to an FFP holder may be transferred to a processor with an active FPP issued under § 679.4 or to a processor with an active FFP that authorizes a vessel named on an LLP license with a BSAI Pacific cod trawl mothership endorsement.

(4) Transfer of PCTC Program QS assigned to a processor-held PCTC Program QS permit that exceeds PCTC Program ownership caps.

(i) If a PCTC Program QS permit receives an initial allocation of QS that exceeds an ownership cap specified at § 679.133(a), the processor may transfer QS in excess of the ownership cap separately from that PCTC Program QS permit and assign it to the PCTC Program QS permit of one or more processors with an active FPP or FFP.

However, a transfer will not be approved by NMFS if that transfer would cause the receiving processor to exceed an ownership cap specified at § 679.133(a).

(ii) Prior to the transfer of a PCTC Program QS permit that received an initial allocation of QS that exceeds an ownership cap specified at § 679.133(a), the permit holder must transfer the QS that is in excess of the ownership cap separately from that PCTC Program QS permit and assign it to one or more PCTC Program QS permits. On completion of the transfer of QS, the PCTC Program QS permit that was initially allocated an amount of QS in excess of the ownership cap may not exceed any ownership cap specified at § 679.133(a).

(iii) Any QS associated with the PCTC Program QS permit held by a processor that is in excess of an ownership cap may be transferred only if the application for transfer of PCTC Program QS permit is filled out entirely.

§ 679.131 PCTC Program annual harvester privileges.

(a) *Assigning CQ to a PCTC Program cooperative*—(1) *General.* (*See* also § 679.4(q)). (i) Every calendar year, PCTC Program QS assigned to LLP licenses and PCTC Program QS permits held by a PCTC Program processor must be assigned to a PCTC Program cooperative through a CQ permit to use the CQ derived from that PCTC Program QS to catch Pacific cod, crab PSC, or halibut PSC assigned to the PCTC Program.

(ii) NMFS will issue a CQ permit to a PCTC Program cooperative based on the aggregate PCTC Program QS of all LLP licenses and associated processors designated on an application for CQ that is approved by the Regional Administrator as described under paragraph (a)(4) of this section.

(iii) Processors must associate with a PCTC Program cooperative for the PCTC Program QS assigned to that processor's PCTC Program QS permit to be issued to a PCTC Program cooperative as CQ.

(2) *PCTC Program QS issued after issuance of CQ or Pacific cod trawl catcher vessel sector TAC.* Any PCTC Program QS assigned to an LLP license or PCTC Program QS permit after NMFS has issued CQ for a calendar year will not result in any additional CQ being issued to a PCTC Program cooperative even if that QS holder has assigned their LLP license or PCTC Program QS permit to a PCTC Program cooperative for that calendar year.

(3) *Failure to designate QS to a PCTC Program cooperative.* Failure to designate an LLP license with PCTC Program QS or a PCTC Program QS permit on a timely and complete application for CQ that is approved by the Regional Administrator as described under paragraph (a)(4) of this section, will result in the Regional Administrator not assigning that QS to a PCTC Program cooperative for the applicable calendar year.

(4) *Application for PCTC Program CQ.* PCTC Program cooperatives must submit a complete application by November 1 to receive CQ that includes the following:

(i) PCTC Program cooperative identification, including but not limited to the name of the cooperative and the taxpayer identification number;

(ii) PCTC Program QS holders and ownership documentation;

(iii) PCTC Program cooperative member vessels and LLP licenses;

(iv) PCTC Program cooperative associated processors;

(v) Vessels with FFPs on which the CQ issued to the PCTC Program cooperative will be used;

(vi) Certification of cooperative representative;

(vii) An attached copy of the membership agreement or contract that includes the following terms:

(A) How the cooperative intends to harvest its CQ;

(B) The obligations of QS holders who are members of a PCTC Program cooperative to ensure the full payment of PCTC Program fee liabilities that may be due;

(C) How cooperatives monitor and report leasing activity in GOA fisheries; and

(D) For a cooperative intending to harvest any amount of the CQ set-aside, the cooperative's plan for coordinating harvest and delivery of the CQ set-aside with an Aleutian Islands shoreplant as defined § 679.2.

(viii) Each year, all cooperatives must establish an inter-cooperative agreement. This inter-cooperative agreement must be included as part of each annual cooperative application and is required before NMFS will issue CQ. The inter-cooperative agreement must establish how the cooperatives intend to harvest the CQ set-aside in years when it applies and ensure harvests in the BS do not exceed the minimum set-aside as specified at § 679.132(a)(4)(i). For the calendar year 2023, NMFS will allow each cooperative to submit the inter-cooperative agreement prior to December 31, 2023.

(b) *Allocations of Pacific cod to the PCTC Program*—(1) *General.* Each calendar year, the Regional Administrator will determine the amount of the BSAI trawl catcher vessel sector's Pacific cod A and B season allocations that will be assigned to the PCTC Program as follows:

(i) *Incidental catch allowance (ICA).* For the A and B seasons, the Regional Administrator will establish an ICA to account for projected incidental catch of Pacific cod by trawl catcher vessels engaged in directed fishing for groundfish other than PCTC Program Pacific cod.

(ii) *Directed fishing allowance (DFA).* The remaining trawl catcher vessel sector's Pacific cod A and B season allocations are established as a DFA for the PCTC Program.

(2) *Calculation*—(i) *Determination of Pacific cod trawl catcher vessel TAC allocated to the PCTC Program.* NMFS will determine the Pacific cod trawl catcher vessel TAC in a calendar year in the annual harvest specification process at § 679.20.

(ii) *Annual apportionment of Pacific cod trawl catcher vessel TAC.* The annual apportionment of Pacific cod in the A and B seasons between the PCTC Program DFA and the ICA in a given calendar year is established in the annual harvest specifications.

(3) *Allocations of Pacific Cod DFA to PCTC Program*—(i) *Harvester percentage of DFA.* NMFS will assign 77.5 percent of the PCTC Program DFA to the QS attached to LLP licenses assigned to PCTC Program cooperatives. Each LLP license's QS units will correspond to a portion of the DFA according to the following equation: (LLP license QS units/(sum of all LLP license QS units)) × (.775 × DFA).

(ii) *Processor percentage of DFA.* NMFS will assign 22.5 percent of the PCTC Program DFA to the QS attached to PCTC Program QS permits assigned to PCTC Program cooperatives. Each QS permit's QS units will correspond to a portion of the DFA according to the following equation: (PCTC Program QS permit QS units/(sum of all PCTC Program QS permit QS units)) × (.225 × DFA).

(4) *Allocation of CQ to PCTC Program cooperatives*—(i) *General.* Annual CQ will be issued to each PCTC Program cooperative by NMFS based on the aggregate QS attached to LLP licenses and PCTC Program QS permits that are assigned to the cooperative. NMFS will issue CQ by A and B season and cooperatives will ensure the seasonal limits are not exceeded. Unused A season CQ may be rolled over to the B season. Annual CQ may be harvested from either BS or AI subareas subject to any limitations on BS harvest when the AI set-aside is in effect.

(ii) *CQ allocation to PCTC Program cooperatives.* The amount of CQ that is

issued to a PCTC Program cooperative is calculated according to the following formula:

CQ derived from QS assigned to LLP holders = [(.775 × DFA)
× (Total LLP license QS units assigned to that cooperative/sum of all LLP license QS units)]
CQ derived from QS assigned to PCTC Program QS permit holders = [(.225 × DFA)
× (Total PCTC Program Permit QS units assigned to that cooperative/sum of all PCTC Program QS permit QS units)]
The total CQ issued to that cooperative =
CQ derived from LLP license holders +
CQ derived from PCTC Program QS permit holders

(iii) *Issuance of CQ.* A and B season trawl catcher vessel Pacific cod sector DFAs will be issued to PCTC Program cooperatives as CQ. Annual CQ for each PCTC cooperative will include separate A and B season CQ.

(iv) *AI set-aside.* When in effect, the AI set-aside will be established annually as specified further at § 679.132.

(c) *Allocations of halibut PSC*—(1) *Halibut PSC limit for the PCTC Program.* NMFS specifies the overall halibut PSC limit for the PCTC Program for each calendar year in the harvest specifications pursuant to the procedures specified at § 679.21(b). NMFS calculates the halibut PSC limit according to the formula described in this paragraph. NMFS assigns that halibut PSC limit to PCTC Program cooperatives pursuant to paragraph (a)(1)(i) of this section.

(i) Multiply the halibut PSC limit apportioned to the BSAI trawl limited access sector's Pacific cod fishery category by 98 percent, which yields the halibut PSC apportioned to the trawl catcher vessel sector. The remaining 2 percent is apportioned to the AFA catcher/processor sector as specified at § 679.21(b)(4).

(ii) Assign 95 percent of the trawl catcher vessel sector's halibut PSC limit to the A and B seasons and 5 percent to the C season.

(iii) Each year after apportioning halibut PSC to the trawl catcher vessel sector for the A and B season, apply one of the following reductions to the A and B season trawl catcher vessel halibut PSC limit to determine the overall PCTC Program halibut PSC limit:

(A) In the first year of the PCTC Program, reduce the A and B season halibut PSC limit by 12.5 percent.

(B) In the second year, and each year thereafter, reduce the A and B season halibut PSC limit by 25 percent.

(2) *Halibut PSC assigned to each PCTC Program cooperative.* For each calendar year, the amount of halibut PSC assigned to a cooperative is determined by the following procedure and the amount will be specified on the CQ permit:

(i) Divide the amount of CQ units assigned to each PCTC Program cooperative by the amount of CQ allocated to all cooperatives. This yields the percentage of CQ units held by each cooperative.

