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# Presidential Documents

**Title 3—**

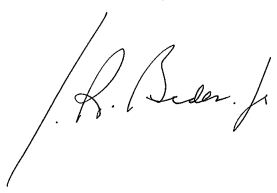
## The President

**Notice of August 14, 2023**

## Continuation of the National Emergency With Respect to Export Control Regulations

On August 17, 2001, the President issued Executive Order 13222 pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). In that order, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States related to the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. 4601 *et seq.*). Because the implementation of certain sanctions authorities, including sections 11A, 11B, and 11C of such Export Administration Act of 1979, consistent with section 1766(b) of Public Law 115–232, the Export Control Reform Act of 2018 (50 U.S.C. 4801 note), is to be carried out under the International Emergency Economic Powers Act, the national emergency declared on August 17, 2001, must continue in effect beyond August 17, 2023. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13222, as amended by Executive Order 13637 of March 8, 2013.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
*August 14, 2023.*

[FR Doc. 2023–17743
Filed 8–15–23; 8:45 am]
Billing code 3395–F3–P

# Rules and Regulations

Federal Register
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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2022–1655; Project Identifier MCAI–2022–00887–T; Amendment 39–22423; AD 2023–08–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–201, –202, –203, –301, –302, and –303 airplanes. This AD was prompted by reports of corrosion and cracks found on engine inlet attach fittings. This AD requires an inspection to determine whether affected engine inlet attach fittings are installed, and replacement of those affected engine inlet attach fittings or replacement with and inlet cowl having no affected engine inlet attach fittings, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also prohibits the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective September 20, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 20, 2023.

**ADDRESSES:**

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1655; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

*Material Incorporated by Reference:*

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–1655.

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–201, –202, –203, –301, –302, and –303 airplanes. The NPRM published in the **Federal Register** on December 28, 2022 (87 FR 79819). The NPRM was prompted by AD 2022–0133, dated July 5, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0133) (also referred to as the MCAI). The MCAI states that findings of corrosion and cracks on engine inlet attach fittings have been reported. It was determined that the affected fittings are susceptible to stress corrosion cracking due to the material used for the fittings. The MCAI notes that stress corrosion cracking, if not detected and corrected, could lead to failure of one or more fittings, possibly resulting in damage to the airplane or injury to occupants.

In the NPRM, the FAA proposed to require an inspection to determine whether affected engine inlet attach fittings are installed, and replacement of those affected engine inlet attach fittings or replacement with an inlet cowl having no affected engine inlet attach fittings, as specified in EASA AD 2022–0133. The NPRM also proposed to prohibit the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1655.

### Discussion of Final Airworthiness Directive

### Comments

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

The FAA received additional comments from two commenters. The following presents the comments received on the NPRM and the FAA's response to each comment.

### Request for Exclusion of Certain Accomplishment Instruction Steps

Delta requested revising paragraph (h) of the proposed AD to clarify that the access and close instructions in service information referenced by EASA AD 2022–0133 are not required. Delta stated that no guidance is provided indicating that the access and close instructions can be either done using airline best practices, or omitted in the case that the instructions have been accomplished previously.

The FAA disagrees. The FAA has reviewed the instructions and determined that the instructions are adequate and can be performed in conjunction with other maintenance actions. The access and close instructions are to open and close the fan cowl doors, install the inlet, make sure the work area is clean and clear of tools, and an inspection report. As specified in paragraph (i) of this AD, the inspection report specified in the closing actions is not required. If the requirements of the AD, including access and close, have been accomplished previously, paragraph (f) of this AD provides relief for actions already done. For methods other than those required by the AD, operators may request an alternative method of compliance (AMOC) under the provisions of paragraph (j)(1) of this AD.

**Request for a Reporting Requirement**

One commenter requested revising paragraph (i) of the proposed AD to require submitting an inspection report to the manufacturer. The commenter states the change would align with the EASA AD and that the wide-body design of the affected 11 U.S.-registered airplanes is duplicated or modified by Airbus in newer designs. The commenter also states the information would assist in avoiding these issue in the future.

The FAA disagrees. EASA AD 2022–0133 does not require reporting; however, the Airbus service information referenced by EASA 2022–0133 does specify an inspection report. The FAA does not consider it necessary to require an inspection report because the unsafe condition has been clearly determined and the corrective actions are defined. However, submitting an inspection report is not prohibited, and any operator may do so voluntarily. The AD has not been changed in this regard.

**Conclusion**

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

**Related Service Information Under 1 CFR Part 51**

EASA AD 2022–0133 specifies procedures for an inspection to determine whether affected engine inlet attach fittings (those having certain part numbers and made of aluminum alloy 7175–T66 or 7075–T6) are installed, and replacement of those affected engine inlet attach fittings with serviceable parts or replacement with an inlet cowl having no affected engine inlet attach fittings. EASA AD 2022–0133 also prohibits the installation of affected parts. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Costs of Compliance**

The FAA estimates that this AD will affect 11 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| 5 work-hours × $85 per hour = $425 | None | $425 | $4,675 |

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

| Labor cost | Parts cost | Cost per product |
|---|---|---|
| 210 work-hours × $85 per hour = up to $17,850 per nacelle | Up to $10,136 | Up to $27,986 per nacelle. |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2023–08–08 Airbus SAS:** Amendment 39–22423; Docket No. FAA–2022–1655; Project Identifier MCAI–2022–00887–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective September 20, 2023.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Airbus SAS Model A330–201, –202, –203, –301, –302, and –303 airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 71, Powerplant.

**(e) Unsafe Condition**

This AD was prompted by reports of corrosion and cracks found on engine inlet attach fittings. The FAA is issuing this AD to detect and correct stress corrosion cracking. The unsafe condition, if not addressed, could result in failure of one or more fittings, possibly resulting in damage to the airplane or injury to occupants.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0133, dated July 5, 2022.

**(h) Exceptions to EASA AD 2022–0133**

(1) Where EASA AD 2022–0133 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2022–0133 does not apply to this AD.

**(i) No Reporting Requirement**

Although the service information referenced in EASA AD 2022–0133 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Additional AD Provisions**

The following provisions also apply to this AD:

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

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

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

**(k) Additional Information**

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov.*

**(l) Material Incorporated by Reference**

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0133, dated July 5, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0133, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on April 20, 2023.

**Christina Underwood,**

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

[FR Doc. 2023–17501 Filed 8–15–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2023–0583; Airspace Docket No. 22–ACE–20]**

**RIN 2120–AA66**

## Modification of Class E Airspace; Alliance Municipal Airport, Alliance, NE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace extending upward from 700 feet above the surface to adequately contain all instrument flight rule (IFR) procedures at Alliance Municipal Airport, NE. This action supports the safety and management of IFR operations at the airport.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Keith T. Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198, telephone: (206) 231–2428.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

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

described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Class E airspace to supports the safety and management of IFR operations at Alliance Municipal Airport.

**History**

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–0583 in the **Federal Register** (88 FR 22385, April 13, 2023), proposing to modify Class E airspace at Alliance Municipal Airport, Alliance, NE. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

**Incorporation by Reference**

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

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

**The Rule**

This action amends 14 CFR part 71 by modifying Class E airspace beginning at 700 feet above the surface at Alliance Municipal Airport, NE. Class E airspace beginning at 700 feet above the surface is expanded to a 7.6-mile radius to fully contain arriving IFR aircraft operating below 1,500 feet above the surface.

**Regulatory Notices and Analyses**

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

**Environmental Review**

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

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above.*

* * * * *

**ACE NE E5 Alliance, NE [Amended]**

Alliance Municipal Airport, NE
(Lat. 42°03′12″ N, long. 102°48′14″ W)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of the airport.

* * * * *

Issued in Des Moines, Washington, on August 3, 2023.

**B.G. Chew,**

*Group Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2023–17511 Filed 8–15–23; 8:45 am]

**BILLING CODE 4910–13–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1310

**[CPSC Docket No. 2022–0025]**

### Ban of Inclined Sleepers for Infants

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Consumer Product Safety Commission is issuing this final rule to codify in its regulations the ban of inclined sleepers for infants pursuant to the Safe Sleep for Babies Act of 2021, which requires that inclined sleepers for infants, regardless of the date of manufacture, shall be considered a banned hazardous product under the Consumer Product Safety Act.

**DATES:** This rule is effective on September 15, 2023.

**FOR FURTHER INFORMATION CONTACT:** Will Cusey, Small Business Ombudsman, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7945 or (888) 531–9070; email: *sbo@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 2 of the Safe Sleep for Babies Act of 2021 (SSBA), 15 U.S.C. 2057d, the Consumer Product Safety Commission (Commission or CPSC) is issuing this final rule to reflect, in the Code of Federal Regulations, the statutory ban of inclined sleepers for infants that took effect by operation of law on November 12, 2022.

**I. Background and Statutory Authority**

On May 3, 2022, Congress passed the Safe Sleep for Babies Act of 2021, H.R. 3182, Public Law 117–126, which the President signed on May 16, 2022. Section 2(a) of the SSBA requires that, not later than 180 days after enactment of that law, ''inclined sleepers for infants, regardless of the date of manufacture, shall be considered a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057).'' 15 U.S.C. 2057d(a). The SSBA defines inclined sleepers for infants as ''product[s] with an inclined sleep surface greater than ten degrees that [are] intended, marketed, or designed to provide sleeping accommodations for an infant up to 1 year old.'' 15 U.S.C. 2057d(b). The SSBA went into effect as a ban enforced by the Commission on November 12, 2022, which was the 180th day after its enactment, making it unlawful for any person to sell, offer for sale, manufacture for sale, distribute in

commerce, or import inclined sleepers for infants as of that date. *See* 15 U.S.C. 2068(a)(1).

On July 26, 2022, CPSC published a notice of proposed rulemaking (NPR) stating the Commission's intention to codify in its regulations the language in the SSBA requiring that inclined sleepers for infants be considered a banned hazardous product under section 8 of the Consumer Product Safety Act (CPSA). 87 FR 44309. CPSC requested and received comments from the public on the proposed rule. Specifically, CPSC requested comments regarding the effective date, interpretation of the SSBA language, and whether testing and certification to the ban should be required for sleep products for infants up to 1 year old. CPSC received a total of 67 comments from medical professionals, academic researchers, safety advocates, a children's products design facility, and a trade association for children's products. Those comments are summarized below in Section III.

## II. Overview of the Final Rule Banning Inclined Sleepers for Infants

The Commission issues this final rule [1] to codify the ban of inclined sleepers for infants pursuant to the SSBA as proposed, with a clarification in the purpose and scope section of the ban to make clear that the rule prohibits not only the sale of inclined sleepers for infants but also the offer for sale, manufacture for sale, distribution in commerce, or importation into the United States, of these products. The final rule codifies the definition of ''inclined sleeper for infants'' as a product with an inclined sleep surface greater than ten degrees that is intended, marketed, or designed to provide sleeping accommodations for an infant up to 1 year old. The final rule also affirms that, regardless of the date of manufacture, inclined sleepers for infants are banned hazardous products as of November 12, 2022. The final rule is further discussed in the Staff Briefing Package: Ban of Inclined Sleepers for Infants Under the Safe Sleep for Babies Act.[2]

## III. Response to Comments

Of the 67 comments received by CPSC in response to the NPR, 55 were from medical professionals including doctors, pediatricians, nurses, academic researchers, and infant safety advocates who provided substantially similar comments expressing general support for the proposed rule. The comments are viewable online at *www.regulations.gov* under docket number CPSC–2022–0025.[3]

### *A. Effective Date*

*Comment A.1:* The majority of commenters supported setting an effective date as soon as possible, but not later than the statutory effective date of November 12, 2022. No commenters advocated for a later date.

*Response A.1:* The SSBA's statutory ban of inclined sleepers for infants went into effect on November 12, 2022, and CPSC has been enforcing it since that time. Accordingly, the final rule will have an effective date 30 days after publication, which is the minimum period provided in the Administrative Procedure Act (APA). 5 U.S.C. 553(d). This effective date for the rule does not change the fact that inclined sleepers for infants have been banned pursuant to the SSBA as of November 12, 2022.

### *B. Interpretation*

Congress enacted the SSBA after the Commission had implemented its Safety Standard for Infant Sleep Products (ISP Rule; 16 CFR part 1236). The ISP Rule became effective on June 23, 2022, and applies to products ''marketed or intended to provide a sleeping accommodation for an infant up to 5 months of age'' that are not subject to another CPSC sleep standard.[4] The ISP Rule requires that the seat back or sleep surface angle for these products be 10 degrees or less from horizontal when measured as specified in part 1236. 86 FR 33022, 33060–61 (June 23, 2021). The SSBA, by its terms, applies to ''inclined sleepers for infants,'' defined as ''a product with an inclined sleep surface greater than ten degrees that is intended, marketed, or designed to provide sleeping accommodations for an infant up to 1 year old.'' 15 U.S.C. 2057d(b). Because the SSBA and the ISP Rule overlap but are not identical, the Commission sought comment on the following questions in particular:

1. How should the Commission interpret and implement the phrase ''sleeping accommodations'' for purposes of the SSBA ban?

*Comment B.1:* Several commenters (children's product design facility Iron Mountains, the Juvenile Products Manufacturers Association (JPMA), and consumer advocacy groups Kids in Danger (KID) and Consumer Federation of America (CFA)) stated that CPSC should use the ISP Rule's definition of ''sleeping accommodations'' to interpret the same language in the SSBA.

Commenters including KID, AAP, U.S. Public Interest Research Group (PIRG), Consumer Reports, CFA, March of Dimes, and Public Citizen, stated that ''sleeping accommodations'' should apply to products marketed for any kind of sleep, including napping or resting. KID stated that words such as ''rest'' or ''nap,'' or statements such as ''not for overnight, unattended or extended sleep,'' should not exclude a product from being considered a sleep product. PIRG suggested that while many infants can and do fall asleep anywhere, regardless of comfort, noise level or darkness, CPSC should define ''sleeping accommodations'' as products in which parents or caregivers believe an infant can sleep and stay unattended because of the way the product is designed, intended, or marketed. Consumer Reports stated that the term should apply broadly to include products remarketed as soothers or loungers.

The March of Dimes stated that CPSC should consider ''sleeping accommodations'' to be any product that is designed, intended, marketed, or commonly used by consumers for the purpose of putting a child to sleep, particularly if the sleep is unattended by an adult.

KID stated that the definition should include not just self-contained products, but also inclined sleep positioners, accessory products, and wedges that are used in the sleep environment.

*Response B.1:* The SSBA does not define ''sleeping accommodations.'' In the preamble to the ISP Rule, the Commission explained that sleeping accommodations are ''products that are

[1] The Commission voted 4–0 to publish this final rule. Chair Hoehn-Saric and Commissioners Feldman and Trumka issued statements in connection with their votes.

[2] Staff Briefing Package: Ban of Inclined Sleepers for Infants Under the Safe Sleep for Babies Act, available at *https://www.cpsc.gov/s3fs-public/Draft-Final-Rule-Ban-of-Inclined-Sleepers-for-Infants.pdf?VersionId=t7I_9B_J3r1aXJ2Epbm0PabWOWg2k2T7*.

[3] The Commission also received comments beyond the scope of this final rule. Those comments are summarized in the Staff Briefing Package and available at *www.regulations.gov*. Many of the commenters provided context for the SSBA, sharing data on the extent of Sudden Infant Death Syndrome (SIDS) in the U.S. over various time periods. The American Academy of Pediatrics (AAP), for example, provided data that shows SIDS deaths since 2000 in the U.S. have not declined, despite extensive outreach and education campaigns on safe sleep practices for babies. Several commenters referred to an AAP report on SIDS/SUID (Sudden Unexpected Infant Death) that estimated 3,500 infant deaths per year. March of Dimes noted that ''Rates of preterm birth are increasing . . . [with] disparities in birth outcomes between women and infants of color and their White peers. An estimated 700 women [die] from complications related to pregnancy each year and more than 22,000 babies die before their first birthday each year.''

[4] The other sleep standards currently are 16 CFR part 1218 (bassinets and cradles); 16 CFR part 1219 (full-size cribs); 16 CFR part 1220 (non-full-size cribs); 16 CFR part 1221 (play yards); and 16 CFR part 1222 (bedside sleepers).

marketed or intended for both extended, unattended sleep, and also napping, snoozing, and other types of sleep in which a parent may or may not be present, awake, and attentive.'' 86 FR 33047. The Commission agrees with commenters that ''sleeping accommodations'' should refer to products in which infants are placed for the purpose of napping or overnight sleep regardless of whether the sleep is ''attended or supervised,'' and that utilizing the same interpretation of sleeping accommodations in these overlapping rules will reduce confusion for the public and industry. Therefore, the Commission interprets the phrase ''sleeping accommodations'' in the SSBA consistent with the term as used in the ISP Rule. *See* 86 FR 33025–26.

2. What, if any, effect should inclusion of the term ''designed'' in the SSBA have on the Commission's interpretation and implementation of the SSBA as compared to the ISP Rule?

*Comment B.2:* Comments from pediatricians and other medical professionals, as well as from AAP, stated that CPSC should be alert to changes to product marketing or categorization that could be cited as justification for the continued sale of dangerous products.

Multiple commenters, including KID, March of Dimes, CFA, Consumer Reports, and AAP, stated that by including the term ''designed'' in the statutory text, Congress sought to comprehensively ban all inclined sleep products and prohibit rebranding or reclassification of products to evade regulatory attention. These commenters stated that use of the word ''designed'' signals Congress's intent to ban products that caregivers would reasonably see as suitable for sleep, regardless of how they are marketed.

One doctor (Hauck) advocated removing inclined products from the market, regardless of whether they are marketed for sleeping or awake infants, stating that ''manufacturers will attempt to market these items for infants who are not shown to be sleeping . . . [but] infants placed in these products will fall asleep and then be at risk for dying in them.'' The AAP stated although caregivers may believe inclined sleep products aid with gastroesophageal reflux, research shows that placing infants on their backs on inclined surfaces is ineffective in reducing gastroesophageal reflux and may result in the infant sliding into a position that could compromise breathing.

PIRG and Public Citizen asserted that the addition of the word ''designed'' will allow CPSC to review the design as well as the marketing of inclined sleep products. These commenters stated that focusing on the manufacturer's stated intent or consumer-facing marketing would enable manufacturers to argue that a product is not meant for sleep, when common sense dictates otherwise based on the design. These commenters urged the Commission to consider a product's design, in addition to the company's stated intention or marketing. Several commenters stated that if the product is not designed for any other purpose, then a logical conclusion is that the product is designed for sleep.

A children's product design facility (Iron Mountains) stated that caregivers need products that restrain supervised, awake infants so that they can complete daily tasks and that swings, rockers, and bouncers are intended for such situations, and are the only alternative to the sofa or other unsafe surfaces. JPMA asserted that ''infant rockers, swings, and bouncers are not designed to provide children with a place to sleep'' and that any decision to include in the scope of the ban products that are not designed for sleep would misinterpret Congressional intent. JPMA further stated that if Congress had intended to include rockers, swings, and bouncers in the SSBA, it would have explicitly done so.

*Response B.2:* The Commission agrees that to give effect to the word ''designed'' within the definition of ''inclined sleeper for infants'' in the SSBA, the Commission should interpret that word as supplementing the accompanying words ''intended'' and ''marketed.'' In the ISP Rule, the Commission identified characteristics to be considered in evaluating whether a product is intended for sleep, including product packaging, marketing materials, instructions, product design, and pictures of consumer usage. *See, e.g.,* 86 FR 33048, *https://www.cpsc.gov/Business--Manufacturing/Business-Education/Business-Guidance/Infant-Sleep-Products-Business-Guidance-and-Small-Entity-Compliance-Guide.* To assess product design, the Commission will consider a number of factors, including those set forth in Response B.3 below.

In the absence of otherwise conclusive evidence regarding design, previous marketing for sleep, while not dispositive, will be persuasive evidence that an inclined product was designed to provide sleeping accommodations. Similarly, if an inclined product's design is materially the same as another product that is an inclined sleeper for infants, that would be persuasive, though not dispositive, evidence that the product is designed to provide sleeping accommodations. Products that are designed to provide sleeping accommodations but also for one or more other purpose(s) likewise are covered by the language of the statutory ban, despite having the other, non-sleep use(s).

3. In the SSBA, what product characteristics, if any, demonstrate that a product is ''designed'' for sleep?

*Comment B.3:* Commenters from consumer safety advocacy groups, such as AAP, KID, PIRG, Consumer Reports, Public Citizen, and CFA, suggested product features they consider indicative of a product ''designed'' for sleep, including: padded sides; excess padding or pillow-like items; soothing sounds, lights, or vibrations; a nest-like appearance; muted color schemes, nighttime themes; illustrations of sleeping animals or closed eyes; warning labels that fail to warn against infant sleep generally and warn only against specific types of sleep, such as ''prolonged,'' ''unattended,'' or ''overnight'' sleep; and no features for another primary purpose, such as feeding or transportation of the child. The March of Dimes identified the following factors that it views as indicators a product is designed for sleep: a focus on comforting an infant to a point it could easily fall asleep in the product; nothing designed to stimulate an infant or prevent a child from sleeping; an absence of non-sleep related purposes, such as feeding or transportation; emphasis on the ability to leave a child unattended, where it may fall asleep.

Several commenters, including AAP, PIRG, Consumer Reports, and CFA, also stated that a product is designed for sleep if the purpose is to position an infant at an angle with the intent of leaving the infant in the product unattended during routine sleep, or if the product is intended to relax an infant in a way that it is reasonably expected the infant will fall asleep and be left unattended. PIRG gave examples of products with other primary purposes that involve supervised use, including high chairs, which are designed for feeding; car seats, which are designed for travel in a motor vehicle; and strollers, which are designed to contain a child being pushed on a walk.

JPMA stated that a ''product designed for sleep would be constructed with features that are specifically intended to accommodate an unattended sleeping infant.'' Iron Mountains stated that sleep products generally have ''flat, horizontal occupant surfaces with no contour, shaping, or restraint'' and are generally

larger than ''awake time'' products. Iron Mountains further stated that a product is designed, intended, and marketed for sleep if it is visually very similar to a play yard, bassinet, crib, or bedside sleeper, and features include some of or all of the following: vertical side-walls, high side-walls indicating containment, typically a distinct angle between the occupant surface and the side walls, generally large size, flat and horizontal sleep surface with little or no contouring, and lack of a restraint.

*Response B.3:* The Commission agrees with commenters' identification of characteristics that could be relevant to distinguishing whether products are designed for infant sleep for purposes of the SSBA, including, but not limited to: padded sides; excess padding or pillow-like items; soothing sounds, motions, lights, or vibrations; nighttime themes; and labels that warn only against specific types of sleep and not sleep generally.

4. How should the Commission interpret and implement the terms ''marketed'' and ''intended'' as a sleeping accommodation in the SSBA? Should these terms be interpreted and implemented the same as in the ISP Rule? Why or why not?

*Comment B.4:* JPMA, AAP, PIRG, Consumer Reports, CFA, and KID stated that the terms ''marketed'' and ''intended'' should be interpreted and implemented under the SSBA consistent with how they are discussed in the preamble to the ISP Rule. AAP added that evaluation of marketing and intent should include assessment of marketing and promotional materials, audience targeting (including algorithms), the firm's public and private communications about a product, and the firm's foreseeable awareness about a product (including images, consumer comments, and discussion on social media and product review pages regarding the use of the product for routine sleep). KID added that while the terms ''marketed'' and ''intended'' overlap, together they ''paint a line between infant products that have other purposes such as play, interaction, transport or feeding and those products [for which] . . . sleep is clearly an intended purpose.''

*Response B.4:* In the preamble of the ISP Rule, the Commission stated that ''if a product's packaging, marketing materials, inserts, or instructions indicate that the product is for sleep, or includes pictures of sleeping infants, then CPSC will consider the product to be marketed for sleep.'' 86 FR 33063. The Commission also stated that staff will consider a ''[m]anufacturer's intent, which can be evaluated through stated warning messages, marketing photos, product instructions and other factors.'' *Id.* at 33051. Consistent with the comments received in response to the NPR for this final rule, and to promote ease of administration and clarity for regulated parties, the Commission adopts for administration of the SSBA and this final rule the same interpretation of ''marketed'' and ''intended'' as exists for the ISP Rule. Therefore, for example, if a manufacturer or importer markets a product as a space for infant sleep, the product will fall within the scope of the SSBA and this final rule and must meet the requirement to have a sleep surface angle of not greater than ten degrees.

5. What is the significance of the age distinction between the ISP Rule and the SSBA's ban? How might this difference bear on implementation of the SSBA as compared to the ISP Rule, including with respect to developmental differences between a newborn to 5 month old as identified in the ISP Rule, versus a newborn to 1 year old as identified in the SSBA?

*Comment B.5:* JPMA stated that while most sleep products within the scope of the SSBA already fall within the scope of the ISP Rule because they are marketed for children 5 months or younger, the broader age range in the SSBA could prevent ''bad actors'' from re-marketing such products for infants 6 months to a year in an attempt to evade the ISP Rule.

AAP and Consumer Reports commented that important differences exist in the hazards for younger versus older infants, because there are significant developmental differences between infants who are newborn to 5 months old and those between 5 months and 1 year of age. AAP identified the following differences between older and younger infants:

- Older infants have greater arm strength and the ability to roll and change body positions, including from supine to prone;
- Older infants have increased head and neck muscle strength;
- Older infants generally have the ability to lift and hold up their heads;
- Older infants have more mature brain development, which enables regulation of autonomic nervous functions, including breathing;
- Older infants in the 9-to-12-month range tend to face more danger from strangulation from straps, restraints, and other loose hazards on sleep products; and
- Younger infants are at greater risk of positional asphyxia and the other biomechanical hazards.

Public Citizen recommended that the Commission address the differences in hazard patterns by age group and make sure products for children up to 1 year of age are included in the scope of the final rule. KID stated that the risk to infants over 5 months is important and noted they had recommended expanding the age range in response to the NPR for the ISP Rule. KID emphasized that the SSBA will prevent new inclined sleep products marketed for 6 months and older from entering the marketplace, deter remarketing of existing products, and provide CPSC with the authority to remove all inclined sleepers marketed for children up to 1 year from the marketplace.

CFA stated that the SSBA, by including infants up to 1 year, broadens CPSC's authority to include inclined sleep products for infants over 5 months. CFA also noted that the expanded age range prevents suppliers from remarketing infant products to an older age group to evade the ISP Rule, when those products are not suitable for an older child.

*Response B.5:* As commenters note, AAP's safe sleep guidance states that infants less than 1 year old should sleep on a firm, flat, surface, such as a crib, bassinet, play yard, or bedside sleeper.[5] Consistent with that guidance, the SSBA and this final rule prohibit inclined sleeping accommodations with an incline of greater than 10 degrees for all children from birth up to 1 year of age.

6. How, if at all, should the SSBA's ban of inclined sleepers for infants affect the ISP Rule or the Commission's application of it?

*Comment B.6:* Commenters largely expressed support for the continued implementation and enforcement of the ISP Rule, without change. AAP and Consumer Reports stated that the SSBA should build upon the successful foundation of the ISP Rule to offer clarity on the importance of banning all inclined infant sleep products, such as by including more extensive examination of products to ensure that if a product is not intended for another purpose (such as travel or eating) and can be used for routine sleep, it does not have an incline greater than 10 degrees.

[5] ''Place infants on their backs for sleep in their own sleep space with no other people. Use a crib, bassinet, or portable play yard with a firm, flat mattress and a fitted sheet. Avoid sleep on a couch or armchair or in a seating device, like a swing or car safety seat (except while riding in the car).'' *www.aap.org/en/patient-care/safe-sleep/.*

*Response B.6:* Although the ISP Rule and the SSBA differ somewhat, commenters did not identify any conflict between them. Therefore, the Commission finds no reason to propose changes to the ISP Rule.

7. To the extent inclined sleepers remain on the market that are not banned by this rule, and that are not regulated under the ISP Rule, should CPSC require testing and certification to this ban, to demonstrate that a product is not within the scope of the ban?

*Comment B.7:* Commenters differed as to whether testing and certification under the SSBA are needed and what such testing would achieve. JPMA opposed testing and certification to demonstrate that inclined sleep products are not banned products pursuant to the SSBA. JPMA further stated that a product with an incline of less than 10 degrees would not meet the definition of an ''inclined sleeper for infants'' in the SSBA.

Consumer groups supported SSBA testing and certification. AAP stated that CPSC should use its authority to require testing and certification to ensure that noncompliant products are not sold. KID and Consumer Reports supported testing and certification to demonstrate which products are out of scope of the ban and thus allowed for sale, stating that testing and certification could demonstrate that an inclined sleep product either for older children or with an incline under 10 degrees is not within the scope of the ban. Consumer Reports stated that testing and certification would help to eliminate potential loopholes and avoid muddling the longstanding ''bare is best'' messaging for safe infant sleep. CFA also supported testing, urging the CPSC to use all of its authority, including enforcement, testing, and certification, to protect infant sleep environments.

*Response B.7:* The NPR noted that when a ban does not remove all products in a product category from the market, CPSC may require testing and certification to demonstrate that a product is not within the scope of the ban. Few bans completely remove all products in a specific category from the market, instead removing a subset of products with hazardous characteristics, while allowing sale of other products in the category subject to regulation. The Commission has previously stated that manufacturers of products in a category where a subset of the products are subject to a ban must issue certificates. 28 FR 28079, 28082 (May 13, 2013). Moreover, section 14(a)(1) of the CPSA requires that products subject to a rule, ban, standard, or regulation, be tested and certified as compliant. 15 U.S.C. 2063(a)(1).

Congress did not prohibit all inclined sleepers for infants in the SSBA—only those intended, marketed, or designed for infants from birth to 1 year that have an incline greater than ten degrees. Therefore, products may remain in the marketplace that could be subject to regulation. Though the Commission is not implementing a testing and certification program at this time, it may consider testing, certification, and registration requirements in the future, based on additional information collected by the agency.

## IV. Changes Included in the Final Rule

The final rule contains three changes from the NPR: the effective date and two minor technical or clarifying revisions.

### *A. Effective Date*

The APA generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The NPR proposed an effective date of November 12, 2022, which was the date that the SSBA took effect. Because that date has passed, and because commenters supported CPSC implementing the rule expeditiously, the Commission is finalizing this rule with a 30-day effective date, the minimum permitted under the APA, and has revised 16 CFR 1310.4 accordingly. Section 1310.4 was further revised to clarify that the ban of inclined sleepers for infants was effective as of November 12, 2022, pursuant to the SSBA, but that the final rule is effective as of September 15, 2023. The promulgation of this final rule does not change the fact that inclined sleepers have been banned pursuant to the SSBA since November 12, 2022.

### *B. Technical and Clarifying Revisions*

For the final rule, the Commission has updated the language proposed in the NPR by replacing the public law citation for the SSBA (Pub. L. 117–126) with the newer U.S. Code citation (15 U.S.C. 2057d).

The Commission also revised proposed 16 CFR 1310.1, *Purpose and scope,* to more fully describe the substantive effect of Congress's classification of inclined sleepers for infants as banned hazardous products. Section 1310.1 of the final rule makes clear that the rule prohibits not only the sale of inclined sleepers for infants but also, in accordance with section 19(a)(1) of the CPSA, the offer for sale, manufacture for sale, distribution in commerce, or importation into the United States, of these products. 15 U.S.C. 2068(a)(1).

## V. Preemption

Section 3(b)(2)(A) of Executive Order 12988, *Civil Justice Reform* (Feb. 5, 1996), directs agencies to specify the preemptive effect of any rule. 61 FR 4729 (Feb. 7, 1996). Because the SSBA states that inclined sleepers for infants are banned hazardous products, any state performance standards allowing the sale of inclined sleepers for infants, as those products are defined in the SSBA and this rule, would be inconsistent with Federal law and therefore preempted by this ban.

## VI. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses, and identify alternatives that may reduce such impact, unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. In the NPR, the Commission certified that the rule will not have a significant economic impact on substantial number of small entities and received no comment on that issue. 87 FR 44309.

## VII. Environmental Considerations

The Commission's regulations at 16 CFR part 1021 address whether the agency must prepare an environmental assessment or an environmental impact statement. Under those regulations, certain categories of CPSC actions that have ''little or no potential for affecting the human environment'' do not require an environmental assessment or an environmental impact statement. 16 CFR 1021.5(c). This final rule codifying section 2 of the SSBA falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

## VIII. Paperwork Reduction Act

This final rule contains no information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521).

## IX. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that, before a rule can take effect, the agency issuing the rule must submit the rule and certain related information to each House of Congress and the Comptroller

General, 5 U.S.C. 801(a)(1), and indicate whether the rule is a ''major rule'' as defined in 5 U.S.C. 804(2). The CRA further states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a ''major rule.'' OIRA has determined that this rule is not a ''major rule'' under the CRA. To comply with the CRA, the Commission will submit the required information to each House of Congress and the Comptroller General.

**List of Subjects in 16 CFR Part 1310**

Administrative practice and procedure, Consumer protection, Infants and children.

■ For the reasons stated in the preamble, the Commission adds part 1310 to title 16 of the Code of Federal Regulations as follows:

## PART 1310—BAN OF INCLINED SLEEPERS FOR INFANTS

Sec.
1310.1 Purpose and Scope.
1310.2 Definition.
1310.3 Banned Hazardous Product.
1310.4 Effective Date.

**Authority:** 15 U.S.C. 2057d.

### § 1310.1 Purpose and Scope.

The purpose of this rule is to prohibit the sale, offer for sale, manufacture for sale, distribution in commerce, or importation into the United States, of any inclined sleepers for infants, as defined in part 1310.2 and as set forth in the Safe Sleep for Babies Act of 2021 (15. U.S.C. 2057d).

### § 1310.2 Definition.

*Inclined sleeper for infants* means a product with an inclined sleep surface greater than ten degrees that is intended, marketed, or designed to provide sleeping accommodations for an infant up to 1 year old.

### § 1310.3 Banned Hazardous Product.

Any inclined sleeper for infants, as defined in section 1310.2, regardless of the date of manufacture, is a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057).

### § 1310.4 Effective Date.

By statute, the effective date of this ban is November 12, 2022. The effective date of this rule is September 15, 2023.

**Alberta E. Mills,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2023–17350 Filed 8–15–23; 8:45 am]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 500, 510, 516, 520, 522, 524, 526, 529, 556 and 558

**[Docket No. FDA–2023–N–0002]**

## New Animal Drugs; Approval of New Animal Drug Applications; Withdrawal of Approval of New Animal Drug Applications, Change of Sponsor, Change of Sponsor Address

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Food and Drug Administration (FDA or we) is amending the animal drug regulations to reflect application-related actions for new animal drug applications (NADAs), abbreviated new animal drug applications (ANADAs), and conditionally approved new animal drug applications (cNADAs) during April, May, and June 2023. FDA is informing the public of the availability of summaries of the basis of approval and of environmental review documents, where applicable. The animal drug regulations are also being amended to improve their accuracy and readability.

**DATES:** This rule is effective August 16, 2023.

**FOR FURTHER INFORMATION CONTACT:** George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–5689, *george.haibel@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Approvals

FDA is amending the animal drug regulations to reflect approval actions for NADAs, ANADAs, and cNADAs during April, May, and June 2023, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the office of the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. Persons with access to the internet may obtain these documents at the CVM FOIA Electronic Reading Room: *https://www.fda.gov/about-fda/center-veterinary-medicine/cvm-foia-electronic-reading-room.* Marketing exclusivity and patent information may be accessed in FDA's publication, Approved Animal Drug Products Online (Green Book) at: *https://www.fda.gov/animal-veterinary/products/approved-animal-drug-products-green-book.*

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS, ANADAS, AND CNADAS APPROVED DURING APRIL, MAY, AND JUNE 2023 REQUIRING EVIDENCE OF SAFETY AND/OR EFFECTIVENESS

| Approval date | File No. | Sponsor | Product name | Effect of the action | Public documents | 21 CFR section |
|---|---|---|---|---|---|---|
| April 5, 2023 | 200–612 | Bimeda Animal Health Ltd., 1B The Herbert Building, The Park, Carrickmines, Dublin 18, Ireland. | BIMASONE (flumethasone) Injectable Solution. | Original approval for the treatment of various inflammatory conditions in horses, dogs, and cats as a generic copy of NADA 030–414. | FOI Summary | 522.960c |
| April 10, 2023 | 038–439 | Phibro Animal Health Corp., GlenPointe Centre East, 3d Floor, 300 Frank W. Burr Blvd., Suite 21, Teaneck, NJ 07666. | TERRAMYCIN for Fish (oxytetracycline) Type A Medicated Article. | Supplemental approval for the control of mortality due to columnaris disease in catfish and freshwater-reared salmonids. | FOI Summary | 558.450 |

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS, ANADAS, AND CNADAS APPROVED DURING APRIL, MAY, AND JUNE 2023 REQUIRING EVIDENCE OF SAFETY AND/OR EFFECTIVENESS—Continued

| Approval date | File No. | Sponsor | Product name | Effect of the action | Public documents | 21 CFR section |
|---|---|---|---|---|---|---|
| April 20, 2023 | 141–570 | Boehringer Ingelheim Animal Health USA, Inc., 3239 Satellite Blvd., Duluth, GA 30096. | NEXGARD COMBO (esafoxolaner, eprinomectin, and praziquantel) Topical Solution. | Original approval for prevention of heartworm disease; for treatment and prevention of flea infestations, treatment and control of tick infestations, roundworms, hookworms, and tapeworms in cats and kittens. | FOI Summary | 524.838 |
| May 1, 2023 | 141–571 | Elanco US Inc., 2500 Innovation Way, Greenfield, IN 46140. | VARENZIN–CA1 (molidustat oral suspension). | Conditional approval for the control of nonregenerative anemia associated with chronic kidney disease (CKD) in cats. | FOI Summary | 516.1449 |
| May 5, 2023 | 141–562 | Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007. | LIBRELA (bedinvetmab injection) Injectable Solution. | Original approval for the control of pain associated with osteoarthritis in dogs. | FOI Summary | 522.158 |
| May 10, 2023 | 200–748 | Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sofia, Bulgaria. | PENNCHLOR (chlortetracycline Type A medicated article) and MONOVET (monensin Type A medicated article) to be used in the manufacture of Type B and Type C medicated feeds. | Original approval for multiple indications in beef calves 2 months of age and older and in growing beef steers and heifers fed in confinement for slaughter as a generic copy of NADA 141–564. | FOI Summary | 558.128 |
| May 25, 2023 | 200–750 | Cronus Pharma Specialities India Private Ltd., Sy No-99/1, M/s GMR Hyderabad Aviation SEZ Ltd., Mamidipalli Village, Shamshabad Mandal, Ranga Reddy, Hyderabad, Telangana, 501218, India. | DORAJECT (doramectin injection) Injectable Solution. | Original approval for treatment and control of internal and external parasites of cattle and swine as a generic copy of NADA 141–061. | FOI Summary | 522.770 |
| June 9, 2023 | 141–555 | Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007. | APOQUEL CHEWABLE (oclacitinib tablet) Tablets. | Original approval for control of pruritus associated with allergic dermatitis and control of atopic dermatitis in dogs at least 12 months of age. | FOI Summary | 520.1604 |
| June 21, 2023 | 141–406 | Boehringer Ingelheim Animal Health USA, Inc., 3239 Satellite Blvd., Duluth, GA 30096. | NEXGARD (afoxolaner) Chewable Tablet. | Supplemental approval for Asian longhorned tick. | FOI Summary | 520.43 |
| June 22, 2023 | 200–751 | Pegasus Laboratories, Inc., 8809 Ely Rd., Pensacola, FL 32514. | Firocoxib Chewable Tablets for Dogs (firocoxib). | Original approval for the control of pain and inflammation associated with osteoarthritis and for the control of postoperative pain and inflammation associated with soft-tissue and orthopedic surgery in dogs as a generic copy of NADA 141–230. | FOI Summary | 520.928 |

Also, FDA is amending the animal drug regulations to reflect approval of supplemental applications, as listed in table 2, to change the marketing status of dosage form antimicrobial animal drug products from over-the-counter (OTC) to by veterinary prescription (Rx). These applications were submitted in voluntary compliance with the goals of the FDA Center for Veterinary Medicine's Judicious Use Initiative as identified by guidance for industry #263, ''Recommendations for Sponsors of Medically Important Antimicrobial Drugs Approved for Use in Animals to Voluntarily Bring Under Veterinary Oversight All Products That Continue to be Available Over-the-Counter,'' June 11, 2021 (*https://www.fda.gov/media/130610/download*).