(ii) Multiply the overall PCTC Program halibut PSC limit by the percentage of the CQ assigned to a cooperative. This yields the amount of halibut PSC issued to that cooperative as CQ.

(3) *Use of halibut PSC in the PCTC Program.* Halibut PSC limits assigned to the CQ permit issued to a PCTC Program cooperative may only be used by the members of that PCTC Program cooperative while harvesting CQ in the BSAI. Any halibut PSC used by a cooperative must be deducted from the amount of halibut PSC on its CQ permit. Halibut PSC limits for cooperatives are not subject to seasonal apportionment under § 679.21. Halibut PSC limits are issued to the PCTC Program for the duration of the A and B seasons. Unused halibut PSC limits may be reapportioned to the C season.

(d) *Allocations of crab PSC*—(1) *Crab PSC limits for the PCTC Program.* NMFS specifies the overall crab PSC limit for the PCTC Program for each calendar year in the harvest specifications pursuant to the procedures specified at § 679.21(e). NMFS calculates the crab PSC limit according to the formula described in this paragraph. NMFS then assigns that crab PSC limit to PCTC Program cooperatives with CQ pursuant to paragraph (a)(1)(i) of this section.

(i) Multiply the crab PSC limit apportioned to the BSAI trawl limited access sector's Pacific cod fishery category by 90.6 percent, which yields the percentage of crab PSC apportioned to the trawl catcher vessel sector. The remaining 9.4 percent goes to the AFA catcher/processor sector as specified at § 679.21(b)(4).

(ii) Assign 95 percent of the trawl catcher vessel sector's crab PSC limit to the A and B seasons and 5 percent to the C season.

(iii) Reduce the A and B season trawl catcher vessel crab PSC limit by 35 percent to determine the overall PCTC Program crab PSC limit.

(2) *Crab PSC assigned to each PCTC Program cooperative.* For each calendar year, the amount of crab PSC limit assigned to a cooperative is determined by the following procedure and the amount will be specified on the CQ permit:

(i) Divide the amount of CQ assigned to each PCTC Program cooperative by the total CQ assigned to all cooperatives. This yields the percentage of CQ held by that cooperative.

(ii) Multiply the overall PCTC Program crab PSC limit by the percentage of the CQ pool assigned to a cooperative. This yields the crab PSC limit issued to that cooperative as CQ.

(3) *Use of crab PSC in the PCTC Program.* Crab PSC limits assigned to the CQ permit issued to a PCTC Program cooperative may only be used by the members of that PCTC Program cooperative while harvesting CQ in the BSAI. Any crab PSC used by a cooperative must be deducted from the amount of crab PSC limit on its CQ permit. Crab PSC limits for cooperatives are not subject to seasonal apportionment under § 679.21. Crab PSC limits are issued to the PCTC Program for the duration of the A and B seasons. Unused crab PSC limits may be reapportioned to the C season.

(e) *Transfer of PSC limits.* Halibut and crab PSC limits are transferable between cooperatives according to the same rules established for CQ in paragraph (i) of this section.

(f) *Non-allocated Groundfish species.* The PCTC Program allocations are for directed fishing for Pacific cod by trawl catcher vessels. All groundfish species not allocated to PCTC Program cooperatives are managed to the maximum retainable amounts (MRAs), as described under § 679.20(e).

(g) *Rollover of Pacific cod.* If, after June 10, the Regional Administrator determines that reallocating a portion of the Pacific cod ICA or DFA from the PCTC Program to the BSAI trawl limited access sector C season is appropriate, the Regional Administrator may do so through notification in the **Federal Register** consistent with regulations at § 679.20(a)(7)(iii).

(h) *Rollover of PSC to the C Season.* If, after June 10, the Regional Administrator determines that reallocating a portion of the halibut or crab PSC limits from the PCTC Program to the BSAI trawl limited access sector C season is appropriate, the Regional Administrator may do so through notification in the **Federal Register** consistent with regulations at § 679.91(f)(4) and (5).

(i) *Process for inter-cooperative transfer of CQ.* NMFS will process an application through the NMFS online system for an inter-cooperative transfer of CQ, including PSC, provided that all information is completed by the transferor and transferee, with all applicable fields accurately filled in,

and all required documentation is provided.

(j) *PCTC Program cooperatives*—(1) *General.* This section governs the formation and operation of PCTC Program cooperatives. The regulations in this section apply only to PCTC Program cooperatives that have formed for the purpose of applying for and fishing with CQ issued annually by NMFS. PCTC Program cooperatives and cooperative members are responsible for ensuring the conduct of cooperatives is consistent with any relevant State or Federal antitrust laws. Membership in a cooperative is voluntary. No person may be required to join a cooperative. Any LLP license holder with PCTC Program QS may join a PCTC Program cooperative and assign their QS to that cooperative. Members may leave a cooperative, but any CQ derived from the QS held by that member will remain with that cooperative for the duration of the calendar year.

(2) *Legal and organizational requirements.* A PCTC Program cooperative must meet the following legal and organizational requirements before it is eligible to receive CQ:

(i) Each PCTC Program cooperative must be formed as a partnership, corporation, or other legal business entity that is registered under the laws of one of the 50 States or the District of Columbia;

(ii) Each PCTC Program cooperative must appoint an individual as the designated representative to act on the cooperative's behalf and to serve as a contact point for NMFS for questions regarding the operation of the cooperative. The designated representative may be a member of the cooperative, or some other individual designated by the cooperative to act on its behalf;

(iii) Each PCTC Program cooperative must submit a timely and complete application for CQ; and

(iv) Each PCTC Program cooperative must meet the mandatory requirements established in paragraph (j)(3) of this section.

(3) *Elements of PCTC Program cooperatives.* The following table describes the necessary elements to form and operate a PCTC Program cooperative:

(i) Who may join or associate with a PCTC Program cooperative?	Any PCTC Program QS holder named on a timely and complete application for CQ for that calendar year that is approved by NMFS. Individuals who are not QS holders may be employed by, or serve as the designated representative of, a cooperative, but cannot be members of the cooperative. Any processor with an FPP may associate with a cooperative. A processor with an FFP must be named on an LLP license with a BSAI Pacific cod trawl mothership endorsement.
(ii) What is the minimum number of LLP licenses required to form a cooperative?	A minimum of three LLP licenses are needed to form a cooperative.
(iii) How many unique LLP license holders are required to form a cooperative?	There is no minimum number of unique LLP license holders required to form a cooperative.
(iv) Is there a minimum amount of PCTC Program QS units that must be assigned to a PCTC Program cooperative?	No.
(v) What is allocated to the PCTC Program cooperatives?	A and B season CQ for Pacific cod, halibut PSC limits, and crab PSC limits, based on the total QS units assigned to the cooperative by its members.
(vi) Is this CQ an exclusive catch and use privilege?	Yes, the cooperative has an exclusive privilege to collectively catch and use this CQ. A cooperative can transfer all or a portion of this CQ to another cooperative.
(vii) Is there a period in a calendar year during which PCTC Program cooperative vessels may catch Pacific cod?	Yes, any cooperative vessel may harvest CQ during the during the A and B seasons specified at § 679.130(a)(2).
(viii) Can any vessel catch a PCTC Program cooperative's Pacific cod?	No, only vessels that are listed on the cooperative's Application for PCTC Program CQ may catch Pacific cod assigned to that cooperative.
(ix) Can a member of a PCTC Program cooperative transfer CQ individually without the approval of the other members of the cooperative?	No, only the designated representative of the cooperative, and not individual members, may transfer CQ to another cooperative, and only if that transfer is approved by NMFS.
(x) Are GOA sideboard limits assigned to specific persons or PCTC Program cooperatives?	Existing sideboard limits apply to individual vessels or LLP license holders, not cooperatives.
(xi) Can PCTC Program QS assigned to an LLP license or QS held by processors be assigned to more than one PCTC Program cooperative in a calendar year?	QS assigned to an LLP license may be assigned to only one cooperative in a calendar year. Multiple QS permits or LLP licenses held by a single person are not required to be assigned to the same cooperative. A processor may associate with more than one cooperative and any QS held by the processor would be divided between the associated cooperatives in the same proportion as the CQ derived from the LLP licenses.
(xii) Which members may catch the PCTC Program cooperative's CQ?	Use of a cooperative's CQ is determined by the cooperative contract signed by its members. Any violations of this contract by a cooperative member may be subject to civil claims by other members of the cooperative.
(xiii) Does a PCTC Program cooperative need a membership agreement or contract?	Yes, a cooperative must have a membership agreement or contract. A copy of this agreement or contract must be submitted to NMFS with the application for CQ. The membership agreement or contract must specify: (A) How the cooperative intends to harvest its CQ; and (B) The obligations of QS holders, who are members of a cooperative, to ensure the full payment of fee liabilities that may be due.
(xiv) What happens if the PCTC Program cooperative membership agreement or contract is modified during the fishing year?	A copy of the amended membership agreement or contract must be sent to NMFS in accordance with § 679.131.
(xv) What happens if the cooperative exceeds its CQ amount?	A cooperative is not authorized to catch Pacific cod or use halibut or crab PSC limits in excess of the amount on its CQ permit. Exceeding a CQ permit is a violation of the regulations.