TABLE 2—SUPPLEMENTAL APPLICATIONS APPROVED DURING APRIL, MAY, AND JUNE 2023 TO CHANGE THE MARKETING STATUS OF ANTIMICROBIAL ANIMAL DRUG PRODUCTS FROM OTC TO RX

| Approval date | File No. | Sponsor | Product name | 21 CFR section |
|---|---|---|---|---|
| April 14, 2023 | 200–147 | Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sofia, Bulgaria. | GENTAPOULT (gentamicin) Injectable Solution | 522.1044 |
| April 24, 2023 | 065–481 | Cronus Pharma Specialities India Private Ltd., Sy No-99/1, M/s GMR Hyderabad Aviation SEZ Ltd., Mamidipalli Village, Shamshabad Mandal, Ranga Reddy, Hyderabad, Telangana, 501218, India. | Chlortetracycline Pneumonia/Calf Scour Bolus | 520.443 |
| April 24, 2023 | 200–128 | Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sofia, Bulgaria. | AGRIMYCIN 200 (oxytetracycline HCl) Injectable Solution. | 522.1660a |

TABLE 2—SUPPLEMENTAL APPLICATIONS APPROVED DURING APRIL, MAY, AND JUNE 2023 TO CHANGE THE MARKETING STATUS OF ANTIMICROBIAL ANIMAL DRUG PRODUCTS FROM OTC TO RX—Continued

| Approval date | File No. | Sponsor | Product name | 21 CFR section |
|---|---|---|---|---|
| April 28, 2023 | 108–963 | Cronus Pharma Specialities India Private Ltd., Sy No-99/1, M/s GMR Hyderabad Aviation SEZ Ltd., Mamidipalli Village, Shamshabad Mandal, Ranga Reddy, Hyderabad, Telangana, 501218, India. | MEDAMYCIN 100 (oxytetracycline HCl) Injectable Solution. | 522.1662 |
| April 28, 2023 | 097–452 | Do | OXYJECT 100 (oxytetracycline HCl) Injectable Solution | 522.1662 |
| April 28, 2023 | 047–278 | Do | OXY–TET 50 (oxytetracycline HCl) Injectable Solution | 522.1662 |
| April 28, 2023 | 045–143 | Do | OXYJECT 50 (oxytetracycline HCl) Injectable Solution | 522.1662 |
| May 15, 2023 | 140–270 | Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sofia, Bulgaria. | SULFATECH SR (sulfamethazine sustained release bolus). | 520.2260b |
| May 15, 2023 | 200–306 | Norbrook Laboratories Ltd., Carnbane Industrial Estate, Newry, County Down, BT35 6QQ, United Kingdom. | Oxytetracycline Injection 200 | 522.1660a |
| May 16, 2023 | 120–615 | Bimeda Animal Health Ltd., 1B The Herbert Building, The Park, Carrickmines, Dublin 18, Ireland. | SUSTAIN III (sulfamethazine) Calf Bolus | 520.2260b |
| May 17, 2023 | 200–224 | Elanco US Inc., 2500 Innovation Way, Greenfield, IN 46140. | COMPONENT T–S with TYLAN; COMPONENT T–H with TYLAN (trenbolone acetate and tylosin tartrate) Implants. | 522.2476 |
| May 19, 2023 | 200–364 | Bimeda Animal Health Ltd., 1B The Herbert Building, The Park, Carrickmines, Dublin 18, Ireland. | SPECTOGARD Scour-Chek (spectinomycin dihydrochloride pentahydrate) Oral Solution. | 520.2123c |
| May 22, 2023 | 035–455 | Do | ERYTHRO–36 Dry (erythromycin) IMM Infusion | 526.820 |
| May 22, 2023 | 200–452 | Norbrook Laboratories Ltd., Carnbane Industrial Estate, Newry, County Down, BT35 6QQ, United Kingdom. | OXYTET 100 (oxytetracycline HCl) Injectable Solution | 522.1662 |
| May 26, 2023 | 200–068 | Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sofia, Bulgaria. | Oxytetracycline Hydrochloride Injection, 100 mg/mL | 522.1662 |
| May 30, 2023 | 055–097 | HQ Specialty Pharma Corp., 120 Rte. 17 North, Suite 130, Paramus, NJ 07652. | DRY–MAST (dihydrostreptomycin sulfate and penicillin G procaine). | 526.1697 |
| May 31, 2023 | 200–008 | Boehringer Ingelheim Animal Health USA, Inc., 3239 Satellite Blvd., Duluth, GA 30096. | BIO–MYCIN 200 (oxytetracycline HCl) Injectable Solution. | 522.1660a |
| June 2, 2023 | 065–383 | Bimeda Animal Health Ltd., 1B The Herbert Building, The Park, Carrickmines, Dublin 18, Ireland. | FORMULA A–34; UNI BIOTIC (penicillin G procaine) 4 DOSE. | 526.1696 |
| June 2, 2023 | 200–537 | Do | TETROXY–LA (oxytetracycline HCl) Injectable Solution | 522.1660a |
| June 7, 2023 | 200–154 | Pharmgate Inc., 1800 Sir Tyler Dr., Wilmington, NC 28405. | PENNO$_X$ 200 (oxytetracycline HCl) Injectable Solution | 522.1660a |
| June 8, 2023 | 200–123 | Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sofia, Bulgaria. | MAXIM–200 Injection (oxytetracycline HCl) | 522.1660a |
| June 9, 2023 | 200–117 | Bimeda Animal Health Ltd., 1B The Herbert Building, The Park, Carrickmines, Dublin 18, Ireland. | OXYSHOT LA (oxytetracycline HCl) Injectable Solution | 522.1660a |
| June 15, 2023 | 135–906 | Elanco US Inc., 2500 Innovation Way, Greenfield, IN 46140. | COMPONENT E–H with TYLAN (testosterone propionate and estradiol benzoate with tylosin tartrate) Implant. | 522.2343 |
| June 22, 2023 | 200–221 | Do | COMPONENT TE–G with TYLAN; COMPONENT TE–ID with TYLAN; COMPONENT TE–IS with TYLAN; COMPONENT TE–S with TYLAN (trenbolone acetate, estradiol, and tylosin tartrate) Implants. | 522.2477 |
| June 30, 2023 | 200–346 | Do | COMPONENT TE–200 with TYLAN; COMPONENT TE–H with TYLAN; COMPONENT TE–IH with TYLAN; (trenbolone acetate, estradiol, and tylosin tartrate) Implants. | 522.2477 |
| June 30, 2023 | 110–315 | Do | COMPONENT E–C with TYLAN; COMPONENT E–S with TYLAN (progesterone, estradiol benzoate, and tylosin tartrate) Implants. | 522.1940 |

## II. Withdrawals of Approval

The sponsors of the following files have requested that FDA withdraw approval of the applications listed in table 3 because the products are no longer manufactured or marketed. As provided in the regulatory text of this document, the cited animal drug regulations are amended to reflect these actions.

TABLE 3—APPLICATIONS FOR WHICH APPROVAL WAS VOLUNTARILY WITHDRAWN DURING APRIL, MAY, AND JUNE 2023

| File No. | Sponsor | Product name | 21 CFR section |
|---|---|---|---|
| 140–954 | Intervet, Inc., 2 Giralda Farms, Madison, NJ 07940 | Type C medicated swine feed containing fenbendazole and lincomycin. | 558.325 |
| 141–002 | Boehringer Ingelheim Animal Health USA, Inc., 3239 Satellite Blvd., Duluth, GA 30096. | OXY 1000 (oxytetracycline HCl) Calf Bolus; OXY 500 (oxytetracycline HCl) Calf Bolus. | 520.1660c |
| 200–191 | Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767–1861. | GENTASOL (gentamicin sulfate solution) | 529.1044b |

**III. Change of Sponsor**

Elanco US, Inc., 2500 Innovation Way, Greenfield, IN 46140 has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 135–468 for CARBIGRAN 25 (nicarbazin) Type A Medicated Article to Pharmgate Inc., 1800 Sir Tyler Dr., Wilmington, NC 28405. As provided in the regulatory text of this document, 21 CFR 558.366 is amended to reflect this action.

**IV. Change of Sponsor Address**

Intervet, Inc., 2 Giralda Farms, Madison, NJ 07940 has informed FDA that it has changed its address to 126 E. Lincoln Ave., Rahway, NJ 07065. As provided in the regulatory text of this document, the tabular listings in 21 CFR 510.600(c) are amended to reflect this action.

**V. Technical Amendments**

FDA is making the following amendments to improve the accuracy of the animal drug regulations.

- 21 CFR 500.1410 and 522.1660a are amended to reflect the use of N-methyl-2-pyrrolidone as an excipient in a formulation of oxytetracycline injectable solution.
- 21 CFR 520.1484 is being revised to include use of neomycin administered in drinking water of turkeys.
- 21 CFR 520.1660a is being redesignated as 21 CFR 520.1664 to reflect the drug as a fixed-ratio combination of oxytetracycline and carbomycin.
- 21 CFR 520.1660b is being revised to reflect the format and content of a prescription drug.
- 21 CFR 520.2220b is amended to reflect revised conditions of use for sulfadimethoxine oral suspension in dogs and cats.
- 21 CFR 520.2220c is amended to reflect revised conditions of use for sulfadimethoxine tablets in dogs and cats.
- 21 CFR 520.2260b is amended to reflect current sponsors of sulfamethazine sustained-release boluses for use in cattle.
- 21 CFR 522.2680 is amended to reflect revised conditions of use for zeranol implants in beef cattle.
- 21 CFR 529.1044a is amended to reflect sponsors of approved applications for use of gentamicin solution for uterine infusion in mares.
- 21 CFR 556.110 and 556.500 are being revised to reflect redesignation of a combination drug containing oxytetracycline and carbomycin used in the drinking water of chickens.
- 21 CFR 558.68 is being revised to reflect approved feeding instructions for avilamycin and monensin two-way, combination drug Type C medicated chicken feed.

**VI. Legal Authority**

This final rule is issued under section 512(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C.360b(i)), which requires **Federal Register** publication of ''notice[s] . . . effective as a regulation,'' of the conditions of use of approved new animal drugs. This rule sets forth technical amendments to the regulations to codify recent actions on approved new animal drug applications and corrections to improve the accuracy of the regulations, and as such does not impose any burden on regulated entities.

Although denominated a rule pursuant to the FD&C Act, this document does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a ''rule of particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808. Likewise, this is not a rule subject to Executive Order 12866, which defines a rule as ''an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.''

**List of Subjects**

*21 CFR Part 500*

Animal drugs, Animal feeds, Cancer, Labeling, Packaging and containers, Polychlorinated biphenyls (PCBs).

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 516*

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

*21 CFR Parts 520, 522, 524, 526, and 529*

Animal drugs.

*21 CFR Part 556*

Animal drugs, Dairy products, Foods, Meat and meat products.

*21 CFR Part 558*

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 500, 510, 516, 520, 522, 524, 526, 529, 556, and 558 are amended as follows:

## PART 500—GENERAL

■ 1. The authority citation for part 500 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 500.1410, revise paragraph (c) to read as follows:

**§ 500.1410 N-methyl-2-pyrrolidone.**

* * * * *

(c) *Related conditions of use.* See §§ 522.814, 522.955, and 522.1660a of this chapter.

## PART 510—NEW ANIMAL DRUGS

■ 3. The authority citation for part 510 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 4. In § 510.600, in the table in paragraph (c)(1), revise the entry for ''Intervet, Inc.'' and in the table in paragraph (c)(2), revise the entry for ''000061'' to read as follows:

**§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.**

* * * * *

(c) * * *

(1) * * *

| Firm name and address | Drug labeler code |
|---|---|
| * * * * * * * | |
| Intervet, Inc., 126 E Lincoln Ave., Rahway, NJ 07065 | 000061 |
| * * * * * * * | |

(2) * * *

| Drug labeler code | Firm name and address |
|---|---|
| * * * * * * * | |
| 000061 | Intervet, Inc., 126 E Lincoln Ave., Rahway, NJ 07065 |
| * * * * * * * | |

## PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

■ 5. The authority citation for part 516 continues to read as follows:

**Authority:** 21 U.S.C. 360ccc–1, 360ccc–2, 371.

■ 6. Add § 516.1449 to read as follows:

### § 516.1449 Molidustat oral suspension.

(a) *Specifications.* Each milliliter (mL) of suspension contains 25 milligrams (mg) molidustat sodium.

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer orally at a dosage of 5 mg/kg of body weight (2.3 mg/lb) daily for up to 28 consecutive days.

(2) *Indications for use.* For the control of nonregenerative anemia associated with chronic kidney disease in cats.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. It is a violation of Federal law to use this product other than as directed in the labeling.

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 7. The authority citation for part 520 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 8. In § 520.43, revise paragraphs (c)(1) and (2) to read as follows:

### § 520.43 Afoxolaner.

* * * * *

(c) * * *

(1) *Amount.* Administer orally once a month at a minimum dosage of 1.14 mg/pound (2.5 mg/kilogram).

(2) *Indications for use.* Kills adult fleas and for the treatment and prevention of flea infestations (*Ctenocephalides felis*); and the treatment and control of *Ixodes scapularis* (black-legged tick), *Dermacentor variabilis* (American dog tick), *Amblyomma americanum* (lone star tick), *Rhipicephalus sanguineus* (brown dog tick), and *Haemaphysalis longicornis* (longhorned tick) infestations in dogs and puppies 8 weeks of age and older, weighing 4 pounds of body weight or greater, for 1 month; and for the prevention of *Borrelia burgdorferi* infections as a direct result of killing *Ixodes scapularis* vector ticks.

* * * * *

■ 9. In § 520.443, revise paragraph (d)(1)(ii) to read as follows:

### § 520.443 Chlortetracycline tablets and boluses.

* * * * *

(d) * * *

(1) * * *

(ii) *Limitations.* Administer bolus directly by mouth or crush and dissolve in milk or water for drenching or bucket feeding. Do not use for more than 5 days. Do not administer within 24 hours of slaughter. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

### § 520.928 [Amended]

■ 10. In § 520.928, in paragraph (b)(1), remove ''Nos. 000010 and 055529'' and add in its place ''Nos. 000010, 055246, and 055529''.

■ 11. In § 520.1484, revise paragraph (b)(3) and add paragraph (b)(4) to read as follows:

### § 520.1484 Neomycin.

* * * * *

(b) * * *

(3) Nos. 016592, 054771, and 058005 for use of product described in paragraph (a)(2) as in paragraph (e)(1) of this section.

(4) No. 054925 for use of product described in paragraph (a)(2) as in paragraphs (e)(1) and (2) of this section.

* * * * *

### § 520.1604 [Amended]

■ 12. In § 520.1604, in paragraph (a), remove ''Each tablet contains'' and add in its place ''Each tablet or chewable tablet contains''.

### § 520.1660a [Redesignated as § 520.1664]

■ 13. Redesignate § 520.1660a as § 520.1664.

### § 520.1660a [Reserved]

■ 14. Add reserved § 520.1660a.

■ 15. In § 520.1660b, revise the section heading and paragraphs (a) and (c) to read as follows:

### § 520.1660b Oxytetracycline capsules.

(a) *Specifications.* Each capsule contains 125 or 250 milligrams (mg) oxytetracycline hydrochloride.

* * * * *

(c) *Conditions of use in dogs and cats*—(1) *Amount.* Administer orally 25 to 50 mg per pound of body weight per day in divided doses at 12-hour intervals.

(2) *Indications for use.* For the treatment of bacterial pneumonia caused by *Brucella bronchiseptica,* tonsilitis caused by *Streptococcus hemolyticus,* bacterial enteritis caused by *Escherichia coli,* urinary tract infections caused by *Escherichia coli,* and wound infections caused by *Staphylococcus aureus.*

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 16. In § 520.1660c, revise the section heading and paragraphs (a), (b), and (d) to read as follows:

**§ 520.1660c Oxytetracycline tablets.**

(a) *Specifications.* Each tablet contains 250 or 500 milligrams (mg) oxytetracycline hydrochloride.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

* * * * *

(d) *Conditions of use in beef and dairy cattle*—(1) *Amounts.* 10 mg per pound of body weight every 12 hours for treatment; 5 mg per pound of body weight every 12 hours for control.

(2) *Indications for use.* For treatment and control of bacterial enteritis caused by *Salmonella typhimurium* and *Escherichia coli* (colibacillosis) and bacterial pneumonia (shipping fever complex, pasteurellosis) caused by *Pasteurella multocida.*

(3) *Limitations.* Discontinue treatment 7 days prior to slaughter. Not for use in lactating dairy cattle. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 17. In § 520.2220b, revise paragraphs (c)(1) and (2) to read as follows:

**§ 520.2220b Sulfadimethoxine suspension.**

* * * * *

(c) * * *

(1) *Amount.* Administer orally 25 mg per pound of body weight, followed by 12.5 mg per pound of body weight daily until the animal is free of clinical signs for 48 hours.

(2) *Indications for use.* For the treatment of sulfadimethoxine-susceptible bacterial infections in dogs and cats and enteritis associated with coccidiosis in dogs.

* * * * *

■ 18. In § 520.2220c, revise paragraphs (d)(1) and (2) to read as follows:

**§ 520.2220c Sulfadimethoxine tablet.**

* * * * *

(d) * * *

(1) *Amount.* Administer orally 25 mg per pound of body weight, followed by 12.5 mg per pound of body weight daily until the animal is free of clinical signs for 48 hours.

(2) *Indications for use.* For the treatment of sulfadimethoxine-susceptible bacterial infections in dogs and cats and enteritis associated with coccidiosis in dogs.

* * * * *

■ 19. In § 520.2260b, revise paragraphs (d)(2)(iii), (f)(2)(iii), and (g)(2)(iii) and remove paragraph (h).

The revisions read as follows:

**§ 520.2260b Sulfamethazine sustained-release boluses.**

* * * * *

(d) * * *

(2) * * *

(iii) *Limitations.* Do not use in female dairy cattle 20 months of age or older. Use of sulfamethazine in this class of cattle may cause milk residues. Do not treat animals within 12 days of slaughter. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

(f) * * *

(2) * * *

(iii) *Limitations.* For use in ruminating replacement calves only. Do not slaughter animals for food for at least 12 days after the last dose. Exceeding two consecutive doses may cause violative tissue residue to remain beyond the withdrawal time. Do not use in calves under 1 month of age or calves being fed an all milk diet. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(g) * * *

(2) * * *

(iii) *Limitations.* For use in beef cattle and nonlactating dairy cattle only. Do not slaughter animals for food for at least 8 days after the last dose. Do not use in lactating dairy cattle. Do not administer more than two consecutive doses. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 20. The authority citation for part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 21. Add § 522.158 to read as follows:

**§ 522.158 Bedinvetmab.**

(a) *Specifications.* Each single-use vial contains 5, 10, 15, 20, or 30 milligrams (mg) bedinvetmab in an extractable volume of 1 milliliter.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer 0.23 mg/pound (0.5 mg/kilogram) body weight monthly by subcutaneous injection.

(2) *Indications for use.* For the control of pain associated with osteoarthritis in dogs.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 22. In § 522.770, revise paragraphs (b), (d)(1)(iii), and (d)(2)(iii) to read as follows:

**§ 522.770 Doramectin.**

* * * * *

(b) *Sponsors.* See Nos. 054771 and 069043 in § 510.600(c) of this chapter.

* * * * *

(d) * * *

(1) * * *

(iii) *Limitations.* Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism. Administer as a single subcutaneous or intramuscular injection. Do not slaughter cattle for human consumption within 35 days of treatment. Not for use in female dairy cattle 20 months of age or older. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

(2) * * *

(iii) *Limitations.* Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism. Administer as a single intramuscular injection. Do not slaughter swine for human consumption within 24 days of treatment.

■ 23. In § 522.960c, revise paragraphs (b) and (c)(1)(iii) to read as follows:

**§ 522.960c Flumethasone solution.**

* * * * *

(b) *Sponsors.* See Nos. 054771 and 061133 in § 510.600(c) of this chapter.

(c) * * *

(1) * * *

(iii) *Limitations.* Not for use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

**§ 522.1222 [Amended]**

■ 24. In § 522.1222, in paragraph (b), remove ''063286,''.

■ 25. In § 522.1660a:

■ a. Revise paragraph (c);

■ b. Remove paragraph (d);

■ c. Redesignate paragraph (e) as paragraph (d); and

■ d. Revise newly redesignated paragraphs (d)(1)(ii) and (d)(2)(ii).

The revisions read as follows:

**§ 522.1660a Oxytetracycline solution, 200 milligrams/milliliter.**

* * * * *

(c) *Related tolerances.* See § 556.500 of this chapter; and for No. 061133, see also § 500.1410 of this chapter.

(d) * * *

(1) * * *

(ii) *Limitations.* Discontinue treatment at least 28 days prior to slaughter. Milk taken from animals during treatment and for 96 hours after the last treatment

must not be used for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) * * *

(ii) *Limitations.* Administer intramuscularly. Do not inject more than 5 mL per site in adult swine. Discontinue treatment at least 28 days prior to slaughter. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 26. In § 522.1662, revise paragraphs (b), (c), (g), (h), and (j) to read as follows:

**§ 522.1662 Oxytetracycline.**

* * * * *

(b)(1) *Specifications.* Each milliliter (mL) of solution contains 50 milligrams (mg) oxytetracycline hydrochloride.

(2) *Sponsor.* See No. 069043 in § 510.600(c) of this chapter.

(3) *Conditions of use*—(i) *Amount.* Administer 3 to 5 mg per pound of body weight (mg/lb) per day by intramuscular injection. Leptospirosis, severe foot-rot, and severe forms of the indicated diseases should be treated with 5 mg/lb per day. Treatment should be continued for 24 to 48 hours following remission of clinical signs of disease, not to exceed 4 consecutive days. Not more than 10 mL should be injected per injection site in adult cattle, and only 2 mL per injection site in calves weighing 100 pounds or less.

(ii) *Indications for use.* Beef cattle, beef calves, nonlactating dairy cattle, and dairy calves; for treatment of diseases due to oxytetracycline-susceptible organisms as follows: Pneumonia and shipping fever complex (*Pasteurella* spp., *Haemophilus* spp., *Klebsiella* spp.), bacterial enteritis (scours) (*Escherichia coli*), foot-rot (*Spherophorus necrophorus*), diphtheria (*Spherophorus necrophorus*), wooden tongue (*Actinobacillus lignieresii*), leptospirosis (*Leptospira pomona*), and wound infections and acute metritis caused by *Staphylococcus* spp. and *Streptococcus* spp.

(iii) *Limitations.* Discontinue treatment at least 20 days prior to slaughter. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(c)(1) *Specifications.* Each milliliter (mL) of solution contains 50 or 100 milligrams (mg) oxytetracycline hydrochloride.

(2) *Sponsor.* See No. 069043 in § 510.600(c) of this chapter.

(3) *Conditions of use*—(i) *Beef cattle and nonlactating dairy cattle*—(A) *Amount.* Administer 3 to 5 mg per pound of body weight (mg/lb) per day; 5 mg/lb per day for the treatment of anaplasmosis, severe foot-rot, and severe cases of other indicated diseases. For 50-mg/mL solution, administer intramuscularly or intravenously; for 100-mg/mL solution, administer intramuscularly only. Treatment should be continued for 24 to 48 hours following remission of clinical signs of disease, not to exceed 4 consecutive days.

(B) *Indications for use.* For treatment of diseases due to oxytetracycline-susceptible organisms as follows: Pneumonia and shipping fever complex associated with *Pasteurella* spp., *Haemophilus* spp., and *Klebsiella* spp., foot-rot and diphtheria caused by *Spherophorus necrophorus,* bacterial enteritis (scours) caused by *Escherichia coli,* wooden tongue caused by *Actinobacillus lignieresii,* leptospirosis caused by *Leptospira pomona,* anaplasmosis caused by *Anaplasma marginale;* and wound infections and acute metritis caused by *Staphylococcus* spp. and *Streptococcus* spp.

(C) *Limitations.* Exceeding the highest recommended dose of 5 mg/lb, administering at recommended levels for more than 4 consecutive days, and/or exceeding 10 mL intramuscularly per injection site may result in antibiotic residues beyond the withdrawal time. Discontinue treatment at least 18 days prior to slaughter. Not for use in lactating dairy cattle. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(ii) *Swine*—(A) *Amount.* Administer 3 to 5 mg/lb per day by intramuscular injection. Sows: Administer 3 mg/lb by intramuscular injection approximately 8 hours before farrowing or immediately after completion of farrowing.

(B) *Indications for use.* For treatment of bacterial enteritis (scours, colibacillosis) caused by *Escherichia coli,* pneumonia caused by *Pasteurella multocida,* and leptospirosis caused by *Leptospira pomona.* Sows: as an aid in control of infectious enteritis (baby pig scours, colibacillosis) in suckling pigs caused by *Escherichia coli.*

(C) *Limitations.* Do not inject more than 5 mL per injection site. Do not use for more than 4 consecutive days. Discontinue treatment at least 26 days before slaughter. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

(g)(1) *Specifications.* Each milliliter (mL) of solution contains 100 milligrams (mg) oxytetracycline hydrochloride.

(2) *Sponsor.* See No. 069043 in § 510.600(c) of this chapter.

(3) *Conditions of use.* For the treatment of diseases due to oxytetracycline-susceptible organisms as follows:

(i) *Beef cattle, beef calves, nonlactating dairy cattle, and dairy calves*—(A) *Amount.* Administer 3 to 5 mg/lb body weight per day by intramuscular, intravenous, or subcutaneous injection. In severe forms of the indicated diseases, administer 5 mg/lb body weight per day. Continue treatment 24 to 48 hours following remission of clinical signs of disease, not to exceed 4 consecutive days.

(B) *Indications for use.* For the treatment of pneumonia and shipping fever complex associated with *Pasteurella* spp., *Haemophilus* spp., or *Klebsiella* spp.

(C) *Limitations.* Do not inject more than 10 mL per intramuscular injection site in adult cattle, and no more than 1 mL per site in calves weighing 100 pounds or less. Do not slaughter cattle for 13 days after intramuscular or intravenous treatment, or 2 days after subcutaneous treatment. Exceeding the highest recommended dosage or duration of treatment (not more than 4 consecutive days) may result in residues beyond the withdrawal period. A withdrawal period has not been established for use of this product in preruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(ii) *Swine*—(A) *Amount.* Administer 3 to 5 mg/lb body weight per day by intramuscular injection. Sows: Administer 3 mg/lb body weight once, by intramuscular injection, approximately 8 hours before farrowing or immediately after completion of farrowing.

(B) *Indications for use.* For treatment of bacterial enteritis (scours, colibacillosis) caused by *Escherichia coli,* pneumonia caused by *Pasteurella multocida,* and leptospirosis caused by *Leptospira pomona.* Sows: As an aid in control of infectious enteritis (baby pig scours, colibacillosis) in suckling pigs caused by *Escherichia coli.*

(C) *Limitations.* Do not inject more than 5 mL per site. Discontinue treatment at least 20 days prior to slaughter. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(h)(1) *Specifications.* Each milliliter (mL) of solution contains 50 or 100 milligrams (mg) oxytetracycline hydrochloride.

(2) *Sponsors.* See No. 069043 in § 510.600(c) of this chapter for use of 50- and 100-mg/mL solution and Nos. 016592 and 055529 in § 510.600(c) of this chapter for use of 100-mg/mL solution.

(3) *Conditions of use in beef cattle, beef calves, nonlactating dairy cattle,*

*and dairy calves*—(i) *Amount.* Administer 3 to 5 mg/lb body weight per day by intramuscular injection; 5 mg/lb body weight per day for treatment of severe forms of the indicated diseases.

(ii) *Indications for use.* For treatment of bacterial pneumonia and shipping fever complex associated with *Pasteurella* spp., foot-rot and calf diphtheria caused by *Fusobacterium necrophorum,* bacterial enteritis (scours) caused by *Escherichia coli,* wooden tongue caused by *Actinobacillus lignieresii;* and wound infections and acute metritis caused by *Staphylococcus* spp. and *Streptococcus* spp.

(iii) *Limitations.* Do not inject more than 10 mL per site in adult cattle. Reduce the volume administered per injection site according to age and body size. In calves weighing 100 pounds or less, do not inject more than 2 mL per site. Discontinue treatment at least 22 days before slaughter. Not for use in lactating dairy animals. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

(j)(1) *Specifications.* Each milliliter (mL) of solution contains either 50 or 100 milligrams (mg) of oxytetracycline hydrochloride.

(2) *Sponsor.* See No. 061133 in § 510.600(c) of this chapter.

(3) *Conditions of use in beef cattle and nonlactating dairy cattle*—(i) *Amount.* Administer 3 to 5 mg/lb body weight daily by intravenous injection. Administer 5 mg/lb for anaplasmosis, severe foot rot, and severe forms of other diseases. Treatment should be continued 24 to 48 hours following remission of clinical signs of disease, but not to exceed 4 consecutive days.

(ii) *Indications for use.* For treatment of diseases due to oxytetracycline-susceptible organisms as follows: Pneumonia and shipping fever complex associated with *Pasteurella* spp. and *Haemophilus* spp., foot rot and diphtheria caused by *Fusobacterium necrophorum,* bacterial enteritis (scours) caused by *Escherichia coli,* wooden tongue caused by *Actinobacillus lignieresii,* leptospirosis caused by *Leptospira pomona,* anaplasmosis caused by *Anaplasma marginale* and anthrax caused by *Bacillus anthracis;* and acute metritis and wound infections caused by staphylococcal and streptococcal organisms.

(iii) *Limitations.* Not for use in lactating dairy cattle. Discontinue use at least 19 days prior to slaughter. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 27. In § 522.1940, revise paragraph (a), redesignate paragraph (c) as paragraph (d), and add new paragraph (c).

The revision and addition read as follows:

**§ 522.1940 Progesterone and estradiol benzoate.**

(a) *Sponsors.* See sponsors in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(1) No. 054771 for use as in paragraphs (d)(1)(i)(A), (d)(1)(ii) and (iii), (d)(2)(i)(A), (d)(2)(ii) and (iii), and (d)(3) of this section.

(2) No. 058198 for use as in paragraphs (d)(1) and (2) of this section.

* * * * *

(c) *Special considerations.* Labeling of implants described in paragraphs (d)(1)(i)(B) and (d)(2)(i)(B) of this section shall bear the following: ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''.

* * * * *

■ 28. In § 522.2343, revise paragraph (a), redesignate paragraph (c) as paragraph (d), and add new paragraph (c).

The revision and addition read as follows:

**§ 522.2343 Testosterone propionate and estradiol benzoate.**

(a) *Sponsors.* See sponsors in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(1) No. 054771 for use as in paragraphs (d)(1)(i) and (d)(2) and (3) of this section.

(2) No. 058198 for use as in paragraph (d) of this section.

* * * * *

(c) *Special considerations.* Labeling of implants described in paragraph (d)(1)(ii) of this section shall bear the following: ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''

* * * * *

■ 29. In § 522.2476, revise paragraph (a), redesignate paragraph (c) as paragraph (d), and add new paragraph (c).

The revision and addition read as follows:

**§ 522.2476 Trenbolone acetate.**

(a) *Sponsors.* See sponsors in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(1) No. 000061 for use as in paragraphs (d)(1)(i)(A), (d)(1)(ii) and (iii), (d)(2)(i)(A), and (d)(2)(ii) and (iii) of this section.

(2) No. 058198 for use as in paragraph (d) of this section.

* * * * *

(c) *Special considerations.* Labeling of implants described in paragraph (d)(1)(i)(B) and (d)(2)(i)(B) of this section shall bear the following: ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''.

* * * * *

■ 30. In § 522.2477, redesignate paragraphs (b) and (c) as paragraphs (a) and (b) and add new paragraph (c) to read as follows:

**§ 522.2477 Trenbolone acetate and estradiol.**

* * * * *

(c) *Special considerations.* Labeling of implants described in paragraphs (d)(1)(i)(B), (E), and (F), (d)(2)(i)(B), (E), and (F), and (d)(3)(i)(B) of this section shall bear the following: ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''.

* * * * *

■ 31. In § 522.2680, revise paragraphs (d)(1)(ii)(A) and (B) and (d)(1)(iii) to read as follows:

**§ 522.2680 Zeranol.**

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(A) Weaned beef calves, growing beef cattle, feedlot steers, and feedlot heifers: For increased rate of weight gain and improved feed conversion.

(B) Suckling calves: For increased rate of weight gain.

(iii) *Limitations.* Implant pellets subcutaneously only. Not approved for repeated implantation (reimplantation) with this or any other cattle ear implant within a single production phase as safety and effectiveness have not been evaluated. Do not use in beef calves less than 2 months of age, dairy calves, and veal calves because effectiveness and safety have not been evaluated. A withdrawal period has not been established for this product in preruminating calves. Do not use in replacement beef heifers after weaning or in bulls, dairy cows, or replacement dairy heifers.

* * * * *

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 32. The authority citation for part 524 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 33. Add § 524.838 to read as follows:

**§ 524.838 Esafoxolaner, eprinomectin, and praziquantel.**

(a) *Specifications.* Each milliliter (mL) of topical solution contains 12

milligrams (mg) esafoxolaner, 4 mg eprinomectin, and 83 mg praziquantel.

(b) *Sponsor.* See No. 000010 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer the entire contents of a provided unit applicator topically once a month at a minimum dose of 0.055 mL/lb (0.12 mL/kg), which delivers a minimum dose of 0.66 mg/lb (1.45 mg/kg) esafoxolaner, 0.23 mg/lb (0.51 mg/kg) eprinomectin, and 4.55 mg/lb (10.0 mg/kg) praziquantel.

(2) *Indications for use.* For the prevention of heartworm disease caused by *Dirofilaria immitis.* Kills adult fleas (*Ctenocephalides felis*) and is indicated for the treatment and prevention of flea infestations, the treatment and control of *Ixodes scapularis* (black-legged tick) and *Amblyomma americanum* (lone star tick) infestations, and the treatment and control of roundworms (fourth-stage larval and adult *Toxocara cati*), hookworms (fourth-stage larval and adult *Ancylostoma tubaeforme;* adult *Ancylostoma braziliense*), and tapeworms (*Dipylidium caninum*) in cats and kittens 8 weeks of age and older, and weighing 1.8 lbs or greater.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

## PART 526—INTRAMAMMARY DOSAGE FORM NEW ANIMAL DRUGS

■ 34. The authority citation for part 526 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

**§ 526.1696 [Amended]**

■ 35. In § 526.1696, in paragraphs (d)(3) and (e)(3), in the last sentence, remove ''For No. 042791:''.

■ 36. In § 526.1697, add a sentence to the end of paragraph (d)(3) to read as follows:

**§ 526.1697 Penicillin G procaine and dihydrostreptomycin.**

(d) * * *

(3) * * * Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

## PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 37. The authority citation for part 529 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 38. In § 529.1044a, revise paragraph (b) to read as follows:

**§ 529.1044a Gentamicin solution for infusion.**

* * * * *

(b) *Sponsors.* See Nos. 000061, 016592, 054771, 058005, 058198, 061133, and 069043 in § 510.600(c) of this chapter.

* * * * *

■ 39. In 529.1044b, revise paragraph (c)(3) to read as follows:

**§ 529.1044b Gentamicin solution for dipping eggs.**

* * * * *

(c) * * *

(3) *Limitations.* Eggs which have been dipped in the drug shall not be used for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

## PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 40. The authority citation for part 556 continues to read as follows:

**Authority:** 21 U.S.C. 342, 360b, 371.

■ 41. In § 556.110, revise paragraph (c) to read as follows:

**§ 556.110 Carbomycin.**

* * * * *

(c) *Related conditions of use.* See § 520.1664 of this chapter.

■ 42. In § 556.500, revise paragraph (c) to read as follows:

**§ 556.500 Oxytetracycline.**

* * * * *

(c) *Related conditions of use.* See §§ 520.1660c, 520.1660d, 520.1664, 522.1660a, 522.1660b, 522.1662, 522.1664, 529.1660, 558.450, and 558.455 of this chapter.

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 43. The authority citation for part 558 continues to read as follows:

**Authority:** 21 U.S.C. 354, 360b, 360ccc, 360ccc–1, 371.

■ 44. In § 558.68, revise paragraph (e)(1)(ii) to read as follows:

**§ 558.68 Avilamycin.**

* * * * *

(e) * * *

(1) * * *

| Avilamycin in grams/ton | Combination in grams/ton | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| * | * | * | * | * |
| (ii) 13.6 to 40.9 ..... | Monensin, 90 to 110 .. | Broiler chickens: For the prevention of mortality caused by necrotic enteritis associated with *Clostridium perfringens;* and as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.* | Feed this complete Type C medicated feed as the sole ration for 21 consecutive days. To assure responsible antimicrobial drug use in broiler chickens, treatment administration must begin on or before 18 days of age. See § 558.355(d) of this chapter. Monensin as provided by No. 058198 in § 510.600(c) of this chapter. | 058198 |
| * | * | * | * | * |

* * * * *

■ 45. In § 558.128, revise paragraphs (e)(4)(iii) and (iv), (e)(4)(ix) through (xiv), and (e)(4)(xviii) through (xx) to read as follows:

**§ 558.128 Chlortetracycline.**

* * * * *

(e) * * *

(4) * * *

| Chlortetracycline amount | Combination in grams/ton | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| * | * | * | * * * * | |
| (iii) 7 to 17.5 g/ton ..... | Monensin, 5 to 40 ..... | Growing beef steers and heifers fed in confinement for slaughter over 400 lb: For reduction of the incidence of liver abscesses and for improved feed efficiency. | Feed as the sole ration to provide 70 mg chlortetracycline per head per day and 50 to 480 mg monensin per head per day. No additional improvement in feed efficiency has been shown from feeding monensin at levels greater than 30 grams per ton (360 mg monensin per head per day). For use in dry feeds only. Not for use in liquid feed supplements. Do not allow horses or other equines access to feed containing monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle and goat feeds are safe for use in cattle and goats only. Consumption by unapproved species may result in toxic reactions. Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result. If feed refusals containing monensin are fed to other groups of cattle, the concentration of monensin in the refusals and amount of refusals fed should be taken into consideration to prevent monensin overdosing. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Monensin as provided by Nos. 016592 and 058198, chlortetracycline by No. 069254 in §510.600(c) of this chapter. | 016592 069254 |
| (iv) 7 to 17.5 g/ton ..... | Monensin, 10 to 40 ..... | Growing beef steers and heifers fed in confinement for slaughter over 400 lb: For reduction of the incidence of liver abscesses and for prevention and control of coccidiosis due to *Eimeria bovis* and *Eimeria zuernii*. | Feed as the sole ration to provide 70 mg chlortetracycline per head per day and 0.14 to 0.42 mg monensin per lb. body weight per day to provide, depending upon severity of coccidiosis challenge, up to 480 mg monensin per head per day. For use in dry feeds only. Not for use in liquid feed supplements. Do not allow horses or other equines access to feed containing monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle and goat feeds are safe for use in cattle and goats only. Consumption by unapproved species may result in toxic reactions. Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result. If feed refusals containing monensin are fed to other groups of cattle, the concentration of monensin in the refusals and amount of refusals fed should be taken into consideration to prevent monensin overdosing. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Monensin as provided by Nos. 016592 and 058198, chlortetracycline by No. 069254 in §510.600(c) of this chapter. | 016592 069254 |
| * | * | * | * * * * | |
| (ix) 33.33 to 66.67 g/ton. | Monensin, 5 to 40 ..... | Growing beef steers and heifers fed in confinement for slaughter over 700 lbs: For control of active infection of anaplasmosis caused by *Anaplasma marginale* susceptible to chlortetracycline and for improved feed efficiency. | Feed as the sole ration to provide 0.5 mg chlortetracycline per lb. body weight per day and 50 to 480 mg monensin per head per day. No additional improvement in feed efficiency has been shown from feeding monensin at levels greater than 30 grams per ton (360 mg monensin per head per day). For use in dry feeds only. Not for use in liquid feed supplements. Do not allow horses or other equines access to feed containing monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle and goat feeds are safe for use in cattle and goats only. Consumption by unapproved species may result in toxic reactions. Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result. If feed refusals containing monensin are fed to other groups of cattle, the concentration of monensin in the refusals and amount of refusals fed should be taken into consideration to prevent monensin overdosing. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Monensin as provided by Nos. 016592 and 058198, chlortetracycline by No. 069254 in §510.600(c) of this chapter. | 016592 069254 |
| (x) 33.33 to 66.67 g/ton. | Monensin, 10 to 40 ..... | Growing beef steers and heifers fed in confinement for slaughter over 700 lbs: For control of active infection of anaplasmosis caused by *Anaplasma marginale* susceptible to chlortetracycline and for the prevention and control of coccidiosis due to *Eimeria bovis* and *Eimeria zuernii*. | Feed as the sole ration to provide 0.5 mg chlortetracycline per lb. body weight per day and 0.14 to 0.42 mg monensin per lb. body weight per day to provide, depending upon severity of coccidiosis challenge, up to 480 mg monensin per head per day. For use in dry feeds only. Not for use in liquid feed supplements. Do not allow horses or other equines access to feed containing monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle and goat feeds are safe for use in cattle and goats only. Consumption by unapproved species may result in toxic reactions. Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result. If feed refusals containing monensin are fed to other groups of cattle, the concentration of monensin in the refusals and amount of refusals fed should be taken into consideration to prevent monensin overdosing. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Monensin as provided by Nos. 016592 and 058198, chlortetracycline by No. 069254 in §510.600(c) of this chapter. | 016592 069254 |

| Chlortetracycline amount | Combination in grams/ton | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| (xi) 50 to 117 g/ton ..... | Monensin, 7.14 to 40 ..... | Growing beef steers and heifers fed in confinement for slaughter under 700 lbs: For control of active infection of anaplasmosis caused by *Anaplasma marginale* susceptible to chlortetracycline and for improved feed efficiency. | Feed as the sole ration to provide 350 mg chlortetracycline per head per day and 50 to 480 mg monensin per head per day. No additional improvement in feed efficiency has been shown from feeding monensin at levels greater than 30 grams per ton (360 mg monensin per head per day). For use in dry feeds only. Not for use in liquid feed supplements. Do not allow horses or other equines access to feed containing monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle and goat feeds are safe for use in cattle and goats only. Consumption by unapproved species may result in toxic reactions. Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result. If feed refusals containing monensin are fed to other groups of cattle, the concentration of monensin in the refusals and amount of refusals fed should be taken into consideration to prevent monensin overdosing. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Monensin as provided by Nos. 016592 and 058198, chlortetracycline by No. 069254 in § 510.600(c) of this chapter. | 016592<br>069254 |
| (xii) 50 to 117 g/ton .... | Monensin, 10 to 40 ..... | Growing beef steers and heifers fed in confinement for slaughter under 700 lbs: For control of active infection of anaplasmosis caused by *Anaplasma marginale* susceptible to chlortetracycline and for the prevention and control of coccidiosis due to *Eimeria bovis* and *Eimeria zuernii*. | Feed as the sole ration to provide 350 mg chlortetracycline per head per day and 0.14 to 0.42 mg monensin per lb. body weight per day to provide, depending upon severity of coccidiosis challenge, up to 480 mg monensin per head per day. For use in dry feeds only. Not for use in liquid feed supplements. Do not allow horses or other equines access to feed containing monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle and goat feeds are safe for use in cattle and goats only. Consumption by unapproved species may result in toxic reactions. Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result. If feed refusals containing monensin are fed to other groups of cattle, the concentration of monensin in the refusals and amount of refusals fed should be taken into consideration to prevent monensin overdosing. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Monensin as provided by Nos. 016592 and 058198, chlortetracycline by No. 069254 in § 510.600(c) of this chapter. | 016592<br>069254 |
| (xiii) 50 to 117 g/ton ... | Monensin, 7.14 to 40 ..... | Growing beef steers and heifers fed in confinement for slaughter: For the control of bacterial pneumonia associated with shipping fever complex caused by *Pasteurella* spp. susceptible to chlortetracycline and for improved feed efficiency. | Feed as the sole ration to provide 350 mg chlortetracycline per head per day and 50 to 480 mg monensin per head per day. No additional improvement in feed efficiency has been shown from feeding monensin at levels greater than 30 grams per ton (360 mg monensin per head per day). For use in dry feeds only. Not for use in liquid feed supplements. Do not allow horses or other equines access to feed containing monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle and goat feeds are safe for use in cattle and goats only. Consumption by unapproved species may result in toxic reactions. Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result. If feed refusals containing monensin are fed to other groups of cattle, the concentration of monensin in the refusals and amount of refusals fed should be taken into consideration to prevent monensin overdosing. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Monensin as provided by Nos. 016592 and 058198, chlortetracycline by No. 069254 in § 510.600(c) of this chapter. | 016592<br>069254 |
| (xiv) 50 to 117 g/ton ... | Monensin, ≤10 to 40 ..... | Growing beef steers and heifers fed in confinement for slaughter: For the control of bacterial pneumonia associated with shipping fever complex caused by *Pasteurella* spp. susceptible to chlortetracycline and for the prevention and control of coccidiosis due to *Eimeria bovis* and *Eimeria zuernii*. | Feed as the sole ration to provide 350 mg chlortetracycline per head per day and 0.14 to 0.42 mg monensin per lb. body weight per day to provide, depending upon severity of coccidiosis challenge, up to 480 mg monensin per head per day. For use in dry feeds only. Not for use in liquid feed supplements. Do not allow horses or other equines access to feed containing monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle and goat feeds are safe for use in cattle and goats only. Consumption by unapproved species may result in toxic reactions. Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result. If feed refusals containing monensin are fed to other groups of cattle, the concentration of monensin in the refusals and amount of refusals fed should be taken into consideration to prevent monensin overdosing. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Monensin as provided by Nos. 016592 and 058198, chlortetracycline by No. 069254 in § 510.600(c) of this chapter. | 016592<br>069254 |

| Chlortetracycline amount | Combination in grams/ton | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| * | * | * | * * * * | |
| (xviii) 400 to 2,000 g/ton. | Monensin, 5 to 40 ..... | Growing beef steers and heifers fed in confinement for slaughter: For treatment of bacterial enteritis caused by *Escherichia coli* and bacterial pneumonia caused by *Pasteurella multocida* susceptible to chlortetracycline; for improved feed efficiency. | Feed as the sole ration to provide 10 mg chlortetracycline per lb. body weight per day and 50 to 480 mg monensin per head per day. Feed for not more than 5 days, then continue feeding monensin Type C medicated feed alone. No additional improvement in feed efficiency has been shown from feeding monensin at levels greater than 30 grams per ton (360 mg monensin per head per day). For use in dry feeds only. Not for use in liquid feed supplements. Do not allow horses or other equines access to feed containing monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle and goat feeds are safe for use in cattle and goats only. Consumption by unapproved species may result in toxic reactions. Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result. If feed refusals containing monensin are fed to other groups of cattle, the concentration of monensin in the refusals and amount of refusals fed should be taken into consideration to prevent monensin overdosing. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Monensin as provided by Nos. 016592 and 058198, chlortetracycline by No. 069254 in § 510.600(c) of this chapter. | 016592<br>069254 |
| (xix) 400 to 2,000 g/ton. | Monensin, 10 to 40 ..... | Growing beef steers and heifers: For treatment of bacterial enteritis caused by *Escherichia coli* and bacterial pneumonia caused by *Pasteurella multocida* susceptible to chlortetracycline; and for the prevention and control of coccidiosis due to *Eimeria bovis* and *Eimeria zuernii*. | Feed as the sole ration to provide 10 mg chlortetracycline per lb. body weight per day and 0.14 to 0.42 mg monensin per lb. body weight per day to provide, depending upon severity of the coccidiosis challenge, up to 480 mg monensin per head per day. Feed for not more than 5 days, then continue feeding monensin Type C medicated feed alone. For use in dry feeds only. Not for use in liquid feed supplements. Do not allow horses or other equines access to feed containing monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle and goat feeds are safe for use in cattle and goats only. Consumption by unapproved species may result in toxic reactions. Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result. If feed refusals containing monensin are fed to other groups of cattle, the concentration of monensin in the refusals and amount of refusals fed should be taken into consideration to prevent monensin overdosing. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Monensin as provided by Nos. 016592 and 058198, chlortetracycline by No. 069254 in § 510.600(c) of this chapter. | 016592<br>069254 |
| (xx) 400 to 2,000 g/ton | Monensin, 10 to 200 ..... | Beef calves 2 months of age and older: For treatment of bacterial enteritis caused by *Escherichia coli* and bacterial pneumonia caused by *Pasteurella multocida* susceptible to chlortetracycline; and for the prevention and control of coccidiosis due to *Eimeria bovis* and *Eimeria zuernii*. | Feed as the sole ration to provide 10 mg chlortetracycline per lb. body weight per day and 0.14 to 1.00 mg monensin per lb. body weight per day to provide, depending upon severity of coccidiosis challenge, up to 200 mg of monensin per head per day. Feed for not more than 5 days, then continue to feed monensin Type C medicated feed alone. For use in dry feeds only. Not for use in liquid feed supplements. Do not allow horses or other equines access to feed containing monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle and goat feeds are safe for use in cattle and goats only. Consumption by unapproved species may result in toxic reactions. Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result. If feed refusals containing monensin are fed to other groups of cattle, the concentration of monensin in the refusals and amount of refusals fed should be taken into consideration to prevent monensin overdosing. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Monensin as provided by Nos. 016592 and 058198, chlortetracycline by No. 069254 in § 510.600(c) of this chapter. | 016592<br>069254 |
| * | * | * | * * * * | |

**§ 558.325 [Amended]**

■ 46. In § 558.325, remove and reserve paragraphs (e)(2)(ii), (viii), and (xiii).

■ 47. In § 558.366, revise paragraphs (b) and (d)(1)(v) to read as follows:

**§ 558.366 Nicarbazin.**

* * * * *

(b) *Sponsors.* See Nos. 060728, 066104, and 069254 in § 510.600(c) of this chapter.

* * * * *

(d) * * *

(1) * * *

| Nicarbazin in grams per ton | Combination in grams per ton | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| * | * | * * | * * * | |
| (v) 113.5 | | Chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix,* and *E. brunetti*) coccidiosis. | Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard. Do not use as a treatment for coccidiosis. Do not use in flushing mashes. Do not feed to laying hens. Withdraw 4 days before slaughter. | 060728<br>069254 |
| * | * | * * | * * * | |

* * * * *

■ 48. In § 558.450, revise paragraphs (e)(5)(iv) and (v) to read as follows:

**§ 558.450 Oxytetracycline.**

* * * * *

(e) * * *

(5) * * *

| Oxytetracycline amount | Indications for use | Limitations | Sponsor |
|---|---|---|---|
| * | * * | * * * | |
| (iv) 2.5 to 3.75 g/100 lb of fish/day. | 1. Freshwater-reared salmonids: For control of ulcer disease caused by *Haemophilus piscium,* furunculosis caused by *Aeromonas salmonicida,* bacterial hemorrhagic septicemia caused by *A. hydrophila,* and pseudomonas disease. | Administer in mixed ration for 10 days. Do not liberate fish or slaughter fish for food for 21 days following the last administration of medicated feed. | 066104 |
| | 2. Catfish: For control of bacterial hemorrhagic septicemia caused by *A. hydrophila* and pseudomonas disease. | Administer in mixed ration for 10 days. Do not liberate fish or slaughter fish for food for 21 days following the last administration of medicated feed. Do not administer when water temperature is below 16.7 °C (62 F). | 066104 |
| (v) 3.75 g/100 lb of fish/day. | 1. Freshwater-reared salmonids: For control of mortality due to coldwater disease associated with *Flavobacterium psychrophilum* or for control of mortality due to columnaris disease associated with *Flavobacterium columnare*. | Administer in mixed ration for 10 days. Do not liberate fish or slaughter fish for food for 21 days following the last administration of medicated feed. | 066104 |
| | 2. Freshwater-reared salmonids weighing up to 55 grams: For marking the skeletal tissue. | Feed for 10 days. Immediate release is permitted following last feeding of medicated feed. | 066104 |
| | 3. Catfish: For control of mortality due to columnaris disease associated with *Flavobacterium columnare*. | Administer in mixed ration for 10 days. Do not liberate fish or slaughter fish for food for 21 days following the last administration of medicated feed. Do not administer when water temperature is below 16.7 °C (62 F). | 066104 |
| * | * * | * * * | |

Dated: August 9, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–17454 Filed 8–15–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF THE INTERIOR

### Office of Natural Resources Revenue

### 30 CFR Part 1217

**[Docket No. ONRR–2022–0001; DS63644000 DRT000000.CH7000 223D1113RT]**

**RIN 1012–AA32**

## Electronic Provision of Records During an Audit; Correction

**AGENCY:** Office of Natural Resources Revenue (''ONRR''), Interior.

**ACTION:** Final rule; correction.

**SUMMARY:** On August 9, 2023, ONRR published a final rule amending its regulations to allow ONRR and other authorized Department of the Interior (''Department'') representatives the option to require that an auditee use electronic means to provide records requested during an audit of an auditee's royalty reporting and payment. The final rule used a subpart that was designated reserved. This document corrects the final regulations by adding the subpart.

**DATES:** Effective on September 8, 2023.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this final rulemaking, contact Ginger Hensley, Regulatory Specialist, by phone at 303–231–3171, or by email at *ONRR_RegulationsMailbox@onrr.gov.*

**SUPPLEMENTARY INFORMATION:** ONRR published a final rule in the **Federal Register** on August 9, 2023 (88 FR 53790). ONRR amended a reserved subpart under part 1217, subpart A, without including instructions to add the subpart. Accordingly, the final rule is corrected by making the following correcting amendments.

### Federal Register Correction

Effective September 8, 2023, in rule document 2023–17059 at 88 FR 53790 in the issue of August 9, 2023, on page 53793, in the first column, amendatory instruction 8 and the accompanying regulatory text are corrected to read as follows:

**§ 1217.10 [Corrected]**

■ 8. Add subpart A, consisting of § 1217.10, to read as follows:

### Subpart A—General Provisions

**§ 1217.10 Providing records during an audit.**

(a) ONRR or an authorized State or Tribe may specify the method an auditee must use to provide records for all audits conducted under this chapter, statute, or agreement. The methods may include one or more of the following:

(1) Inspect records at an auditee's place of business during normal business hours;

(2) Send records using secure electronic means. When requesting that records be provided electronically, ONRR or the authorized State or Tribe will specify the format in which the records shall be produced, directions for electronic transmission, and instructions to ensure secure transmission; or

(3) Deliver hard copy records using the U.S. Postal Service, special courier, overnight mail, or other delivery service to an address specified by ONRR or an authorized State or Tribe.

(b) [Reserved]

**Howard Cantor,**

*Director, Office of Natural Resources Revenue.*

[FR Doc. 2023–17568 Filed 8–15–23; 8:45 am]

**BILLING CODE 4335–30–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket No. USCG–2023–0598]**

## Special Local Regulations; Marine Events Within the Fifth Coast Guard District—Atlantic City, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the special local regulation for the Thunder Over the Boardwalk Air Show August 14, 15, and 16, 2023, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Fifth Coast Guard District identifies the regulated area for this event in Atlantic City, NJ. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

**DATES:** The regulations in 33 CFR 100.501 will be enforced for the Thunder Over the Boardwalk Air Show event listed in table 1 to paragraph (i)(1) to § 100.501 from 10 a.m. through 5 p.m. on August 14–16, 2023, to provide for the safety of life on navigable waterways during this event.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, you may call or email Petty Officer Christopher Payne, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, telephone 215–271–4889, email *SecDelBayWWM@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the special local regulations in 33 CFR 100.501 for the Thunder Over the Boardwalk Airshow regulated area from 12 p.m. through 3 p.m. on August 14, 2023, and from 9 a.m. through 5 p.m. August 15 and 16, 2023. This action is being taken to provide for the safety of life on navigable waterways during this 3-day event. Our regulation for marine events within the Fifth Coast Guard District, § 100.501, specifies the location of the regulated area for the Thunder Over the Boardwalk Airshow, which encompasses waters of the North Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: From a point along the shoreline at latitude 39°21′31″ N, longitude 074°25′04″ W, thence southeasterly to latitude 39°21′08″ N, longitude 074°24′48″ W, thence southwesterly to latitude 39°20′16″ N, longitude 074°27′17″ W, thence northwesterly to a point along the shoreline at latitude 39°20′44″ N, longitude 074°27′31″ W, thence northeasterly along the shoreline to latitude 39°21′31″ N, longitude 074°25′04″ W.

During the enforcement periods, as reflected in § 100.501(g), the Coast Guard will announce details concerning the event in the Local Notices to Mariners and by Broadcast Notice to Mariners over VHF–FM marine band radio. If you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

Dated: August 10, 2023.

**Kate F. Higgins-Bloom,**

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

[FR Doc. 2023–17554 Filed 8–15–23; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2023–0075]**

**RIN 1625–AA00**

## Safety Zones; Recurring Fireworks Displays and Swim Events in Coast Guard Sector New York Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is revising its regulations for permanent safety zones in the Coast Guard Sector New York Captain of the Port Zone for recurring fireworks displays and swim events. This revision will update the list of events, alter the means of notification, and clarify the function of these safety zone regulations. The establishment of the safety zones is necessary to protect event participants, waterway users, and vessels from the potential hazards associated with these recurring organized water events. When subject to enforcement, no person is authorized to access the safety zones without permission from the Captain of the Port (COTP) or the COTP's designated representative.

**DATES:** This rule is effective August 16, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0075 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MSTC Stacy Stevenson, Waterways Management Division, U.S. Coast Guard; telephone 718–354–4197, email *D01-SMB-SecNY-Waterways@uscg.mil*.

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background Information and Regulatory History

The Captain of the Port New York (COTP) is establishing, amending, and updating annual and recurring swim events and fireworks safety zones codified in 33 CFR 165.160 in Tables 1 and 2, for the COTP zone.

On May 4, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zones; Recurring Fireworks Displays and Swim Events in Coast Guard Sector New York Zone'' (88 FR 28444). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this rule. During the comment period that ended June 5, 2023, we received two comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Six firework displays are scheduled to occur in June. Delaying the effective date of this rule would be impracticable because the absence of a safety zone around barge-based fireworks displays within the COTP

zone poses a significant risk to public safety. Therefore, it is important to enforce the safety zones without delay to mitigate potential hazards to mariners and ensure effective management of vessel traffic around these displays.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The revision of Table 1 and Table 2 to § 165.160 amends and updates recurring safety zones in the COTP zone. This rule will prohibit entry into those safety zones without permission of COTP to protect spectators, mariners, and other persons and property from potential hazards presented during the firework display or swim event associated with the safety zone.

## IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments on our NPRM published May 4, 2023 (88 FR 28444). Both comments received were in favor of the rule overall.

One commenter asked about the implementation of other safety precautions if the safety zone failed or was breached. These precautions include, but are not limited to, regular inspections, emergency response protocols, signage, and ongoing monitoring and evaluation of the safety zones' effectiveness. Additionally, many fireworks displays are scheduled to occur within areas monitored by the Vessel Traffic Center, who will ensure adequate notice and predictability in the New York and New Jersey waters through coordination of vessel movements and dissemination information.

The second commenter, also in favor of the safety zones around fireworks displays, recommended that the fireworks take place in an area that prevents debris from entering the water and that a cleanup plan be in place. While the Coast Guard takes its role as an environmental steward seriously, the purpose of this safety zone is to manage traffic around the displays and ensure safety. This rulemaking does not contemplate the environmental concerns relative to the fireworks themselves, but of the impact on the environment by the safety zone. Therefore, this rule aligns with the principles of NEPA and underscores the commitment to mitigate adverse environmental effects while managing vessel traffic effectively. Further, the Coast Guard is not serving as the permitting agency for these events, they are coordinated by other government agencies.

This rule updates Table 1 to § 165.160 by consolidating all fireworks displays launched from a barge location to one row and removing other firework displays. This rule also completely replaces Table 2 to § 165.160 with new swim events and their respective locations. Only event sponsors, designated participants of swim events, and official patrol vessels will be allowed to enter safety zones without needing to seek permission. Spectators and other vessels not registered as swim event participants cannot enter the safety zones without the permission of the COTP or the Designated Representative. Finally, the rule reorganizes and updates the text of § 165.160 to be more understandable to the reader, as described in the NPRM.

There are no changes to the regulatory text of this rule from the proposed rule in the NPRM.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the ability of other waterway users to safely transit around the safety zones in many cases, and the size and duration of the safety zones will impact a small, designated area of the waterway for a relatively short period of time. Moreover, the Coast Guard will notify mariners of the enforcement via marine broadcasts, local notice to mariners, local news media, distribution in leaflet form, by an on-scene oral notice, or signage as appropriate. The rule will also allow vessels to seek permission to enter the zone if necessary.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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

have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule prevents vessels from transiting areas specifically designated as safety zones during the periods they are subject to enforcement. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise § 165.160 to read as follows:

### § 165.160 Safety Zones; Recuring Fireworks Displays and Swim Events Held in Coast Guard Sector New York Zone.

(a) *Regulations.* The general regulations in subpart C of this part as well as the following regulations apply to the safety zones associated with the recurring fireworks displays and swim events listed in tables 1 or 2 to this section, respectively.

(1) Under the general safety zone regulations in subpart C of this part, no person may enter the safety zone described in table 1 or 2 of this section unless authorized by the Captain of the Port (COTP) or the COTP's Designated Representative.

(2) To seek permission to enter the designated safety zone, contact the COTP or the COTP's Designated Representative via VHF–FM Marine Channel 16, or by contacting the Coast Guard Sector New York command center at 718–354–4356.

(3) Event organizers must ensure that fireworks barges have signage on their port and starboard side labeled ''Fireworks—Stay Away''. This sign will consist of 10-inch-high by 1.5-inch-wide red lettering on a white background.

(4) Shore sites used in these locations will display a sign labeled ''Fireworks—Stay Away'' with the same dimensions.

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

*Designated representative* means any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

*Official Patrol Vessels* means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned as an on- scene representative or approved by the COTP.

*Spectators* means all persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) *Enforcement periods.* (1) Safety zones for fireworks-display events listed in Table 1 of this section will be subject to enforcement for approximately one hour between 6 p.m. to 1 a.m. when a barge with a ''Fireworks—Stay Away'' sign on the port and starboard side is on-scene or a ''Fireworks—Stay Away'' sign is posted in a location listed in Table 1 to § 165.160.

(2) The regulations in this section will be subject to enforcement for the duration of each event on or about the dates indicated in Table 2 of this section.

(3) For events in Tables 1 and 2 that do not have a date or location listed, or if the event occurs on a date or location other than the one that is listed, then exact dates and times of the enforcement period will be announced via marine broadcast, local notice to mariners, distribution in leaflet form, local news media, or by an on-scene oral notice as appropriate.

(4) Notifications of enforcement times for events listed in Table 1 and 2, including any changes to the enforcement dates or times listed in this section, may be made via marine broadcasts, local notice to mariners, local news media, distribution in leaflet form, or by an on-scene oral notice and signage.

(d) *Location.* If the specific location of a safety zone for fireworks displays is not listed in Table 1, an announcement will be made by marine broadcast, local notice to mariners, distribution in leaflet form, local news media, or by an on-scene oral notice as appropriate. The specific locations of swim event safety zones are listed in Table 2. Any modification to the location of safety zones described in this section will be listed in USCG First District Local Notice to Mariners at: *http://www.navcen.uscg.gov/.*

TABLE 1 TO § 165.160—FIREWORKS DISPLAYS

| 1.0 Event | Location [1] |
|---|---|
| 1.1 Twin Island, Long Island Sound Safety Zone. | Launch Site: A land shoot located on the east end of Orchard Beach, NY, in approximate position 40°52′10″ N, 073°47′07″ W. This Safety Zone includes navigable waters within a 200-yard radius from the launch site. |
| 1.2 Arthur Kill, Elizabeth, NJ Safety Zone ..... | Launch Site: A land shoot located in Elizabeth, NJ, in approximate position 40°38′50″ N, 074°10′58″ W. This Safety Zone includes navigable waters within a 150-yard radius from the launch site. |
| 1.3 Wards Island, East River, NY Safety Zone | Launch Site: A land shoot located on Wards Island in approximate position 40°46′57″ N 073°55′28″ W, approximately 330 yards north of the Robert F. Kennedy Bridge (Triborough Bridge). This Safety Zone includes navigable waters within a 200-yard radius from the launch site. |
| 1.4 Barge Based Fireworks Displays ..... | All waters within the Sector New York COTP Zone within an area up to a 500-yard radius of a firework barge or barges used during the storage, preparation, and launching of fireworks. |

[1] All coordinates listed in Table 1 to § 165.01–165.160 reference Datum NAD 1983.

TABLE 2 TO § 165.160—SWIM EVENTS

| 1.0 Event | Date/location [1] |
|---|---|
| 1.1 Hudson River, Ulster, NY, Swim. | Date: The first weekend after the 4th of July.<br>Location: The safety zone includes all navigable waters of the Hudson River in the vicinity of Ulster Landing, bound by the following coordinates:<br>42°00′03.7″ N, 073°56′43.1″ W, thence to<br>41°59′52.5″ N, 073°56′34.2″ W, to<br>42°00′15.1″ N, 073°56′25.2″ W, to<br>42°00′05.4″ N, 073°56′41.9″ W, thence along the shoreline to the point of origin. |
| 1.2 Hudson River, Nyack to Kingsland Point Swim. | Date: 2nd weekend in September.<br>Location: The safety zone includes all navigable waters of the Hudson River between Nyack, NJ and the Tarrytown Lighthouse bound by the following coordinates:<br>41°05′10.7″ N, 073°55′03″ W, thence to<br>41°05′02″ N, 073°52′25″ W, to<br>41°05′19″ N, 073°52′22″ W, to<br>41°05′25″ N, 073°54′51″ W thence along the shoreline to the point of origin. |
| 1.3 Navy Seal Swim, New York Harbor. | Date: One Saturday or Sunday in August.<br>Location: The safety zone includes all navigable waters bound by the following coordinates:<br>40°41′26″ N, 74°03′17″ W, thence to<br>40°41′02″ N, 74°02′25″ W, to<br>40°41′40″ N, 74°02′00″ W, to<br>40°42′25″ N, 74°01′08″ W, to<br>40°42′28″ N, 74°01′07″ W, to<br>40°41′57″ N, 74°02′07″ W, to<br>40°41′40″ N, 74°02′30″ W, to<br>40°41′24″ N, 74°02′27″ W, to<br>40°41′12″ N, 74°02′38″ W, to<br>40°41′29″ N, 74°03′15″ W, thence back to the point of origin. |
| 1.4 Hudson River, Newburgh to Beacon Swim. | Date: One Saturday or Sunday in July.<br>Location: The safety zone includes all navigable waters of the Hudson River between Newburgh and Beacon, NY bound by the following coordinates:<br>41°30′24.2″ N, 074°0′17.4″ W, thence to<br>41°30′27.8″ N, 073°59′16.8″ W, to<br>41°30′11.6″ N, 073°59′19.9″ W, to<br>41°30′03.4″ N, 074°0′17.2″ W, thence north along the shoreline to the point of origin. |
| 1.5 Long Island Sound, Horseshoe Harbor Swim. | Date: 4th weekend in July and 2nd weekend in August.<br>Location: The safety zone includes all navigable waters of the Long Island Sound bound by the following coordinates:<br>40°55′32″ N, 73°44′37″ W, thence southeast to<br>40°55′28″ N, 73°44′14″ W, to<br>40°55′01″ N, 73°43′59″ W, to<br>40°54′01″ N, 73°44′17″ W, to<br>40°54′48″ N, 73°45′10″ W, thence along the shoreline back to the point of origin. |
| 1.6 New York Harbor, Liberty Island to Morris Canal Swim. | Date: One weekend in July.<br>Location: The safety zone includes all navigable waters of the New York Harbor bound by the following coordinates:<br>40°41′27″ N, 74°02′25″ W, thence to<br>40°41′22″ N, 74°02′13″ W, to<br>40°41′36″ N, 74°02′04″ W, to<br>40°42′39″ N, 74°01′42″ W, to<br>40°42′42″ N, 74°02′05″ W, to<br>40°42′31″ N, 74°01′55″ W, thence back to the point of origin. |

[1] All coordinates listed in Table 2 to § 165.01–165.160 reference Datum NAD 1983.

Dated: June 24, 2023.

**Z. Merchant,**

*Captain, U.S. Coast Guard, Captain of the Port New York.*

[FR Doc. 2023–17514 Filed 8–15–23; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R02–OAR–2022–0459; FRL–10785–02–R2]**

## Approval of Air Quality Implementation Plans; New Jersey; New Jersey 2017 Periodic Emission Inventory SIP for the Ozone Nonattainment Area and $PM_{2.5}$/Regional Haze Areas, New Jersey Nonattainment Emission Inventory for 2008 Ozone NAAQS

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the New Jersey Department of Environmental Protection (NJDEP). The SIP revision consists of the following: 2017 calendar year ozone precursor emission inventory for volatile organic compounds (VOCs), oxides of nitrogen ($NO_X$), and carbon monoxide (CO) for the Northern New Jersey portion of the New York-Northern New Jersey-Long Island NY-NJ-CT ozone nonattainment area (Northern New Jersey) and the Southern New Jersey portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE ozone nonattainment area (Southern New Jersey). The SIP revision also consists of the 2017 calendar year statewide periodic emissions inventory for New Jersey. The pollutants included in this inventory include VOC, $NO_X$, CO, particulate matter with an aerodynamic diameter less than or equal to 2.5 microns ($PM_{2.5}$), particulate matter with an aerodynamic diameter less than or equal to 10 microns ($PM_{10}$), ammonia ($NH_3$) and sulfur dioxide ($SO_2$). Additionally, EPA is approving a minor update to the 2011 nonattainment base year emission inventory. This action is being taken in accordance with the Clean Air Act (CAA).

**DATES:** This final rule is effective on September 15, 2023.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2022–0459. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Ysabel Banon, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3382, or by email at *banon.ysabel@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

### Table of Contents



### I. Background and Purpose

On May 19, 2023 (88 FR 32167), the EPA published a Notice of Proposed Rulemaking (NPRM) that proposed to approve a State Implementation Plan (SIP) revision submitted by NJDEP on November 23, 2021. The NPRM proposed approval of three elements of the SIP submittal: the 2017 calendar year ozone season daily and annual ozone precursor emission inventory for CO, $NO_X$ and VOCs for the Northern New Jersey and Southern New Jersey ozone nonattainment areas, the statewide 2017 emission inventory, and a revision for the 2011 base year emission inventory. In addition, the SIP revision submittal consisted of the 2017 calendar year $PM_{2.5}$/Regional Haze emissions inventory that was developed statewide for New Jersey. The pollutants included in the inventory are annual emissions for VOC, $NO_X$, $PM_{2.5}$, $PM_{10}$, $NH_3$ and $SO_2$.

These submittals were made, in part to meet requirements for serious areas for the 2008 ozone National Ambient Air Quality Standard (NAAQS). Other specific requirements of New Jersey's SIP revisions for the 2008 ozone NAAQS and the rationale for the EPA's proposed action are explained in the NPRM and will not be restated here.

### II. Response to Comments

EPA provided a 30-day review and comment period for the May 19, 2023, proposed rule. The comment period ended on Jun 20, 2023. In response to EPA's May 19, 2023, proposed rulemaking on New Jersey's SIP revision, EPA received one comment during the 30-day public comment period. The specific comment may be reviewed under Docket ID Number EPA–R02–OAR–2022–0459 on the *https://regulations.gov* website.

*Comment*

NJDEP submitted a comment on June 19, 2023. NJDEP noted that they submitted, on November 18, 2021, a SIP revision for the 2008 8-hour Ozone Attainment, Demonstration, and 2015 8-hr ozone Reasonable Available Control Technology (RACT) Determinations and Nonattainment New Source Review (NNSR) Program Compliance Certification and 2017 Periodic Emission Inventory. The EPA proposed to approve the New Jersey's 2017 Emission inventory for the 2008 NAAQS, $PM_{2.5}$, and Regional Haze, but did not propose to approve it for the 2015 Ozone NAAQS for either of New Jersey's ozone nonattainment areas.

*Response*

The EPA acknowledges the commenter's concern about New Jersey's 2017 periodic emission inventory statewide, for both New Jersey nonattainment areas for the 2008 and 2015 ozone standards. The EPA is approving the 2017 emission inventory that could be used for any relevant SIP planning requirements, including for the 2015 ozone NAAQS. The EPA inadvertently did not indicate in the NPRM that the 2017 periodic emission inventory was submitted by New Jersey to address 2015 ozone planning requirements. The EPA acknowledges that the NJDEP November 18, 2021, SIP revision submittal included the 2017 Emission Inventory for the 2015 Ozone NAAQS. The other elements of that submittal, New Jersey's statewide RACT certification and NNSR certification for the 2015 Ozone NAAQS, will be addressed under a separate future rulemaking and is not addressed within this action.

### III. Final Action

The EPA is approving revisions to the New Jersey SIP which pertains to the following: 2017 calendar year ozone season daily and annual ozone precursor emission inventories for CO, $NO_X$, and VOC for the Northern New Jersey and Southern New Jersey ozone nonattainment areas, which is relevant to both the 2008 and 2015 ozone standards. In addition, the SIP revision submittal that EPA is approving also

consists of the 2017 calendar year $PM_{2.5}$/Regional Haze emissions inventory that was developed statewide for New Jersey. The pollutants included in the inventory are annual emissions for VOC, $NO_X$, $PM_{2.5}$, $PM_{10}$, $NH_3$ and $SO_2$. EPA is also approving a revision to the New Jersey 2011 base year emission inventory.

## IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The NJDEP did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 16, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

**Lisa Garcia,**

*Regional Administrator, Region 2.*

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

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart FF—New Jersey

■ 2. Section 52.1570 is amended by adding entries to the end of the table in paragraph (e) to read as follows:

**§ 52.1570 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED NEW JERSEY NONREGULATORY AND QUASI-REGULATORY PROVISIONS

| SIP element | Applicable geographic or nonattainment area | New Jersey submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| 2011 VOC, $NO_X$ and CO ozone summer season and annual emission inventory. | Northern New Jersey portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area. | November 23, 2021 | August 16, 2023, [insert **Federal Register** citation]. | • Full approval.<br>• The inventory contains point, nonpoint, nonroad and on-road. |
| 2011 base year emissions inventory. | State-wide | November 23, 2021 | August 16, 2023, [insert **Federal Register** citation]. | • Full approval.<br>• The inventory contains point, nonpoint, nonroad, on-road and biogenic source data. |
| 2017 VOC, $NO_X$ and CO ozone summer season daily and annual emission inventory. | Northern New Jersey portion of the New York-Northern New Jersey-Long Island NY-NJ-CT 8-hour ozone nonattainment area. | November 23, 2021 | August 16, 2023, [insert **Federal Register** citation]. | • Full approval.<br>• The inventory contains point, nonpoint, nonroad, on-road and biogenic source data. |
| 2017 VOC, $NO_X$ and CO ozone summer season daily and annual emission inventory. | Southern New Jersey portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 8-hour ozone nonattainment area. | November 23, 2021 | August 16, 2023, [insert **Federal Register** citation]. | • Full approval.<br>• The inventory contains point, nonpoint, nonroad, on-road and biogenic source data. |
| 2017 base year emissions inventory. | State-wide | November 23, 2021 | August 16, 2023, [insert **Federal Register** citation]. | • Full approval.<br>• The inventory contains point, nonpoint, nonroad, on-road and biogenic source data. |
| 2017 $PM_{2.5}$/Regional Haze associated precursor annual emission inventory. | State-wide | November 23, 2021 | August 16, 2023, [insert **Federal Register** citation]. | • Full approval.<br>• The inventory contains point, nonpoint, nonroad, on-road and biogenic source data. |

[FR Doc. 2023–17563 Filed 8–15–23; 8:45 am]
**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2022–0234 and EPA–HQ–OPP–2022–0258; FRL–10679–01–OCSPP]**

### Fluxapyroxad; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of fluxapyroxad in or on avocado; stevia, dried leaves; and stevia, fresh leaves and revises the tolerance for residues of fluxapyroxad in or on coffee, green bean. Interregional Project Number 4 (IR–4) and BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective August 16, 2023. Objections and requests for hearings must be received on or before October 16, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The dockets for this action, identified by docket identification (ID) numbers EPA–HQ–OPP–2022–0234 and EPA–HQ–OPP–2022–0258, are available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/.*

**FOR FURTHER INFORMATION CONTACT:** Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID numbers EPA–HQ–OPP–2022–0234 and EPA–HQ–OPP–2022–0258 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before October 16, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID numbers EPA–HQ–OPP–2022–0234 and EPA–HQ–OPP–2022–0258, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 28, 2022 (87 FR 25178) (FRL–9410–12–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E8980) by IR–4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. The petition requested that 40 CFR 180.666 be amended to establish tolerances for residues of the fungicide fluxapyroxad, 3-(difluoromethyl)-1-methyl-*N*-(3′,4′,5′-trifluoro[1,1′-biphenyl]-2-yl)-1*H*-pyrazole-4-carboxamide in or on stevia, dried leaves at 60 parts per million (ppm) and stevia, fresh leaves at 20 ppm and to revise the established tolerance in or on coffee, green bean at 0.2 ppm to remove the footnote indicating a tolerance without U.S. registrations. That document referenced a summary of the petition prepared by IR–4, which is available in the docket, *https://www.regulations.gov.* One comment was received in response to the notice of filing. EPA's response to this comment is discussed in Unit. IV.C.

In the **Federal Register** of July 20, 2022 (87 FR 43231) (FRL–9410–03–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F8974) by BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.666 be amended to establish a tolerance for residues of the fungicide fluxapyroxad, 3-(difluoromethyl)-1-methyl-*N*-(3′,4′,5′-trifluoro[1,1′-biphenyl]-2-yl)-1*H*-pyrazole-4-carboxamide in or on avocado at 0.6 ppm. One comment was received in response to the notice of filing. EPA's response to this comment is discussed in Unit. IV.C.

Based upon review of the data supporting the petition, EPA is establishing two tolerances at a different level than the petitioners requested. The reasons for these changes are explained in Unit IV.D.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified therein, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fluxapyroxad including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluxapyroxad follows.

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published for tolerance rulemakings for the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemakings, and EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking. EPA has previously published a number of tolerance rulemakings for fluxapyroxad, in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to fluxapyroxad and established tolerances for residues of that chemical. EPA is incorporating previously published sections from those rulemakings as described further in this rulemaking, as they remain unchanged.

*Toxicological profile.* For a discussion of the Toxicological Profile of fluxapyroxad, see Unit III.A. of the May 5, 2016, rulemaking (81 FR 27019) (FRL–9945–48).