(xvi) Is there a limit on how much CQ a PCTC Program cooperative may hold?	No, but each QS holder is subject to ownership caps, and a vessel may be subject to vessel use caps. See § 679.133.
(xvii) Is there a limit on how much Pacific cod a vessel may catch?	Yes, generally a vessel may not catch more than 5 percent of the Pacific cod assigned to the PCTC Program for that calendar year. See § 679.133 for use cap provisions.
(xviii) Are there any special reporting requirements?	The designated representative of the cooperative may submit an annual PCTC Program cooperative report to the North Pacific Fishery Management Council.
(xix) Is there a requirement that a PCTC Program cooperative pay PCTC Program cost recovery fees?	Yes, see § 679.135 for the provisions that apply. PCTC Program cooperatives are responsible for paying cost recovery fees.
(xx) Is there any restriction on deliveries of CQ?	Sometimes, if the AI CQ set-aside is in effect for the fishing year as specified at § 679.132. Cooperatives must establish, through an inter-cooperative agreement, how 12 percent of the BSAI A season CQ will be set aside for delivery to an Aleutian Islands shoreplant.

(4) *Successors-in-interest.* If a member of a PCTC Program cooperative dies (in the case of an individual) or dissolves (in the case of a business entity), the CQ derived from the QS assigned to the cooperative for that year from that person remains under the control of the cooperative for the duration of that calendar year as specified in the cooperative contract. Each cooperative is free to establish its own internal procedures for admitting a successor-in-interest during the fishing season due to the death or dissolution of a cooperative member.

§ 679.132 Aleutian Islands CQ set-aside provisions in the PCTC Program.

(a) *Aleutian Islands CQ set-aside provisions in the PCTC Program*—(1) *Calculation of the Aleutian Islands Pacific cod non-CDQ ICA and DFA.* Each year, during the annual harvest specifications process set forth at § 679.20(c), the Regional Administrator will specify the AI Pacific cod non-CDQ ICA, the DFA from the AI Pacific cod non-CDQ TAC, and the AI set-aside as follows:

(2) *Aleutian Islands Pacific cod non-CDQ ICA.* The AI Pacific cod non-CDQ ICA will be deducted from the aggregate portion of the AI Pacific cod non-CDQ TAC annually allocated to the non-CDQ sectors identified at § 679.20(a)(7)(ii)(A).

(3) *Aleutian Islands Pacific cod non-CDQ DFA.* The AI Pacific cod non-CDQ DFA will be the amount of the AI Pacific cod TAC remaining after subtraction of the AI Pacific cod CDQ reserve and the AI Pacific cod non-CDQ ICA.

(4) *Calculation of the Aleutian Islands CQ set-aside.* The Regional Administrator will specify the AI set-aside in either of the following ways:

(i) When the AI DFA exceeds 12 percent of A season CQ, the AI set-aside is 12 percent of the PCTC Program A season CQ and is in effect during the A and B seasons.

(ii) If the AI non-CDQ DFA is below 12 percent of the PCTC Program A season CQ, then the AI set-aside will be set equal to the AI non-CDQ DFA and is in effect during the A and B seasons. When the AI set-aside is in effect and set equal to the AI non-CDQ DFA, directed fishing for Pacific cod in the AI may only be conducted by PCTC Program vessels that deliver their catch of AI Pacific cod to an Aleutian Islands shoreplant. After June 10, the Regional Administrator may open directed fishing for AI non-CDQ Pacific cod for other sectors.

(b) *Annual notice of intent to process Aleutian Islands Pacific cod*—(1) *Submission of notice.* The provisions of this section will apply if a representative of either the City of Adak or the City of Atka submits to the Regional Administrator a timely and complete notice of its intent to process PCTC Program Pacific cod during the upcoming fishing year.

(2) *Submission method and deadline.* The notice of intent to process PCTC Program Pacific cod for the upcoming fishing year must be submitted in writing to the Regional Administrator by a representative of the City of Adak or the City of Atka no later than October 15 of each year in order for the provisions of this section to apply during the upcoming fishing year. Notices of intent to process received later than October 15 may not be accepted by the Regional Administrator.

(3) *Contents of notice.* A notice of intent to process PCTC Program Pacific cod for the upcoming fishing year must contain the following information:

(i) Date of submission,

(ii) Name of city,

(iii) Statement of intent to process PCTC Program Pacific cod,

(iv) Identification of the fishing year during which the city intends to process PCTC Program Pacific cod,

(v) Contact information for the representative of the city, and

(vi) Documentation of authority to represent the City of Adak or the City of Atka.

(4) *NMFS confirmation and notice.* On or before November 30, the Regional Administrator will notify the representative of the City of Adak or the City of Atka, confirming receipt of their official notice of intent to process PCTC Program Pacific cod. Then, NMFS will announce through notification in the **Federal Register** whether the AI set-aside will be in effect for the upcoming fishing year.

(5) *AI CQ set-aside PCTC Program cooperative provisions.* If the representative of the City of Adak or the City of Atka submits a timely and complete notice of intent to process in accordance of this section, then the following provisions will apply for the fishing year following the notice:

(i) The PCTC Program cooperative(s) are required to set-aside an amount of CQ calculated by the Regional Administrator pursuant to (a)(4) of this section for delivery to an Aleutian Islands shoreplant as defined at § 679.2.

(ii) All cooperatives must enter into an inter-cooperative agreement that describes how the AI set-aside will be administered by the cooperatives to ensure that the PCTC Program harvests from the BS do not exceed the minimum set-aside. This inter-cooperative agreement must establish how the cooperatives intend to harvest the AI set-aside when it applies. This inter-cooperative agreement must be provided as part of the annual PCTC Program cooperative application as specified at § 679.131(a)(4) and is required before NMFS can issue CQ.

(iii) The inter-cooperative agreement must establish how cooperatives would ensure that trawl catcher vessels less than 60 ft (18.3 m) LOA assigned to an LLP license with a transferable AI trawl endorsement have the opportunity to harvest 10 percent of the AI set-aside for delivery to an Aleutian Islands shoreplant.

(c) *PCTC Program A season CQ set-aside limitations.* (1) If the Regional Administrator has approved a notice of intent to process, vessels authorized under the PCTC Program shall not harvest the amount of the AI set-aside in the BS subarea.

(2) PCTC Program cooperatives may not deliver more than the PCTC A season CQ minus the AI set-aside established under this section to processors in the BS subarea when the AI CQ set-aside is in effect.

(3) The City of Adak or the City of Atka may withdraw their annual notice of intent to process prior to the end of B season.

(4) The Regional Administrator may remove the delivery requirement for some or all of the projected unused AI CQ set-aside if the Regional Administrator determines that the Aleutian Islands shoreplants will not process the entire AI CQ set-aside.

(5) In the event all notices of intent to process are withdrawn, the Regional Administrator will remove the delivery requirement for CQ that was set-aside for that calendar year.

(6) To remove the AI CQ set-aside delivery requirement for that calendar year, the Regional Administrator will publish a document in the **Federal Register**.

§ 679.133 PCTC Program ownership caps, use caps, and sideboard limits.

(a) *Ownership and use caps*—(1) *General.* (i) Ownership caps limit the amount of PCTC Program QS that may be owned by a harvester or processor and their affiliates. Use caps limit the amount of CQ that may be harvested by a vessel or received and processed by a processor.

(ii) Use caps do not apply to halibut or crab PSC CQ.

(iii) Ownership and use caps may not be exceeded except as provided under paragraph (a)(6) of this section.

(iv) All QS ownership caps are a percentage of the initial PCTC Program QS pool established by NMFS at § 679.130(e).

(v) The CQ processing use cap is a percentage of the total amount of CQ issued to cooperatives during a calendar year.

(vi) The vessel use cap is a percentage of the amount of CQ assigned to the PCTC Program during a calendar year.

(2) *Harvester PCTC Program QS ownership cap.* A person may not individually or collectively own more than 5 percent of the PCTC Program QS initially assigned to harvesters unless that person qualifies for an exemption to this ownership cap under paragraph (a)(6) of this section based on their qualifying catch history. Processor-issued QS does not count toward this ownership cap.

(3) *Vessel use cap.* A catcher vessel may not harvest an amount of CQ greater than 5 percent of the CQ issued to the PCTC Program during a calendar year unless that vessel qualifies for an exemption to this use cap under paragraph (a)(6) of this section based on their qualifying catch history.

(4) *Processor ownership cap.* A person may not individually or collectively own more than 20 percent of the PCTC Program QS initially assigned to processors unless that person qualifies for an exemption to this ownership cap under paragraph (a)(6) of this section based on their qualifying processing history.

(5) *Processing use cap.* A processor, at the firm or company level, may not process more than 20 percent of the CQ assigned to the PCTC Program during a calendar year unless that processor qualifies for an exemption to this use cap under paragraph (a)(6) of this section based on their qualifying processing history. The amount of CQ that is received by a PCTC Program processor is calculated based on the sum of all landings made with CQ received or processed by that processor and the CQ received or processed by any person affiliated with that processor as that term is defined at § 679.2.

(6) *Cap exemptions.* (i) A person may receive an initial allocation of PCTC Program QS in excess of the harvester ownership cap. This exemption is non-transferable.

(ii) A person may receive an initial allocation of PCTC Program QS in excess of the processor ownership cap. This exemption is non-transferable.

(iii) A vessel designated on an LLP license that received an initial allocation of PCTC Program QS in excess of the harvester ownership cap may harvest CQ in excess of the vessel use cap up to the amount of CQ resulting from QS assigned to the LLP license. This exemption is non-transferable.

(iv) *Processor use cap exemptions.* A processor that received an initial allocation of PCTC Program QS in excess of the processor ownership cap may process more than 20 percent of CQ during a calendar year up to an amount of CQ proportional to the ratio of QS held by the processor to the total amount of QS held by processors. This exemption is non-transferable. An Aleutian Islands shoreplant is not subject to this processor use cap.

(7) *Transfer limitations.* An eligible harvester that receives an initial allocation of PCTC Program QS that exceeds the ownership cap listed in paragraph (a)(2) of this section shall not receive any PCTC Program QS by transfer unless and until the eligible harvester's holdings of PCTC Program QS in the PCTC Program are reduced to an amount below the use cap specified in this paragraph (a).