*Toxicological points of departure/Levels of concern.* For a summary of the Toxicological Points of Departure/Levels of Concern used for the safety assessment, see Unit III.B. of the May 5, 2016, rulemaking.

*Exposure assessment.* Much of the exposure assessment remains the same, although updates have occurred to accommodate exposures from the petitioned-for tolerances. The updates are discussed in this section; the remaining discussion of EPA's assumptions for exposure remain unchanged since the 2016 rulemaking. For a description of the rest of the EPA approach to and assumptions for the exposure assessment, see Unit III.C. of the May 5, 2016, rulemaking.

EPA's dietary exposure assessments have been updated to include the additional exposure from the new uses of fluxapyroxad on avocado, coffee, and stevia. A partially refined acute dietary exposure analysis was performed for the general population and all population subgroups. Tolerance level residues were adjusted to account for the metabolite of concern (M700F008) and 100 percent crop treated (PCT) assumptions were used for all plant commodities. For livestock commodities, anticipated residues accounting for parent and the metabolites of concern (M700F008 and/or M700F010) were used. A partially refined chronic dietary exposure analysis was performed for the general U.S. population and various population subgroups. Average field trial residues for parent plus maximum metabolite residue were used for all plant commodities. For livestock commodities, anticipated residues accounting for parent and the metabolites of concern (M700F008 and/or M700F010) were used. An assumption of 100 PCT was also used for the chronic dietary analysis.

Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

The new uses do not result in an increase in the estimated residue levels in drinking water, so EPA used the same estimated drinking water concentrations in the acute and chronic dietary exposure assessments as identified in Unit III.C.2. of the May 5, 2016, rulemaking.

The new uses do not impact residential exposures and thus the residential exposures have not changed since the last assessment described in the May 5, 2016, rulemaking.

*Cumulative exposure.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fluxapyroxad and any other substances. For the purposes of this action, therefore, EPA has not assumed that fluxapyroxad has a common mechanism of toxicity with other substances.

*Safety factor for infants and children.* EPA continues to conclude that there is reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor from 10X to 1X. See Unit III.D. of the May 5, 2016, rulemaking for a discussion of the Agency's rationale for that determination.

*Aggregate risks and Determination of safety.* EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing dietary exposure estimates to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated total food, water, and residential exposure to the appropriate points of departure (PODs) to ensure that an adequate margin of exposure (MOE) exists.

Acute dietary risks are below the Agency's level of concern of 100% of the aPAD. They are 15% of the aPAD for children 1 to 2 years old, the population subgroup with the highest exposure estimate. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD. They are 94% of the cPAD for all infants less than 1 year old, the population subgroup with the highest exposure estimate.

The short-term aggregate exposure assessment for children 1 to less than 2 years old includes dietary (food and drinking water) and incidental oral exposure from hand-to-mouth activities from post-application exposure to turf applications. For adults, the short-term aggregate exposure assessment includes dietary (food and drinking water) and inhalation exposure during application to turf using a backpack sprayer. The short-term MOEs are greater than the Agency's level of concern of 100 and therefore are not of concern. They are 1,100 for adults and 400 for children.

There are no residential use scenarios that would result in potential intermediate-term exposure to fluxapyroxad; therefore, an intermediate-term aggregate risk assessment is not required.

There are no residential use scenarios that would result in potential long-term (chronic) exposure; therefore, the chronic aggregate risk is equivalent to the chronic dietary (food and water) risk, and there are no risks of concern.

Fluxapyroxad has been classified as ''not likely to be carcinogenic to humans below a defined dose range.'' The Agency has determined that the quantification of risk using a non-linear approach (*i.e.,* reference dose or RfD) will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to fluxapyroxad and, as indicated above, there are no chronic risks of concern for fluxapyroxad.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to fluxapyroxad residues. More detailed information about the Agency's analysis can be found at *https://www.regulations.gov* in the document titled ''Fluxapyroxad. Human Health Risk Assessment for the Section 3 Registrations Proposing Use on Avocado, Coffee (green bean); Stevia (dried leaves), and Stevia (fresh leaves)'' in docket ID numbers EPA–HQ–OPP–2022–0234 and EPA–HQ–OPP–2022–0258.

## IV. Other Conclusions

### *A. Analytical Enforcement Methodology*

For a discussion of the available analytical enforcement method, see Unit IV.A of the July 13, 2021, rulemaking (86 FR 36666) (FRL–8663–01).

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4).

Codex does not have MRLs for residues of fluxapyroxad in or on avocado or stevia. It is not possible to harmonize the U.S. tolerance of 0.2 ppm for residues in or on coffee, green bean with the Codex MRL of 0.15 ppm because establishing the tolerance at the lower level may result in exceedances for U.S. growers despite compliance with U.S. label instructions.

### *C. Response to Comments*

Two comments were received in response to the Notices of Filing. One comment stated in part that the Agency

should not approve the petitions because of the ''further pollution of the air water soil of this earth'' and the other expressed similar sentiments. Although the Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops, the existing legal framework provided by section 408 of the FFDCA authorizes EPA to establish tolerances when it determines that the tolerances are safe. Upon consideration of the validity, completeness, and reliability of the available data as well as other factors the FFDCA requires EPA to consider, EPA has determined that the fluxapyroxad tolerances are safe. The commenter has provided no information indicating that a safety determination cannot be supported.

*D. Revisions to Petitioned-For Tolerances*

A tolerance of 1.5 ppm is being established for avocado rather than 0.6 ppm as requested. This reflects the use of proportionality to adjust the field trial residue data to the labeled rate because the field trials were conducted at 0.5x the labeled single/seasonal rate. A tolerance of 70 ppm is being established for stevia, dried leaves rather than the petitioned for tolerance of 60 ppm because EPA used the highest residue from the residue decline trial for calculations rather than the residue at the labeled pre-harvest interval.

## V. Conclusion

Therefore, tolerances are established for residues of fluxapyroxad in or on avocado at 1.5 ppm; stevia, dried leaves at 70 ppm; and stevia, fresh leaves at 20 ppm. In addition, the established tolerance for residues of fluxapyroxad in or on coffee, green bean at 0.2 ppm is revised to remove the footnote indicating a tolerance without U.S. registrations.

## VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

## VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 8, 2023.

**Charles Smith,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

## PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.666, in paragraph (a) amend table 1 by:

■ a. Adding in alphabetical order the entry ''Avocado'';

■ b. Revising the entry ''Coffee, green bean'';

■ c. Adding in alphabetical order the entries ''Stevia, dried leaves'' and ''Stevia, fresh leaves''.

The additions and revision read as follows:

**§ 180.666 Fluxapyroxad; tolerances for residues.**

(a) * * *

TABLE 1 TO PARAGRAPH (a)

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Avocado | 1.5 |
| * * * * * | |
| Coffee, green bean | 0.2 |
| * * * * * | |
| Stevia, dried leaves | 70 |
| Stevia, fresh leaves | 20 |
| * * * * * | |

* * * * *

[FR Doc. 2023–17430 Filed 8–15–23; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[EPA–HQ–OLEM–2021–0486; EPA–HQ–OLEM–2022–0828; EPA–HQ–OLEM–2022–0854; EPA–HQ–OLEM–2022–0947; EPA–HQ–OLEM–2022–0948; EPA–HQ–OLEM–2022–0949; EPA–HQ–OLEM–2022–0964; EPA–HQ–OLEM–2022–0965; EPA–HQ–OLEM–2022–0966; EPA–HQ–OLEM–2022–0968; EPA–HQ–OLEM–2023–0021; and FRL–10633–02–OLEM]**

### Deletion From the National Priorities List

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) announces the deletion of three sites and the partial deletion of eight sites from the Superfund National Priorities List (NPL). The NPL, created under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the states, through their designated State agencies, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** The document is effective August 16, 2023.

**ADDRESSES:** *Docket:* EPA has established a docket for this action under the Docket Identification included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. All documents in the docket are listed on the *https://www.regulations.gov* website. The Final Close-Out Report (FCOR, for a full site deletion) or the Partial Deletion Justification (PDJ, for a partial site deletion) is the primary document which summarizes site information to support the deletion. It is typically written for a broad, non-technical audience and this document is included in the deletion docket for each of the sites in this rulemaking. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Docket materials are available through *https://www.regulations.gov* or at the corresponding Regional Records Centers. Locations, addresses, and phone numbers-of the Regional Records Center follows.

- Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4308.
- Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, 1600 John F. Kennedy Boulevard, Mail code 3MD50, Philadelphia, PA 19103; 215/814–5382.
- Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW, Mail code 9T25, Atlanta, GA 30303.
- Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Records Manager, Mail code SRC–7J, Metcalfe Federal Building, 7th Floor South, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
- Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Lenexa, KS 66219; 913/551–7079.
- Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mail code Records Center, Denver, CO 80202–1129; 303/312–7273.
- EPA Headquarters Docket Center Reading Room (deletion dockets for all states), William Jefferson Clinton (WJC) West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004, (202) 566–1744.

EPA staff listed below in the **FOR FURTHER INFORMATION CONTACT** section may assist the public in answering inquiries about deleted sites and accessing deletion support documentation, determining whether there are additional physical deletion dockets available.

**FOR FURTHER INFORMATION CONTACT:**

- Mabel Garcia, U.S. EPA Region 2 (NJ, NY, PR, VI), *garcia.mabel@epa.gov,* 212/637–4356.
- Andrew Hass, U.S. EPA Region 3 (DE, DC, MD, PA, VA, WV), *hass.andrew@epa.gov,* 215/814–2049.
- Leigh Lattimore, U.S. EPA Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), *lattimore.leigh@epa.gov,* 404/562–8768.
- Karen Cibulskis, U.S. EPA Region 5 (IL, IN, MI, MN, OH, WI), *cibulskis.karen@epa.gov,* 312/886–1843.
- Maria Morey, U.S. EPA Region 7 (IA, KS, MO, NE), *morey.maria@epa.gov,* 913/551–7079.
- Linda Kiefer, U.S. EPA Region 8 (CO, MT, ND, SD, UT, WY), *kiefer.linda@epa.gov,* 303/312–6689.
- Charles Sands, U.S. EPA Headquarters, *sands.charles@epa.gov,* 202–566–1142.

**SUPPLEMENTARY INFORMATION:** The NPL, created under section 105 of CERCLA, as amended, is an appendix of the NCP. The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. Partial deletion of sites is in accordance with 40 CFR 300.425(e) and are consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, 60 FR 55466, (November 1, 1995). The sites to be deleted are listed in Table 1, including docket information containing reference documents with the rationale and data principally relied upon by the EPA to determine that the Superfund response is complete. The NCP permits activities to occur at a deleted site, or that media or parcel of a partially deleted site, including operation and maintenance of the remedy, monitoring, and five-year reviews. These activities for the site are entered in Table 1 in this **SUPPLEMENTARY INFORMATION** section, if applicable, under Footnote such that; 1= site has continued operation and maintenance of the remedy, 2= site receives continued monitoring, and 3= site five-year reviews are conducted. As described in 40 CFR 300.425(e)(3) of the NCP, a site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

TABLE 1

| Site name | City/county, state | Type | Docket No. | Footnote |
|---|---|---|---|---|
| Haviland Complex | Town of Hyde Park, NY | Full | EPA–HQ–OLEM–2022–0968. | |
| Smithtown Ground Water Contamination. | Smithtown, NY | Full | EPA–HQ–OLEM–2022–0964. | |
| Jackson Ceramix | Falls Creek, PA | Partial | EPA–HQ–OLEM–2022–0854. | |
| Fort Hartford Coal Co. Stone Quarry | Olaton, KY | Full | EPA–HQ–OLEM–2022–0948 | 1, 2, 3. |
| Marine Corps Logistics Base | Albany, GA | Partial | EPA–HQ–OLEM–2021–0486. | |
| Redstone Arsenal (USARMY/NASA) | Huntsville, AL | Partial | EPA–HQ–OLEM–2022–0949 | 1, 3. |
| Tyndall Air Force Base | Panama City, FL | Partial | EPA–HQ–OLEM–2022–0947. | |

TABLE 1—Continued

| Site name | City/county, state | Type | Docket No. | Footnote |
|---|---|---|---|---|
| Aircraft Components (D & L Sales) | Benton Harbor, MI | Partial | EPA–HQ–OLEM–2022–0828. | |
| Omaha Lead | Omaha, NE | Partial | EPA–HQ–SFUND–2023–0021 | 1, 3. |
| Anaconda Co. Smelter | Anaconda, MT | Partial | EPA–HQ–OLEM–2022–0965 | 1, 3. |
| Eagle Mine | Minturn/Redcliff, CO | Partial | EPA–HQ–OLEM–2022–0966 | 1, 3. |

Information concerning the sites to be deleted and partially deleted from the NPL, the proposed rule for the deletion and partial deletion of the sites, and information on receipt of public comment(s) and preparation of a Responsiveness Summary (if applicable) are included in Table 2.

TABLE 2

| Site name | Date, proposed rule | FR citation | Public comment | Responsiveness summary | Full site deletion (full) or media/parcels/ description for partial deletion |
|---|---|---|---|---|---|
| Haviland Complex | 2/22/2023 | 88 FR 10864 | Yes | Yes | Full. |
| Smithtown Ground Water Contamination | 2/22/2023 | 88 FR 10864 | No | No | Full. |
| Jackson Ceramix | 2/22/2023 | 88 FR 10864 | No | No | Soils and unsaturated subsurface vadose zones from OU 1 Baseball Field. |
| Fort Hartford Coal Co. Stone Quarry | 2/22/2023 | 88 FR 10864 | No | No | Full. |
| Marine Corps Logistics Base | 2/22/2023 | 88 FR 10864 | Yes | Yes | OU 3 Soils. |
| Redstone Arsenal (USARMY/NASA) | 2/22/2023 | 88 FR 10864 | No | No | Soils and pipeline sediments from OU–26. |
| Tyndall Air Force Base | 2/22/2023 | 88 FR 10864 | Yes | No | 13 specified operable units. |
| Aircraft Components (D & L Sales) | 2/22/2023 | 88 FR 10864 | Yes | No | OU 1 radiological cleanup. |
| Omaha Lead | 2/22/2023 | 88 FR 10864 | No | No | 13 residential properties. |
| Anaconda Co. Smelter | 2/22/2023 | 88 FR 10864 | No | No | OU 15 Mill Creek. |
| Eagle Mine | 2/22/2023 | 88 FR 10864 | Yes | Yes | 5.31 acres of soils in the OU 3 North Property Redevelopment—Trestle Area. |

For the sites proposed for deletion, the closing date for comments in the proposed rule was March 24, 2023. EPA received no public comment on six sites proposed for deletion or partial deletion from the NPL. The EPA received public comments on five sites: Tyndall Air Force Base, Havilland Complex, Marine Corps Logistics Base, Aircraft Components (D & L Sales), and Eagle Mine. Tyndall Air Force Base received two public comments; one supportive of the proposed deletion and one comment which was not germane to the proposed deletion. No Responsiveness Summary was prepared. Aircraft Components (D & L Sales) received two public comments from one submitter. The first comment was not adverse to the proposed deletion and the second comment requested EPA remove some of the comment information previously submitted. EPA attempted to contact the commentor, who did not respond. EPA documented the actions in a memo which is included with the docket. The Havilland Complex site received one public comment which acknowledged that collaboration between the state and EPA is essential to protect human health and the environment and recommended that review of sites should be conducted more often than every five years. EPA prepared a Responsiveness Summary indicating there was frequent collaboration with the state and that the established five-year review period is mandated by statute. The Marine Corps Logistics Base site received one public comment with no specific site concerns, which acknowledged that collaboration between the state, U.S. Navy and EPA is essential to protect human health and the environment and recommended that review of sites should be conducted more often than every five years. EPA prepared a Responsiveness Summary indicating there was frequent collaboration among the parties and that the established five-year review period is mandated by statute. The Eagle Mine site received two public comments. One commentor supports the deletion but has issue with who is stated as the property owner. A second commentor stated ecological risks have not been evaluated and potential future residents would not feel safe. The second commenter also stated that field data verified by the purchaser's contractor is a conflict of interest therefore a third party should verify the data, and that the purchaser cannot be trusted to assure the area remains protective as the site will always grapple with contamination. EPA prepared a Responsiveness Summary addressing the concerns in the comments. EPA recognizes the property owner of record for the site as determined in an August 2018 Colorado Court of Appeals ruling. EPA also indicated an ecological assessment was conducted. All work conducted by the purchaser and their contractors is overseen by both the EPA and State under an Administrative Order of Consent. EPA placed the public comments, memo and the Responsiveness Summaries in the docket specified in Table 1, on *https://www.regulations.gov,* and in the appropriate Regional Records Center listed in the **ADDRESSES** section. Thus, EPA concluded for all sites that no action is warranted under CERCLA, and the sites can be deleted from the NPL.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that future conditions warrant further actions.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Larry Douchand,**

*Office Director, Office of Superfund Remediation and Technology Innovation.*

For reasons set out in the preamble, the EPA amends 40 CFR part 300 as follows:

## PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. In appendix B to part 300:

■ a. Amend table 1 by:

■ i. Removing the entry for ''KY, Fort Hartford Coal Co. Stone Quarry, Olaton'';

■ ii. Revising the entry for ''MI, Aircraft Components (D & L Sales), Benton Harbor'';

■ iii. Removing the entry for ''NY'', ''Havilland Complex'', ''Town of Hyde Park'';

■ iv. Removing the entry for ''NY, Smithtown Ground Water Contamination, Smithtown''; and

■ v. Revising the entry for ''PA, Jackson Ceramix, Falls Creek''; and

■ b. Amend table 2 by:

■ i. Revising the entry for ''FL, Tyndall Air Force Base, Panama City''; and

■ ii. Revising the entry for ''GA, Marine Corps Logistics Base, Albany''.

The revisions read as follows:

**Appendix B to Part 300—National Priorities List**

TABLE 1—GENERAL SUPERFUND SECTION

| State | Site name | City/county | Notes (a) |
|---|---|---|---|
| * | * | * | * |
| MI | Aircraft Components (D & L Sales) | Benton Harbor | P |
| * | * | * | * |
| PA | Jackson Ceramix | Falls Creek | P |
| * | * | * | * |

**Notes:**

* * * * * * *

P = Sites with partial deletion(s).

TABLE 2—FEDERAL FACILITIES SECTION

| State | Site name | City/county | Notes (a) |
|---|---|---|---|
| * | * | * | * |
| FL | Tyndall Air Force Base | Panama City | P |
| * | * | * | * |
| GA | Marine Corps Logistics Base | Albany | P |
| * | * | * | * |

**Notes:**

* * * * * * *

P = Sites with partial deletion(s).

[FR Doc. 2023–17434 Filed 8–15–23; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 7

**[WT Docket No. 96–198; FCC 99–181; FR ID 160641]**

### Access to Telecommunications Service, Telecommunications Equipment & Customer Premises Equipment by Persons With Disabilities

**AGENCY:** Federal Communications Commission.

**ACTION:** Correcting amendment.

**SUMMARY:** In this document, the Federal Communications Commission revises the final rules portion of a **Federal Register** document published on November 19, 1999. The published document inadvertently listed an erroneous cross-reference. This document corrects the final regulations.

**DATES:** Effective August 16, 2023.

**FOR FURTHER INFORMATION CONTACT:** Joshua Mendelsohn, Consumer and Governmental Affairs Bureau, (202) 559–7304, or email: *Joshua.Mendelsohn@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document, FCC 99–181, published November 19, 1999, (64 FR 63235). This document corrects a cross-reference error to 47 CFR 7.5(a)(1) in 47 CFR 7.5(b)(2) to cross-reference 47 CFR 7.5(b)(1).

**List of Subjects in 47 CFR Part 7**

Communications equipment, Individuals with disabilities, Telecommunications.

Accordingly, 47 CFR part 7 is corrected by making the following correcting amendment:

## PART 7—ACCESS TO VOICEMAIL AND INTERACTIVE MENU SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

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

**Authority:** 47 U.S.C. 151–154, 208, 255, and 303(r).

■ 2. Amend § 7.5 by revising paragraph (b)(2) to read as follows:

**§ 7.5 General Obligations.**

(b) * * *

(2) Whenever the requirements of paragraph (b)(1) of this section are not readily achievable, the service provider shall ensure that the service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.

* * * * *

Federal Communications Commission.

**Aleta Bowers,**

*Information Management Specialist, Office of the Secretary.*

[FR Doc. 2023–17485 Filed 8–15–23; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 121004515–3608–02]**

**RTID 0648–XD246**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2023 Commercial Closure for South Atlantic Red Snapper

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements an accountability measure for red snapper in the exclusive economic zone (EEZ) of the South Atlantic. NMFS projects that commercial landings of red snapper have reached the commercial annual catch limit (ACL) for the 2023 fishing year. Therefore, NMFS is closing the commercial sector for red snapper in the South Atlantic EEZ. This closure is necessary to protect the red snapper resource.

**DATES:** This temporary rule is effective from 12:01 a.m., eastern time, on August 18, 2023, through December 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic includes red snapper and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial ACL for red snapper in the South Atlantic is 124,815 lb (56,615 kg), round weight, as specified in 50 CFR 622.193(y)(1).

Under 50 CFR 622.193(y)(1), NMFS is required to close the commercial sector for red snapper when the commercial ACL is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial ACL for South Atlantic red snapper will be reached by August 18, 2023. Accordingly, the commercial sector for South Atlantic red snapper is closed effective at 12:01 a.m., eastern time, on August 18, 2023. For the 2024 fishing year, unless otherwise specified, the commercial season will begin on the second Monday in July (50 CFR 622.183(b)(5)(i)).

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having red snapper on board must have landed and bartered, traded, or sold such red snapper prior to 12:01 a.m., eastern time, on August 18, 2023. Because the recreational sector closed on July 16, 2023 (88 FR 33838, May 25, 2023), after the commercial closure that is effective on August 18, 2023, all harvest and possession of red snapper in or from the South Atlantic EEZ is prohibited for the remainder of the 2023 fishing year.

On and after the effective date of the closure notification, all sale or purchase of red snapper is prohibited. This prohibition on the harvest, possession, sale or purchase applies in the South Atlantic on a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, regardless if such species were harvested or possessed in state or Federal waters (50 CFR 622.193(y)(1) and 622.181(c)(2)).

### Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.193(y)(1), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the NMFS Assistant Administrator (AA) finds good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule that established the commercial season, ACL, and accountability measure for red snapper has already been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect red snapper because the capacity of the fishing fleet allows for rapid harvest of the commercial ACL. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 10, 2023.

**Jennifer M. Wallace,**

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

[FR Doc. 2023–17506 Filed 8–10–23; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 88, No. 157
Wednesday, August 16, 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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 300, 362, 410

**[Docket ID: OPM–2023–0020]**

**RIN 3206–AO25**

### Pathways Programs

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is proposing to modify the regulations for the Pathways Programs to align the program to better meet the Federal Government's needs for recruiting and hiring interns and recent graduates. OPM proposes to update the regulations for the Pathways Programs to facilitate a better applicant experience, to improve developmental opportunities for Pathways Program participants, and to streamline agencies' ability to hire participants in the Pathways Programs, especially those who have successfully completed their Pathways requirements and are eligible for conversion to a term or permanent position in the competitive service. Robust Pathways Programs with appropriate safeguards to promote its use as a supplement to, and not a substitute for, the competitive hiring process is essential to boosting the Federal Government's ability to recruit and retain early career talent.

**DATES:** Comments must be received on or before October 2, 2023.

**ADDRESSES:** You may submit comments, identified by the Regulation Identifier Number (RIN) ''3206–AO25'', and title using following method:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.

The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Katika Floyd at (202) 606–0960, or by email at *employ@opm.gov.*

**SUPPLEMENTARY INFORMATION:** OPM is proposing to revise its regulations for the Pathways Programs. The proposed rule will clarify and update information on a variety of issues including reporting requirements, eligibility requirements, training requirements for Internship positions, and rotational assignments for Presidential Management Fellows. The proposed rule will also make changes to the public notification requirement for appointing Interns and Recent Graduates. Additionally, we propose to make several technical corrections to remove references to the former Student Career Program. OPM also invites feedback on potential modifications to several aspects of this rulemaking.

OPM is adopting a 45-day comment period to balance the need for robust public comment with agencies' operational considerations regarding the timing for students and recent graduates recruitment and hiring. The traditional agency recruiting season for early career talent, including interns, begins as early as winter to allow for internships to begin in the spring/summer. Agencies also start extending offers for full-time positions in the spring to students who expect to graduate in the summer. Prospective interns and job applicants frequently choose between numerous offers and opportunities in the winter and spring; agencies can maximize their chances of attracting and hiring great candidates if their recruiting and hiring activities are strategically timed. Applicants also benefit from having greater certainty about employment decisions as soon as possible.

To allow agencies a reasonable amount of time to modify their practices by the effective date of the final rule, OPM aims to review public comments on this proposed rule and make any necessary modifications expeditiously.

## Background Information

The Pathways Programs were established on December 27, 2010, with the issuance of E.O. 13562 (75 FR 82585) pursuant to 5 U.S.C. 3301 and 3302. The programs are designed to provide students and recent graduates with the opportunity for Federal internships and potential careers in the Federal Government through three components.

• The Internship Program exposes current high school students, undergraduate students, including those enrolled in community and technical colleges, and graduate students to the work of government by providing paid opportunities to work in agencies and explore Federal careers while still in school.

• The Recent Graduates Program (Recent Graduates) provides opportunities for individuals who have received qualifying degrees or certificates within the previous two years (up to six years for qualifying veterans) to obtain entry-level developmental experience designed to lead to a career in the Federal Government after successfully completing the Program, which is generally one year in length and in certain cases may be two years in length.

• The Presidential Management Fellows Program (PMF) promotes careers in the Federal Government by offering leadership development opportunities to individuals who have received advanced degrees within the preceding two years.

The Pathways Programs became effective on July 10, 2012.[1] In the final implementing regulations, OPM identified five core principles shared by each of the programs to advance merit system principles and the policies established by the President in E.O. 13562:

(1) Transparency—In an effort to promote transparency, agencies have to provide OPM with information about Internship Program and Recent Graduates Program opportunities and how interested members of the public can apply so that OPM can inform potential applicants. OPM designated USAJOBS, a website used to announce Federal jobs in the competitive service, for the purpose of notifying the public of these opportunities and how to apply at each agency. For the PMF Program, OPM itself publishes the vacancy announcement in USAJOBS. Under the

[1] Final regulations were issued on May 11, 2012, and the five core principles are outlined in the supplemental information accompanying the final regulations for the Pathways Programs. See Excepted Service, Career and Career-Conditional Employment; and Pathways Programs, 77 FR 28195 (2012).

discontinued Federal Career Intern Program (FCIP) and previous student programs, public notice using USAJOBS was not required, which created the appearance of restrictive, rather than open, recruitment practices.

(2) Limited Scope—Agencies are to use the Pathways Programs as part of an overall workforce planning strategy to supplement competitive examining, rather than a substitute for it. If agencies are not using the hiring authorities as intended, OPM may place caps on the number of individuals who may be initially appointed to or converted from Pathways positions to positions in the competitive service.

(3) Fairness to Veterans—The Pathways Programs honor and protect the rights of veterans in the Federal hiring process. Veterans' preference rules in the excepted service governed by sections 3308–3318, title 5, U.S.C. pursuant to section 3320, apply to Pathways positions through the application of part 302 of OPM's regulations in title 5 of the CFR. Veterans also have greater flexibility in meeting eligibility requirements for the Recent Graduates Program in that those unable to apply due to military service obligations have up to six years from the date they completed their educational programs to apply, whereas non-veterans must apply within two years of completion. This flexibility, along with providing public notice and safeguarding veterans' preference, helps ensure the hiring process is fair and veteran-friendly.

(4) Agency Investment—To meet the training and developmental requirements for the Pathways Programs, especially for the Recent Graduates and PMF Programs, agencies must commit resources to foster a positive experience that will help prepare their Pathways hires for potential conversion to the competitive service and success in their careers as Federal employees.

(5) OPM Oversight—To use the Pathways Programs, agencies must enter into Memoranda of Understanding (MOUs) with OPM and report to OPM annually on their use of the Pathways authorities. Agencies are also subject to any caps OPM may place on initial appointments or conversions to positions in the competitive service. In addition, the use of Pathways Programs is subject to evaluation by OPM or the agency as part of its independent audit program.

In general, these five principles, as outlined in the 2012 implementing regulation, are retained throughout this proposal. However, OPM invites comments on whether we should consider modification to, or addition to, these principles.

The Federal Government benefits from a diverse workforce that includes students and recent graduates, who contribute enthusiasm, talents, and unique perspectives. OPM assessed the Pathways regulations to consider the need for changes to make the regulations better advance the goals of E.O. 13562. It has also received substantial input from agencies that utilize Pathways.

In August 2016, OPM published a special report titled, ''The Pathways Programs Their Use and Effectiveness Two Years After Implementation.'' [2] This report documents a study OPM performed in fiscal year (FY) 2015 to determine how the Programs were being used and whether they were operating within the spirit and intent of the five core principles OPM identified in its implementing regulations: transparency, limited scope, fairness to veterans, agency investment, and OPM oversight. Additionally, OPM analyzed agencies' usage, highlighted notable practices, identified challenges and compliance concerns, and developed recommendations for improvement in the effective and efficient use of the Pathways Programs.

OPM has received qualitative feedback directly from agencies since the Programs' implementation. Between FY 2012 and FY 2016 OPM hosted monthly office hours meetings with agencies. During these office hours OPM and agencies discussed solutions and recommendations to challenges agencies encountered when using the Programs. Pathways Programs Officers and Presidential Management Fellows (PMF) Coordinators have and continue to contact OPM directly for advice and guidance on using the Programs since their inception. The Chief Human Capital Officers Council convened a working group to discuss challenges, issues, and successes of using the Pathways Programs during FY 2019. The working group also provided OPM staff with a number of ideas and recommendations for ways that the Programs could be improved.

Based on agency feedback and OPM's own analysis, we are proposing several changes aimed at enhancing the robust usage of the Pathways Programs as a key source of early career talent in the Federal Government, as a supplement to, and not a substitute for, the competitive hiring process. Overall, the purpose of this proposal is to streamline the Pathways regulations, making it easier for agencies to recruit and hire Pathways program participants, and to optimize the Pathways program as a tool to recruit and retain diverse and highly-qualified early career talent. The proposed changes, which are explained in greater detail below, cover a variety of issues related to the way agencies use the Pathways Programs to recruit and hire students and recent graduates including:

- Outlining the specific responsibilities of the Presidential Management Fellows (PMF) Coordinator;
- Expanding the time period for converting Pathways Interns from 120 to 180 days;
- Modifying the public notice requirement for vacancy announcements for Pathways Interns and Recent Graduates;
- Clarifying and streamlining the training and development requirements;
- Allowing Recent Graduate and Presidential Management Fellows participants to be converted to term or permanent positions in any agency, when appropriate;
- Clarifying the time period for required reporting;
- Allowing the use of part-time work schedules for PMFs in certain situations;
- Clarifying information about the use of developmental assignments for PMFs; and
- Expanding eligibility for the Recent Graduates Program to include those who have completed certain career or technical education programs.

In addition to seeking comment on the proposed changes summarized above and discussed in greater detail throughout, please see the Request for Comment and Data section below for additional requests for data and additional comments on specific topics.

## Section by Section Analysis

### Part 300 Employment (General)

*Section 300.301 Authority*

OPM is proposing to modify the regulations in 5 CFR 300.301(b) to allow agencies to detail employees appointed under the Pathways Programs (Schedule D of the excepted service) to positions in the competitive service without approval from OPM. Current regulations under Schedule A, Schedule B, or the Veterans Recruitment Appointment authority allow an agency to detail an employee in an excepted service position under those authorities without approval from OPM. Prior to the creation of the Pathways Programs, both

[2] *https://www.opm.gov/policy-data-oversight/hiring-information/students-recent-graduates/reference-materials/report-on-special-study-of-the-pathways-programs.pdf.*

the former Student Education Employment Program (SEEP) and the predecessor to the PMF Program were a part of Schedules A and B of the excepted service. However, the Pathways Internship Program, which replaced the SEEP, and the PMF Program are now filled under Schedule D of the excepted service, which currently requires OPM approval for details to the competitive service. OPM is proposing to modify the Schedule D regulations to allow agencies to detail Pathways employees to positions in the competitive service without approval from OPM, similar to how details were executed under the SEEP.

**Part 362 Pathways Programs**

**Subpart A General Provisions**

*Section 362.102 Definitions*

OPM is proposing to revise the definition of an advanced degree and certificate program in § 362.102. We are proposing that the definition of advanced degree be revised to mean a master's degree, professional degree, doctorate degree, or other formal degree pursued after completing a bachelor's degree. We believe that the revised definition may lead to less confusion among applicants and agencies about the types of degrees required for eligibility under the Pathways Programs. We are proposing to revise the definition of a certificate program to include a qualifying career or technical education program that awards a recognized postsecondary credential or industry-recognized credential.

OPM is also proposing to add definitions for terms related to career and technical education. These terms are: certificate of completion of a Registered Apprenticeship Program; industry-recognized credential; qualifying career or technical education program; recognized postsecondary credential; and Registered Apprenticeship Program. These definitions are being proposed as a part of the proposed changes to the eligibility criteria for the Internship and Recent Graduate Programs, as discussed more extensively in the Supplemental Information related to § 362.302.

We are proposing to define certificate of completion of a Registered Apprenticeship Program to mean documentation (*i.e.,* an official record) given to an individual who has successfully completed a registered apprenticeship program (29 CFR parts 29 and 30).

The term career or technical education program is used in section 3 and section 4 of E.O. 13562 but is not currently defined in the regulation. We are proposing to define qualifying career or technical education program to mean:

- An organized educational program, administered through a Federal agency, that focuses on providing rigorous academic content and relevant technical knowledge and skills needed to prepare the individual for further education and a career in a current or emerging profession and provides technical skill proficiency, and a recognized postsecondary credential (which may include an industry-recognized credential, a certificate, or an associate degree); or
- A Registered Apprenticeship Program; or
- Service in a federally administered local, state, national, or international volunteer service program or organization designed to give individuals work and or educational experiences in volunteer programs that benefit the Federal Government or local communities.

This proposed definition is based in part on the definition found in 20 U.S.C. 2302(5). Examples of eligible programs would include the Department of Labor Job Corps programs, Registered Apprenticeship Programs, the Peace Corps, and AmeriCorps.

We are proposing to define industry-recognized credential as either a certificate or credential developed and offered by, or endorsed by, a nationally- or regionally recognized industry association or organization representing a sizeable portion of the industry sector, or credential that is sought or accepted by companies within the industry sector for purposes of hiring or recruitment, which may include credentials from vendors of certain products.

We are proposing to define recognized postsecondary credential to mean documentation of an industry-recognized certificate or certification, a certificate of completion of a Registered Apprenticeship Program, a license recognized by the State involved or Federal Government, or an associate or baccalaureate degree. This proposed definition is based on the definition found in 29 U.S.C. 3102(52). Our intent in incorporating these definitions is to provide agencies clarity that both career and technical education programs and industry recognized credentials, as defined herein, are suitable demonstrations of relevant experience for Pathways purposes.

We are proposing to define Registered Apprenticeship Program as a program that meets the requirements in 29 CFR part 29. Approval of registration would be evidenced by a Certificate of Registration or other written documentation as provided by the respective career or technical education establishment. This proposed definition would align with DOL regulations.

We are proposing these changes based on the authority given to OPM in E.O. 13562 to promulgate regulations for the implementation and use of the Pathways Programs and the statutory authority in 5 U.S.C. 3301 and 3302.

*Section 362.104 Agency Requirements*

Currently, an agency must execute a memorandum of understanding (MOU) with OPM before using the Pathways Programs. The original Pathways regulations contained this requirement because the MOU was the mechanism for OPM to obtain from agencies a listing in advance of the positions the agencies intended to fill through Pathways Programs. The MOU requirement allows for OPM to play a role in considering and approving those positions, a key oversight safeguard that promotes the use of these programs as supplements to, and not substitutes for, competitive hiring. OPM is proposing to replace the use of an MOU with a requirement that an agency must have a Pathways Policy in accordance with § 362.104 in order to make appointments under the Pathways authority. Similar to the MOU, the agency policy will outline the parameters under which the agency will use the Pathways Programs. In lieu of the MOU, OPM will tie oversight to agency compliance with its Pathways Policy in revised § 362.108(b)(1). OPM may limit an agency's use of this authority if we determine the agency is not in compliance with its Pathways Policy in accordance with revised § 362.104, or E.O. 13562 in general. This proposed change will do what the MOU would otherwise require, and we think it is an appropriate modification based on 10 years of experience overseeing the Pathways Programs that will streamline administration.

If this proposed change is adopted, each agency would be required to submit a copy of its Pathways Policy to OPM within 120 days of the effective date of the final rule. Once approved, the submission of an updated policy would only be required when the agency made substantive or significant changes to the policy. This is in line with how OPM approves delegated examining for agencies in the regular competitive hiring process. Agencies with existing Pathways MOUs [3] may

[3] A sample MOU is available online in the Pathways Transition and Implementation Guidance at *https://www.opm.gov/policy-data-oversight/hiring-information/students-recent-graduates/reference-materials/pathways-transition-and-implementation-guidance.pdf.*

continue to use the Pathways Programs subject to the new regulations in lieu of an updated Pathways Policy while they are developing and updating their policies in accordance with the new regulations. Agencies without existing MOUs must submit a copy of their agency Pathways Policy before they begin making Pathways appointments.

OPM is also proposing to clarify the role of the Presidential Management Fellows Coordinator in § 362.104(a)(8) to outline the specific responsibilities of the role. We have found that there is inconsistency in the importance that agencies place on this role. The PMF Program is the premier leadership development program for the Federal Government. Each year, the best qualified candidates are selected through a rigorous assessment process. Then, the PMF finalists apply for placement to PMF-designated positions at Federal agencies. But placement rates vary year-to-year, and many years, hundreds of finalists do not get placed. Moreover, for those who are placed in agencies, the experience varies widely, as some agencies are more highly invested in the professional development of their PMFs. By bolstering the role of the PMF Coordinator, OPM seeks to offer agencies a better way to share information about the PMF Program throughout agencies and standardized practices associated with the use of the Program. This increased communication and added consistencies in practice may help agencies place more PMF finalists and provide a more positive developmental experience for those finalists who get placed. Accordingly, we are proposing that an agency must have at least one PMF Coordinator in a position at the agency's headquarters, in a position at or higher than grade 12 of the General Schedule (GS) or other equivalent pay and classification system. In addition, OPM recommends building the capacity within agencies, by designating PMF Coordinators at the headquarters level of a departmental component or sub-agency level. Additionally, we are proposing that the PMF Coordinator will be responsible for administering the agency's PMF Program including coordinating the recruitment of PMF finalists, coordinating and overseeing the on-boarding and certification processes for PMF Program Participants, coordinating the agency's PMF Program plan to ensure it is integrated with agency-wide workforce plans, and reporting to OPM on the agency's implementing of its PMF program. If an agency chooses to use more than one PMF Coordinator, at least one must be at the headquarters level and in a position at the GS–12 level or higher. If an agency designates multiple PMF Coordinators, they must work collaboratively to administer the agency's PMF Program. For example, a large agency may have a GS–12 PMF Coordinator at the headquarters level and additional coordinators in the component level offices may be at whatever grade level the agency finds appropriate.

*Section 362.107 Conversion to the Competitive Service*

OPM is proposing to revise § 362.107(c)(2) to allow a Recent Graduate, who has successfully completed program requirements, to be converted to a position in the competitive service within the employing agency or another agency within the Federal Government. This change will provide agencies additional flexibilities to capitalize on the Federal Government's investment in training and development of a Recent Graduate when the employing organization has determined resource restrictions prevent the agency from converting a Recent Graduate to a permanent or term position within the agency.

OPM continues to expect an eligible Recent Graduate to convert to a position at the agency that hired them as a Recent Graduate (either in the organization in which they are employed, or another component within the same Department or agency) before the Recent Graduate may convert to a different Department or agency. Indeed, agencies who hire Recent Graduates are required to have engaged in sufficient strategic workforce planning to allow for a plan to convert the Recent Graduate to a permanent position in the agency upon successful completion of the program. This is an important safeguard to protect against the possibility of agencies becoming overly reliant on Recent Graduates who cycle through every few years but never land permanent positions with the agency.

Nonetheless, it is reasonable to expect that an agency may encounter obstacles that prevent conversion within the agency. For example, unforeseen budgetary constraints may affect the agency's ability to convert the Recent Graduate. New priorities brought about by a new law or policy could require agencies to shift resources and focus away from the jobs to which the Recent Graduate is eligible to convert. OPM believes that, given the nature of such unexpected obstacles, it is in the interests of efficient and effective administration of the civil service to provide for opportunities for Recent Graduates who have successfully completed their program and meet the requirements for conversion to be able to convert at agencies other than the one that initially hired them as a Recent Graduate. Such conversion can occur for any position for which the Recent Graduate is qualified and at the grade level to which the Recent Graduate would have been converted within the agency that appointed them had the opportunity been available. The position in another component of the same agency or at the new agency must have a full performance level that is equivalent or less than the position at the prior agency. The initial agency has invested in the development of the Recent Graduate and, if it is unable to convert them, other agencies should have that opportunity so that the investment in the Recent Graduate is not lost to the Federal Government. OPM proposes that the employing agency should determine within a reasonable period of time (*e.g.,* 90 to 120 days before conversion deadline) whether or not they intend to convert the Recent Graduate to a position in either the component or the broader agency. If the agency is unable to convert the eligible Recent Graduate, then the Recent Graduate may be converted to a position in a different agency.

We welcome comments on how to balance an agency right of first refusal in converting their Recent Graduates with Recent Graduates choosing whether to convert if there are opportunities at other agencies. We are also interested in comments on whether conversion at other agencies should be limited to situations where the employing agency is unable to convert due to a lack of resources or if conversion should occur at another agency for any reason. Comments in favor of conversion at another agency for any reason should address the types of reasons or situations where conversion at another agency may be allowed.

For the same reasons stated above with respect to eligible Recent Graduates, OPM is also proposing to allow eligible Presidential Management Fellows to be converted to a position in the competitive service either within the employing agency or at another agency within the Federal Government. For reader clarity we are proposing to move the revised provision on PMFs to proposed § 362.107(c)(3).

*Section 362.108 Oversight*

OPM is proposing to revise § 362.108 by amending § 362.108(b)(1) to remove the reference to an MOU and replace it

with a reference to the agency's Pathways Policy in accordance with the proposed change at § 362.104 described above.

*Section 362.109 Reporting Requirements*

The regulations in § 362.109 require agencies to provide OPM with information on workforce planning strategies and their use of the Pathways Programs on an annual basis. OPM is proposing to clarify this requirement by modifying § 362.109 to indicate that reporting is required on a fiscal year basis. OPM proposes starting the updated requirement in FY 2024 because that is the target fiscal year for publication of the final rule. In addition, since FY 2010, OPM has required reporting on an annual basis. Because the Pathways rules and programs have been effective since that time and OPM receives regular feedback on these programs on an on-going basis, we believe a 3-year reporting cycle is more appropriate and will reduce any administrative burdens this requirement may present to agency Pathways users. Accordingly, we are proposing to modify the reporting requirement to once every three years, *i.e.,* beginning in FY 2024 and then again in FY 2027, and so on.

*Section 362.111 Severability*

Severability is an important remedial doctrine that arises in cases challenging the legality of statutes and agency rules. When reviewing a rule, if a court determines that a particular provision is unlawful, severability addresses whether judicial relief should extend to the entire rule or whether it can be limited to the invalid provision, leaving in effect the remainder of the rule.[4] OPM is proposing to add a new § 362.11 to address the issue of severability. OPM intends and expects that if any part or section is held to be invalid or unenforceable as applied to any person or circumstance, that part or section shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this Part and shall not affect the remainder thereof. We have come to this determination because the Pathways Programs encompassed three discrete programs with different implementing provisions. Should provisions related to one of the programs be held to be invalid we believe that the other programs should be severable and would not be impacted.

**Subpart B Internship Program**

*362.202 Definitions*

OPM is proposing to include a definition for Intern not-to-exceed (Intern NTE). We are proposing this change because it is the general way that Interns and agencies refer to Interns who have been appointed for an initial period of up to one year.

OPM is also proposing to modify the definition of student to include individuals enrolled or accepted for enrollment in a qualifying career or technical education program. We are proposing this change to make the Pathways Internship Program more inclusive of individuals in career or technical education programs that award a post-secondary certification or credential. Eligible career or technical education programs would include programs such as Registered Apprenticeship programs and the Job Corps programs. Section 3 of E.O. 13562 states that the Internship Program shall provide opportunities for, ''. . . students in high schools, community colleges, 4-year colleges, trade schools, career and technical education programs, and other qualifying educational institutions and programs, as determined by OPM . . .''. Consistent with the direction in E.O. 13562, OPM has determined that career and technical education programs that provide a recognized post-secondary credential such as Registered Apprenticeships and Jobs Corps programs meet the criteria of career and technical education programs expressed in E.O. 13562.

*362.203 Filling Positions*

Since the implementation of the Pathways Internship Program in 2012, OPM, through administrative guidance, has required that agencies must post internship positions on *USAJOBS.gov* before filling these positions. Over the years, agencies have noted that this requirement can substantially lengthen the hiring process and can hinder agencies' ability to effectively recruit and retain early career talent. Therefore, OPM is proposing changes to this requirement to give agencies greater flexibility to recruit and retain early career talent and therefore to advance the goals of E.O. 13562. It should be noted that the flexibility to recruit in an efficient manner must be balanced with the agency's responsibility to uphold fair and open competition.

OPM proposes that agencies can meet the public notice requirement in one of two ways: (1) posting a searchable announcement on *www.USAJOBS.gov,* as is currently required; or (2) posting job information on the agency's public facing career or job information web page with a link to a USAJOBS custom posting.

With respect to this second option, a USAJOBS custom posting generates a unique URL that agencies can use for the job announcement. An agency can create a custom job posting in its talent acquisition system (TAS). OPM will have the posting stored within USAJOBS, and therefore can use USAJOBS to collect applicant data analytics for trend reporting and applicant flow data purposes, but the custom job posting will not appear in USAJOBS searches. Therefore, to facilitate applicants' access to these internship opportunities, OPM will provide a centralized source through which applicants can be directed to the locations on agency-specific web pages where applicants can learn about these opportunities.

For either of these two options—either a searchable announcement on USAJOBS or a link to a USAJOBS custom posting on the agency's public career or job information web page—agencies can promote the job posting on third party websites and recruitment boards or recruiting platforms, social media platforms, in trade publications, and at college and university events.

OPM is proposing these changes to assist agencies in their recruitment and retention efforts and as informed by the public notification requirements provided in recent statutory changes for early career hiring authorities for Post-Secondary Students and College Graduates (5 U.S.C. 3116 and 3115). OPM specifically invites comments regarding these changes and whether they will assist agencies and ultimately improve the hiring experience for Interns and Recent Graduates, thereby better advancing the purposes of E.O. 13562.

OPM is proposing to revise § 362.203(d) to remove the reference to an MOU and replace it with a reference to the agency's Pathways Policy. The conforming change is necessary due the proposed change in § 362.104 described above.

Both agencies and employees have asked for clarity on the ability of an agency to promote Interns. Eligibility for promotion is determined based on the type of appointment given. Employees

[4] *https://www.acus.gov/sites/default/files/documents/tailoring-the-scope-of-judicial-remedies-in-administrative-law-final-report.pdf.*

on temporary appointments (initial appointments of not-to-exceed one year) are not eligible for promotions. Employees on non-temporary appointments (initial appointments of more than one year made without a not-to-exceed date) are eligible for promotion. For this reason, we are revising § 362.203(e) to reflect that those Interns whose appointments are expected to last more than one year without a not-to-exceed date may be promoted when they meet the qualification requirements for a higher graded position. The change also provides that Interns NTEs (on temporary appointments not-to-exceed one year) are not eligible for promotions.

Agencies participating in the Pathways Internship Program are required to provide Interns with meaningful developmental work and set clear expectations regarding the work experience of the Intern as indicated in § 362.104. Identifying and allowing Interns to participate in training opportunities such as job training activities, formal training classes, mentoring sessions, testing products or tools, organizing work activities or functions, and assisting colleagues with projects or tasks will help ensure that Interns have meaningful work experiences that will help to adequately prepare Interns for Federal service. For this reason, we are proposing to modify the regulations at § 362.203 by adding a new paragraph (i) that requires agencies to provide Interns with meaningful onboarding activities and training and development opportunities. Agencies should document training information using training plans, Individual Development Plans (IDP) or the Pathways Participant Agreement. Appropriate training opportunities may include but are not limited to on-the-job training activities, formal training classes, mentoring sessions, testing products or tools, organizing work activities or functions, and assisting colleagues with projects or tasks.

*Section 362.204 Conversion to the Competitive Service*

Currently, agencies must convert an Intern to a permanent position in the competitive service within 120 days of the Intern's completion of a degree and the program requirements. Agencies have indicated that they face challenges in completing additional background investigations and adjudications that may be required to encumber the position following conversion. OPM is proposing to extend this time for conversion from 120 calendar days to 180 calendar days in § 362.204(b)(2). Though we are extending the timeline to assist agencies and Interns in securing conversion, we continue to urge agencies to move promptly to complete conversion upon the Intern's completion of the degree or qualifying career or technical education program and program requirements. Lengthy delays in conversion can pose a financial hardship on the Intern and lead to them seeking employment elsewhere.

Currently, an Intern must complete a minimum of 640 hours of work experience while in the Internship Program to be eligible for conversion. Under § 362.204(c) an agency may credit time served in comparable non-Federal Internships, in which an Intern is working in, but not for, a Federal agency, for up to half of that time (320 hours) when that service occurred prior to an Internship appointment. OPM proposes to modify the provisions in § 362.204(c) to allow agencies to also credit time served in a Registered Apprenticeship Program at a Federal agency prior to the appointment as an Intern toward the 640-hour requirement. As with the time served in non-Federal internships, time served in Registered Apprenticeship Program can count for up to half of the minimum 640 hours. We are also proposing that an agency may count time spent in a Department of Labor Job Corps program, prior to appointment as an Intern, toward the 640-hour work requirement. It is important to note that all time served by participants in Registered Apprenticeship Programs or Job Corps Programs (after the publication of the final rule) while appointed as a Pathways Intern will be creditable toward the 640-hour requirement as allowed by § 362.204(b). This provision for crediting time toward conversion would only be needed for those Interns who may have participated in a Registered Apprenticeship Program or Job Corps program prior to a current Intern appointment where eligibility was based on enrollment in a subsequent qualifying program after completing the Registered Apprenticeship Program. For example, an Intern currently enrolled in a bachelor's degree program has completed 320 work hours as an Intern prior to completing her degree. The Intern had participated in a Registered Apprenticeship Program at a Federal agency two years before their appointment as an Intern. Up to 320 hours from the prior Registered Apprenticeship Program may be credited toward the 640-hour requirement.

OPM invites comments on other ways to strengthen the provisions that agencies may credit or waive up to 320 hours toward an Intern's 640-hour service requirement.

*Section 362.205 Reduction in Force (RIF) and Termination*

OPM is proposing to change the provision for termination of an Intern appointment from 120 days after completion of a degree to 180 days after the completion of a degree. This conforming change is necessary based on the proposed change in § 362.204(b)(2) pertaining to the conversion window described above.

We are also proposing to make conforming changes in this section to incorporate the new term Intern NTE.

**Subpart C Recent Graduates Program**

*Section 362.301 Program Administration*

OPM is proposing to revise § 362.301(a) to remove the reference to an MOU and replace it with a conforming reference to the agency's Pathways Policy in accordance with the proposed change at § 362.104.

*Section 362.302 Eligibility*

One objective of E.O. 13562, as stated under section 1, is to enable the Federal Government to ''compete effectively'' for talent and avoid ''being at a competitive disadvantage compared to private-sector employees when it comes to hiring qualified applicants for entry level positions.'' In the years since the creation of the Pathways Programs, employment trends in other sectors have shifted to better recognize the value of and utilize skills-based hiring over reliance on degrees. The Governors of Colorado,[5] Alaska,[6] and Pennsylvania[7] among others, have issued Executive orders to promote skills-based hiring for state government jobs and reduce or eliminate degree requirements. According to a Burning Glass Institute report, major companies in the technology services field are dropping degree requirements for a significant share of their entry-level and

[5] Executive Order D–2022–015: Concerning Skills-based Hiring for the State Workforce (*https://www.colorado.gov/governor/sites/default/files/inline-files/D%202022%20015%20Skills%20Based%20Hiring%20EO.pdf*).

[6] Administrative Order No. 343 (*https://gov.alaska.gov/admin-orders/administrative-order-no-343/*).

[7] Executive Order 2023–03: Creating Opportunities by Prioritizing Work Experience for State Government Jobs (*https://www.oa.pa.gov/Policies/eo/Documents/2023-03.pdf*).

above positions.[8] Federal policies have also started to change, as demonstrated by E.O. 13932 of June 26, 2020, Modernizing and Reforming the Assessment and Hiring of Federal Job Candidates, which directed the Federal Government to increase its use of skills-based hiring to fill positions. Consistent with E.O. 13562's objective of enabling the Federal Government to compete effectively for qualified applicants to fill entry-level positions under current workforce and job marketplace conditions, OPM is proposing to modify the eligibility criteria for the Recent Graduate Program in § 362.302 to include individuals who have completed a career or technical education program.

The current regulation includes a definition of the term ''qualifying educational institutions'' under § 362.102 but does not include a definition of ''qualifying career or technical education program.'' As noted in the discussion of § 362.102, we are proposing a definition of career or technical education programs to include programs such as Registered Apprenticeship Programs, the Department of Labor-administered Job Corps, the Peace Corps, and AmeriCorps. Individuals who have completed such career or technical education programs, much like college graduates who have graduated from a qualifying educational institution, may be at a disadvantage for competitive service hiring, as they lack significant previous work experience. *See* E.O. 13562, Sec. 1 (noting that existing competitive hiring process favors job applicants who have significant previous work experience and therefore finding it necessary to create an excepted hiring authority for the Pathways Programs).

OPM has specifically identified four Federal programs that meet the criteria under this definition of ''qualifying career or technical education program'': Registered Apprenticeship Programs, the Department of Labor-administered Job Corps Programs, the Peace Corps, and AmeriCorps. Graduates and alumni from these programs are uniquely positioned to apply for Federal positions because they have been accepted into a government-administered program that is regulated by specific standards, and the Federal Government has already invested funding and personnel resources toward their success. Many of these participants have been pre-screened with background checks or investigations before joining these programs, and they have already demonstrated an inclination toward government service through their participation. Additionally, these programs attract more diverse participants relative to the broader U.S. workforce and creating a more robust applicant pipeline from these programs to Pathways Programs would help further the objective of E.O. 13562 to draw from all parts of American society. OPM believes that overtly defining this term will assist agencies as they seek to access additional talent pools that they can draw upon to meet their missions.

OPM invites comments regarding the inclusion of career and technical education programs in the eligibility criteria for the Recent Graduate Program. OPM is particularly interested whether we should establish restrictions or criteria for the types of programs that would meet the eligibility criteria.

*Section 362.303 Filling Positions*

For the reasons discussed above regarding § 362.203, OPM is proposing to revise § 362.303(a)—the job posting requirements for Recent Graduates—in the same manner as has been proposed for Interns in § 362.203(a). OPM believes that these changes will enable agencies to better recruit and retain early career talent and therefore advance the goals of E.O. 13562. OPM invites comments on these changes, as discussed above.

OPM is proposing to revise § 362.303(b)(1) and (c) to remove the reference to an agency's MOU and replace it with a reference to the agency's Pathways Policy. The conforming change is necessary due the proposed change in § 362.104.

OPM's qualification standards for white collar jobs allows education alone to be qualifying for non-research positions at the GS–11 level and below. The standards also allow education alone to be qualifying at the GS–12 level for research positions. For this reason, OPM is proposing to revise § 362.303(b)(i) to allow initial appointments of a Recent Graduate to any position filled under the authority up the GS–11 level. The existing provisions in the regulations to allow appointments at the GS–12 level for research positions in § 362.303(b)(iv) remains unchanged.

*Section 362.305 Conversion to the Competitive Service*

OPM is proposing to modify § 362.305 to permit conversion to a term or permanent position in a different agency. The proposed change adds a new paragraph (c) which provides that conversion at a different agency may only occur when the employing agency documents it is unable to convert the Recent Graduate. An agency may determine that it is unable to convert the Recent Graduate for reasons related to a lack of available positions for which the Recent Graduate is qualified due to unforeseen funding or budgetary constraints or limitations, reorganizations, abolishment of positions, or other appropriate reasons. It is important to note that a Recent Graduate is not entitled to conversion at the employing agency or another agency. Conversions may only be offered to those Recent Graduates who have successfully completed the Recent Graduate Program requirements and demonstrated successful job performance resulting in a rating of record (or summary rating) of at least Fully Successful or equivalent and have a recommendation for conversion from the first level supervisor. Recent Graduates who do not meet these criteria or have misconduct issues or unsuccessful performance may not be converted to a position in the employing agency or another agency. Additionally, such a conversion must occur on or before the end of the agency prescribed Program period, plus any agency-approved extension, and the position at the new agency must have a career ladder or full promotion potential that is the same or lower than the position at the former agency.

**Subpart D Presidential Management Fellows Program**

*Section 362.401 Definitions*

OPM is proposing to revise the definition of Agency PMF Coordinator in § 362.401. This conforming change is necessary due to the proposed change in § 362.104(a)(8).

*Section 362.404 Appointment and Extension*

OPM is proposing to revise § 362.404(a)(1) and (b) to remove the references to an agency's MOU and replace it with a reference to the agency's Pathways Policy. This conforming change is necessary due to the proposed change in § 362.104.

Presidential Management Fellows (Fellows) are generally given full-time work schedules. However, there are times when an agency may need the flexibility to offer a part-time work schedule to Fellows for limited periods of time. For example, as a reasonable accommodation due to a medical condition, illness, or injury, or

[8] The Emerging Degree Reset (*https://static1.squarespace.com/static/6197797102be715f55c0e0a1/t/6202bda7f1ceee7b0e9b7e2f/1644346798760/The+Emerging+Degree+Reset+%2822.02%29Final.pdf*).

caregiving responsibilities for family members, an agency could authorize a part-time work schedule for a period of 3 to 6 months while the Fellow recovers. For this reason, OPM is proposing to modify § 362.404 by adding paragraph (e) to provide agencies with the discretion to authorize a part-time work schedule for limited period of up to 6 months during the program if the agency and Fellow have determined that it would not negatively impact the Fellow's ability to meet all program requirements by the expiration of the Fellow's appointment. An agency is not required to approve a part-time schedule. When a part-time schedule is being approved, it should be approved for the shortest amount of time necessary because the Fellow must complete all program requirements within the two-year program period and any approved extension. In situations where the Fellow may have entitlements under the Family Medical Leave Act, the use of a part-time work schedule may supplement those entitlements.

*Section 362.405 Development, Evaluation, Promotion, and Certification*

Currently, § 362.405(a) provides that a Fellow must (1) have an Individual Development Plan (IDP) in place within 45 days upon entering on duty, (2) have a Mentor in place within 90 days, and (3) be able to consult the Mentor in the development of the IDP. The different time frames for developing an IDP and identifying a mentor creates a situation where most Fellows do not have a Mentor in place prior to and during the initial development of their IDP. For this reason, we are proposing to modify § 362.405(a) to require an IDP within 90 days. This will allow the Mentor to participate in the development of the IDP with the Fellow and the manager. OPM encourages agencies and Fellows to identify Mentors and create IDPs as soon as practicable but no later than 90 days after the appointment.

OPM is proposing to modify § 362.405(b)(1) to reflect that OPM will provide leadership development activities and general program resources instead of an orientation program. Years of experience with the PMF program has led us to conclude that the agency-specific PMF orientation is far more valuable to individuals selected as Fellows than a centrally provided orientation program. Fellows are going to work for a particular agency. While there are centrally managed activities for Fellows, the employing agency is primarily responsible for the day-to-day activities of their PMF Fellow cohort. Fellows need to learn about their agency and where their job fits into it. Clarifying that agencies are responsible for PMF orientation—which many already are providing—reduces confusion between agencies and OPM about responsibilities and provides a better on-boarding experience for Fellows. OPM views its role as providing meaningful leadership development activities and resources throughout the program lifecycle. This proposed change will better reflect the reality of how the program is administered today, which is a model that will lead to a better on-boarding experience for Fellows.

Currently, § 362.405(b)(4)(i) requires agencies to provide for a minimum of one developmental assignment of 4 to 6 months' duration. It also allows that as an alternative to this developmental assignment Fellows may choose to participate in an agency-wide, Presidential or Administration initiative that will provide experience comparable to the developmental assignment. Fellows and agencies have found this description of an alternative to be confusing and duplicative. Accordingly, we are instead providing examples that we expect will assist agencies and Fellows alike. Specifically, we note that developmental assignments could include projects requiring implementation of a new Executive order, major piece of legislation, agency reorganization, or cross-agency collaboration on a major Administration initiative. Cross-agency collaboration on a new program or service, establishment of a new program or office, or drafting a report would be additional types of projects that could serve as a developmental assignment. We welcome further comment on other examples.

Agencies may also provide Fellows with an additional short term rotational assignment of up to 6 months. Over the years, Fellows and agencies have inquired about whether such assignments are limited to the employing agency or if they may also occur in other agencies. To clarify this matter OPM is proposing to revise § 362.405(b)(4)(ii) to indicate that short term rotational assignments may take place within the Fellow's organization, in another component of the agency, or in another Federal agency at the employing agency's discretion.

OPM is proposing to clarify the information about Executive Resource Board (ERB) certification of completion to indicate how certification relates to the eligibility for conversion in the current agency or a different agency. We are proposing to modify § 362.405(d)(2) and (4) to indicate that a Fellow who is successfully certified may be converted in accordance with § 362.409 and that a Fellow who is not approved for ERB certification is not eligible for conversion. This change is necessitated by the change in § 362.107 to allow the conversion of a Fellow in the employing agency or a different agency. The losing agency is responsible for the ERB certification.

*Section 362.409 Conversion to the Competitive Service*

OPM is proposing to modify in § 362.409 to allow conversion to a term or permanent position in a different agency. The proposed change adds a new paragraph (c), which would require that conversion at another agency is allowed only when the employing agency documents that there no available positions in the current organizational unit or elsewhere in the employing agency (including its various components) for which the Fellow is qualified. An agency may determine that it is unable to convert the Fellow for reasons related to a lack of available positions for which the Fellow is qualified due to unforeseen funding or budgetary constraints or limitations, reorganizations, abolishment of positions, or other appropriate reasons. It is important to note that a Fellow is not entitled to conversion at the employing agency or another agency. Conversions may only be offered to those Fellows who have successfully completed the PMF Program requirements including the performance and developmental expectations set forth in the Fellow's performance plan and IDP; and has received ERB-certification of completion. Fellows who do not meet this criteria or have misconduct issues or unsuccessful performance may not be converted to a position in the employing agency or another agency. The proposed change would also require that such conversion must occur on or before the end of the agency prescribed Program period, plus any agency-approved extension, and the position at the new agency must have a career ladder or full promotion potential that is the same or lower than the position at the former agency.

OPM welcomes comments on whether the employing agency should have priority in converting their Recent Graduates or Fellows or if, instead, the Recent Graduates or Fellows should be able to choose where to convert if there are opportunities at other agencies.

**Part 410 Training**

*Section 410.306 Selecting and Assigning Employees to Training*

OPM is proposing to replace the outdated reference to the former Student Career Experience Program (SCEP) program in 5 CFR 10.306(c) with a reference to the Pathways Internship Program.

**Expected Impact of This Proposed Rule**

*A. Statement of Need*

OPM is proposing these regulations to update the Pathways Programs to facilitate a better applicant experience, to improve developmental opportunities for Pathways Programs participants, and to streamline agencies' ability to hire Pathways Program participants and convert to permanent employment those that have successfully completed their Pathways requirements. Robust Pathways Programs with appropriate safeguards to promote its use as a supplement to, and not a substitute for, the competitive hiring process is essential to boosting the Federal Government's ability to recruit and retain early career talent.

*B. Impact*

The proposed rule modifies existing regulations for the Pathways Programs for hiring Interns and Recent Graduates and for the Presidential Management Fellowship Program. We anticipate that these changes will improve and enhance the effectiveness of the Pathways Programs consistent with E.O. 13562, which requires OPM to support agency use of programs to recruit students and recent graduates.

In fiscal year 2021, agencies made 8,039 new appointments using the Pathways Programs hiring authorities (4,873 Interns, 2,828 Recent Graduates and 338 Presidential Management Fellows). It is important to note that, while these proposed changes may enhance the way the agencies use the program, they are only one of several factors impacting whether the number of appointments made will increase or decrease. Other factors not addressed or impacted by these regulations such as agency resources available for hiring and recruiting will also need to be considered when evaluating the effectiveness of the programs in helping agencies reach their recruiting and hiring goals.

*C. Costs*

This proposed rule will affect the operations of over 80 Federal agencies—ranging from cabinet-level departments to small independent agencies. We estimate that this proposed rule will require individuals employed by these agencies to modify policies and procedures to implement the rule and perform outreach and recruitment activities when using the authority. For the purpose of this cost analysis, the assumed average salary rate of Federal employees performing this work will be the rate in 2022 for GS–14, step 5, from the Washington, DC, locality pay table ($143,064 annual locality rate and $68.55 hourly locality rate). We assume that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of $137.10 per hour.

In order to comply with the regulatory changes in this NPRM, affected agencies would need to review the final rule and update their policies and procedures. We estimate that, in the first year following publication of the final rule, this would require an average of 250 hours of work by employees with an average hourly cost of $137.10. This would result in estimated costs in that first year of implementation of about $34,275 per agency, and about $2,742,000 in total Governmentwide. We do not believe this proposed rule will substantially increase the ongoing administrative costs to agencies (including the administrative costs of administering the programs and hiring and training new staff). This is because the proposed rule is modifying existing programs and recruitment of students and recent graduates is an ongoing need.

*D. Benefits*

The proposed changes will boost the Federal Government's ability to recruit and retain early career talent. For example, the proposed change to modify the public notice requirement will provide agencies with additional flexibility when recruiting and may also lead to a better applicant experience. The proposed changes to allow the conversion of eligible Recent Graduates and Presidential Management Fellows to competitive service positions in the employing agency or another agency will provide flexibility when resource restrictions would otherwise prevent conversion. When an agency is unable to convert the eligible Recent Graduate or Presidential Management Fellow the agency and the government lose the expertise and knowledge the participant has gained during the program. However, the opportunity for conversion at another agency may prevent that loss. The extension of the 120-day period for the conversion of Interns to 180 days provides agencies the benefit of being able to convert those interns who may have been separated when the background investigation or vetting process exceeded the 120-day limit.

Executive Order 14035 of June 25, 2021, Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce, establishes an initiative on diversity, equity, inclusion, and accessibility (DEIA) in the Federal workforce. As part of OPM's work, a Government-Wide Strategic Plan to Advance Diversity, Equity, and Accessibility in the Federal Workforce was released in November 2021.[9] This plan directs agencies to prioritize a number of efforts to support sustainability and continued improvement on DEIA matters. This includes seeking opportunities to promote paid internships, fellowships, and apprenticeships. The proposed updates to the Pathways Programs will help inform and support agency efforts to use and promote paid internships.

*E. Regulatory Alternative*

E.O. 13562 authorized OPM to establish regulations to implement the Pathways Programs. Over the years OPM has issued guidance in addition to these regulations to assist agencies in using the Programs. However, the proposed changes in this notice of proposed rulemaking (NPRM) address issues that require a modification of the existing regulations and cannot be changed by guidance alone. For example, OPM believes that agencies need additional flexibility to convert participants in the Recent Graduate and PMF programs to positions in another agency. The existing regulations limit the conversion of Recent Graduate or PMF participants to positions in the employing agency. We have determined that a change to these regulatory provisions is required to provide the additional flexibility agencies requested.

**Request for Comment and Data**

In addition to the information contained in the regulatory analysis, OPM requests comment on whether to modify several aspects of this rulemaking. Such information will be useful for better understanding the impact of these regulations on hiring by Federal agencies. OPM welcomes the public's views on the following:

- Whether Recent Graduates and Presidential Management Fellows should be able to convert to positions at a different agency. OPM recognizes that agencies may encounter obstacles preventing the conversion of Recent Graduates and Presidential Management

[9] *https://www.whitehouse.gov/wp-content/uploads/2021/11/Strategic-Plan-to-Advance-Diversity-Equity-Inclusionand-Accessibility-in-the-Federal-Workforce-11.23.21.pdf.*

Fellows. OPM believes that given the nature of such unexpected obstacles, it is in the interests of efficient and effective administration to provide for opportunities for Recent Graduates and Presidential Management Fellows who have successfully completed their program and meet the requirements for conversion to be able to convert at agencies other than the one that initially hired them as a Recent Graduate. The initial agency has invested in the development of the Recent Graduate and Presidential Management Fellow and, if it is unable to convert them, other agencies should have that opportunity so that the investment in the Recent Graduate or Presidential Management Fellow is not lost to the Federal Government.

- Whether the employing agency should have a right of first refusal in converting their Recent Graduates and Presidential Management Fellows, as currently proposed, or if, instead, the Recent Graduates and Presidential Management Fellows should be able to choose where to convert if they have multiple offers.
- How could OPM structure the Pathways Intern conversion process to maximize the Federal enterprise's ability to recruit and retain qualified interns following the conclusion of their internship? Should OPM consider alternative conversion timelines (*e.g.,* greater than 180 days), alternative internship service requirements, alternative interagency conversion rules, or specific waiver/exception conditions?
- Whether the proposed public notice options for filling positions under the Internship Program and Recent Graduates Program will enable agencies to more effectively recruit and retain early career talent than the current process. In addition to allowing agencies to post searchable job opportunities at USAJOBS, OPM is also proposing to allow agencies to post job information with a link to a USAJOBS custom posting on their agency websites, with OPM providing a centralized place where applicants can be directed to those postings on the agency websites. OPM specifically invites comments on these changes and whether they will assist agencies with better advancing the purposes of E.O. 13562.
- Ways to strengthen the proposed provision that allows agencies to waive or credit up to 320 hours toward an Intern's 640-hour service requirement for these programs. OPM encourages commenters to provide examples of alternate criteria that could be used for the credit or waiver provisions. Are there practical considerations or specific waiver/exception conditions OPM should consider when setting the 640-hour requirement? Should agencies be able to consider and credit work experience from non-Federal Internships for up to 320 hours? Comments in favor of crediting non-Federal experience should address the types of criteria and documentation that could be used to evaluate such experiences.
- Whether OPM should consider making a change to the 640-hour service requirement that must be met for conversion of an Intern. Although this proposal retains the existing 640-hour Pathways hours of service requirement to be eligible for non-competitive conversion, OPM is open to adopting a different hourly requirement in the final rule. OPM is interested in learning more about non-Federal entities' best practices with regard to internship conversion pipelines, especially if there are innovative programs that integrate specific internship requirements (hours of service, content, skill-based assessment) with defined pathways into career paths. OPM encourages commenters who suggest a different length for the work hour requirement to discuss the advantages and/or disadvantages of such a change.
- Whether to revise the PMF regulations by clarifying the developmental assignment requirement by providing examples that we expect will assist agencies and Fellows alike. Projects requiring implementation of a new Executive order, major piece of legislation, agency reorganization, or cross-agency collaboration on a major Administration initiative would be the sorts of projects that could serve as a developmental assignment. OPM welcomes further comments and other examples that could satisfy this requirement from the public.

OPM invites comments regarding the inclusion of career and technical education programs as meeting the eligibility criteria for the Recent Graduate Program. In this proposed regulation, the definition includes Federal programs: Job Corps, Registered Apprenticeship Programs, Peace Corps, and AmeriCorps. We are interested in comments as to whether these programs are appropriate. We are also interested in whether we should include non-Federal programs in the definition of career and technical education programs. Comments that advocate for inclusion of non-Federal programs should address the types of criteria and documentation that could be used to justify why those who complete such programs should be eligible for the Recent Graduates Program. OPM welcomes data showing the effectiveness and comparability to Federal programs that could support an expansion of eligibility.

**Executive Orders 13563, 12866, and 14094 Regulatory Review**

Executive Orders 13563, 12866, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget as a significant, but not significant under section (3)(f)(1), rule.

**Regulatory Flexibility Act**

The Director of the Office of Personnel Management certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

**E.O. 13132 Federalism**

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

**E.O. 12988 Civil Justice Reform**

This regulation meets the applicable standard set forth in section 3(a) and (b)(2) of Executive Order 12988.

**Unfunded Mandates Reform Act of 1995**

This proposed rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Thus, no written assessment of unfunded mandates is required.

**Paperwork Reduction Act (44 U.S.C. 3501–3521)**

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This proposed rule involves the following OMB-approved collections of information subject to the PRA: OMB Control Number 3206–0219, USAJOBS 3.0 and OMB Control Number 3206–0082, OPM 1300 (PMF Program Annual Application) OPM believes any additional burden associated with this proposed rule falls within the existing estimates currently associated with these control numbers. We do not anticipate that the implementation of this proposed rule will increase the cost burden to members of the public. Additional information regarding these collections of information—including all background materials—can be found at *https://www.reginfo.gov/public/do/PRAMain* by using the search function to enter either the title of the collection or the OMB Control Number.

**List of Subjects**

*5 CFR Part 300*

Government employees.

*5 CFR Part 362*

Administrative practice and procedure, Colleges and universities, Government employees.

*5 CFR Part 410*

Education, Government employees.

Office of Personnel Management.

**Kayyonne Marston,**

*Federal Register Liaison.*

For reasons stated in the preamble, the Office of Personnel Management proposes to amend 5 CFR parts 300, 315, 362, and 410 as follows:

## PART 300—EMPLOYMENT (GENERAL)

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 5 U.S.C. 552, 2301, 2302, 3301, and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR 1966–1970 Comp., page 803, E.O. 13087; and E.O. 13152.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c).

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

### Subpart C—Details of Employees

■ 2. Revise § 300.301(b) to read as follows:

**§ 300.301 Authority.**

* * * * *

(b) In accordance with 5 U.S.C. 3341, an agency may detail an employee in the excepted service to a position in the excepted service and may also detail an excepted service employee serving under Schedule A, Schedule B, Schedule D, or a Veterans Recruitment Appointment, to a position in the competitive service.

* * * * *

## PART 362—PATHWAYS PROGRAMS

■ 3. The authority citation for part 362 continues to read as follows:

**Authority:** E.O. 13562, 75 FR 82585. 3 CFR, 2010 Comp., p. 291.

### Subpart A—General Provisions

■ 4. Amend § 362.102 by:
■ a. Revising the definition for ''Advanced degree'';
■ b. Adding the definition for ''Certificate of completion of a Registered Apprenticeship Program'' in alphabetical order;
■ c. Revising the definition for ''Certificate program''; and
■ d. Adding the definitions for ''Industry-recognized credential'', ''Qualifying career or technical education program'', ''Recognized postsecondary credential'', and ''Registered Apprenticeship Program'' in alphabetical order.

The revisions and additions read as follows:

**§ 362.102 Definitions.**

* * * * *

*Advanced degree* means a master's degree, professional degree, doctorate degree, or other formal degree pursued after completing a bachelor's degree.

* * * * *

*Certificate of completion of a Registered Apprenticeship Program* means the documentation given to individuals who have successfully completed a Registered Apprenticeship Program.

*Certificate program* means post-secondary education in a:

(1) Qualifying educational institution, equivalent to at least one academic year of full-time study that is part of an accredited post-secondary, technical, trade, or business school curriculum; or

(2) Qualifying career or technical education program that awards a recognized postsecondary credential or industry recognized credential.

* * * * *

*Industry-recognized* credential means:

(1) A credential or certificate that is developed and offered by, or endorsed by, a nationally or regionally recognized industry association or organization representing a sizeable portion of the industry sector, or

(2) A credential that is sought or accepted by companies within the industry sector for purposes of hiring or recruitment, which may include credentials from vendors of certain products.

* * * * *

*Qualifying career or technical education program* means:

(1) An organized educational program, administered through a Federal agency, that focuses on providing rigorous academic content and relevant technical knowledge and skills needed to prepare the individual for further education and/or a career in a current or emerging profession and provides technical skill proficiency and a recognized postsecondary credential (which may include an industry-recognized credential, a certificate, or an associate degree); or

(2) A Registered Apprenticeship Program; or

(3) Service in a Federally-administered local, state, national, or international volunteer service program or organization designed to give individuals work and or educational experiences in volunteer programs that benefit the Federal Government or local communities. Qualifying volunteer service must be documented with written information from the federally sponsored program of successful completion of at least one year of volunteer service.

* * * * *

*Recognized postsecondary credential* means documentation (*e.g.,* official record) of an industry-recognized certificate or certification, a certificate of completion of a Registered Apprenticeship Program, a license recognized by the State involved or Federal Government, or an associate's or baccalaureate degree.

*Registered Apprenticeship Program* means a program that meets the requirements in 29 CFR part 29. Approval of registration is evidenced by a Certificate of Registration or other written documentation as provided by the respective career or technical education establishment.

■ 5. Revise § 362.104 to read as follows:

**§ 362.104 Agency requirements.**

(a) *Agency policy.* In order to make any appointment under a Pathways authority, an agency must establish a Pathways Policy. The Pathways Policy must:

(1) Include information about any agency-specific program labels that will be used, subject to the Federal naming conventions identified in § 362.101 (*e.g.,* OPM Internship Program);

(2) State the delegations of authority for the agency's use of the Pathways Programs (*e.g.,* department-wide vs. bureaus or components);

(3) Include any implementing policy or guidance that the agency determines would facilitate successful implementation and administration for each Pathways Program;

(4) Prescribe criteria and procedures for agency-approved extensions for Recent Graduates and PMFs, not to exceed 120 days. Extension criteria must be limited to circumstances that would render the agency's compliance with the regulations impracticable or impossible;

(5) Describe how the agency will design, implement, and document formal training and/or development, as well as the type and duration of assignments;

(6) Include a commitment from the agency to:

(i) Provide to OPM any information it requests on the agency's Pathways Programs;

(ii) Adhere to any caps on the Pathways Programs imposed by the Director;

(iii) Provide information to OPM about opportunities for individuals interested in participating in the Pathways Programs, upon request from OPM;

(iv) Provide a meaningful on-boarding process for each Pathways Program;

(7) Identify the agency's Pathways Programs Officer (PPO), who:

(i) Must be in a position at the agency's headquarters level, or at the headquarters level of a departmental component, in a position at or higher than grade 12 of the General Schedule (GS) (or the equivalent under the Federal Wage System (FWS) or another pay and classification system);

(ii) Is responsible for administering the agency's Pathways Programs, including coordinating the recruitment and on-boarding process for Pathways Programs Participants, and coordinating the agency's Pathways Programs plan with agency stakeholders and other hiring plans (*e.g.,* merit promotion plans, and agency plans pursuant to Executive Order (E.O.) 14035, ''Diversity, Equity, Inclusion, and Accessibility (DEIA) in the Federal Workforce'');

(iii) Serves as a liaison with OPM by providing updates on the agency's implementation of its Pathways Programs, clarifying technical or programmatic issues, sharing agency best practices, and other similar duties; and

(iv) Reports to OPM on the agency's implementation of its Pathways Programs and individuals hired under these Programs, in conjunction with the agency's Pathways Policy; and

(8) Identify the agency's Presidential Management Fellows (PMF) Program Coordinator who:

(i) Must be in a position at the agency's headquarters level, or at the headquarters level of a departmental component, or sub-agency level, in a position at or higher than grade 12 of the General Schedule (GS) (or the equivalent under the Federal Wage System (FWS) or another pay and classification system);

(ii) Is responsible for administering the agency's PMF Program including coordinating the recruitment, on-boarding, and certification processes for PMF Program Participants, and coordinating the agency's PMF Program plan to ensure it is integrated with agency-wide workforce plans;

(iii) Serves as a liaison with OPM by providing updates on the agency's implementation of its PMF Program, clarifying technical or programmatic issues, sharing agency best practices, and other similar duties; and

(iv) Reports to OPM on the agency's implementation of its PMF Program and individuals hired under the PMF Program.