(b) *Sideboard limits—general.* The regulations in this section restrict the holders of LLP licenses issued PCTC Program QS from using the increased flexibility provided by the PCTC Program to expand their level of participation in GOA groundfish fisheries.

(1) *Sideboard limit restrictions for LLP licenses authorizing AFA non-exempt catcher vessels.* LLP licenses that authorize AFA non-exempt catcher vessels will be subject to the sideboard limitations specified at § 679.64(b)(4)(i).

(2) *At-Sea Processing Sideboard Limit.* A sideboard limit will be specified on each LLP license with a BSAI Pacific cod trawl mothership endorsement. Each LLP license with a BSAI Pacific cod trawl mothership endorsement may receive CQ deliveries from a catcher vessel not to exceed 125 percent of a catcher/processor's processing history as defined at § 679.130 and subject to eligibility requirements under BSAI FMP Amendment 120 to limit CPs acting as motherships.

§ 679.134 PCTC Program permits, catch monitoring, catch accounting, and recordkeeping and reporting.

(a) *Permits.* For permit information, please see § 679.4(q).

(b) *Catch monitoring requirements for PCTC Program catcher vessels.* The owner and operator of a catcher vessel must ensure the vessel complies with the observer coverage requirements described at § 679.51(a)(2) at all times the vessel is participating in a PCTC Program cooperative.

(c) *Catch monitoring requirements for motherships receiving unsorted codends from a PCTC Program catcher vessel*—(1) *Catch weighing.* All catch, except halibut sorted on deck by vessels participating in the halibut deck sorting described at § 679.120, must be weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately and all catch must be made available for sampling by an observer.

(2) *Additional catch monitoring requirements.* Comply with catch monitoring requirements specified at § 679.93(c).

(d) *Catch monitoring requirements for shoreside processors.* All groundfish landed by catcher vessels described at § 679.51(a)(2) must be sorted, weighed on a scale approved by the State of Alaska as described at § 679.28(c), and be made available for sampling by an observer, NMFS staff, or any individual authorized by NMFS. Any of these

persons must be allowed to test any scale used to weigh groundfish to determine its accuracy.

(e) *Catch accounting*—(1) *Pacific cod.* All Pacific cod harvests by a vessel that is named on a PCTC Program CQ application and fishing under a CQ permit will be debited against the CQ for that cooperative during the fishing seasons as defined at § 679.130(a)(2).

(2) *PCTC Program halibut and crab PSC.* All halibut and crab PSC used by a vessel that is named on an Application PCTC Program CQ and fishing under a CQ permit will be debited against the CQ for that cooperative during the fishing seasons as defined at § 679.130(a)(2).

(3) *Groundfish sideboard limits.* All groundfish harvests in the BSAI and GOA that are subject to a sideboard limit for that groundfish species as described under § 679.133(c), except groundfish harvested by a vessel when participating in the Central GOA Rockfish Program, will be debited against the applicable sideboard limit.

(f) *Recordkeeping and reporting.* The owners and operators of catcher vessels and processors authorized as participants in the PCTC Program must comply with the applicable recordkeeping and reporting requirements of this section and must assign all catch to a PCTC Program cooperative as applicable at the time of catch or receipt of Pacific cod. All owners of catcher vessels and processors authorized as participants in the PCTC Program must ensure that their designated representatives or employees comply with all applicable recordkeeping and reporting requirements.

(1) *Logbook*—(i) *DFL.* Operators of catcher vessels participating in the PCTC Program fishery must maintain a daily fishing logbook for trawl gear as described at § 679.5.

(ii) *ELB.* Operators of a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement or a mothership receiving CQ must use a combination of NMFS-approved catcher/processor trawl gear ELB and eLandings to record and report groundfish and PSC information as described at § 679.5 to record PCTC Program landings and production.

(2) *eLandings.* Managers of shoreside processors that receive Pacific cod in the PCTC Program must use eLandings or NMFS-approved software as described at § 679.5(e) to record PCTC Program landings and production.

(3) *Production reports.* Operators of a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement that receives and purchases landings of CQ must submit a production report as described at § 679.5(e)(10).

(4) *Product transfer report (PTR), processors.* Operators of a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement and managers of shoreside processors that receive and purchase landings of CQ must submit a PTR as described at § 679.5(g).

(5) *Vessel monitoring system (VMS) requirements.* Operators of catcher vessels assigned to a PCTC Program cooperative or that are subject to sideboard limits detailed at § 679.133 must use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska during the A and B season.

(6) *PCTC Program cost recovery fee submission* (See § 679.135).

(7) *Pacific cod Ex-vessel Volume and Value Report.* A processor that receives and purchases landings of CQ must submit annually to NMFS a complete Pacific cod Ex-vessel Volume and Value Report, as described at § 679.5(u) for each reporting period for which the PCTC processor receives CQ.

§ 679.135 PCTC Program cost recovery.

(a) *Cost recovery fees*—(1) *Responsibility.* Each PCTC Program cooperative must comply with the requirements of this section.

(i) Subsequent transfer of CQ or QS held by PCTC Program cooperative members does not affect the cooperative's liability for noncompliance with this section.

(ii) Non-renewal of a CQ permit does not affect the cooperative's liability for noncompliance with this section.

(iii) Changes in the membership in a PCTC Program cooperative, such as members joining or departing during the relevant year, or changes in the amount of QS holdings of those members does not affect the cooperative's liability for noncompliance with this section.

(2) *Fee collection.* PCTC Program cooperatives that receive CQ are responsible for submitting the cost recovery payment for all CQ landings made under the authority of their CQ permit.

(3) *Payment.* (i) A cooperative must submit any cost recovery fee liability payment(s) no later than August 31 following the calendar year in which the CQ landings were made.

(ii) Make electronic payment payable to NMFS.

(iii) Submit payment and related documents as instructed on the NMFS Alaska Region website as defined at § 679.2.

(iv) Payment must be made electronically in U.S. dollars using an approved payment method available on the payment website.

(b) *Pacific cod standard ex-vessel value determination and use.* NMFS will use the standard prices calculated for Pacific cod based on information provided in the Pacific Cod Ex-vessel Volume and Value Report described at § 679.5(u)(1) from the previous calendar year.

(c) *PCTC Program fee percentage*—(1) *Fee percentage.* The fee percentage is the amount as determined by the factors and methodology described in paragraph (c)(2) of this section. This amount will be announced by publication in the **Federal Register**. This amount must not exceed 3.0 percent of the gross ex-vessel value pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value.* Each year NMFS shall calculate and publish the fee percentage following the fishing season in which the CQ landings were made, according to the following factors and methodology:

(i) NMFS must use the following factors to determine the fee percentage:

(A) The catch to which the PCTC Program cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management, data collection, and enforcement of the PCTC Program.

(ii) NMFS must use the following equations to determine the fee percentage:

$$100 \times DPC/V$$

where:

DPC = the direct program costs for the PCTC Program for the previous calendar year with any adjustments to the account from payments received in the previous year.

V = total of the standard ex-vessel value of the catch subject to the PCTC cost recovery fee liability for the current year.

(iii) The calculated fee percentage is applied to the ex-vessel value of CQ landings made in the previous calendar year.

(3) *Applicable fee percentage.* The cooperative must use the fee percentage applicable at the time a PCTC landing is debited from a CQ allocation to calculate the cost recovery fee liability for any retroactive payments for CQ landed.

(4) *Fee liability determination for a cooperative.* (i) All cooperatives are subject to a fee liability for any CQ debited from a CQ allocation during a calendar year.

(ii) The PCTC Program fee liability assessed to a PCTC Program cooperative

is based on the proportion of the standard ex-vessel value of Pacific cod debited from the cooperative's CQ relative to all cooperatives during a calendar year as determined by NMFS.

(iii) NMFS will provide a fee liability summary letter to all cooperatives by no later than August 1 of each year. The summary will explain the fee liability determination including the current fee percentage, details of CQ pounds debited from CQ allocations by permit, species, date, and prices.

(d) *Underpayment of fee liability.* (1) Pursuant to § 679.131, no cooperative will receive any CQ unless that cooperative has made full payment of cost recovery liability at the time it applies for CQ.

(2) If a cooperative fails to submit full payment for PCTC Program cost recovery fee liability by the date described in paragraph (a)(3) of this section:

(i) At any time thereafter the Regional Administrator may send an IAD to the cooperative stating the amount of the cooperative's estimated fee liability that is past due and requesting payment. If payment is not received by the 30th day after the date on the IAD, the agency may pursue collection of the unpaid fees.

(ii) The Regional Administrator may disapprove any application to transfer CQ to or from the cooperative in accordance with § 679.130.

(iii) No CQ permit will be issued to that cooperative for that following calendar year and the Regional Administrator may continue to prohibit issuance of a CQ permit for any subsequent calendar years until NMFS receives the unpaid fees.

(iv) No CQ will be issued based on the QS held by the members of that PCTC Program cooperative to any other CQ permit for any subsequent calendar years until NMFS receives the unpaid fees.

(e) *Over payment.* Payment submitted to NMFS in excess of the annual PCTC Program cost recovery fee liability for a cooperative will be credited against the cooperative's future cost recovery fee liability unless the cooperative requests the agency refund the over payment. Payment processing fees may be deducted from any fees returned to the cooperative.

(f) *Appeals.* A cooperative that receives an IAD for incomplete payment of a fee liability may appeal the IAD pursuant to 15 CFR part 906.

(g) *Annual report.* Each year, NMFS will publish a report describing the PCTC Program cost recovery fee program.

■ 13. Revise table 40 to part 679 to read as follows:

TABLE 40 TO PART 679—BSAI HALIBUT PSC SIDEBOARD LIMITS FOR AFA CATCHER/PROCESSORS AND AFA CATCHER VESSELS

In the following target species categories as defined at § 679.21(b)(1)(iii) and (e)(3)(iv) . . .	The AFA catcher/processor halibut PSC sideboard limit in metric tons is . . .	The AFA catcher vessel halibut PSC sideboard limit in metric tons is . . .
All target species categories	286	N/A
Pacific cod trawl	N/A	N/A
Pacific cod hook-and-line or pot	N/A	2
Yellowfin sole	N/A	101
Rock sole/flathead sole/"other flatfish" [1]	N/A	228
Turbot/Arrowtooth/Sablefish	N/A	0
Rockfish [2]	N/A	2
Pollock/Atka mackerel/"other species"	N/A	5

■ 14. Revise table 56 to part 679 to read as follows:

TABLE 56 TO PART 679—GOA SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY NON-EXEMPT AFA CATCHER VESSELS IS PROHIBITED

Species or species group	Management or regulatory area and processing component (if applicable)
Pollock	Southeast Outside District, Eastern GOA.
Pacific cod	Eastern GOA, inshore component.
	Eastern GOA, offshore component.
Sablefish	Western GOA.
	Central GOA.
	Eastern GOA.
Shallow-water flatfish	Western GOA.
	Eastern GOA.
Deep-water flatfish	Western GOA.
	Central GOA.
	Eastern GOA.
Rex sole	Western GOA.
	Eastern GOA.
Arrowtooth flounder	Western GOA.
	Eastern GOA.
Flathead sole	Western GOA.
	Eastern GOA.
Pacific ocean perch	Western GOA.
	Central GOA.
	Eastern GOA.
Northern rockfish	Western GOA.
Shortraker rockfish	Western GOA.

TABLE 56 TO PART 679—GOA SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY NON-EXEMPT AFA CATCHER VESSELS IS PROHIBITED—Continued

Species or species group	Management or regulatory area and processing component (if applicable)
	Central GOA.
	Eastern GOA.
Dusky rockfish	Western GOA.
	Central GOA.
	Eastern GOA.
Rougheye rockfish	Western GOA.
	Central GOA.
	Eastern GOA.
Demersal shelf rockfish	Southeast Outside District.
Thornyhead rockfish	Western GOA.
	Central GOA.
	Eastern GOA.
Other rockfish	Central GOA.
	Eastern GOA.
Atka mackerel	GOA.
Big skates	Western GOA.
	Central GOA.
	Eastern GOA.
Longnose skates	Western GOA.
	Central GOA.
	Eastern GOA.
Other skates	GOA.
Sculpins	GOA.
Sharks	GOA.
Octopuses	GOA.

[FR Doc. 2023–16526 Filed 8–3–23; 4:15 pm]

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FEDERAL REGISTER

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Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2023–0051, Sequence No. 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2023–05; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2023–05. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective dates see the separate documents, which follow.

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

RULES LISTED IN FAC 2023–05

Item	Subject	FAR case	Analyst
I	Use of Acquisition 360 to Encourage Vendor Feedback	2017–014	Delgado.
II	Small Disadvantaged Business Threshold	2023–004	Moore.
III	Update to ASSIST Database References	2022–008	Moore.
IV	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2023–05 amends the FAR as follows:

Item I—Use of Acquisition 360 To Encourage Vendor Feedback (FAR Case 2017–014)

This final rule amends the FAR to implement the Acquisition 360 Survey tool, a voluntary online survey to elicit industry feedback on the preaward and debriefing processes in a consistent and standardized manner. Contracting officers may insert the provision into solicitations in accordance with agency procedures. However, because it is voluntary, the impact on offerors or contractors is expected to be minimal.

Item II—Small Disadvantaged Business Threshold (FAR Case 2023–004)

This final rule amends the FAR to update the net worth threshold for the owners of small disadvantaged business concerns to align with SBA's regulations, and updates obsolete FAR citations to certain SBA regulations.

Item III—Update to ASSIST Database References (FAR Case 2022–008)

This final rule amends the FAR to update obsolete contact information, web addresses, and office titles necessary to obtain Federal and Defense specifications and standards from the DoD Acquisition Streamlining and Standardization Information System (ASSIST) website or, for Defense documents not available in ASSIST, from the Defense Standardization Program Office. These updates will ensure offerors have the most current information with which to obtain both Federal and Defense specifications and standards that are referenced in an agency's solicitation. The final rule will not have a significant economic impact on a substantial number of small entities because it simply updates contact information, web addresses and office titles in existing regulations.

Item IV—Technical Amendments

Administrative change is made at FAR 52.212–3.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2023–05 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2023–05 is effective August 8, 2023 except for Item I, which is effective September 22, 2023, and Items II, III, and IV, which are effective September 7, 2023.

John M. Tenaglia,

Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Karla Smith Jackson,

Assistant Administrator for Procurement, Senior Procurement Executive/Deputy CAO, National Aeronautics and Space Administration.

[FR Doc. 2023–16657 Filed 8–7–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 12, 26, and 52

[FAC 2023–05, FAR Case 2017–014, Item I; Docket No. 2017–001, Sequence No. 1]

RIN 9000–AN43

Federal Acquisition Regulation: Use of Acquisition 360 To Encourage Vendor Feedback

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to encourage use of voluntary feedback mechanisms, where appropriate, to support continual improvement of the acquisition process.

DATES: Effective September 22, 2023.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207, or by email at *Zenaida.delgado@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2023–05, FAR Case 2017–014.

SUPPLEMENTARY INFORMATION:

I. Background

Understanding how contractors experience the Federal marketplace is critical to the Government's ability to build and maintain a healthy, diverse, and resilient supplier base that can help Federal agencies use acquisition as a catalyst to address the needs of our Nation. While many agencies periodically seek feedback from their contractors, there are no Government-wide mechanisms for agencies to collect and consider this information in a consistent and organized manner. This final rule fills an important gap in Government-vendor communications by providing a standardized tool for voluntary vendor feedback.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 85 FR 57177 on September 15, 2020, to encourage use of voluntary feedback mechanisms, where appropriate, to support continual improvement of the acquisition process. These mechanisms were largely developed through pilot efforts conducted in accordance with the Office of Federal Procurement Policy (OFPP) memorandum ''Acquisition 360—Improving the Acquisition Process through Timely Feedback from External and Internal Stakeholders.'' The memorandum established the Acquisition 360 Survey tool, a voluntary online survey to elicit industry feedback on the preaward and debriefing processes in a consistent and standardized manner.

An advance notice of proposed rulemaking (ANPR) was published at 83 FR 34820 on July 23, 2018, to obtain public input regarding matters related to contractor feedback, the overall cost of compliance and any specific regulatory requirements that are particularly burdensome. The proposed Acquisition 360 Survey questions were also posted.

One respondent submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments is provided as follows:

A. Summary of Significant Changes

There are no significant changes from the proposed rule. Minor corrections were made at FAR 1.102–3(a)(3) to the citation referencing performance standards, and to update a reference at FAR 26.206(a). The new FAR provision at FAR 52.201–1 was added to the list of provisions and clauses at FAR 12.301(e) to reflect the final rule's applicability to commercial solicitations.

B. Analysis of Public Comments

1. Support for the Rule

Comment: The respondent commends OFPP and the Federal Acquisition Regulatory Council for their initiative in advancing this rule, and states that both the information and the initiative to promote voluntary feedback has merit. The respondent also notes the Government estimate of 10 minutes to complete the survey, and finds this to be a worthy time investment to facilitate effective communication that could prevent delays or errors due to miscommunication.

Response: The Councils appreciate the support for the rule.

2. True 360-Degree Rollout

Comment: The respondent suggests that ''Acquisition 360'' techniques would be most effective by implementing a ''true 360-degree rollout, including adding questions that would identify both contract type and non-bidders.''

Response: OFPP will consider the respondent's comment during development of the final question set. The final question set will be available for public comment as part of the Paperwork Reduction Act common form information collection notice.

3. Acquisition 360 Should Be Made Mandatory

Comment: Rather than merely encouraging Contracting Officers to insert the provision at FAR 52.201–1, more should be provided to ensure the full accomplishment of the Acquisition 360 initiative and achieve the objective to obtain actionable feedback on the acquisition process. The respondent also recommends more direct language to encourage participants' feedback.

Response: While actionable feedback is desired, it is equally important that participants understand the survey is completely voluntary and will not impact the outcome of a specific acquisition. Adding language to further encourage survey use may confuse participants or compel a response out of fear that not responding would preclude the opportunity to participate in an acquisition.

4. Rule Does Not Accomplish the Goals of the 2015 OFPP Memorandum

i. Public Reporting

Comment: The effort outlined in the proposed rule falls short of the goals outlined in the memorandum dated March 18, 2015, titled ''Improving the Acquisition Process through Timely Feedback from External and Internal Stakeholders,'' by failing to publicly report information acquired from such evaluations.

Response: The Councils and OFPP agree that publicly reporting survey data would be beneficial; however, the open-comment fields present the possibility of personal or private information being disclosed, if entered voluntarily by a participant. Full transparency is not feasible, as review and redaction of comments would be necessary prior to publication to prevent the unintentional release of personal or private information. The Councils and OFPP intend to publicize efforts taken in response to the survey data so that all parties can understand the impact and efforts undertaken as a result.

ii. Postaward Goals

Comment: The proposed rule does not meet the goals of Acquisition 360 by not including postaward experiences or acquisition outcomes in the evaluation.

Response: The survey does include questions regarding the postaward debriefing process. Additionally, the proposed revisions at 1.102–3(a)(3) encourage agencies to seek feedback on ''targeted aspects of an acquisition throughout its lifecycle''.