(b) *Submission of agency policies to OPM.* Beginning in FY 2024 an agency must make an initial submission of the agency's Pathways Policy to OPM as required in paragraph (a) of this section. Submission of an updated policy is required only when the agency makes substantive changes to the policy.

■ 6. Amend § 362.107 by revising paragraph (c)(2) and adding paragraph (c)(3) to read as follows:

**§ 362.107 Conversion to the competitive service.**

* * * * *

(c) * * *

(2) A Recent Graduate may be converted to a position within the employing agency or any other agency within the Federal Government. Conversion to a different agency may occur when the employing agency is unable to convert the Recent Graduate to a term or permanent position in the competitive service in the agency (including its various components).

(3) A Presidential Management Fellow (Fellow) may be converted within the employing agency or any other agency within the Federal Government. Conversion to a different agency may occur when the employing agency is unable to convert the Fellow to a term or permanent position in the competitive service in the employing agency (including its various components).

* * * * *

■ 7. Amend § 362.108 by revising paragraph (b)(1) to read as follows:

**§ 362.108 Program oversight.**

* * * * *

(b) * * *

(1) An agency's compliance with its Pathways Policy;

* * * * *

■ 8. Revise § 362.109 to read as follows:

**§ 362.109 Reporting requirements.**

Agencies must provide information requested by OPM regarding workforce planning strategies that includes:

(a) Information on the entry-level occupations targeted for filling positions under this part in the coming three fiscal years;

(b) The percentage of overall hiring expected in the coming three fiscal years under the Internship, Recent Graduates, and Presidential Management Fellows Programs; and

(c) Every three fiscal years beginning with fiscal year (FY)—2024 (*i.e.,* FY24 and then again in FY27, etc.):

(1) The number of individuals initially appointed under each Pathways Program;

(2) The percentage of the agency's overall hires made from each Pathways Program;

(3) The number of Pathways Participants, per Program, converted to the competitive service; and

(4) The number of Pathways Participants.

■ 9. Add § 362.111 to read as follows:

**§ 362.111 Severability.**

Any provision of part 362 held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this part and shall not affect the remainder thereof.

## Subpart B—Internship Program

■ 10. Revise § 362.202 to read as follows:

**§ 362.202 Definitions.**

In this subpart:

*Intern Not-to-Exceed (Intern NTE)* means an Intern appointed for an initial period not to exceed one year.

*Student* means an individual who is:

(1) Accepted for enrollment or enrolled and seeking a degree (diploma, certificate, etc.) in a qualifying educational institution, on a full or half-time basis (as defined by the institution in which the student is enrolled), including awardees of the Harry S. Truman Foundation Scholarship Program under Public Law 93–842. Students need not be in physical attendance, so long as all other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical course-load immediately prior to graduating is still considered a student for purposes of this Program; or

(2) Enrolled or accepted for enrollment in a qualifying career or technical education program that awards a recognized postsecondary credential.

■ 11. Amend § 362.203 by:

■ a. Revising paragraphs (a), (d)(1) and (e); and

■ b. Adding paragraph (i).

The revisions and addition read as follows:

**§ 362.203 Filling positions.**

(a) *Announcement*—(1) *Public notice requirement.* An agency must adhere to merit system principles and thus must provide public notification in a manner designed to recruit qualified individuals from appropriate sources in an endeavor to draw from all segments of society. For the purposes of this paragraph (a), ''agency'' means an Executive agency as defined in 5 U.S.C. 105 and the Government Printing Office. An Executive department may treat each of its bureaus or components (*i.e.,* the first major subdivision that is separately organized and clearly distinguished from other bureaus or components in work function and operation) as a separate agency or as part of one agency but must do so consistent with its Delegated Examining Agreement.

(2) *Meeting the public notice requirement.* An agency may use the following options for meeting the public notice requirement:

(i) Posting a searchable announcement on *www.USAJOBS.gov;* or

(ii) Posting job information with a link to a USAJOBS custom job announcement on the agency's public facing career or job information web page. This custom posting must provide applicants with information about how to apply or seek additional information about the position(s) being filled, while also providing information regarding that job announcement to OPM.

(iii) The agency may also consider whether additional recruitment and advertisement activities to supplement paragraphs (a)(2)(i) and (ii) of this section, such as posting to third-party websites, are necessary or appropriate to further support merit system principles.

(3) *Contents of announcements.* Announcements used to meet the public notice requirement must include:

(i) *Position information.* Position title, series, and grade;

(ii) *Position location.* Geographic location where the position will be filled;

(iii) *Appointment length.* Duration of the appointment;

(iv) *Salary information.* The starting salary of the position;

(v) *Qualifications.* The minimum qualifications of the position;

(vi) *Promotion potential.* Whether the individual in the position will be eligible for promotion to higher grade levels;

(vii) *Conversion information.* The potential for conversion to the agency's permanent workforce;

(viii) *How to apply.* A public source (*e.g.,* a link to the location on the agency's website with information on how to apply) for interested individuals to seek further information about how to apply for Intern opportunities;

(ix) *Equal employment information.* Equal employment opportunity statement (Agencies may use the recommended equal employment opportunity statement located on OPM's USAJOBS website);

(x) *Reasonable accommodation information.* Reasonable accommodation statement;

(xi) *Other relevant information.* Any other relevant information about the position such as telework opportunities, recruitment incentives, etc.; and

(xii) *Other requirements.* Any other information OPM considers appropriate.

(4) *Other information.* OPM will publish information on Internship opportunities in such form as the Director may determine.

* * * * *

(d) * * *

(1) An agency may make Intern appointments, pursuant to its Pathways Policy, under Schedule D of the excepted service in accordance with part 302 of this chapter.

* * * * *

(e) *Promotion.* An agency may promote an Intern, on an initial appointment expected to last more than one year (without a not to exceed (NTE) date) who meets the qualification requirements for the position. An Intern NTE on a temporary appointment is not eligible for promotion. This provision does not confer entitlement to promotion.

* * * * *

(i) *Required developmental activities.* Agencies are required to provide appropriate training and development activities to Interns regardless of the length of the appointment. OPM recommends that agencies ensure, within 45 days of appointment, that each Intern, appointed for an initial period expected to last more than 1 year, or an Intern NTE appointed for more than 90 days, an agency documents its planned use of training activities in a training plan, Individual Development Plan (IDP), or the Pathways Participant Agreement that is approved by his or her supervisor. Documenting of training activities for is also recommended for an Intern NTE appointed for an initial period less than 90 days. Appropriate training opportunities may include but are not limited to on-the-job training activities, formal training classes, mentoring sessions, testing products or tools, organizing work activities or functions, and assisting colleagues with projects or tasks.

■ 12. Amend § 362.204 by:

■ a. Revising paragraph (b)(2);

■ b. Revising paragraph (c)(1)(ii) and (iii);

■ c. Adding paragraph (c)(1)(iv); and

■ d. Revising paragraph (c)(2).

The revisions and addition to read as follows:

**§ 362.204 Conversion to the competitive service.**

* * * * *

(b) * * *

(2) Completed a course of academic study, within the 180-day period preceding the appointment, at a qualifying educational institution conferring a diploma, certificate, or degree; or successful completion in a qualifying career or technical educational program.

* * * * *

(c) * * *

(1) * * *

(ii) Worked in, but not for, a Federal agency, pursuant to a written contract with a third-party internship provider officially established to provide internship experiences to students that are comparable to the Internship Program under this subpart;

(iii) Served as an active-duty member of the armed forces (including the National Guard and Reserves), as defined in 5 U.S.C. 2101, provided the veteran's discharge or release is under honorable conditions; or

(iv) Worked in a Registered Apprenticeship Program at a Federal Agency (prior to appointment as an Intern).

(2) Student volunteer service under part 308 of this chapter, and other Federal programs designed to give internship experience to students (*e.g.,* fellowships and similar programs) including a Department of Labor Job Corps Program prior to an intern appointment may be evaluated, considered, and credited under this section when the agency determines the experience is comparable to experience gained in the Internship Program.

* * * * *

■ 13. Revise § 362.205 to read as follows:

**§ 362.205 Reduction in force (RIF) and termination.**

(a) *Reduction in force.* Interns and Interns NTE are covered by part 351 of this chapter for purposes of RIF.

(1) *Tenure Groups.* (i) An Intern serving under an appointment for an initial period expected to last more than 1 year is in excepted service Tenure Group II.

(ii) An Intern NTE who has not completed 1 year of service, is in excepted service Tenure Group 0.

(iii) An Intern NTE serving under a temporary appointment not to exceed 1 year, who has completed 1 year of current, continuous service, is in excepted service Tenure Group III.

(2) [Reserved]

(b) *Termination*—(1) *Intern.* As a condition of employment an Intern appointment expires 180 calendar days after completion of the designated academic course of study, unless the Participant is selected for noncompetitive conversion under § 362.204.

(2) *Intern NTE.* As a condition of employment an Intern NTE appointment expires upon expiration of the temporary Internship appointment, unless the Participant is selected for noncompetitive conversion under § 362.204.

## Subpart C—Recent Graduate Program

■ 14. Amend § 362.301 by revising paragraph (a) to read as follows:

**§ 362.301 Program administration.**

* * * * *

(a) Identify in its Pathways Policy the duration of its Recent Graduates Program, including any criteria used to determine the need for a longer and more structured training program that exceeds 1 year;

* * * * *

■ 15. Amend § 362.302 by revising paragraph (a) to read as follows:

**§ 362.302 Eligibility.**

(a) A Recent Graduate is an individual who obtained a qualifying associate's, bachelor's, master's, professional, doctorate, vocational or technical degree or certificate from a qualifying educational institution or completed a qualifying career or technical education program within the previous 2 years or other applicable period provided below.

* * * * *

■ 16. Amend § 362.303 by revising paragraphs (a), (b)(1), and (b)(3)(i) to read as follows:

**§ 362.303 Filling positions.**

(a) *Announcement*—(1) *Public notice requirement.* An agency must adhere to merit system principles and thus must provide public notification in a manner designed to recruit qualified individuals from appropriate sources in an endeavor to draw from all segments of society. For the purposes of this paragraph (a), ''agency'' means an Executive agency as defined in 5 U.S.C. 105 and the Government Printing Office. An Executive department may treat each of its bureaus or components (*i.e.,* the first major subdivision that is separately organized and clearly distinguished from other bureaus or components in work function and operation) as a separate agency or as part of one agency but must do so consistent with its Delegated Examining Agreement.

(2) *Meeting the public notice requirement.* An agency may use the following options for meeting the public notice requirement:

(i) Posting a searchable announcement on *www.USAJOBS.gov;* or

(ii) Posting job information with a link to a USAJOBS custom job announcement on the agency's public facing career or job information web page. This custom posting must provide applicants with information about how to apply or seek additional information about the position(s) being filled, while also providing information regarding that job announcement to OPM.

(iii) The agency may also consider whether additional recruitment and advertisement activities to supplement paragraphs (a)(2)(i) and (ii) of this section, such as posting on third-party websites, are necessary or appropriate to further support merit system principles.

(3) *Contents of announcements.* Announcements used to meet the public notice requirement must include:

(i) *Position information.* Position title, series, and grade;

(ii) *Position location.* Geographic location where the position will be filled;

(iii) *Salary information.* The starting salary of the position;

(iv) *Qualifications information.* The minimum qualifications of the position;

(v) *Promotion potential.* Whether the individual in the position will be eligible for promotion to higher grade levels;

(vi) *Conversion information.* The potential for conversion to the agency's permanent workforce;

(vii) *How to apply.* A public source (*e.g.,* a link to the location on the agency's website with information on how to apply) for interested individuals to seek further information about how to apply for Recent Graduate opportunities; and

(viii) *Equal employment information.* Equal employment opportunity statement (Agencies may use the recommended equal employment opportunity statement located on OPM's USAJOBS website);

(ix) *Reasonable accommodation information.* Reasonable accommodation statement;

(x) *Other relevant information.* Any other relevant information about the position such as telework opportunities, recruitment incentives, etc.; and

(xi) *Other requirements.* Any other information OPM considers appropriate.

(4) *Other Information.* OPM will publish information on Recent Graduate opportunities in such form as the Director may determine.

(b) * * *

(1) An agency may make appointments to the Recent Graduates Program pursuant to its Pathways Policy under Schedule D of the excepted service in accordance with part 302 of this chapter.

* * * * *

(3)(i) An agency may make an initial appointment of a Recent Graduate to any position filled under this authority for which the Recent Graduate qualifies, up to the GS–11 level (or equivalent under another pay and classification system, such as the Federal Wage System), except as provided in paragraphs (b)(3)(ii) through (iv) of this section.

* * * * *

■ 17. Amend § 362.305 by adding paragraph (c) to read as follows:

**§ 362.305 Conversion to the Competitive Service.**

* * * * *

(c) A Recent Graduate may be converted to a permanent or term position at a different agency when the following conditions are met:

(1) The employing (or losing) agency documents that the agency is unable to convert the Recent Graduate to a term or permanent position in the competitive service in the current organizational unit of the employing agency or another component within the same Department or agency. The documentation of this must address the reason(s) why conversion did not occur in the agency. These reasons may include unforeseen budgetary constraints; reorganizations; abolishment of positions; or other appropriate reasons. Such a conversion to another agency may not be due to issues related to misconduct, poor performance, or suitability.

(2) Conversion must occur on or before the end of the agency prescribed Program period, plus any agency-approved extension; and

(3) The position at the new agency must have a full performance level that is equivalent or less than the position at the prior agency.

## Subpart D—Presidential Management Fellows Program

■ 18. Amend § 362.401 by removing the definition for ''Agency PMF Coordinator'' and adding the definition for ''Agency Presidential Management Fellows (PMF) Program Coordinator'' to read as follows:

**§ 362.401 Definitions.**

*Agency Presidential Management Fellows (PMF) Program Coordinator* has the same meaning as described in § 362.104(a)(8); is an individual, at the appropriate agency component level, who coordinates the placement, development, and other Program-related activities of PMFs appointed in his or her agency. The agency Pathways Programs Officer may also serve as the PMF Coordinator.

* * * * *

■ 19. Amend § 362.404 by revising paragraph (a)(1) and adding paragraph (e) to read as follows.

**§ 362.404 Appointment and extension.**

(a) *Appointments.* (1) An agency may make 2-year appointments to the PMF Program, pursuant to a Pathways Policy executed with the OPM, under Schedule D of the excepted service in accordance with part 302 of this chapter.

* * * * *

(e) *Work schedules.* A Fellow will generally have a full-time work schedule. An agency may authorize a part-time work schedule for a limited period of up to 6 months during the PMF Program if the agency and Fellow have determined that it would not negatively impact the Fellow's ability to meet all program requirements by the expiration of the Fellow's appointment. An agency's Pathways Policy must outline the conditions under which a part-time work schedule may be authorized. The Fellow's Pathways Participant agreement should be updated with the new work schedule information when a part-time work schedule is approved.

■ 20. Amend § 362.405 by revising paragraphs (a), (b)(1), (4) and (5), (d)(2) and adding paragraph (d)(4)(iii) to read as follows:

**§ 362.405 Development, evaluation, promotion, and certification.**

(a) *Individual Development Plans.* An agency must approve, within 90 days, an Individual Development Plan (IDP) for each of its Fellows that sets forth the specific developmental activities that are mutually agreed upon by each Fellow and his or her supervisor. The IDP must be developed in consultation with the Agency PMF Coordinator and/or the mentor assigned to the Fellow under paragraph (b)(3) of this section.

(b) *Required developmental activities.* (1) OPM will provide leadership development activities and general program resources for each class or cohort of Fellows and will provide information on available training opportunities known to it. Agencies must provide appropriate agency specific onboarding and employee orientation activities.

* * * * *

(4) The agency must provide each Fellow with at least one rotational or developmental assignment with full-time management and/or technical responsibilities consistent with the Fellow's IDP. With respect to this requirement:

(i) Each Fellow must receive at least one developmental assignment of 4 to 6 months in duration, with management and/or technical responsibilities consistent with the Fellow's IDP.

(ii) The developmental assignment may be within the Fellow's organization, in another component of the agency, or in another Federal agency as permitted by the employing agency.

(iii) Examples of appropriate developmental assignments may include projects implementing a new Executive order or, major piece of legislation, agency reorganization, or cross-agency collaboration on a major administration initiative.

(5) The Fellow may receive other short-term rotational assignments of 1 to 6 months in duration, at the agency's discretion. A short-term rotational assignment may take place within the Fellow's organization, in another component of the agency, or in another Federal agency as permitted by the employing agency.

* * * * *

(d) * * *

(2) (i) The ERB must notify the Fellow of its decision regarding certification of successful completion.

(ii) A Fellow who receives successful certification is eligible for conversion in accordance with § 362.409.

* * * * *

(4) * * *

(iii) A Fellow who is not approved for certification and whose appeal to OPM is denied is not eligible for conversion in accordance with § 362.409.

■ 21. Amend § 362.409 by revising paragraph (b) and adding paragraph (c) to read as follows:

**§ 362.409 Conversion to the competitive service.**

(a) * * *

(b) An agency may convert, without a break in service, an ERB-certified Fellow to a competitive service term or permanent appointment in any position for which they are qualified.

(c) A Fellow who is being converted to a permanent or term position at a different agency is subject to the following conditions:

(i) The employing (or losing) agency documents that the agency is unable to convert the Fellow to a term or permanent position in the competitive service in the employing agency. The documentation must address the reason(s) why conversion did not occur in the agency. These reasons may include unforeseen funding or budgetary constraints or limitations, reorganizations, abolishment of positions, or other appropriate reasons. Such a conversion to another agency may not be due to issues related to failure to obtain certification from the agency's Executive Resources Board, misconduct, poor performance, or suitability.

(ii) Conversion must occur on or before the end of the agency prescribed Program period, plus any agency-approved extension; and

(iii) The position at the new agency must have a full performance level that is equivalent or less than the position at the losing agency.

## PART 410—TRAINING

■ 22. The authority citation for part 410 continues to read as follows:

**Authority:** 5 U.S.C. 1103(c), 2301, 2302, 4101, *et seq.;* E.O. 11348, 3 CFR, 1967 Comp., p. 275, E.O. 11478, 3 CFR 1966–1970 Comp., page 803, unless otherwise noted, E.O. 13087; and E.O. 13152.

■ 23. Amend § 410.306 by revising paragraph (c) to read as follows:

**§ 410.306 Selecting and assigning employees to training.**

* * * * *

(c) Subject to the prohibitions of § 410.308(a), an agency may pay all or part of the training expenses of students hired under the Pathways Internship Program (see 5 CFR part 362, subpart B).

[FR Doc. 2023–17372 Filed 8–15–23; 8:45 am]

BILLING CODE 6325–39–P

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### 7 CFR Parts 3550 and 3555

**[Docket No. RHS–23–SFH–0007]**

**RIN 0575–AD32**

## Updating Manufactured Housing Provisions

**AGENCY:** Rural Housing Service, Department of Agriculture (USDA).

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Housing Service (RHS or the Agency), a Rural Development agency of the United States Department of Agriculture (USDA), proposes to amend the current regulations for the Single-Family Housing (SFH) Section 502 Direct and the SFH Guaranteed Loan Program. The intent of this proposed rule is to allow the Agency to give borrowers increased purchase options within a competitive market and increase adequate housing along with an enhanced customer experience with the SFH programs.

**DATES:** Comments on the proposed rule must be received on or before October 16, 2023.

**ADDRESSES:** Comments may be submitted electronically by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search Field'' box, labeled ''Search for dockets and documents on agency actions,'' enter the following docket number: *https://aiomostl0as096.usda.net/desktop/container/?locale=en_US-/home* (RHS–23–SFH–0007) or RIN# 0575–AD32, then click search. To submit or view public comments, select the following document title: (Updating Manufactured Housing Provisions) from the ''Search Results,'' and select the ''Comment'' button. Before inputting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if available). Input your email address and select ''Submit Comment.'' Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

*Other Information:* Additional information about Rural Development and its programs is available on the internet at *http://www.rurdev.usda.gov/index.html.*

All comments will be available for public inspection online at the Federal eRulemaking Portal (*http://www.regulations.gov*).

**FOR FURTHER INFORMATION CONTACT:** Sonya Evans, Finance & Loan Analyst, SFH Direct Loan Division, Rural Housing Service, Rural Development, United States Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250, Phone: 423–268–4333, Email: *sonya.evans@usda.gov.* Or contact Stephanie Freeman, Finance & Loan Analyst, Policy, Analysis, and Communications Branch, Single Family Housing Guaranteed Loan Division, Rural Housing Service, Rural Development, United States Department of Agriculture, 1400 Independence Avenue SW, Washington DC 20250, Phone: 314–457–6413, Email: *stephanie.freeman@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

RHS offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single- and multifamily housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, and housing for farm laborers. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, state and federal government agencies, and local communities.

Well built, affordable housing is essential to the vitality of communities in rural America. Rural Development's (RD) Single Family Housing (SFH) Programs give families and individuals the opportunity to buy, build, or repair affordable homes located in rural America. Eligibility for these loans, loan guarantees, and grants is based on income and varies according to the average median income for each area.

RHS administers the following SFH Programs under 7 CFR parts 3550 and 3555 authorized by Section 502 of the Housing Act of 1949, as amended, (42 U.S.C. 1472):

- Section 502 Direct Loan Program assists low- and very low-income applicants who currently do not own adequate housing and cannot obtain other credit, the opportunity to acquire, build, rehabilitate, improve, or relocate dwellings in rural areas.
- Section 502 Guaranteed Loan Program assists low- and moderate-income applicants the opportunity to acquire, build, rehabilitate, improve, or relocate dwellings in rural areas.

The President announced in May 2022, the release of a Housing Supply Action Plan (the Plan) to ease the burden of housing costs over time, by boosting the supply of quality housing in every community. The plan includes legislative and administrative actions that will help close America's housing supply shortfall in five years, starting with the creation and preservation of hundreds of thousands of affordable housing units in the next three years. Under the Plan, the Administration intends to deploy new financing mechanisms to build and preserve more housing where housing gaps exist. There is special emphasis on supporting production and availability of manufactured housing through improved loan rates and terms making this type of homeownership more attainable and affordable.

### II. Discussion of the Proposed Rule

The Housing and Urban Development's (HUD) Office of Manufactured Housing Program regulates the construction of all manufactured homes built in the United States. These homes are built and installed in accordance with the Federal Manufactured Home Construction and Safety Standards (FMHCSS) administered by HUD. FMHCSS became effective June 15, 1976, replacing the term ''Mobile Home'' with ''Manufactured Home.'' These federal standards regulate manufactured housing design and construction, installation, strength and durability, transportability, fire resistance, energy efficiency and quality. The FMHCSS also sets performance standards for the heating, plumbing, air conditioning, thermal and electrical systems. Prior to the implementation of the FMHCSS in 1976, the construction and installation of manufactured homes were not uniformly regulated and were not generally considered to be quality, safe

and sanitary housing. Further improvements to the FMHCSS were enacted in 1994 and 2007 with additional improvements in 2021 that included the development of mandates for manufactured home installation, the creation of a federal installation oversight program, mandated updates to the HUD code to enforce construction and safety standards for factory built manufactured homes to address items such as structural design, wind force resistance, additional loads requirements that are in accordance with the design load identified on data plate, and smoke alarm requirements. These were all implemented in accordance with the Manufactured Home Improvement Act of 2000.

RHS defines a manufactured home as a structure that is built to FMHCSS and placed on a permanent foundation. It is transportable in one or more sections, which in the traveling mode is 10-body feet (3.048 meters) or more in width, and when erected on site is 400 or more square feet (37.16 square meters), and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. It is designed and constructed for permanent occupancy by a single family and contains permanent eating, cooking, sleeping, and sanitary facilities. The plumbing, heating, and electrical systems are contained in the structure. RHS will continue to require all new and existing manufactured homes to be constructed and placed on a permanent foundation in accordance with RD Instruction 1924–A, as applicable to the Direct Program, and the FMHCSS, established by HUD and found in 24 CFR part 3280.

The proposed revisions will allow the Agency to responsibly and effectively utilize funds appropriated by Congress by allowing borrowers more purchase options within a competitive market and thereby increasing the likelihood of finding adequate housing which increases program impact. The Agency proposes to modify the direct and guaranteed loan regulations as follows:

1. *Update the current regulations to permit the purchase of existing manufactured homes for direct and guaranteed loans.* The current direct and guaranteed regulations prohibit the purchase of a manufactured home unless it is a new unit, an existing unit and site already financed with a section 502 loan or is a RHS real estate owned (REO) property. The Agency has been operating a pilot for the direct and guaranteed programs to test the concept of waiving the regulatory restrictions to finance existing manufactured homes in selected pilot states, even if the home is not currently financed by the agency. Under the pilot, the unit must have been constructed on or after January 1, 2006, in conformance with the Federal Manufactured Home Construction and Safety Standards (FMHCSS), as evidenced by an affixed Housing and Urban Development (HUD) Certification Label and the unit must not have been previously installed on a different homesite, or had any structural alterations to it since construction in the factory, except for porches, decks or other structures which were built to engineered designs or were approved and inspected by local code officials. Once this rulemaking is final, these requirements will be the placed in the program handbooks and any adjustment to the date will be made public through a Federal Register notice. It has been determined that the pilot has been successful in increasing homeownership by expanding the Direct and Guaranteed portfolios by 1,372 loans. Therefore, regulatory revisions are being proposed to provide additional flexibility for the programs to lend on existing manufactured homes built in conformance with standards and a manufacture date, as determined by the Agency, based on factors such as industry standards and practices.

2. *For direct and guaranteed loans, update the current regulations language to meet conditions of the ownership requirement for energy efficient manufactured and modular home financing in Land-Lease Communities Operating on a Nonprofit Basis pilot, and expand this to include Tribal lands.* These updates are expected to provide additional flexibility for new energy efficient manufactured and modular homes that meet the conditions of the pilot, as well as provide consistency between the direct and guaranteed programs. Currently, the Agency is operating an ownership requirement pilot for energy efficient manufactured and modular home financing in land-lease communities operating on a nonprofit basis, for the direct and guaranteed programs. Under the pilot, RD accepts leases with an unexpired term that is at least two years beyond the term of the promissory note in the pilot states.

3. *Remove the administrative requirements from the regulations for review and approval of applications from manufactured housing dealers for direct loans.* The removal of this requirement will alleviate Agency staff from the review and approval of applications from manufactured housing dealers and the maintenance of a list that must be updated every two years based on the activity of the ''approved'' dealer-contractors, thus providing the Agency with needed flexibility. This review process provided minimal value to both the applicant or dealer and contrasted from the requirements for site-built contractors who do not have a formal application or approval process nor is there a list of approved site-built contractors maintained. The removal will also prevent delays in the processing of a manufactured housing purchase request by eliminating the need to approve the dealer prior to proceeding, which can be time-consuming due to the review of financial and credit information for the dealer. The dealer will still be required to provide all site services and agree to construction and development requirements in 7 CFR 3550.73(d) and standards set forth in the FMHCSS.

4. *Revise the definition of ''Manufactured home'' in 7 CFR 3550.10 Definitions to remove reference to RHS Thermal Performance Standards for direct loans.*

The removal of this reference is necessary due to RHS exemption from these thermal standards. Instead, RHS relies on HUD FMHCSS for thermal performance requirements for construction of manufactured homes. This change will also provide further alignment between the Section 502 Direct and Guaranteed loan programs.

The Agency proposes to update the current Section 502 Direct and SFH Guaranteed Loan Programs regulations implemented under 7 CFR parts 3550 and 3555. This will be accomplished by reducing the regulatory burdens that are specifically related to manufactured housing requirements, enhancing program delivery, customer service, promoting consistency between the direct and guaranteed SFH loan programs, and reflect current housing market conditions and mortgage loan practices.

## III. Summary of Changes

The Agency proposes to change 7 CFR parts 3555 and 3550 by:

(1) Update sections 3550.52(e)(1), 3550.73(b)(1), 3555.208(b)(3) and add new paragraph 3555.208(a)(3) to clarify that borrowers are allowed under the direct and guaranteed loan programs to purchase existing manufactured homes constructed in conformance with the FMHCSS standards, as specified in program handbooks.

(2) Update sections 3550.58(b) and 3555.203(b)(3) so that, for the direct and guaranteed loan programs, the Agency will accept a land-lease with an unexpired term that is at least two years longer than the mortgage term for new

energy efficient manufactured and modular home financing in Tribal and land-lease communities operating on a nonprofit basis.

(3) Remove paragraph (c) from section 3550.73 which requires Agency approval of manufactured housing dealers for direct loans.

(4) Update the definition of Manufactured home under section 3550.10, by removing reference to ''RHS Thermal Performance Standards'' for direct loans. SFH is exempt from RHS Thermal Performance Standards compliance.

## IV. Regulatory Information

*Statutory Authority*

Section 510(k) of Title V the Housing Act of 1949 [42 U.S.C. 1480(k)], as amended, authorizes the Secretary of the Department of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title; and implemented under 7 CFR parts 3550 and 3555.

Executive Order 12372, Intergovernmental Review of Federal Programs

These programs are not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented under the USDA's regulations at 2 CFR part 415, subpart C.

Executive Order 12866, Regulatory Planning and Review

This proposed rule has been determined to be non-significant and, therefore, was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988. In accordance with this proposed rule: (1) Unless otherwise specifically provided, all State and local laws that conflict with this proposed rule will be preempted; (2) no retroactive effect will be given to this proposed rule except as specifically prescribed in the proposed rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before suing in court that challenges action taken under this proposed rule.

Executive Order 13132, Federalism

The policies contained in this proposed rule do not have any substantial direct effect on 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. This proposed rule does not impose substantial direct compliance costs on state and local governments; therefore, consultation with States is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this proposed rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Tribal Coordinator at: *AIAN@usda.gov* to request such a consultation.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this document has been reviewed in accordance with 7 CFR part 1970 (''Environmental determined that i) this action meets the criteria established in 7 CFR 1970.53(f); ii) no extraordinary circumstances exist; and iii) the action is not ''connected'' to other actions with potentially significant impacts, is not considered a ''cumulative action'' and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this proposed rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Unfunded Mandates Reform Act (UMRA)

Title II of the UMRA, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to state, local, or tribal Governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal Governments or for the private sector. Therefore, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies the following information collection that RHS is submitting to OMB as a revision to an existing approved collection with Agency adjustment. The Agency expects a modest change in burden once this proposed rule is published as a final rule in the **Federal Register**.

*Title:* Direct Single Family Housing Loan and Grant Programs, 7 CFR 3550–HB–1–3550, and HB–2–3550.

*OMB Control Number:* 0575–0172.

*Expiration Date of Approval:* February 28, 2025.

*Type of Request:* Revision of a currently approved information collection.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .500 hours per response.

*Respondents:* Business or other for profit, not-for-profit institutions.

*Estimated Number of Respondents:* Approximately 50 manufactured dealer-

contractors seeking approval to provide manufactured sales, service and site development services.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Responses:* 50.

*Estimated Total Annual Burden on Respondents:* 25 hours.

*Abstract:* Through the Section 502 direct single family housing loan program, RHS provides 100 percent loan financing to assist eligible low- and very low-income applicants purchase modest homes in eligible rural areas by providing payment assistance to increase an applicant's repayment ability.

Applicants must provide the Agency with a uniform residential loan application and supporting documentation (*e.g.,* verification of income, assets, liabilities, etc.) when applying for assistance. The information requested is comparable to that required by any public or private mortgage lender.

Applicants who choose to purchase a new manufactured home are currently required to purchase from an approved manufactured dealer-contractor. Manufactured dealer-contractors who wish to participate in the Section 502 direct program are required to submit RD Form 1944–5, Manufactured Housing Dealer-Contractor Application, along with supplementary data sources such as financial statements and tax returns to verify or determine employment, income, and held assets. After RHS review, a dealer-contractor meeting qualification criteria may be added to list of approved dealer-contractors maintained for each state. Applicants must choose an approved dealer-contractor from this list for purchase and all other site services related to the transaction. If an applicant wishes to purchase a new manufactured home from a dealer-contractor who has not received prior approval, the applicant is notified of other approved dealer-contractors on the state list. If applicants still request to purchase from a dealer-contractor who has not received prior approval, the dealer-contractor must submit the required form and supplementary documentation and wait for their approval prior to entering into a contract with the applicant. Elimination of prior approval will remove obstacles and potential delays for applicants to purchase new manufactured housing while sustained manufactured construction regulations will continue to maintain quality and installation standards.

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 will have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Copies of this information collection can be obtained from Crystal Pemberton, Rural Development Innovation Center—Regulations Management Division, at Telephone: (202) 260–8621, Email: *Crystal.Pemberton@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

## E-Government Act Compliance

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

## Civil Rights Impact Analysis

Rural Development has reviewed this proposed rule in accordance with USDA Regulation 4300–004, Civil Rights Impact Analysis,'' to identify any major civil rights impacts the proposed rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After review and analysis of the proposed rule and available data, it has been determined that implementation of the proposed rule will not adversely or disproportionately impact very low-, low- and moderate-income populations, minority populations, women, Indian tribes, or persons with disability by virtue of their race, color, national origin, sex, age, disability, or marital or familial status. No major civil rights impact is likely to result from this proposed rule.

## Assistance Listing

The programs affected by this regulation are listed in the Assistance Listing Catalog (formerly Catalog of Federal Domestic Assistance) under number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans), and number 10.417, Very Low-Income Housing Repair Loans and Grants (specifically the Section 504 direct loans and grants).

## Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering 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.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint Form, which can be obtained online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights about the nature and date of an alleged civil rights violation.

The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

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**List of Subjects**

*7 CFR Part 3550*

Administrative practice and procedure, Environmental impact statements, Fair housing, Grant programs—housing and community development, Housing, Loan programs—housing and community development, low- and moderate-income housing, Reporting and recordkeeping requirements, Rural areas.

*7 CFR Part 3555*

Administrative practice and procedure, Business and industry, Conflicts of interest, Credit, Environmental impact statements, Fair housing, Flood insurance, Grant programs—housing and community development, Home improvement, Housing, Loan programs—housing and community development, low and moderate-income housing, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, the Rural Housing Service proposes to amend 7 CFR parts 3550 and 3555 as follows:

## PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3550 continues to read as follows:

**Authority:** 5 U.S.C. 301; 42 U.S.C. 1480.

### Subpart A—General

■ 2. Amend § 3550.10 by revising the first sentence of the Manufactured home definition to read as follows:

**§ 3550.10 Definitions.**

* * * * *

*Manufactured home.* A structure that is built to Federally Manufactured Home Construction and Safety Standards established by HUD and found at 24 CFR part 3280.

* * *

* * * * *

### Subpart B—Section 502 Origination

■ 3. Amend § 3550.52 by revising paragraph (e)(1) to read as follows:

**§ 3550.52 Loan purposes.**

* * * * *

(e) * * *

(1) Purchase an existing manufactured home (unless the unit was constructed in conformance with Federal Manufactured Home Construction and Safety Standards (FMHCSS) standards as evidenced by both an affixed HUD Certification label and HUD Data Plate); on or after a date specified in the program handbook (any adjustment to the date will be made public through a **Federal Register** notice); and has not been previously installed on a different homesite or had any alterations since construction in the factory (except for porches, decks or other structures which were built to engineered designs or were approved and inspected by local code officials), or for any other purposes prohibited in § 3550.73(b).

* * * * *

■ 4. Amend § 3550.58 by adding a sentence to the end of paragraph (b) to read as follows:

**§ 3550.58 Ownership requirements.**

* * * * *

(b) * * * For new energy efficient manufactured and modular home financing in land-lease communities operating on a nonprofit basis, and on Tribal Trust land, individual (allotted) Trust land, or Tribal restricted fee land, the Agency will accept a lease with an unexpired term that is at least 2 years longer than the loan term.

* * * * *

■ 5. Amend § 3550.73 by:

■ a. Revising paragraph (b)(1);

■ b. Removing paragraph (c); and

■ c. Redesignating paragraphs (d) through (h) as (c) through (g).

The revision reads as follows:

**§ 3550. 73 Manufactured homes.**

* * * * *

(b) * * *

(1) An existing unit and site unless it is already financed with a section 502 loan or is an RHS REO property; or, the unit was constructed both in conformance with FMHCSS standards as evidenced by both an affixed HUD Certification label and HUD Data Plate on or after a date specified in the program handbook, the unit is installed on a permanent foundation which meets HUD regulations, and the unit has not been previously installed on a different homesite or had any alterations since construction in the factory except as specified in the program handbook.

* * * * *

## PART 3555—GUARANTEED RURAL HOUSING PROGRAM

■ 6. The authority citation for part 3555 continues read as follows:

**Authority:** 5 U.S.C. 301; 42 U.S.C. 1471 *et seq.*

### Subpart E—Underwriting the Property

■ 7. Amend § 3555.203 by revising paragraph (b)(3) to read as follows:

**§ 3555.203 Ownership requirements.**

* * * * *

(b) * * *

(3) The lease has an unexpired term of at least 45 years from the date of loan closing, except in the case of properties located on Tribal Trust land, individual (allotted) Trust land, or Tribal restricted fee land, where the lease must have an unexpired term at least equal to the term of the loan. Leases on Tribal Trust land, individual Trust (allotted) land, or Tribal restricted fee land, for period of 25 years which are renewable for a second 25 year period are permissible, as are leases of a longer duration. For new energy efficient manufactured and modular home financing in land-lease communities operating on a nonprofit basis and on Tribal Trust land, the Agency will accept a lease with an unexpired term that is at least two years longer than the loan term;

* * * * *

■ 8. Amend § 3555.208 by:

■ a. Adding paragraph (a)(3); and

■ b. Revising paragraphs (b)(3)(iii) and (iv), and adding paragraphs (b)(3)(v) through (viii).

The addition and revisions read as follows:

**§ 3555.208 Special requirements for manufactured homes.**

* * * * *

(a) * * *

(3) An existing unit and site, provided:

(i) The unit was constructed in conformance with the Federal Manufactured Home Construction and Safety Standards (FMHCSS) as evidenced by both an affixed HUD Certification label and HUD Data Plate; and

(ii) The unit was installed on a permanent foundation in accordance to the manufacturer's requirements and HUD installation standards. Certification of a proper foundation is required; and

(iii) The unit has not been previously installed on a different homesite, or had any alterations since construction in the factory, except for porches, decks or other structures which were built to engineered designs or were approved and inspected by local code officials; and

(iv) The unit was constructed on or after the date specified in the program handbook (any adjustment to the date will be made public through a Federal Register notice).