5. Use of Pilot Program Version of the Survey Questions

Comment: The respondent recommends reviving the original intent by using the pilot program version of the survey questions in the Acquisition 360 portal and adding three options: ''contractor'', ''program office'', and ''acquisition office'' to route survey participants to the appropriate version of the survey.

Response: OFPP will consider the respondent's comment during development of the final question set. The final question set will be available for public comment as part of the Paperwork Reduction Act common form information collection notice.

6. OMB Centralized Survey Portal

Comment: The respondent suggests that survey data be collected through the Office of Management and Budget's (OMB) centralized survey portal, which should facilitate greater data submission, access, and analysis across the Government.

Response: The current iteration of the survey, though hyper-linked at *acquisition.gov/360* for ease, is hosted via the OMB MAX Survey tool so that agencies can be granted access to data. Ease of access and the ability of agencies to receive their response data will remain a priority when and if the survey tool is moved to other platforms.

7. Anonymization of the Data

Comment: Respondent recommends language that allows the survey to anonymously categorize the data for publication.

Response: Subject to the quality and reliability of the data, the Councils and OFPP may perform certain analyses and develop statistics, reports, or other items summarizing the results of the collection activity and may make public aggregate information discussing efforts taken in response to the survey data. Efforts will be made not to disclose personal or private information related to any particular survey participant.

8. Use of Other Mechanisms

Comment: Respondent recommends language to encourage the use of other mechanisms where Government and industry may also provide input through a freeform response on the OMB portal.

Response: The revisions at 1.102–3(a) encourage agencies to ''utilize a variety of feedback mechanisms available to the public (*e.g.,* surveys, in-person, and/or group exchanges)'' and seek feedback on ''targeted aspects of an acquisition throughout its lifecycle.'' This may include freeform response. In addition, improving communication between Government and industry partners is an ongoing process and multi-dimensional effort that involves the coordination of various elements and networks. Besides regulatory actions, agency personnel such as the designated industry liaisons and acquisition innovation advocates, continue to promote effective and meaningful communication strategies. With the aid of a ''crowd-sourcing'' idea management tool, OFPP will also solicit additional, targeted input to gather more ideas on modernizing and improving communication during the acquisition process. These efforts will continue in parallel with the rollout of this rulemaking and the voluntary use of a standardized feedback survey as part of broader efforts to improve Government-vendor communication and strengthen the diversity and resiliency of the Federal supplier base.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items, or for Commercial Services

This rule adds a provision at FAR 52.201–1, Acquisition 360: Voluntary Survey. The provision is not prescribed for any particular procurement; agencies, in accordance with their procedures, may include it in solicitations at or below the SAT and in solicitations for commercial services and commercial products, including COTS items.

IV. Expected Impact of the Rule

This final rule amends the FAR to implement the Acquisition 360 Survey tool, a voluntary online survey to elicit industry feedback on the preaward and debriefing processes in a consistent and standardized manner. Contracting officers may insert the provision into solicitations per agency guidance. However, because it is voluntary, the impact on offerors or contractors is expected to be minimal.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801–808) requires interim and final rules to be submitted to Congress before the rule takes effect. DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

This final rule amends the Federal Acquisition Regulation to implement the voluntary use of the Acquisition 360 Survey to elicit feedback on preaward and debriefing processes in a consistent and standardized manner. The objective of the rule is to encourage agency use of the Acquisition 360 Survey tool to obtain feedback from offerors which may be used to improve their acquisition processes.

No public comments were received in response to the initial regulatory flexibility analysis.

Data generated from the Federal Procurement Data System (FPDS) and the System for Award Management (SAM) have been used as the basis for estimating the number of small entities affected by this rule. Currently, there are approximately 331,899 small entities registered in SAM that were small in at least one North American Industry Classification Systems (NAICS) code. The rule, therefore, will potentially impact all 331,899 small entities.

To estimate the likely number of small entities impacted by the rule, we used the average of FPDS data for fiscal years 2020, 2021, and 2022. Examination of the data reveals that the number of unique small entities that received contract awards was 79,264. DoD, GSA, and NASA estimate that each unique small entity would respond to approximately 3 solicitations, equating to 237,791 potential offers. It is anticipated that 33 percent of these potential offerors will submit a response to the survey based upon the outcome of a previous OFPP-conducted pilot. Based upon this data, it is anticipated that 78,471 small entities will likely be affected by the rule.

The final rule encourages potential offerors to provide feedback at *https://www.acquisition.gov/360* on agency acquisition processes.

There were other alternatives considered, to include the status quo, for Government acquisition officials to elicit feedback from their contractors, such as vendor outreach with industry days on the agency's performance of its contract administration responsibilities; however, these would not accomplish the stated objective of the rule, nor would they minimize the economic impact of the rule on small entities.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel

for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3521) applies. The rule contains information collection requirements. OMB has cleared this information collection requirement under OMB Control Number 9000–0204, Acquisition 360 Voluntary Survey.

List of Subjects in 48 CFR Parts 1, 12, 26, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 12, 26, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 12, 26, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.102–3 and 1.102–4 [Redesignated]

■ 2. Redesignate sections 1.102–3 and 1.102–4 as sections 1.102–4 and 1.102–5.

■ 3. Add new section 1.102–3 to read as follows:

1.102–3 Evaluating agency acquisition processes.

(a) Agencies are encouraged to develop internal procedures seeking voluntary feedback from interested parties in an acquisition to assess process strengths and weaknesses and improve effectiveness and efficiency of the acquisition process. Agencies may—

(1) Utilize a variety of feedback mechanisms available to the public (*e.g.,* surveys, in-person, and/or group exchanges);

(2) Utilize the core preaward and debriefing survey questions at *https://www.acquisition.gov/360;* and

(3) Seek additional feedback on targeted aspects of an acquisition throughout its lifecycle (*e.g.,* performance standards at 1.102–2 or postaward contract administration responsibilities at 42.302).

(b) Contracting officers are encouraged to insert the provision 52.201–1, Acquisition 360: Voluntary Survey, in accordance with agency procedures.

(c) Contracting officers shall not review information until after contract award and shall not consider it in the award decision.

■ 4. In section 1.106, amend the table by adding an entry for ''52.201–1'' in numerical order to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * * *	
52.201–1	9000–0204
* * * * *	

1.108 [Amended]

■ 5. Amend section 1.108 by removing from paragraph (b) ''1.102–4(b)'' and adding ''1.102–5(b)'' in its place.

PART 12—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 6. Amend section 12.301 by—

■ a. Redesignating paragraphs (e)(1) through (4) as paragraphs (e)(2) through (5); and

■ b. Adding a new paragraph (e)(1).

The addition reads as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

* * * * *

(e) * * *

(1) The contracting officer may use the provision at 52.201–1, Acquisition 360: Voluntary Survey, as prescribed in 1.102–3(b).

* * * * *

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.206 [Amended]

■ 7. Amend section 26.206 by removing from paragraph (a) ''12.301(e)(4)'' and adding ''12.301(e)(5)'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Add section 52.201–1 to read as follows:

52.201–1 Acquisition 360: Voluntary Survey.

As prescribed in 1.102–3(b), insert the following provision:

Acquisition 360: Voluntary Survey (Sep 2023)

(a) All actual and potential offerors are encouraged to provide feedback on the preaward and debriefing processes, as applicable. Feedback may be provided to agencies up to 45 days after award. The feedback is anonymous, unless the participant self-identifies in the survey. Actual and potential offerors can participate in the survey by selecting the following link: *https://www.acquisition.gov/360.*

(b) The Contracting Officer will not review the information provided until after contract award and will not consider it in the award decision. The survey is voluntary and does not convey any protections, rights, or grounds for protest. It creates a way for actual and potential offerors to provide the Government constructive feedback about the preaward and debriefing processes, as applicable, used for a specific acquisition.

(End of provision)

[FR Doc. 2023–16658 Filed 8–7–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 19, and 52

[FAC 2023–05, FAR Case 2023–004, Item II; Docket No. 2023–0004; Sequence No. 1]

RIN 9000–AO52

Federal Acquisition Regulation: Small Disadvantaged Business Threshold

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration to adjust the net worth threshold for owners of small disadvantaged business concerns.

DATES: Effective September 7, 2023.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Carrie Moore, Procurement Analyst, at 571–300–5917, or by email at *carrie.moore@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2023–05, FAR Case 2023–004.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are amending the FAR to implement regulatory changes made by the Small Business Administration (SBA) in its interim rule published on November 17, 2022, at 87 FR 69118, which adjusted for inflation the net worth threshold for an individual to be eligible as an owner of a small disadvantaged business concern from $750,000 to $850,000. To do so, this rule updates this threshold to reflect a reference to SBA's regulations at 13 CFR 124.104(c)(2), which is used in the definition of ''small disadvantaged business concern,'' in the FAR. This rule also updates FAR citations to former SBA regulations 13 CFR 124.1002 through 124.1016, as SBA removed these sections from their regulations in a rule published May 8, 2020 (85 FR 27290).

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707. Subsection (a)(1) of 41 U.S.C. 1707 requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because it does not change existing acquisition procedures for agencies or contractors; instead, this final rule simply revises the FAR to align with SBA's regulation by reflecting the increased threshold established by SBA in its regulations, and updates obsolete FAR citations to certain SBA regulations that no longer exist.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This rule amends the solicitation provisions at FAR 52.212–3 and 52.219–1, and contract clauses at FAR 52.212–5, 52.213–4, 52.219–8, 52.219–9, 52.219–28, and 52.244–6. However, this rule does not impose any new requirements on contracts valued at or below the SAT, or on contracts for commercial products, including COTS items, or commercial services. The clauses continue to apply to acquisitions at or below the SAT and to acquisitions for commercial products, including COTS items, and commercial services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the ''Submission of Federal Rules Under the Congressional Review Act'' form to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 48 CFR Parts 2, 19, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 19, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 2. Amend section 2.101, in paragraph (b)(2), in the definition of ''Small disadvantaged business concern'' by—

■ a. Removing from the introductory text ''13 CFR 124.1002'' and adding ''13 CFR 124.1001'' in its place; and

■ b. Removing from paragraph (1)(ii) ''$750,000'' and adding ''the threshold at 13 CFR 124.104(c)(2)'' in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.301–1 [Amended]

■ 3. Amend section 19.301–1 by removing from the third sentence of paragraph (h) the phrase ''13 CFR 124.1004 for small disadvantaged business, 13 CFR 125.29'' and adding ''13 CFR 128.600'' in its place.

19.304 [Amended]

■ 4. Amend section 19.304 by removing from paragraph (c) ''13 CFR 124.1001(b)'' and adding ''13 CFR 124.1001'' in its place.

■ 5. Amend section 19.305 by revising the section heading, introductory text, and paragraph (c) to read as follows:

19.305 Reviews of SDB status.

This section applies to reviews of a small business concern's SDB status as a prime contractor or subcontractor.

* * * * *

(c) An SBA review of a subcontractor's SDB status differs from a formal protest. Protests of a concern's size as a prime contractor are processed under 19.302. Protests of a concern's size as a subcontractor are processed under 19.703(b).

19.703 [Amended]

■ 6. Amend section 19.703 by:

■ a. Removing from paragraph (a)(2)(iv) ''13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700'' and adding ''13 CFR 121.411, 126.900, 127.700, and 128.600'' in its place; and
■ b. Removing paragraph (e).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 52.212–3 by—
■ a. Revising the date of the provision; and
■ b. In paragraph (a), in the definition of ''Small disadvantaged business concern'' by—
■ i. Removing from the introductory text ''13 CFR 124.1002'' and adding ''13 CFR 124.1001'' in its place; and
■ ii. Removing from paragraph (1)(ii) ''$750,000'' and adding ''the threshold at 13 CFR 124.104(c)(2)'' in its place.

The revision reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Products and Commercial Services.

* * * * *

Offeror Representations and Certifications—Commercial Products and Commercial Services (Sep 2023)

* * * * *

■ 8. Amend section 52.212–5 by—
■ a. Revising the date of the clause;
■ b. Removing from paragraphs (b)(17) ''(OCT 2022)'' and adding ''(Sep 2023)'' in its place;
■ c. Removing from paragraph (b)(18)(i) ''(OCT 2022)'' and adding ''(Sep 2023)'' in its place;
■ d. Removing from paragraph (b)(18)(v) ''(SEP 2021)'' and adding ''(Sep 2023)'' in its place;
■ e. Removing from paragraph (b)(23)(i) ''(MAR 2023)'' and adding ''(Sep 2023)'' in its place;
■ f. Removing from paragraph (e)(1)(vi) ''(OCT 2022)'' and adding ''(Sep 2023)'' in its place; and
■ g. In Alternate II by—
■ i. Revising the date of the Alternate; and
■ ii. Removing from paragraph (e)(1)(ii)(F) ''(OCT 2022)'' and adding ''(Sep 2023)'' in its place.

The revisions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (Sep 2023)

* * * * *

Alternate II (Sep 2023) * * *

* * * * *

■ 9. Amend section 52.213–4 by:
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (a)(2)(vii) ''(JUN 2023)'' and adding ''(Sep 2023)'' in its place.

The revision reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (Sep 2023)

* * * * *

■ 10. Amend section 52.219–1 by—
■ a. Revising the date of the provision;
■ b. In paragraph (a), in the definition of ''Small disadvantaged business concern'' by—
■ i. Removing from the introductory text ''13 CFR 124.1002'' and adding ''13 CFR 124.1001'' in its place; and
■ ii. Removing from paragraph (1)(ii) ''$750,000'' and adding ''the threshold at 13 CFR 124.104(c)(2)'' in its place; and
■ c. Removing from paragraph (c)(2) ''13 CFR 124.1002'' and adding ''13 CFR 124.1001'' in its place.

The revision reads as follows:

52.219–1 Small Business Program Representations.

* * * * *

Small Business Program Representations (Sep 2023)

* * * * *

■ 11. Amend section 52.219–8 by—
■ a. Revising the date of the clause;
■ b. In paragraph (a), in the definition of ''Small disadvantaged business concern'' by—
■ i. Removing from the introductory text ''13 CFR 124.1002'' and adding ''13 CFR 124.1001'' in its place; and
■ ii. Removing from paragraph (1)(ii) ''$750,000'' and adding ''the threshold at 13 CFR 124.104(c)(2)'' in its place; and
■ c. Removing from paragraph (e)(4) ''13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700'' and adding ''13 CFR 121.411, 126.900, 127.700, and 128.600'' in its place.

The revision reads as follows:

52.219–8 Utilization of Small Business Concerns.

* * * * *

Utilization of Small Business Concerns (Sep 2023)

* * * * *

■ 12. Amend section 52.219–9 by—
■ a. Revising the date of the clause;
■ b. Removing from paragraph (c)(2)(iv) ''13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700'' and adding ''13 CFR 121.411, 126.900, 127.700, and 128.600'' in its place; and
■ c. In Alternate IV by—
■ i. Revising the date of the alternate; and
■ ii. Removing from paragraph (c)(2)(iv) ''13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700'' and adding ''13 CFR 121.411, 126.900, 127.700, and 128.600'' in its place.

The revision reads as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

Small Business Subcontracting Plan (Sep 2023)

* * * * *

Alternate IV (Sep 2023) * * *

* * * * *

■ 13. Amend section 52.219–28 by:
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (h)(2) ''13 CFR 124.1002'' and adding ''13 CFR 124.1001'' in its place.

The revision reads as follows:

52.219–28 Post-Award Small Business Program Rerepresentation.

* * * * *

Post-Award Small Business Program Rerepresentation (Sep 2023)

* * * * *

■ 14. Amend section 52.244–6 by:
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (c)(1)(viii) ''(OCT 2022)'' and adding ''(Sep 2023)'' in its place.

The revision reads as follows:

52.244–6 Subcontracts for Commercial Products and Commercial Services.

* * * * *

Subcontracts for Commercial Products and Commercial Services (Sep 2023)

* * * * *

[FR Doc. 2023–16659 Filed 8–7–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 11, 23, 52, and 53

[FAC 2023–05, FAR Case 2022–008, Item III; Docket No. 2022–0008, Sequence No. 1]

RIN 9000–AO45

Federal Acquisition Regulation: Update to ASSIST Database References

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to update contact information, web addresses, and office titles associated with the DoD Acquisition Streamlining and Standardization Information System and clarify the authoritative source for a form.

DATES: Effective September 7, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, Procurement Analyst, at 571–300–5917 or by email at *carrie.moore@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2023–05, FAR Case 2022–008.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are amending the FAR to update the contact information, web addresses, and office titles necessary to obtain Federal and Defense specifications and standards from the DoD Acquisition Streamlining and Standardization Information System (ASSIST) website or, for Defense documents not available in ASSIST, the Defense Standardization Program Office. This final rule also adds a reference in part 53, Forms, to the American National Standards Institute (ANSI) Z39.18, Scientific and Technical Reports—Preparation, Presentation, and Preservation, with the prescription for the Standard Form 298, Report Documentation Page.

DoD, GSA, and NASA published a final rule at 64 FR 72446, on December 27, 1999, to provide guidance to offerors on how to obtain Defense specifications and standards formerly listed in the DoD Index of Specifications and Standards (DoDISS) from the ASSIST database or from the DoD Single Stock Point (DoDSSP). DoD, GSA, and NASA published additional revisions to this guidance at 71 FR 227, on January 3, 2006, which replaced references to DoDISS with ASSIST and made several updates associated with obtaining DoD specifications and standards via internet, phone, and fax.

This final rule updates the web address where offerors may download unclassified DoD specifications and standards from the ASSIST website, as well as the program office name and the contact information where offerors can obtain Defense specifications and standards that are not available from the ASSIST website. The rule also removes obsolete guidance for ordering specifications, standards, and/or product descriptions by mail or in person via a physical address, fax, or phone, as these methods of contact were replaced by a more immediate method of access via the ASSIST database. Conforming changes are made in the FAR provisions at 52.211–1, Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101–29; 52.211–2, Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST); and 52.212–1, Instructions to Offerors—Commercial Products and Commercial Services.

Additionally, this rule adds a reference to ANSI Standard Z39.18 within the prescription for form SF 298 in part 53 to provide the source document that requires the use of the form.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707. Subsection (a)(1) of 41 U.S.C. 1707 requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because this rule only: updates the obsolete contact information and methods for obtaining Defense specifications and standards and Federal specifications, standards, and product descriptions; and identifies the source document that requires the use of a standard form identified in the FAR. This rule does not change the policy regarding or necessity for obtaining such documents or using the form.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items, and for Commercial Services

This rule does not create any new solicitation provisions or contract clauses. This rule does amend the provisions at FAR 52.211–1, 52.211–2, and 52.212–1 to incorporate the updated directions to obtain Federal and DoD documents, but does not impose any new requirements on contracts at or below the SAT, for commercial products, including COTS items, or for commercial services. The provision 52.212–1 continues to apply to acquisitions at or below the SAT and to acquisitions for commercial products, including COTS items, or for commercial services; while the provisions 52.211–1 and 52.211–2 continue to apply to acquisitions at or below the SAT, and not apply to acquisitions for commercial products, including COTS items, or for commercial services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801–808) requires interim and final rules to be submitted to Congress before the rule takes effect. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and

Budget has determined that this is not a major rule under 5 U.S.C. 804.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 48 CFR Parts 9, 11, 23, 52, and 53

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 9, 11, 23, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 9, 11, 23, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 9—CONTRACTOR QUALIFICATIONS

■ 2. Amend section 9.203 by revising paragraphs (b), (c)(2), and (d) to read as follows:

9.203 QPL's, QML's, and QBL's.

* * * * *

(b) Specifications requiring a qualified product are included—

(1) In the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions; and

(2) On the Department of Defense Acquisition Streamlining and Standardization Information System (ASSIST) website at *https://assist.dla.mil.*

(c) * * *

(2) Department of Defense Manual 4120.24, Defense Standardization Program (DSP) Procedures, (*www.esd.whs.mil/Directives/Issuances/dodm*) as amended by Military Standards 961 and 962 (*https://assist.dla.mil*).