* * * * *

(b) * * *

(3) * * *

(iii) The unit and site are being sold from the lender's inventory, and the

loan for which the unit and site served as security was a loan guaranteed by Rural Development;

(iv) The unit was installed on its initial installation site on a permanent foundation complying with the manufacturers and HUD installation standards; or

(v) The unit was constructed in conformance with the Federal Manufactured Home Construction and Safety Standards (FMHCSS) as evidenced by an affixed HUD Certification label and HUD Data Plate; and

(vi) The foundation design meets HUD standards for manufactured housing; and

(vii) The unit has not had any alterations or modifications since construction in the factory, except for porches, decks or other structures which were built to engineered designs or were approved and inspected by local code officials; and

(viii) The unit was constructed on or after a date, as specified in the program handbook (any adjustment to the date will be made public through a **Federal Register** notice) (any adjustment to the date will be made public through a **Federal Register** notice).

* * * * *

(e) *HUD requirements.* The FMHCSS and HUD requirements can be located in the National Archives Code of Federal Regulations, 24 CFR part 3280—Manufactured Home Construction Safety Standards.

* * * * *

**Joaquin Altoro,**

*Administrator, Rural Housing Service.*

[FR Doc. 2023–17519 Filed 8–15–23; 8:45 am]

**BILLING CODE 3410–XV–P**

## FEDERAL ELECTION COMMISSION

### 11 CFR Part 112

**[Notice 2023–13]**

### Artificial Intelligence in Campaign Ads

**AGENCY:** Federal Election Commission.

**ACTION:** Notification of availability of Petition for Rulemaking.

**SUMMARY:** The Commission announces its receipt of a Petition for Rulemaking filed by Public Citizen. The Petition asks the Commission to amend its regulation on fraudulent misrepresentation of campaign authority to make clear that the related statutory prohibition applies to deliberately deceptive Artificial Intelligence campaign ads.

**DATES:** Comments must be submitted on or before October 16, 2023.

**ADDRESSES:** All comments must be in writing. Commenters may submit comments electronically via the Commission's website at *https://sers.fec.gov/fosers/,* reference REG 2023–02.

Each commenter must provide, at a minimum, his or her first name, last name, city and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Knop, Assistant General Counsel, or Ms. Jennifer Waldman, Attorney, 1050 First Street NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** On July 13, 2023, the Commission received a Petition for Rulemaking (''Petition'') from Public Citizen, a non-profit advocacy organization. The Petition asks the Commission to amend its regulation on ''fraudulent misrepresentation'' at 11 CFR 110.16 to clarify that ''the restrictions and penalties of the law and the Code of Regulations are applicable'' should ''candidates or their agents fraudulently misrepresent other candidates or political parties through deliberately false [Artificial Intelligence]-generated content in campaign ads or other communications.'' Petition at 5.

The Federal Election Campaign Act (the ''Act'') provides that a candidate for federal office, employee, or agent of such a candidate shall not ''fraudulently misrepresent'' themselves or any committee or organization under their control ''as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof.'' 52 U.S.C. 30124(a)(1).

The Petition asserts that generative Artificial Intelligence and deepfake technology, is being ''used to create convincing images, audio and video hoaxes.'' Petition at 2. The Petition asserts that while the technology is not so far advanced currently as for viewers to not be able to identify when it is used disingenuously, if the use of the ''technology continues to improve, it will become increasingly difficult, and perhaps, nearly impossible for an average person to distinguish deepfake videos and audio clips from authentic media.'' *Id.*

The Petition notes that the technology will ''almost certainly create the opportunity for political actors to deploy it to deceive voters[,] in ways that extend well beyond any First Amendment protections for political expression, opinion or satire.'' *Id.* According to the Petition, this technology might be used to ''create a video that purports to show an opponent making an offensive statement or accepting a bribe'' and, once disseminated, be used for the purpose of ''persuading voters that the opponent said or did something they did not say or do.'' *Id.* The Petition explains that a deepfake audio clip or video by a candidate or their agent would violate the fraudulent misrepresentation provision by ''falsely putting words into another candidate's mouth, or showing the candidate taking action they did not [take],'' thereby ''fraudulently speak[ing] or act[ing] 'for' that candidate in a way deliberately intended to [harm] him or her.'' *Id.* at 3. The Petitioner states that because the deepfaker misrepresents themselves as speaking for the deepfaked candidate, ''the deepfake is fraudulent because the deepfaked candidate in fact did not say or do what is depicted by the deepfake and because the deepfake aims to deceive the public.'' *Id.* The Petitioner draws a distinction between deepfakes, which it contends violates the prohibition on fraudulent misrepresentation, and other uses of Artificial Intelligence in campaign communications, such as in parodies, where the purpose and effect are not to deceive voters, or as in other communications where ''there is a sufficiently prominent disclosure that the image, audio or video was generated by [A]rtificial [I]ntelligence and portrays fictitious statements and actions.'' *Id.* at 4.

The Commission seeks comment on the Petition. The public may inspect the Petition on the Commission's website at *http://www.fec.gov/fosers/.*

The Commission will not consider the Petition's merits until after the comment period closes. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. The Commission will announce any

action that is takes in the **Federal Register**.

**Authority:** 52 U.S.C. 30108, 30111(a)(8).

Dated: August 10, 2023.

On behalf of the Commission,

**Dara S. Lindenbaum,**

*Chair, Federal Election Commission.*

[FR Doc. 2023–17547 Filed 8–15–23; 8:45 am]

**BILLING CODE 6715–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 146

**[Docket No. FDA–2023–N–2632]**

## Food Standards of Identity Modernization; Pasteurized Orange Juice; Request for Information

**AGENCY:** Food and Drug Administration, Department of Health and Human Services.

**ACTION:** Petition for rulemaking; request for information.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing that the Florida Citrus Processors Association (FCPA) and Florida Citrus Mutual (FCM) have filed a citizen petition requesting that we amend the standard of identity (SOI) for pasteurized orange juice (POJ) by adjusting the minimum soluble solids content from 10.5° to 10° Brix. We are issuing this document to request comments, data, and information about the issues presented in the petition.

**DATES:** Submit either electronic or written comments and scientific data and information by October 16, 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 16, 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–2632 for ''Food Standards of Identity Modernization; Pasteurized Orange Juice; Request for Information.'' 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.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

**FOR FURTHER INFORMATION CONTACT:** Vivien Yan Peng, Center for Food Safety and Applied Nutrition, Office of Nutrition and Food Labeling (HFS–800), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371; or Philip L. Chao, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

**SUPPLEMENTARY INFORMATION:**

### I. FCPA and FCM Petition

The SOI for POJ requires that the product contains not less than 10.5 percent by weight of orange juice soluble solids (also expressed as degree Brix), exclusive of the solids of any added optional sweetening ingredients, and the ratio of the Brix hydrometer reading to the grams of anhydrous citric acid per 100 milliliters of juice is not less than 10 to 1 (§ 146.140(a) (21 CFR 146.140(a)). The Brix level expresses the percentage of orange juice solids present in a product. The SOI for POJ allows for the addition of concentrated orange juice ingredients and certain optional sweetening ingredients to adjust the Brix (§ 146.140(b) and (c)), provided that the label of POJ bears a statement that the concentrated orange juice ingredient or optional sweetening ingredient has been added (§ 146.140(e)(1) and (2)). Under this standard, the ''optional sweetening ingredients'' (or

''sweeteners'') are sugar, invert sugar, dextrose, dried corn sirup, and dried glucose sirup (§ 146.140(c)).

The FCPA and FCM jointly submitted a citizen petition (Docket No. FDA–2022–P–1668) on July 25, 2022, asking us to amend the SOI for POJ to reduce the minimum soluble solids requirement for POJ from 10.5° to 10° Brix, exclusive of the solids from any added optional sweetening ingredients. See Citizen Petition from Florida Citrus Processors Association Inc. and Florida Citrus Mutual Inc., entitled ''Request to Amend Pasteurized Orange Juice Standard of Identity,'' sent to the Division of Dockets Management (now called the Dockets Management Staff), Food and Drug Administration, dated July 22, 2022 (''Petition''). The FCPA and FCM stated that when FDA issued the SOI for POJ in 1963 (see ''Orange Juice and Orange Juice Products; Definitions and Standards of Identity; Findings of Fact and Final Order,'' 28 FR 10900, October 11, 1963), FDA recognized that Florida was the dominant supplier of juice oranges with an average Brix of 11.8°. The petitioners asserted that, based on the fruits used in preparing POJ at that time, FDA set a minimum Brix value of 10.5° for the POJ standard (Petition at page 3).

The FCPA and FCM stated that Florida's average Brix level has steadily dropped over the past couple of decades due to a bacterial disease called ''citrus greening disease,'' also known as Huanglongbing (id.). (According to information on the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service's (APHIS) website, symptoms of trees infected with citrus greening include blotchy mottle leaves, stunted grown, reduced fruit size, premature fruit drop, corky veins, and root decline, and the disease eventually causes tree death. See USDA APHIS, ''Citrus Greening,'' at *https://www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/citrus/citrus-greening#:~:text=Huanglongbing%20(HLB)%2C%20also%20known,when%20feeding%20on%20new%20shoots*). There is no cure for citrus greening disease. The FCPA and FCM also maintained that severe weather, particularly Hurricane Irma in 2017, has resulted in reduced production of oranges and normal fruit sugar content (Petition at pages 3 to 4). The FCPA and FCM stated that, due to these factors, seasonal average Brix values (weighted by volume) are hovering below the minimum of 10.5° Brix (Petition at page 4). The FCPA and FCM stated that the POJ SOI was carefully constructed to reflect the qualities of U.S. oranges, and asserted that it should now be updated to align with the properties of the modern U.S. crop (Petition at page 5).

The FCPA and FCM noted that the POJ SOI sets specific requirements for juice content and labeling, including a minimum fruit sugar level (Petition at page 3). The FCPA and FCM stated that most fruit juices, albeit many of which have a relatively lower volume of sales, have no U.S. standards and that this regulatory discrepancy further emphasizes the need to amend the orange juice SOI to keep pace with modern scientific understanding and naturally occurring dynamics impacting product production (Petition at page 7). The FCPA and FCM asserted that without such an update, POJ products will be further disadvantaged in the market (id.).

The FCPA and FCM maintained that the SOIs for various orange juice products are intended to serve the interest of consumers and the POJ standard established POJ as a high-quality and minimally processed juice that is heat-treated to eliminate potentially harmful pathogens and is not concentrated or reconstituted with added water (Petition at page 3). They asserted that consumers widely understand POJ to be natural, not from concentrate juice made from mature Florida oranges (Petition at page 5), although they did not provide information demonstrating this consumer understanding.

The Petition included the results of a consumer survey to assess orange juice and consumer ''willingness to buy'' orange juice with varying levels of sweetness under hypothetical settings which was conducted online among a total of 1,027 adult men and women, aged 18 to 69 years old, who consume 100 percent fruit juice at least once in a typical 2-week period (Petition at Appendix 4). From this consumer survey, the FCPA and FCM concluded that 96 percent of the consumers in the study accepted the idea that a natural product, like orange juice, could have varying levels of sweetness (Petition at page 6). The FCPA and FCM also noted that 95 percent of those surveyed agreed that orange juice with less sugar should still be called orange juice, and 76 percent claimed they would have no concerns with a less sweet orange juice (id.). The petitioners did not provide information on how these general statements and preferences relate to the Brix level for POJ.

The FCPA and FCM stated that the 10° minimum Brix level they request for POJ is consistent with the minimum Brix level of 10° for the SOI for canned orange juice specified in 21 CFR 146.141 (Petition at page 6). The FCPA and FCM also asserted that the 10° Brix level would be consistent with the applicable Codex General Standard for Juices and Nectars, which has no minimum but allows for Brix for not-from-concentrate POJ to be at the Brix level of the fruit from which the juice is directly expressed (id.). They also noted that the European Fruit Juice Directive incorporates a 10° minimum Brix, established by the European Fruit Juice industry in the AIJN Code of Practice (id.). The FCPA and FCM stated that the proposed minimum Brix decrease would help to bring the POJ standard into alignment with these international food standards (Petition at pages 6 to 7).

Finally, the FCPA and FCM maintained that a temporary marketing permit (TMP) under § 130.17 (21 CFR 130.17) for POJ with a lower Brix level would not be a viable option, due to the overwhelming presence of low-Brix orange juice crops in recent years, because it would be burdensome for manufacturers to make labeling changes and add stock keeping units for the lower-Brix products and could cause consumer confusion (Petition at page 5). No information was provided on consumer understanding.

## II. Summary of the 1963 Final Order

As noted above, FDA published a final order establishing SOIs for certain orange juice products, including POJ, in 1963. The final order contained various findings of fact, including a statement that ''Florida orange juices available for processing'' had an approximate average Brix level of 11.8° at the time (28 FR 10900 at 10905). While the FCPA and FCM maintained that this Brix value of 11.8° was used to set the standard for POJ (Petition at page 3), we clarify that FDA recognized this value in the context of the reconstituted orange juice standard, with FDA setting a minimum Brix of 11.8° in its standard for reconstituted orange juice (28 FR 10900 at 10906). By contrast, for POJ, FDA set a minimum Brix of 10.5°, recognizing that ''the juice of many legally mature oranges that come on the market would not meet [a Brix of 10.5°]'' and stating that producers could add frozen single-strength juice or orange juice concentrate to achieve a higher Brix level (28 FR 10900 at 10902). On the basis of these and other facts and evidence, FDA established SOIs for orange juice and various orange juice products.

## III. Request for Comments

We invite interested persons to submit comments, data, and information concerning the need for, and the appropriateness of, amending the SOI for POJ. We especially invite comment and supporting data, as appropriate, on the following matters:

1. The SOI for POJ requires that the product contains not less than 10.5 percent by weight of orange juice soluble solids (that is, the Brix level), exclusive of the solids of any added optional sweetening ingredients (§ 146.140(a)). Would amending the SOI for POJ from 10.5 to 10 percent by weight of orange juice soluble solids continue to promote honesty and fair dealing in the interest of consumers? Specifically, would such an amendment result in products that are inconsistent with consumer expectations about POJ? The petitioners noted that POJ with a lower Brix has less sugar—specifically, when Brix value is lowered from 10.5° to 10.25° or 10°, the sugar content is reduced from 18 grams to 17 grams per 8 oz of product (see Petition at Appendix 4, page 19). Would POJ products with a Brix level between 10° and 10.5° taste less sweet or have less orange flavor such that consumers would not accept them? Please explain your reasoning.

2. Below are the Nutrition Facts labels for the POJ with different Brix levels provided by the petitioners (id.). From left to right are labels for product with 10.5° Brix, 10.25° Brix, and 10.0° Brix.

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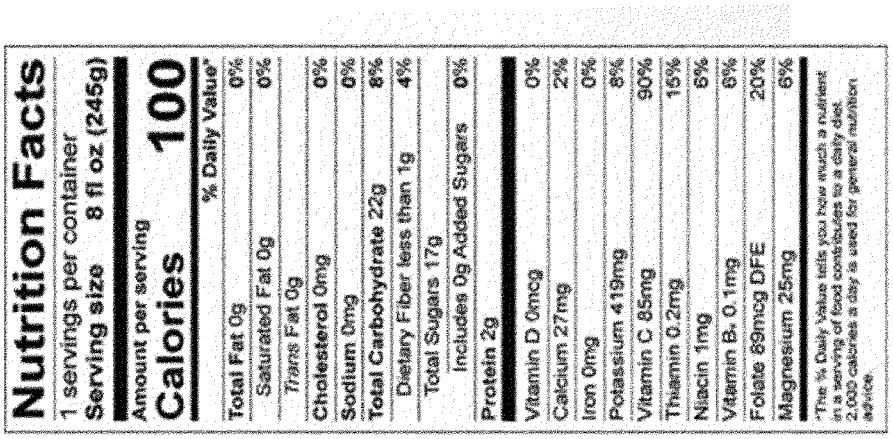


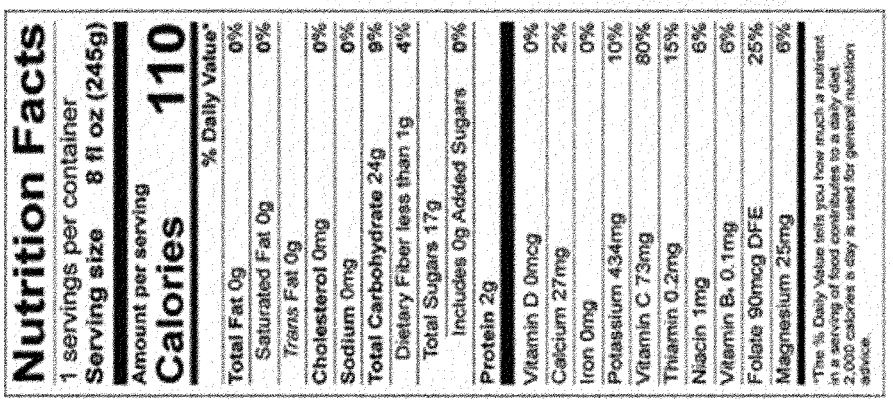


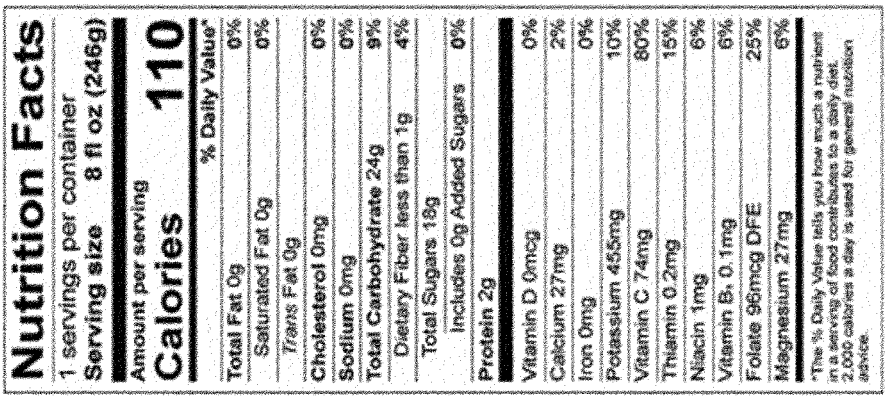

If the SOI for POJ is amended in the manner as requested in the petition, there may also be some nutritional changes to POJ. Specifically, the Nutrition Fact labels provided by the petitioners show that several nutrients, such as potassium, folate, and vitamin C, would change with the Brix. Would such products have lower levels of certain nutrients than POJ under the current SOI? If so, would such decreases in nutrient levels lead consumers to not accept such products? Would consumers be willing to accept POJ with differing amounts of certain nutrients? Would it depend on the specific type of nutrient? Please be specific and explain your reasoning. Would it depend on the amount the nutrient declaration was changed? Please be specific about what (if any amount) would be acceptable at either a higher or lower level of what is currently declared for POJ.

3. Orange juice that does not meet the minimum Brix of 10.5° in the SOI may, under § 146.140(a) and (b), be blended with one or more of the optional concentrated orange juice ingredients (which would be labeled as specified in § 146.140(e)(1)) or with a higher-Brix POJ to meet the 10.5° Brix minimum.

(a) Would the use of concentrated orange juice ingredients impact consumers' decisions to purchase or consume POJ products? What if concentrated orange juice ingredients only contribute one-fourth of the total orange juice solids in the finished product, as currently specified by the SOI (§ 146.140(b))? Do consumers expect that POJ is produced entirely from non-concentrate orange juice? Please explain your reasoning.

(b) Oranges from other countries and states may be used to produce POJ with a higher Brix. Would the use of orange juice from other countries or other states impact consumers' decisions to purchase or consume POJ products? Please explain your reasoning.

4. Would orange juice producers apply for a TMP under § 130.17 to market POJ with Brix levels between 10° and 10.5° in order to gather data on consumers' expectations and acceptance of POJ with Brix levels in this range? If orange producers would not apply for such a TMP, please explain why. To satisfy the labeling provision under § 130.17(c)(9), would labeling POJ with Brix in this range as having lower Brix or lower sugar be feasible? Please explain why or why not. Is there another way that POJ with Brix between 10° and 10.5° could be labeled if it were market-tested under a TMP? If so, please explain how it could be labeled.

**Authority:** 21 U.S.C. 321, 341, 343, 348, 371, 379e.

Dated: August 9, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–17453 Filed 8–15–23; 8:45 am]

**BILLING CODE 4164–01–C**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 147

**[EPA–HQ–OW–2023–0073; FRL 9916–03–OW]**

## State of Louisiana Underground Injection Control Program; Class VI Program Revision Application; Notice of Availability of New Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability; request for comment.

**SUMMARY:** This document supplements the proposed ''State of Louisiana Underground Injection Control Program; Class VI Program Revision Application'' rule of May 4, 2023, to approve a revision to the State's Safe Drinking Water Act (SDWA) section 1422 UIC program to include Class VI injection well primary enforcement responsibility (primacy). On June 30, 2023, the Louisiana Department of Natural Resources (LDNR) supplemented its Class VI primacy application to include Act No. 378 (HB 571), which revised portions of Louisiana law relevant to LDNR's application. On June 14, 2023, Act No. 378 was signed into law and went into effect during the comment period for EPA's proposal. This document presents and requests public comment on LDNR's supplement to its application, which was not available in the docket EPA–HQ–OW–2023–0073 at the time of the Environmental Protection Agency's (EPA) May 4, 2023, proposal.

**DATES:** Comments must be received on or before September 15, 2023.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA–HQ–OW–2023–0073, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

*Instructions:* All submissions received must include the Docket ID No. for this 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.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Kelly, Drinking Water Infrastructure Development Division, Office of Ground Water and Drinking Water (4606M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–3887; or Lisa Pham, U.S. EPA Region 6, Groundwater/UIC Section (Mail code WDDG), 1201 Elm Street, Suite 500, Dallas, Texas 75720–2102; telephone number: (214) 665–8326. Both can be reached by emailing: *LAClassVINOA@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Public Participation

*A. Written Comments*

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2023–0073, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. If you need to submit CBI, contact Lisa Pham, contact information available in the **FOR FURTHER INFORMATION CONTACT** section. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full

EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

## II. General Information

This document presents LDNR's supplement to its primacy application regarding Louisiana State Act No. 378. This act was signed into law and went into effect on June 14, 2023, during the comment period for EPA's proposed rulemaking, ''State of Louisiana Underground Injection Control Program; Class VI Program Revision Application'' (88 FR 28450, May 4, 2023). LDNR thereafter supplemented its Class VI primacy application to incorporate the new act, which revised portions of Louisiana law relevant to LDNR's Class VI primacy application. In LDNR's letter supplementing its application, LDNR stated that it found that Act 378 had no substantive impact on its pending application. The purpose of this document is to provide public notice and the opportunity for comment specific to LDNR's supplement to its primacy application regarding Louisiana State Act No. 378, which was not available for public review and comment at the time of the proposal. EPA is not reopening the overall comment period for the Agency's proposed approval of Louisiana's Class VI primacy application. EPA continues to review the comments received on the Agency's proposed approval and will address those comments and the comments submitted in response to this document in the final action.

Act 378 revised portions of Louisiana law relevant to LDNR's Class VI primacy application. For instance, it codified a parish notification requirement for permit applications for Class VI wells (and Class V wells related to geologic sequestration of carbon dioxide). It also codified Class VI quarterly and twenty-four-hour reporting requirements. It also revised Louisiana's long term liability provision in Louisiana Revised Statute (LA R.S.) 30:1109. As mentioned in the May 4, 2023, proposal, EPA is aware that stakeholders have raised concerns about this provision. EPA has reviewed Act 378, including its revisions to the long-term liability provision at LA R.S. 30:1109, and continues to propose approving Louisiana's application for Class VI primacy. EPA has determined that the application as supplemented continues to meet all applicable requirements for approval under SDWA section 1422.

Persons interested in the Class VI UIC program established by the State of Louisiana, and its proposed incorporation under Section 1422 of the SDWA are encouraged to read the new information presented and respond to this document. Additionally, owners and operators, States, Tribes, and State co-regulators involved in geologic sequestration activities in Louisiana may also wish to comment on this publication. EPA is not reopening the overall comment period for the Agency's proposed approval of Louisiana's Class VI primacy application. EPA continues to review the comments received on the Agency's proposed rule approval and will address those comments and the comments submitted in response to this document in the final action.

**Radhika Fox,**

*Assistant Administrator.*

[FR Doc. 2023–17517 Filed 8–15–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[EPA–HQ–OLEM–2023–0299; EPA–HQ–OLEM–2023–0304; EPA–HQ–OLEM–2023–0382; FRL–11238–01–OLEM]**

### Proposed Deletion From the National Priorities List

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; notice of intent.

**SUMMARY:** The Environmental Protection Agency (EPA) is issuing a Notice of Intent to delete one site and partially delete two sites from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the states, through their designated state agency, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** Comments regarding this proposed action must be submitted on or before September 15, 2023.

**ADDRESSES:** EPA has established a docket for this action under the Docket Identification numbers included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. Submit your comments, identified by the appropriate Docket ID number, by one of the following methods:

- *https://www.regulations.gov.* Follow on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*
- *Email:* Table 2 in the **SUPPLEMENTARY INFORMATION** section of this document provides an email address to submit public comments for the proposed deletion action.

*Instructions:* Direct your comments to the Docket Identification number included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any

disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* EPA has established a docket for this action under the Docket Identification included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. All documents in the docket are listed on the *https://www.regulations.gov* website. The Final Close-Out Report (FCOR, for a full site deletion) or the Partial Deletion Justification (PDJ, for a partial site deletion) is the primary document which summarizes site information to support the deletion. It is typically written for a broad, non-technical audience and this document is included in the deletion docket for each of the sites in this rulemaking. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Docket materials are available through *https://www.regulations.gov* or at the corresponding Regional Records Center. Location, address, and phone number of the Regional Records Centers follows.

**Regional Records Center**

- Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA New England, SEMS Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; 617/918–1440.
- Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4308.
- Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, Mail code 9T25, Atlanta, GA 30303.
- EPA Headquarters Docket Center Reading Room (deletion dockets for all states), William Jefferson Clinton (WJC) West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004, 202/566–1744.

EPA staff listed below in the **FOR FURTHER INFORMATION CONTACT** section may assist the public in answering inquiries about deleted sites, accessing deletion support documentation, and determining whether there are additional physical deletion dockets available.

**FOR FURTHER INFORMATION CONTACT:**

- Robert Lim, U.S. EPA Region 1 (CT, ME, MA, NH, RI, VT), *lim.robert@epa.gov,* 617/918–1392.
- Mabel Garcia, U.S. EPA Region 2 (NJ, NY, PR, VI), *garcia.mabel@epa.gov,* 212/637–4356.
- Leigh Lattimore, U.S. EPA Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), *lattimore.leigh@epa.gov,* 404/562–8768.
- Charles Sands, U.S. EPA Headquarters, *sands.charles@epa.gov,* 202/566–1142.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



## I. Introduction

EPA is issuing a proposed rule to delete one site and partially delete two sites from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the NCP, which EPA created under section 105 of the CERCLA statute of 1980, as amended. EPA maintains the NPL as those sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). These partial deletions are proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466, (November 1, 1995). As described in 40 CFR 300.425(e)(3) of the NCP, a site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

EPA will accept comments on the proposal to delete or partially delete these sites for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III of this document discusses procedures that EPA is using for this action. Section IV of this document discusses the site or portion of the site proposed for deletion and demonstrates how it meets the deletion criteria, including reference documents with the rationale and data principally relied upon by the EPA to determine that the Superfund response is complete.

## II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

## III. Deletion Procedures

The following procedures apply to the deletion or partial deletion of the sites in this proposed rule:

(1) EPA consulted with the respective state before developing this Notice of Intent for deletion.

(2) EPA has provided the state 30 working days for review of site deletion documents prior to publication of it today.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.

(4) The state, through their designated state agency, has concurred with the proposed deletion action.

(5) Concurrently, with the publication of this Notice of Intent for deletion in the **Federal Register**, a notice is being published in a major local newspaper of general circulation near the site. The newspaper announces the 30-day public comment period concerning the proposed action for deletion.

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket, made these items available for public inspection, and copying at the Regional Records Center identified above.

If comments are received within the 30-day comment period on this document, EPA will evaluate and respond accordingly to the comments before making a final decision to delete or partially delete the site. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete or partially delete the site, the EPA will publish a final Notice of Deletion or Partial Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the site information repositories listed above.

Deletion of a site or a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site or a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

## IV. Basis for Full Site or Partial Site Deletion

The site to be deleted or partially deleted from the NPL, the location of the site, and docket number with information including reference documents with the rationale and data principally relied upon by the EPA to determine that the Superfund response is complete are specified in Table 1. The NCP permits activities to occur at a deleted site, or that media or parcel of a partially deleted site, including operation and maintenance of the remedy, monitoring, and five-year reviews. These activities for the site are entered in Table 1, if applicable, under Footnote such that; 1 = site has continued operation and maintenance of the remedy, 2 = site receives continued monitoring, and 3 = site five-year reviews are conducted.

TABLE 1

| Site name | City/County, State | Type | Docket No. | Footnote |
|---|---|---|---|---|
| Tyndall Air Force Base | Panama City, FL | Partial | EPA–HQ–OLEM–2023–0299 | 1, 3 |
| Universal Oil Products (Chemical Division). | East Rutherford, NJ | Partial | EPA–HQ–OLEM–2023–0304 | |
| Portsmouth Naval Shipyard | Kittery, ME | Full | EPA–HQ–OLEM–2023–0382 | 1, 2, 3 |

Table 2 includes information concerning whether the full site is proposed for deletion from the NPL or a description of the area, media or Operable Units (OUs) of the NPL site proposed for partial deletion from the NPL, and an email address to which public comments may be submitted if the commenter does not comment using *https://www.regulations.gov.*

TABLE 2

| Site name | Full site deletion (full) or media/parcels/ description for partial deletion | E-mail address for public comments |
|---|---|---|
| Tyndall Air Force Base | OUs 10, 11 and parts of 15 and 25 | *jackson.brad@epa.gov.* |
| Universal Oil Products (Chemical Division) | 17 acres of soil from OU1 | *lapoma.jennifer@epa.gov.* |
| Portsmouth Naval Shipyard | Full | *lim.robert@epa.gov.* |

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that future conditions warrant further actions.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

**Larry Douchand,**

*Office Director, Office of Superfund Remediation and Technology Innovation.*

[FR Doc. 2023–17433 Filed 8–15–23; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 101

**RIN 0908–AA00**

## Health Resources Priorities and Allocations System (HRPAS)

**AGENCY:** Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Health and Human Services (HHS) is issuing a Notice of Proposed Rule Making (NPRM) to establish standards and procedures by which it may require acceptance and priority performance of certain contracts or orders to promote

the national defense over other contracts or orders with respect to health resources. This proposed rule also sets new standards and procedures by which HHS may allocate materials, services, and facilities to promote the national defense.

**DATES:** Consideration will be given to comments received on or before September 15, 2023.

**ADDRESSES:** Written comments may be submitted through one of three methods:

- *Electronic Submission:* Comments may be submitted electronically through the Federal Government eRulemaking portal at *https://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables HHS to make the comments available to the public.
- *Mail:* Send to U.S. Department of the Health and Human Services, Attention: Paige Ezernack, Director, Defense Production Act—Emergency Response Authorities Office, 400 7th Street SW, Washington DC 20024.
- *Email:* The Defense Production Act Resource Mailbox at *aspr.dpa@hhs.gov.*

We encourage comments to be submitted via *https://www.regulations.gov.* Please submit comments only and include your name and company name (if any) and cite ''HEALTH RESOURCES PRIORITIES AND ALLOCATIONS SYSTEM (HRPAS)'' in all correspondence. In general, the Department of Health and Human Services will post all comments to *https://www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** L. Paige Ezernack, telephone at (202) 260–0365 or via email at *aspr.dpa@hhs.gov.*

**SUPPLEMENTARY INFORMATION:** This proposed rule implements HHS's administration of priorities and allocations actions with respect to health resources and establishes the Health Resources Priorities and Allocations System (HRPAS). The HRPAS covers health resources pursuant to the authority under section 101(a) of the Defense Production Act (DPA) of 1950 as delegated to the Secretary of HHS (Secretary) by Executive Order (E.O.) 13603. On September 26, 2022, the Secretary delegated to the Assistant Secretary for Preparedness and Response (the ASPR) within the Administration for Strategic Preparedness and Response (ASPR), the authority under section 201 of E.O. 13603 to exercise priorities authority under section 101 of the DPA. This delegation authorized the ASPR, on behalf of the Secretary, to approve DO—[—[M1–M9] priority rating requests for health resources that promote the national defense. This delegation excludes the authority to approve all priorities provisions for health resources that require DX—[—[M1–M9] priority ratings. The Secretary retains all other authorities delegated by the President in E.O. 13603.

The HRPAS has two principal components: priorities and allocations. Under the priorities' component, the Secretary is authorized to place priority ratings on contracts or orders for health resources to support programs which have been determined by the Department of Defense, Department of Energy, or Department of Homeland Security as necessary or appropriate to promote the national defense in accordance with section 202 of E.O. 13603. Through the HRPAS rule, HHS may also respond to requests to place priority ratings on contracts or orders (requiring priority performance of contracts or orders) for health resources, as specified in the DPA, if the necessity arises. Under the priorities' component, certain contracts or orders between the government and private parties or between private parties for the production or delivery of health resources are required to be prioritized over other contracts or orders to facilitate expedited production or delivery in promotion of the U.S. national defense. The Secretary retains the authority for allocations. Under the allocations' component, materials, services, and facilities may be allocated to promote the national defense. Such requests must be determined as necessary or appropriate to promote the national defense in accordance with section 202 of E.O. 13603. For both components, the term ''national defense'' is defined in section 801(j) of E.O. 13603 as ''programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity.'' The term also includes emergency preparedness activities conducted pursuant to title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) and critical infrastructure protection and restoration. See E.O. 13603, section 801(j). Other authorities delegated to the Secretary in E.O. 13603, but not covered by this regulation may be re-delegated by the Secretary.

## I. Background

HHS published an interim final rule in the **Federal Register** at 80 FR 42408 on July 17, 2015, to comply with the Part II—Priorities and Allocations, Sec 201(b) of E.O. 13603, dated March 16, 2012, and section 101(d) of the DPA, 50 U.S.C. 4511(d), and received no public comments. Based on the significant amount of time between the publication of interim final rule in 2015, HHS is issuing this NPRM to allow for comments based on the experience of utilizing this authority to respond to COVID–19 and the infant formula shortage in 2022.

## II. Discussion and Analysis

HRPAS is a program established in accordance with the DPA and E.O. 13603 that supports national defense needs (for health resources), including emergency preparedness initiatives, by addressing essential civilian needs through the placing of priority ratings on contracts and orders for items and services or allocating resources, as necessary. Although a specific Presidential disaster declaration is not required, the ability to prioritize or allocate items or services requires a determination be made in accordance with section 202 of E.O. 13603, (except as provided in section 201(e) for use of the allocations authority) that the program or programs are necessary or appropriate to promote national defense, including emergency preparedness. The HRPAS outlines several conditions that must be met in order for HHS to undertake an allocation order, which include a finding under section 101(b) of the DPA that such a material is a scarce and critical material essential to the national defense and that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship. The President must approve the finding, in accordance with section 201(e) of E.O. 13603, before the Secretary may use the allocation authority. Under section 702(14) of the DPA (50 U.S.C. 4552(14)), the term ''national defense'' includes emergency preparedness activities conducted pursuant to the Stafford Act, and critical infrastructure protection and restoration. Authority for priorities

and allocations is specified in the DPA and further defined in E.O. 13603, ''National Defense Resources Preparedness,'' dated March 16, 2012. E.O. 13603 replaced E.O. 12919 and further defined jurisdictional areas and national defense preparedness roles and responsibilities for specific agencies. E.O. 13603 did not change the intent of the DPA as it applies to HHS's functions in national defense, including emergency preparedness. For the NPRM, only those sections in the ''Supplementary Information'' part of the Interim Final Rule preamble that required modifications due to E.O. 13603 or for other reasons are further discussed in the **SUPPLEMENTARY INFORMATION** section of this NPRM. A more thorough explanation of the HRPAS was published on July 17, 2015 (80 FR 42408–42423). We are not reiterating the Section-by-Section Changes of the Rule. Any changes to those sections are discussed in this document.

*Jurisdiction*

E.O. 13603 authorizes jurisdictional areas for each agency delegated title I authority under the DPA that is involved in national defense, including emergency preparedness. HHS has jurisdiction for items that fall under the category of health resources which is defined in E.O. 13603 as ''drugs, biological products, medical devices, materials, facilities, health supplies, services and equipment required to diagnose, mitigate, or prevent the impairment of, improve, treat, cure, or restore the physical or mental health conditions of the population.'' HHS cannot use its DPA authority for items or services not in its jurisdiction. Those entities in need of items or services that do not fall under the jurisdiction of HHS should request priorities assistance from the applicable resource department. HHS will direct the requesters to the appropriate resource agency if the request comes to HHS. HHS intends to work with other resource agencies to address instances where HHS does not have jurisdiction—or where jurisdiction may be overlapping or ambiguous—for items necessary to complete the order. HHS intends to work with the other resource agencies to request prioritization of contracts or orders for other items or services necessary for use in support of programs approved for use by HHS (see next section).

*HRPAS Approved Programs*

HHS is currently reviewing activities under the ''health resources'' jurisdiction for priorities and allocations support to promote the national defense, under the authority of the DPA and Executive Order 13603. HHS may exercise its priorities and allocations authorities for items or services that fall under the current approved programs, while the review for activities under the ''health resources'' jurisdiction is ongoing.

## III. DPA Priorities and Allocations System Authority

The Defense Production Act Reauthorization (DPAR) of 2009 required that HHS, and all other agencies that previously have been delegated priorities and allocations authority under E.O. 13603, publish regulations providing standards and procedures for prioritization of contracts and orders and for allocation of materials, services, and facilities to promote the national defense under both emergency and nonemergency conditions. HHS's regulation, along with regulations promulgated by other agencies, are part of the Federal Priorities and Allocations System (FPAS).

On October 1, 2018, Congress amended the DPA through the John S. McCain National Defense Authorization Act (Pub. L. 115–232) which extended non-permanent provisions through September 30, 2025. Section 101(d) of the DPA, as amended, directs all agencies to which the President has delegated priorities and allocations authority under E.O. 13603 to publish final rules establishing standards and procedures by which that authority will be used to promote the national defense in both emergency and non-emergency situations. The DPAR also required all such agencies to consult with the heads of other Federal agencies as appropriate and to the extent practicable to develop a consistent and unified FPAS. This rulemaking is one of several rules published to implement section 101 of the DPA. The rules of the agencies with such authorities, which are the Departments of Commerce, Energy, Transportation, Health and Human Services, Homeland Security, Defense, and Agriculture, comprise the FPAS. HHS is publishing this NPRM rule in compliance with section 101(d) of the DPA. HHS's HRPAS provisions are consistent with the FPAS regulations issued by other agencies to the extent practicable.

The HRPAS, as part of the FPAS, has two principal components: priorities and allocations. Under the priorities component, contracts and orders between the government and private parties or between private parties for the production or delivery of health resources are required to be given priority over other contracts to facilitate expedited production and delivery in promotion of the U.S. national defense. Under the allocations component, materials, services, and facilities may be allocated to promote the national defense. For both components, the term ''national defense'' ' is defined broadly and includes emergency preparedness activities conducted pursuant to title VI of the Stafford Act and critical infrastructure protection and restoration priorities authorities. Priorities, allocations, and other authorities delegated to the Secretary in E.O. 13603, but not covered by this regulation may be re-delegated by the Secretary. The Secretary delegated the authority for DO priority ratings to the ASPR. The Secretary retains the authority for DX priority ratings and for allocations.

## IV. Summary of Significant Changes to the Interim Final Rule

a. HHS's interim final rule had a 60-day comment period that ended on September 15, 2015. HHS received no comments on the Interim Final Rule. Based on interagency review and internal deliberations, HHS made minor revisions to its Interim Final Rule and is issuing this NPRM to seek public comments based on its use of these authorities to respond to COVID–19 and the infant formula shortage.