(d) The publications in paragraphs (b)(1) and (c)(1) of this section may be obtained from the address in 11.201(d)(1).

PART 11—DESCRIBING AGENCY NEEDS

11.102 [Amended]

■ 3. Amend section 11.102 by—

■ a. Removing from the first sentence ''DoD 4120.24–M, Defense Standardization Program Policies and Procedures'' and adding ''DoD Manual 4120.24, Defense Standardization Program (DSP) Procedures'' in its place; and

■ b. Removing from the third sentence ''DoD 4120.24–M'' and ''see 11.201(d)(2) or (3)'' and adding ''DoD Manual 4120.24'' and ''*https://www.esd.whs.mil/Directives/Issuances/dodm* or see 11.201(d)(2) or (3)'' in their places, respectively.

■ 4. Amend section 11.201 by—

■ a. Removing from paragraph (a) introductory text ''the DoD Acquisition Streamlining and Standardization Information System (ASSIST), or other'' and adding ''available on the DoD Acquisition Streamlining and Standardization Information System (ASSIST) website, or listed in other'' in its place;

■ b. Revising paragraphs (d)(1) through (3); and

■ c. Removing from paragraph (e) ''DoDSSP'' and adding ''the Defense Standardization Program Office'' in its place.

The revisions read as follows:

11.201 Identification and availability of specifications.

* * * * *

(d) (1) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101–29, may be viewed at the ASSIST website at *https://assist.dla.mil.*

(2) Most unclassified Defense specifications and standards may be downloaded from the ASSIST website at *https://assist.dla.mil.*

(3) Defense documents not available from the ASSIST website may be ordered from the Defense Standardization Program Office by—

(i) Using the ASSIST feedback module at *https://assist.dla.mil/feedback;* or

(ii) Contacting the Defense Standardization Program Office by telephone at 571–767–6888 or email at *assisthelp@dla.mil.*

* * * * *

11.202 [Amended]

■ 5. Amend section 11.202 by—

■ a. Removing from paragraph (a) ''listed in the DoDISS'' and adding ''available at the ASSIST website'' in its place; and

■ b. Removing from paragraph (b) ''DoD 4120.24–M, Defense Standardization Program Policies and Procedures'' and adding ''DoD Manual 4120.24, Defense Standardization Program (DSP) Procedures'' in its place.

■ 6. Amend section 11.204 by revising the section heading and paragraph (b) to read as follows:

11.204 Solicitation provisions.

* * * * *

(b) The contracting officer shall insert the provision at 52.211–2, Availability of Defense Specifications, Standards, and Data Item Descriptions in the Acquisition Streamlining and Standardization Information System (ASSIST) website, in solicitations that cite specifications available in ASSIST that are not furnished with the solicitation.

* * * * *

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.704 [Amended]

■ 7. Amend section 23.704 by removing from paragraph (b)(1)(ii) ''Pub. L.'' and ''(see 11.102)(c))'' and adding ''Public Law'' and ''(see 11.101(b))'' in their places, respectively.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Revise section 52.211–1 to read as follows:

52.211–1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101–29.

As prescribed in 11.204(a), insert the following provision:

Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101–29 (Sep 2023)

(a) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101–29, and copies of Federal specifications, standards, and product descriptions can be downloaded from the ASSIST website at *https://assist.dla.mil.*

(b) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a copy of

specifications, standards, and commercial item descriptions cited in this solicitation may be obtained from the ASSIST website identified in paragraph (a) of this provision.

(End of provision)

■ 9. Revise section 52.211–2 heading and text to read as follows:

52.211–2 Availability of Defense Specifications, Standards, and Data Item Descriptions in the Acquisition Streamlining and Standardization Information System (ASSIST) website.

As prescribed in 11.204(b), insert the following provision:

Availability of Defense Specifications, Standards, and Data Item Descriptions in the Acquisition Streamlining and Standardization Information System (ASSIST) Website (Sep 2023)

(a) Most unclassified Defense specifications and standards may be downloaded from the ASSIST website at *https://assist.dla.mil.*

(b) Defense documents not available from ASSIST may be requested from the Defense Standardization Program Office by—

(1) Using the ASSIST feedback module (*https://assist.dla.mil/feedback*); or

(2) Contacting the Defense Standardization Program Office by telephone at 571–767–6888 or email at *assisthelp@dla.mil.*

(End of provision)

■ 10. Amend section 52.212–1 by revising the date of the provision and paragraphs (i)(1), (2), and (3) to read as follows:

52.212–1 Instructions to Offerors—Commercial Products and Commercial Services.

* * * * *

Instructions to Offerors—Commercial Products and Commercial Services (Sep 2023)

* * * * *

(i) * * *

(1)(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101–29, and copies of Federal specifications, standards, and product descriptions can be downloaded from the ASSIST website at *https://assist.dla.mil.*

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained from the address in paragraph (i)(1)(i) of this provision.

(2) Most unclassified Defense specifications and standards may be downloaded from the ASSIST website at *https://assist.dla.mil.*

(3) Defense documents not available from the ASSIST website may be requested from the Defense Standardization Program Office by—

(i) Using the ASSIST feedback module (*https://assist.dla.mil/feedback*); or

(ii) Contacting the Defense Standardization Program Office by telephone at 571–767–6688 or email at *assisthelp@dla.mil.*

* * * * *

PART 53—FORMS

53.235 [Amended]

■ 11. Amend section 53.235 by removing ''35.010'' and adding ''35.010 and ANSI Standard Z39.18'' in its place.

[FR Doc. 2023–16660 Filed 8–7–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2023–05; Item IV; Docket No. FAR–2023–0052; Sequence No. 3]

Federal Acquisition Regulation; Technical Amendments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes an amendment to the Federal Acquisition Regulation (FAR) in order to make needed editorial changes.

DATES: Effective: September 7, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Lois Mandell, Regulatory Secretariat Division (MVCB), at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2023–05, Technical Amendments.

SUPPLEMENTARY INFORMATION: This document makes an editorial change to 48 CFR part 52.

List of Subjects in 48 CFR Part 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

52.212–3 [Amended]

■ 2. Amend section 52.212–3 by:

■ a. Revising the date of the provision; and

■ b. Removing from paragraph (g)(4)(i) ''paragraph (g)(5)(ii)'' and adding ''paragraph (g)(4)(ii)'' in its place.

The revision reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Products and Commercial Services.

* * * * *

Offeror Representations and Certifications—Commercial Products and Commercial Services (Sep 2023)

* * * * *

[FR Doc. 2023–16661 Filed 8–7–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2023–0051, Sequence No. 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2023–05; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide (SECG).

SUMMARY: This document is issued under the joint authority of DoD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in

accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2023–05, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding these rules by referring to FAC 2023–05, which precedes this document.

DATES: August 8, 2023.

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2023–05 and the FAR Case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

RULES LISTED IN FAC 2023–05

Item	Subject	FAR case	Analyst
*I	Use of Acquisition 360 to Encourage Vendor Feedback	2017–014	Delgado.
II	Small Disadvantaged Business Threshold	2023–004	Moore.
III	Update to ASSIST Database References	2022–008	Moore.
IV	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2023–05 amends the FAR as follows:

Item I—Use of Acquisition 360 To Encourage Vendor Feedback (FAR Case 2017–014)

This final rule amends the FAR to implement the Acquisition 360 Survey tool, a voluntary online survey to elicit industry feedback on the preaward and debriefing processes in a consistent and standardized manner. Contracting officers may insert the provision into solicitations in accordance with agency procedures. However, because it is voluntary, the impact on offerors or contractors is expected to be minimal.

Item II—Small Disadvantaged Business Threshold (FAR Case 2023–004)

This final rule amends the FAR to update the net worth threshold for the owners of small disadvantaged business concerns to align with SBA's regulations, and updates obsolete FAR citations to certain SBA regulations.

Item III—Update to ASSIST Database References (FAR Case 2022–008)

This final rule amends the FAR to update obsolete contact information, web addresses, and office titles necessary to obtain Federal and Defense specifications and standards from the DoD Acquisition Streamlining and Standardization Information System (ASSIST) website or, for Defense documents not available in ASSIST, from the Defense Standardization Program Office. These updates will ensure offerors have the most current information with which to obtain both Federal and Defense specifications and standards that are referenced in an agency's solicitation. The final rule will not have a significant economic impact on a substantial number of small entities because it simply updates contact information, web addresses and office titles in existing regulations.

Item IV—Technical Amendments

Administrative change is made at FAR 52.212–3.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2023–16662 Filed 8–7–23; 8:45 am]

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Federal Register

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Tuesday, August 8, 2023

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FEDERAL REGISTER PAGES AND DATE, AUGUST

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