(1) Section 101.1, Purpose, is revised to add livestock resources, veterinary resources, and plant health resources.

(2) Section 101.20, Definitions, is revised to include a new definition of priority rating and program identification symbol, and add a definition of ''working day.''

(3) Section 101.30, Delegation of Authority, is revised to include the delegation of DO priority rating authority of the DPA, and section 201 of E.O. 13603, from the Secretary of HHS to the Assistant Secretary for Preparedness and Response (the ASPR).

(4) Section 101.63, Letters and Memoranda of Understanding is revised to delete references to Memoranda.

b. Analysis of Technical Comments: Several editorial changes were made to the rule and are summarized below.

*(1) Placement of Rated Orders*

(a) Section 101.33. The acceptance and rejection times for rated orders are revised. The preamble section of the interim final rule was inconsistent with the provisions in §§ 101.32 and 101.33 with respect to the time limits for acceptance and rejection of rated orders. Most rated orders will continue to require acceptance or rejection within 10 or 15 days depending on the type of rating. Rated orders placed in support of

emergency preparedness requirements may require acceptance or rejection within a shorter timeframe that is specified in the rated order. The minimum times for acceptance or rejection that such orders may specify are six (6) hours for emergencies that have occurred, or 12 hours if needed to prepare for an imminent hazard. Also, ''time limit in'' has been changed to ''minimum times,'' which is the correct terminology.

(b) Section 101.33(d)(2). Customer notification requirements require persons who have accepted a rated order to give notice if performance will be delayed. The time limit to provide written confirmation of a verbal notice is five (working) days; the time limit is revised to one (1) working day to provide written confirmation of a verbal notice. HHS believes that the nature of rated orders supporting national defense requirements, including COVID–19 response activities, justifies expeditious communications and that once a verbal notice of delayed performance has been given, putting that notice into writing should not take more than one working day.

*(2) Allocation Actions*

Sections 101.51 and 101.51(a) are revised to conform with language in the other FPAS regulations and comply with the requirement in section 101(d)(2) of the DPA for the regulations to be consistent and unified.

Section 101.53. Revised § 101.53 to change ''is requiring'' to ''as established.'' The rationale for this change is that ''is requiring'' implies that the allocations process is a constant obligation.

*(3) Elements of an Allocation Order*

(a). Section 101.54(e) is revised to include a new element to be included in an allocation order that gives constructive notice through publication in the **Federal Register**. A statement that reads in substance: ''This is an allocation order certified for national defense use. [Insert the name(s) of the person(s) to whom the order applies or a description of the class of persons to whom the order applies] is (are) required to comply with this order, in accordance with the provisions of the Health Resources Priorities and Allocations System regulation (45 CFR part 101).

*(4) Official Actions*

(a) Section 101.63. ''Memorandums of Understanding'' (MOUs) are universally known in the Federal Government as an agreement between agencies/parties, sometimes completed under the Economy Act, and the use of MOUs in implementing priorities authorities could cause confusion. Therefore, the terms ''Memorandum of Understanding'' or ''Memoranda of Understanding'' in § 101.63 and other sections in the interim rule are deleted.

(b) Section 101.1 Purpose

Section 101.1 revises the sentence regarding guidance and procedures for use of DPA authorities to include livestock, veterinary resources, plant health resources, and all forms of energy. In addition, HHS deleted reference to 32 CFR part 555, referring to priorities and allocations for water resources.

(c) Section. 101.3 Program Eligibility

Section 101.3 is revised to delete ''deployment and sustainment of military forces,'' to track with section 702(14) of the DPA.

(d) Section 101.20 Definitions

(1) Revise definition of ''National defense'' to delete ''health'' and add ''energy'' to track definition of ''national defense'' in section 702(14) of the DPA.

(2) Add the following definition: ''Food resources'' means ''all commodities and products (simple, mixed, or compound), or complements to such commodities of products, that are capable of being ingested by other human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products thereof in vendible form for human or animal consumption. 'Food resources' also means potable water packaged in commercially marketable containers, all starches, sugars, vegetable and animal or marine fats and oils, seed, cotton, hemp, and flax fiber, but does not mean any such material after it loses its identity as an agricultural commodity or agriculture product.''

(3) Add the following definition: ''Farm equipment'' means ''equipment, machinery, and repair parts manufactured for use on farms in connection with the production or preparation for market use of food resources.''

(4) Add the following definition: ''Fertilizer'' means ''any product or combination of products that contain one or more of the elements nitrogen, phosphorous, and potassium for use as a plant nutrient.''

(5) Add the following definition: ''Food resource facilities'' means ''plants, machinery, vehicles (including on farm), and other facilities required for the production, processing, distribution, and storage (including cold storage) of food resources, and for the domestic distribution of farm equipment and fertilizer (excluding transportation thereof).''

(6) Delete sentence stating, ''Natural resources such as oil and gas,'' from the definition of ''Materials.''

(7) Revise definition of person to include, ''and for purposes of administration of this part, includes the Federal Government and any authorized foreign government or international organization or agency thereof, delegated authority as provided in this part.''

(8) Add the following definition: ''Priority rating is an identifying code assigned by a Delegate Agency or authorized person placed on all rated orders and consisting of the rating symbol and program identification symbol.''

(9) Add the following definition: ''Working day means any day that the recipient of an order is open for business.''

e. Sec. 101.30 Delegations of Authority

Revised to change ''priority rating activities'' to ''priorities authorities'' to track E.O. 13603.

f. Section 101.31 Priority ratings.

(1) Paragraph (a)(1), Levels of priority is revised to change ''Federal'' to ''Health Resources'' because agency regulations establish priority levels.

g. Section 101.32 Elements of a rated order.

(2) Paragraph (d)(2)(i). The preamble discussion of § 101.33 is revised to correct the 2-day time frame for acceptance or rejection of rated orders for emergency preparedness to be consistent with §§ 101.32 and 101.33.

h. Section 101.33 Acceptance and rejection of rated orders.

Paragraph (e). The discussion of § 101.33 of the preamble of the interim final rule is inconsistent with the 2-day time frame for acceptance or rejection of rated orders in § 101.33. The preamble is revised to correct this inconsistency.

i. Section 101.37 Use of rated orders.

(1) Paragraph (a)(4) ''Facilities needed to produce rated orders, and'' is deleted because ''facilities'' are considered an industrial resource and not eligible for priorities and allocations under the HHS-administered HRPAS regulation.

j. Section 101.38 Limitations on placing rated orders.

(1) Paragraph (b)(1). Revising paragraph (b)(1) to insert ''livestock resources, veterinary resources, and plant health resources,'' to track E.O. 13603.

(2) Paragraph (b)(2). Revising paragraph (b)(2) to add ''All forms of energy'' in lieu of ''Energy supplies,'' to track E.O. 13603.

(3) Paragraph (b)(5). Adding the following paragraph (5): ''All materials,

services, and facilities, including construction materials (industrial resources) for which the authority has not been delegated to other agencies under E.O. 13603 (Resource agency with jurisdiction—Department of Commerce)'' because Commerce was not mentioned in the interim final rule and paragraph (5) is added.

(4) Paragraph (b)(6). Changing former paragraph (b)(5) (now paragraph (b)(6)) to read as follows: ''The priorities and allocations authority of this part may not be applied to communications services (Resource agency with jurisdiction—National Communications System under E.O. 13618 of July 6, 2012.)''

k. Section 101.40 General Provisions.

Paragraph (a). Revising the introductory sentence of paragraph(a) to read ''Once a priority rating has been authorized pursuant to this part, further action by the Department of Health and Human Services generally is not needed.'' The rationale for this change is once a rating is authorized, in most instances, no further action is required by HHS.

l. Section 101.60 General Provisions.

Paragraph (b). Revising paragraph (b) to replace ''Memoranda'' of Understanding with ''Letters.''

m. Section 101.62 Directives.

Paragraph (d). Deleting paragraph (d) relating to an Allocation Directive,'' as it was deleted in the Department of Commerce's final rule.

n. Section 101.63 Letters and Memoranda of Understanding.

Revising § 101.63 to delete ''and Memoranda'' in paragraphs (a) and (b).

o. Section 101.74 Violations, penalties, and remedies.

Paragraph (a). The sentence ''The maximum penalties provided by the Selective Service Act and related statutes are a $50,000 fine, or three years in prison, or both,'' is deleted because HHS has not been delegated authority under the Selective Service Act, and the sentence, as well as the reference to the Selective Service Act earlier in this paragraph, have been deleted.

## V. Regulatory Analysis

### *A. Review Under E.O. 12866, E.O. 13563*

(1) Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has been drafted and reviewed in accordance with E.O. 12866. This proposed rule has been designated a ''significant regulatory action'' by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs, under section 3(f)(1)) of E.O. 12866. Accordingly, the rulemaking has been reviewed by the OMB.

(2) This NPRM adopts the interim final rule that established standards and procedures by which HHS may require certain contracts or orders that promote the national defense be given priority over other contracts or orders and setting new standards and procedures by which HHS may allocate materials, services, and facilities to promote the national defense under emergency and non-emergency conditions pursuant to section 101 of the DPA of 1950, as amended. Accordingly, relative to a post-interim final rule baseline, this NPRM has limited economic impact.

### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. HHS reviewed this NPRM under the provisions of the Regulatory Flexibility Act and has determined that this rulemaking, if promulgated, will not have a significant impact on a substantial number of small entities.

(1) Number of Small Entities

(a) Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this final rule on small entities, a small business, as described in the Small Business Administration's Table of Small Business Size Standards Matched to North American Industry Classification System Codes (January 2022 Edition), has a maximum annual revenue of $33.5 million and a maximum of 1,500 employees (for some business categories, these numbers are lower). A small governmental jurisdiction is a government of a city, town, school district or special district with a population of less than 50,000. A small organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

(b) This rulemaking sets criteria under which HHS (or agencies to which HHS delegates HHS's DPA authority to issue rated orders) will authorize prioritization of certain contracts or orders for health resources as well as criteria under which HHS will issue orders allocating materials, services, and facilities. Because the rulemaking affects specific commercial transactions, HHS believes that small non-profit organizations and small governmental jurisdictions are unlikely to be directly affected by this rulemaking.

(c) Prior to the COVID–19 pandemic, HHS had minimally exercised its prioritization authority for contracts and orders and had not exercised its allocation authorities. To date, HHS has exercised title I priorities authorities approximately 70 times in responding to the COVID–19 pandemic to prioritize contracts thus ensuring rapid industrial mobilization for critical health resources (including N95 facemasks, vaccines, therapeutics, and diagnostics) to meet urgent emergency preparedness and response requirements. In response to the initial wave of the COVID–19 pandemic, HHS leveraged its allocations authority, in conjunction with a DX rated order, to re-distribute N–95 facemasks that were seized by the U.S. Customs and Border Protection. Several health resource materials have been identified as essential in responding to the COVID–19 pandemic and these items, such as personal protective equipment (PPE), ventilators, medical countermeasures, and ancillary supplies are in high demand. Therefore, a priority rating was necessary to provide the quantities of these health resources within a specified timeframe to respond to the COVID–19 pandemic. Additionally, in response to the infant formula shortage in the summer of 2023, HHS issued three priority rated orders to help ensure timely delivery of key ingredients to infant formula manufacturers.

(2) Impact

(a) The NPRM has two principal components: prioritization and allocation. Under prioritization, HHS, or its Delegate Agency, designates certain orders as one of two possible priority levels. Once so designated, such orders are referred to as ''rated orders.'' The recipient of a rated order must give it priority over an unrated order or an order with a lower priority rating as necessary to meet the delivery requirement of the rated order. A recipient of a rated order must place

orders at the same priority level with suppliers and subcontractors for supplies and services necessary to fulfill the recipient's rated order. The suppliers and subcontractors must treat the request from the rated order recipient as a rated order with the same priority level as the original rated order. The rulemaking does not require recipients to fulfill rated orders if the price or terms of sale are not consistent with the price or terms of sale of similar non-rated orders. The rulemaking provides protection against claims for actions taken in, or inactions required for, compliance with the rulemaking.

(b) Although rated orders could require a firm to fill one order prior to filling another, they will not necessarily require a reduction in the total volume of orders. The regulations also do not require the recipient of a rated order to reduce prices or provide rated orders with more favorable terms than a similar non-rated order. Under these circumstances, the economic effects on the rated order recipient of substituting one order for another are likely to be mutually offsetting, resulting in no net economic impact.

(c) Allocations could be used to control the general distribution of materials or services in the civilian market. Specific allocation actions that HHS might take are as follows:

1. *Set-aside:* an official action that requires a person to reserve materials, services, or facilities capacity in anticipation of receipt of rated orders.

2. *Directive:* an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. A directive can require a person to stop or reduce production of an item; prohibit the use of selected materials, services, or facilities; or divert the use of materials, services, or facilities from one purpose to another.

3. *Allotment:* an official action that specifies the maximum quantity of a material, service, or facility authorized for a specific use to promote the national defense.

(d) In response to the initial wave of the COVID–19 pandemic, HHS leveraged its allocations authority, in conjunction with a DX rated order to re-distribute N–95 facemasks that were seized by the U.S. Customs and Border Protection. Any future allocations actions would be used only in extraordinary circumstances. As required by section 101(a)(2) of the DPA and by section 201(a)(3) of E.O. 13603, HHS may implement allocations only if the materials, services, and facilities are deemed necessary or appropriate to promote the national defense. ''National defense'' covers programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any related activity. Such terms include emergency preparedness activities conducted pursuant to title VI of the Stafford Act and critical infrastructure protection and restoration.

(e) Any allocation actions taken by HHS must assure that small business concerns shall be accorded, to the extent practicable, a fair share of the materials or services covered by the allocation action, in proportion to the share received by small business concerns under normal conditions, giving such special consideration as may be possible to emerging business concerns. 50 U.S.C. 4551(e).

Conclusion

(f) Although HHS cannot precisely determine the number of small entities that will be affected by this rulemaking, HHS believes that the overall impact on such entities will not be significant. In most instances, rated contracts or orders will be fulfilled in addition to other (unrated) contracts or orders and, in some instances might actually increase the total amount of business of the firm that receives a rated contract or order.

(g) Because allocations can be imposed only after a finding required under section 101(b) of the DPA, and approved by the President in accordance with section 201(e) of E.O. 13603, that such material is a scarce and critical material essential to the national defense and that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship, and because HHS has only used its allocations authority one time in response to the initial wave of COVID–19, one can expect allocations will be ordered only in rare and unique circumstances. Any allocation actions would also have to comply with section 701(e) of DPA (50 U.S.C. 4551(e)), which provides that small business concerns be accorded, to the extent practicable, a fair share of the material, including services, in proportion to the share received by such business concerns under normal conditions, giving such special consideration as may be possible to emerging business concerns.

Therefore, HHS believes that the requirement for a finding under section 101(b) of the DPA, and approved by the President in accordance with section 201(e) of E.O. 13603, that such a material is a scarce and critical material essential to the national defense and that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship and the provisions of section 701 of the DPA indicate that any impact on small business will not be significant.

(h) For the reasons set forth above, the Secretary of HHS certifies that this NPRM will not have a significant economic impact on a substantial number of small entities.

*C. Review Under the Paperwork Reduction Act*

*Abstract:* HRPAS will efficiently place priority ratings on contracts or orders of health resources within its authority as specified in the DPA, as amended, when necessary. Applicants will request authorization from HHS/ASPR to place a rating on a contract for health resources to support national defense activities. Applicants must supply, at time of request, their name, location, contact information, items for which the applicant is requesting assistance on, quantity of items for which the applicant is requesting assistance on, and delivery date. Applicants can submit the request by mail or email.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 30 minutes per response.

*Type of Respondents:* Individuals, businesses, and agencies with responsibilities for emergency preparedness and response.

*Estimated Number of Respondents:* 100.

*Estimated Number of Responses per Respondents:* 0.95.

*Estimated Total Number of Respondents:* 95.

*Estimate Total Annual Burden Hours on Respondents:* 50 hours.

We are requesting comments on all aspects of this information collection to help us: (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of HHS, including whether the information will have practical utility; (2) Evaluate the accuracy of HHS's estimate of burden, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All comments received in response to this document, including names and addresses, when provided, will be a matter of public record.

*D. Review Under E.O. 13132*

HHS reviewed this proposed rule pursuant to E.O. 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), which imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. HHS determined that the rulemaking will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government.

*E. Review Under Unfunded Mandates Reform Act*

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, Local, Tribal, or Territorial governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any one year for State, Local, Tribal, or Territorial governments, in the aggregate, or to the private sector. This proposed rule contains no Federal mandates as defined by title II of UMRA for State, local, or Tribal governments or for the private sector; therefore, this proposed rule is not subject to the requirements of sections 202 and 205 of Unfunded Mandate Reform Act.

*F. Approval of the Office of the Secretary*

The Secretary of Health and Human Services has approved publication of this NPRM.

**List of Subjects in 45 CFR Part 101**

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

For the reasons stated in the preamble, HHS is revising part 101 of title 45 of the Code of Federal Regulations as follows:

## PART 101—HEALTH RESOURCES PRIORITIES AND ALLOCATIONS SYSTEM (HRPAS)

**Subpart A—General**



**Subpart B—Definitions**



**Subpart C—Placement of Rated Orders**



**Subpart D—Special Priorities Assistance**



**Subpart E—Allocation Actions**



**Subpart F—Official Actions**



**Subpart G—Compliance**



**Subpart H—Adjustments, Exceptions, and Appeals**



**Subpart I—Miscellaneous Provisions**



**Appendix A to Part 101—Approved Programs and Delegate Agencies**

**Authority:** Defense Production Act of 1950, as amended (50 U.S.C. 4501, *et seq.*), and Executive Order 13603 (77 FR 16651, 3 CFR, March 16, 2012).

### Subpart A—General

**§ 101.1 Purpose.**

This part provides guidance and procedures for use of Defense Production Act (DPA) of 1950 section 101 priorities and allocations authority with respect to health resources necessary or appropriate to promote the national defense. The guidance and procedures in this part are consistent with the guidance and procedures provided in other regulations that form the Federal Priorities and Allocations System (FPAS). Guidance and procedures for use of the DPA priorities and allocations authority with respect to other types of resources are provided for: food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer in 7 CFR part 789; all forms of energy in 10 CFR part 217; all forms of civil transportation in 49 CFR part 33; and all other materials, services, and facilities, including construction materials in 15 CFR part 700.

**§ 101.2 Priorities and allocations authority.**

(a) Section 201 of Executive Order (E.O.) 13603, delegates the President's priorities and allocations authority under section 101 of the DPA. Section 101 of the DPA provides the President with authority to require acceptance and priority performance of contracts and orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense to a number of agencies. Section 201 of E.O. 13603 delegates the President's authority to specific agencies as follows:

(1) The Secretary of Agriculture with respect to food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer;

(2) The Secretary of Energy with respect to all forms of energy;

(3) The Secretary of Health and Human Services with respect to health resources;

(4) The Secretary of Transportation with respect to all forms of civil transportation;

(5) The Secretary of Defense with respect to water resources; and

(6) The Secretary of Commerce for all other materials, services, and facilities, including construction materials.

(b) Section 202 of E.O. 13603 states that the authority delegated in section 201, except as provided in section 201(e) of E.O. 13603, may be used only to support programs that have been determined in writing as necessary or appropriate to promote the national defense:

(1) By the Secretary of Defense with respect to military production and construction, military assistance to foreign nations, military use of civil transportation, stockpiles managed by the Department of Defense, space, and directly related activities.

(2) By the Secretary of Energy with respect to energy production and construction, distribution, and use, and directly related activities; and

(3) By the Secretary of Homeland Security with respect to all other national defense programs, including civil defense and continuity of Government.

(c) Section 201(e) of E.O. 13603 provides that each department that is delegated allocations authority under section 201(a) of E.O. 13603 may use this authority with respect to control of the general distribution of any material (including applicable services) in the civilian market only after:

(1) Making the finding required under section 101(b) of the DPA; and

(2) The finding has been approved by the President.

#### § 101.3 Program eligibility.

Certain programs to promote the national defense are approved for priorities and allocations support. These include programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Other eligible programs include emergency preparedness activities conducted pursuant to title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 *et seq.*] and critical infrastructure protection and restoration.

### Subpart B—Definitions

#### § 101.20 Definitions.

The following definitions pertain to all sections of this part:

*Allocation* means the control of the distribution of materials, services, or facilities for a purpose deemed necessary or appropriate to promote the national defense.

*Allocation order* means an official action to control the distribution of materials, services, or facilities for a purpose deemed necessary or appropriate to promote the national defense.

*Allotment* means an official action that specifies the maximum quantity or use of a material, service, or facility authorized for a specific use to promote the national defense.

*Approved program* means a program determined by the Secretary of Defense, the Secretary of Energy, or the Secretary of Homeland Security to be necessary or appropriate to promote the national defense, under the authority of the Defense Production Act and in accordance with section 202 of E.O. 13603.

*Construction* means the erection, addition, extension, or alteration of any building, structure, or project, using materials or products which are to be an integral and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

*Critical infrastructure* means any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.

*Defense Production Act* or *DPA* means the Defense Production Act of 1950, as amended (50 U.S.C. 4501 *et seq.*).

*Delegate agency* means a Federal Government agency authorized by delegation from the Department of Health and Human Services (HHS) to place priority ratings on contracts or orders needed to support approved programs.

*Directive* means an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions.

*Emergency preparedness* means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. ''Emergency Preparedness'' includes the following:

(1) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the nonmilitary evacuation of the civilian population).

(2) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).

(3) Measures to be undertaken following a hazard (including activities for firefighting; rescue; emergency medical, health and sanitation services; monitoring for specific dangers of special weapons; unexploded bomb reconnaissance; essential debris clearance; emergency welfare measures; and immediately essential emergency repair or restoration of damaged vital facilities).

*Facilities* includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.

*Farm equipment* means equipment, machinery, and repair parts manufactured for use on farms in connection with the production or preparation for market use of food resources.

*Fertilizer* means any product or combination of products that contain one or more of the elements nitrogen, phosphorous, and potassium for use as a plant nutrient.

*Food resources* means all commodities and products, (simple, mixed, or compound), or complements to such commodities of products, that are capable of being ingested by other human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products thereof in vendible form for human or animal consumption. ''Food resources'' also means potable water packaged in commercially marketable containers, all starches, sugars, vegetable and animal or marine fats and oils, seed, cotton, hemp, and flax fiber, but does not mean any such material after it loses its identity as an agricultural commodity or agriculture product.

*Food resource facilities* means plants, machinery, vehicles (including on

farm), and other facilities required for the production, processing, distribution, and storage (including cold storage) of food resources, and for the domestic distribution of farm equipment and fertilizer (excluding transportation thereof).

*Hazard* means an emergency or disaster resulting from:

(1) A natural disaster; or

(2) An accidental or man-caused event.

*Health resources* means drugs, biological products, medical devices, materials, facilities, health supplies, services and equipment required to diagnose, mitigate, or prevent the impairment of, improve, treat, cure, or restore the physical or mental health conditions of the population.

*Homeland Security* includes efforts—

(1) To prevent terrorist attacks within the United States;

(2) To reduce the vulnerability of the United States to terrorism;

(3) To minimize damage from a terrorist attack in the United States; and

(4) To recover from a terrorist attack in the United States.

*Industrial resource* means all materials, services, and facilities, including construction materials, the authority for which has not been delegated to other agencies under E.O. 13603. The term ''Industrial resource'' does not include food resources, food resource facilities, livestock resources, veterinary resources, and the domestic distribution of farm equipment and commercial fertilizer; all forms of energy; health resources; all forms of civil transportation; and water resources.

*Item* means any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

*Maintenance and Repair and/or Operating Supplies* (*MRO*) includes the following—

(1) ''*Maintenance*'' is the upkeep necessary to continue any plant, facility, or equipment in working condition;

(2) ''*Repair*'' is the restoration of any plant, facility, or equipment to working condition when it has been rendered unsafe or unfit for service by wear and tear, damage, or failure of parts;

(3) ''*Operating Supplies*'' are any resources carried as operating supplies according to a person's established accounting practice. ''Operating Supplies'' may include hand tools and expendable tools, jigs, dies, fixtures used on production equipment, lubricants, cleaners, chemicals, and other expendable items; and

(4) *MRO* does not include items produced or obtained for sale to other persons or for installation upon or attachment to the property of another person, or items required for the production of such items; items needed for the replacement of any plant, facility, or equipment; or items for the improvement of any plant, facility, or equipment by replacing items which are still in working condition with items of a new or different kind, quality, or design.

*Materials* includes—

(1) Any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and

(2) Any technical information or services ancillary to the use of any such materials, commodities, articles, components, products, or items.

*National defense* means programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) and critical infrastructure protection and restoration.

*Official action* means an action taken by HHS under the authority of the DPA, E.O. 13603, and this part or another regulation under the FPAS. Such actions include the issuance of Rating Authorizations, Directives, Set Asides, Allotments, Letters of Understanding, and Demands for Information, Inspection Authorizations, and Administrative Subpoenas.

*Person* includes any individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof; or any State or local government or agency thereof; and for purposes of administration of this part, includes the Federal Government and any authorized foreign government or international organization or agency thereof, delegated authority as provided in this part.

*Priority rating* is an identifying code assigned by HHS, a Delegate Agency or authorized person placed on all rated orders for health resources and consisting of the rating symbol and program identification symbol.

*Program Identification Symbols* is an abbreviation used to indicate which approved program is supported by a rated order.

*Rated order* means a prime contract, a subcontract, or a purchase order in support of an approved program issued in accordance with the provisions of this part.

*Resource department* means any agency delegated priorities and allocations authority as specified in § 101.2.

*Secretary* means the Secretary of HHS.

*Services* includes any effort that is needed for or incidental to—

(1) The development, production, processing, distribution, delivery, or use of a health resource.

(2) The construction of facilities.

(3) Other national defense programs and activities.

*Set-aside* means an official action that requires a person to reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders.

*Stafford Act* means title VI (Emergency Preparedness) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*).

*Water resources* means all usable water, from all sources, within the jurisdiction of the United States, that can be managed, controlled, and allocated to meet emergency requirements, except ''water resources'' do not include usable water that qualifies as ''food resources''.

*Working day* means any day that the recipient of an order is open for business.

## Subpart C—Placement of Rated Orders

### § 101.30 Delegations of authority.

(a) The priorities and allocations authorities of the President under section 101 of the DPA with respect to health resources have been delegated to the Secretary under E.O. 13603. The Secretary may re-delegate the Secretary's priorities authorities under the DPA to authorize a Delegate Agency to assign priority ratings to orders for health resources needed for use in approved programs.

(b) Pursuant to 87 FR 58363 published in the **Federal Register** on September 26, 2022, the Secretary delegated to the Assistant Secretary for Preparedness and Response (the ASPR) within the Administration for Strategic Preparedness and Response (ASPR), the authority under section 201 of E.O. 13603 to exercise priorities authority under section 101 of the DPA. This delegation authorized the ASPR, on behalf of the Secretary, to approve DO—[—[M1–M9] priority rating requests for health resources that promote the national defense, though this delegation

excludes the authority to approve all priorities provisions for health resources that require DX—[—[M1–M9] priority ratings.

**§ 101.31 Priority ratings.**

(a) *Levels of priority.* (1) There are two levels of priority established by the HRPAS, identified by the rating symbols ''DO'' and ''DX''.

(2) All DO rated orders have equal priority with each other and take precedence over unrated orders. All DX rated orders have equal priority with each other and take precedence over DO rated orders and unrated orders. (For resolution of conflicts among rated orders of equal priority, see § 101.34(c).)

(3) In addition, a Directive regarding priority treatment for a given item issued by HHS for that item takes precedence over any DX rated order, DO rated order, or unrated order, as stipulated in the Directive. (For a full discussion of Directives, see § 101.62.)

(b) *Priority ratings.* A priority rating is an identifying code assigned by a Delegate Agency or authorized person placed on all rated orders for health resources. It consists of the rating symbol and the program identification symbol.

**§ 101.32 Elements of a rated order.**

(a) Each rated order must include:

(1) The appropriate priority rating (*e.g.,* DO—[M1–M9 or DX—[—[M1–M9];

(2) A required delivery date or dates. The words ''immediately'' or ''as soon as possible'' do not constitute a delivery date. A ''requirements contract,'' ''basic ordering agreement,'' ''prime vendor contract,'' or similar procurement document bearing a priority rating may contain no specific delivery date or dates and may provide for the furnishing of items or service from time-to-time or within a stated period against specific purchase orders, such as ''calls,'' ''requisitions,'' and ''delivery orders.'' These purchase orders must specify a required delivery date or dates and are to be considered as rated as of the date of their receipt by the supplier and not as of the date of the original procurement document;

(3) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an individual authorized to sign rated orders for the person placing the order. The signature or use of the name certifies that the rated order is authorized under this part and that the requirements of this part are being followed; and

(4) A statement that reads in substance:

(b) This is a rated order certified for national defense use, and you are required to follow all the provisions of the Health Resources Priorities and Allocations System regulation at 45 CFR part 101.

(c) Additional element required for certain emergency preparedness rated orders. If the rated order is placed in support of emergency preparedness requirements and expedited action is necessary and appropriate to meet these requirements, the following statement must be included in the order: ''This rated order is placed for the purpose of emergency preparedness. It must be accepted or rejected within [Insert a time limit no less than the minimum applicable time limit specified in § 101. 33(e)].

**§ 101.33 Acceptance and rejection of rated orders.**

(a) *Mandatory acceptance.* (1) Except as otherwise specified in this section, a person shall accept every rated order received and must fill such orders regardless of any other rated or unrated orders that have been accepted.

(2) A person shall not discriminate against rated orders in any manner such as by charging higher prices or by imposing different terms and conditions than for comparable unrated orders.

(b) *Mandatory rejection.* Unless otherwise directed by HHS for a rated order involving health resources:

(1) A person shall not accept a rated order for delivery on a specific date if unable to fill the order by that date. However, the person must inform the customer of the earliest date on which delivery can be made and offer to accept the order on the basis of that date. Scheduling conflicts with previously accepted lower rated or unrated orders are not sufficient reason for rejection under this section.

(2) A person shall not accept a DO rated order for delivery on a date which would interfere with delivery of any previously accepted DO or DX rated orders. However, the person must offer to accept the order based on the earliest delivery date otherwise possible.

(3) A person shall not accept a DX rated order for delivery on a date which would interfere with delivery of any previously accepted DX rated orders but must offer to accept the order based on the earliest delivery date otherwise possible.

(4) If a person is unable to fill all of the rated orders of equal priority status received on the same day, the person must accept, based upon the earliest delivery dates, only those orders which can be filled, and reject the other orders. For example, a person must accept order A requiring delivery on December 15 before accepting order B requiring delivery on December 31. However, the person must offer to accept the rejected orders based on the earliest delivery dates otherwise possible.

(c) *Optional rejection.* Unless otherwise directed by HHS for a rated order involving health resources, rated orders may be rejected in any of the following cases as long as a supplier does not discriminate among customers:

(1) If the person placing the order is unwilling or unable to meet regularly established terms of sale or payment;

(2) If the order is for an item not supplied or for a service not capable of being performed;

(3) If the order is for an item or service produced, acquired, or provided only for the supplier's own use for which no orders have been filled for two years prior to the date of receipt of the rated order. If, however, a supplier has sold some of these items or provided similar services, the supplier is obligated to accept rated orders up to that quantity or portion of production or service, whichever is greater, sold or provided within the past two years;

(4) If the person placing the rated order, other than the U.S. Government, makes the item or performs the service being ordered;

(5) If acceptance of a rated order or performance against a rated order would violate any other regulation, official action, or order of the HHS issued under the authority of the DPA or another relevant statute.

(d) *Customer notification requirements.* (1) Except as provided in paragraph (e) of this section, a person must accept or reject a rated order in writing or electronically within fifteen (15) working days after receipt of a DO-rated order and within ten (10) working days after receipt of a DX-rated order. If the order is rejected, the person must give reasons in writing or electronically for the rejection.

(2) If a person has accepted a rated order and subsequently finds that shipment or performance will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment or performance date. If notification is given verbally, written (hard copy) or electronic confirmation must be provided within one (1) working day of the verbal notice.

(e) *Exception for emergency response conditions.* If the rated order is placed for the purpose of emergency preparedness, and expedited action is necessary or appropriate to meet these requirements and the order includes the statement as set forth in § 101.32(d)(2),

a person must accept or reject a rated order and transmit the acceptance or rejection in writing or in an electronic format within the time frame specified in the rated order (usually within two working days after receipt of the order). The minimum times for acceptance or rejection that such orders may specify are six (6) hours after receipt if the order is issued by an authorized person in response to a hazard that has occurred; or twelve (12) hours after receipt if the order is issued by an authorized person to prepare for an imminent hazard.

**§ 101.34 Preferential scheduling.**

(a) A person must schedule operations, including the acquisition of all needed production items or services, in a timely manner to satisfy the delivery requirements of each rated order. Modifying production or delivery schedules is necessary only when required delivery dates for rated orders cannot otherwise be met.

(b) DO rated orders must be given production preference over unrated orders, if necessary, to meet required delivery dates, even if this requires the diversion of items being processed or ready for delivery or services being performed against unrated orders. Similarly, DX rated orders must be given preference over DO rated orders and unrated orders. (Examples: If a person receives a DO rated order with a delivery date of June 3 and if meeting that date would mean delaying production or delivery of an item for an unrated order, the unrated order must be delayed. If a DX rated order is received calling for delivery on July 15 and a person has a DO rated order requiring delivery on June 2 and operations can be scheduled to meet both deliveries, there is no need to alter production schedules to give any additional preference to the DX rated order. However, if business operations cannot be altered to meet both the June 2 and July 15 delivery dates, then the DX rated order must be given priority over the DO rated order.)

(c)(1) If a person finds that delivery or performance against any accepted rated orders conflicts with the delivery or performance against other accepted rated orders of equal priority status, the person shall give precedence to the conflicting orders in the sequence in which they are to be delivered or performed (not to the receipt dates). If the conflicting orders are scheduled to be delivered or performed on the same day, the person shall give precedence to those orders that have the earliest receipt dates.

(2) If a person is unable to resolve rated order delivery or performance conflicts under this section, the person should promptly seek special priorities assistance as provided in §§ 101.40 through 101.44. If the person's customer objects to the rescheduling of delivery or performance of a rated order, the customer should promptly seek special priorities assistance as provided in §§ 101.40 through 101.44. For any rated order against which delivery or performance will be delayed, the person must notify the customer as provided in § 101.33(d)(2).

(d) If a person is unable to purchase needed production items in time to fill a rated order by its required delivery date, the person must fill the rated order by using inventoried production items. A person who uses inventoried items to fill a rated order may replace those items with the use of a rated order as provided in § 101.37(b).

**§ 101.35 Extension of priority ratings.**

(a) A person must use rated orders with suppliers to obtain items or services needed to fill a rated order. The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in this part or as directed by HHS.

(b) The priority rating must be included on each successive order placed to obtain items or services needed to fill a customer's rated order. This continues from contractor to subcontractor to supplier throughout the entire procurement chain.

**§ 101.36 Changes or cancellations of priority ratings and rated orders.**

(a.) The priority rating on a rated order may be changed or canceled by:

(1) An official action of HHS; or

(2) Written notification from the person who placed the rated order (including a Delegate Agency).

(b) If an unrated order is amended to make it a rated order, or a DO rating is changed to a DX rating, the supplier must give the appropriate preferential treatment to the order as of the date the change is received by the supplier.

(c) An amendment to a rated order that significantly alters a supplier's original production or delivery schedule shall constitute a new rated order as of the date of its receipt. The supplier must accept or reject the amended order according to the provisions of § 101.33.

(d) The following amendments do not constitute a new rated order: a change in shipping destination; a reduction in the total amount of the order; an increase in the total amount of the order which has negligible impact upon deliveries; a minor variation in size or design (prior to the start of production); or a change which is agreed upon between the supplier and the customer.

(e) If a person no longer needs items or services to fill a rated order, any rated orders placed with suppliers for the items or services, or the priority rating on those orders, must be canceled.

(f) When a priority rating is added to an unrated order, or is changed or canceled, all suppliers must be promptly notified in writing.

**§ 101.37 Use of rated orders.**

(a) A person must use rated orders to obtain:

(1) Items which will be physically incorporated into other items to fill rated orders, including that portion of such items normally consumed or converted into scrap or by-products in the course of processing;

(2) Containers or other packaging materials required to make delivery of the finished items against rated orders;

(3) Services, other than contracts of employment, needed to fill rated orders;

(4) MRO needed to produce the finished items to fill rated orders.

(b) A person may use a rated order to replace inventoried items (including finished items) if such items were used to fill rated orders, as follows:

(1) The order must be placed within 90 days of the date of use of the inventory.

(2) A DO rating symbol and the program identification symbol indicated on the customer's rated order must be used on the order. A DX rating may not be used even if the inventory was used to fill a DX rated order.

(3) If the priority ratings on rated orders from one customer or several customers contain different program identification symbols, the rated orders may be combined.

(c) A person may combine DX and DO rated orders from one customer or several customers if the items or services covered by each level of priority are identified separately and clearly.

(d) Combining rated and unrated orders.

(1) A person may combine rated and unrated order quantities on one purchase order provided that:

(i) The rated quantities are separately and clearly identified; and

(ii) The four elements of a rated order, as required by § 101.32, are included on the order with the statement required in § 101.32(d) modified to read in substance: ''This purchase order contains rated order quantities certified for national defense use, and you are required to follow all applicable provisions of the Health Resources Priorities and Allocations System regulations at 45 CFR part 101 only as it pertains to the rated quantities''.

(2) A supplier must accept or reject the rated portion of the purchase order as provided in § 101.33 and give preferential treatment only to the rated quantities as required by this part. This part may not be used to require preferential treatment for the unrated portion of the order.

(3) Any supplier who believes that rated and unrated orders are being combined in a manner contrary to the intent of this part or in a fashion that causes undue or exceptional hardship may submit a request for adjustment or exception under § 101.80.

(e) A person may place a rated order for the minimum commercially procurable quantity even if the quantity needed to fill a rated order is less than that minimum. However, a person must combine rated orders as provided in paragraph (c) of this section, if possible, to obtain minimum procurable quantities.

(f) A person is not required to place a priority rating on an order for less than one-half of the Simplified Acquisition Threshold (as established in the Federal Acquisition Regulation (FAR) (see 48 CFR 2.101) or in other authorized acquisition regulatory or management systems) whichever amount is greater, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

### § 101.38 Limitations on placing rated orders.

(a) *General limitations.* (1) A person may not place a DO or DX rated order pursuant to this part unless the person in receipt of the rated order has been explicitly authorized to do so by HHS or a Delegate Agency or is otherwise permitted to do so by this part.

(2) Rated orders may not be used to obtain:

(i) Delivery on a date earlier than needed;

(ii) A greater quantity of the item or services than needed, except to obtain a minimum procurable quantity. Separate rated orders may not be placed solely for the purpose of obtaining minimum procurable quantities on each order;

(iii) Items or services in advance of the receipt of a rated order, except as specifically authorized by HHS (see § 101.41(c) for information on obtaining authorization for a priority rating in advance of a rated order);

(iv) Items that are not needed to fill a rated order, except as specifically authorized by HHS, or as otherwise permitted by this part; or

(v) Any of the following items unless specific priority rating authority has been obtained from HHS, a Delegate Agency, or the Department of Commerce, as appropriate:

(A) Items for plant improvement, expansion, or construction, unless they will be physically incorporated into a construction project covered by a rated order; or

(B) Production or construction equipment or items to be used for the manufacture of production equipment. [For information on requesting priority rating authority, see § 101.41.]

(C) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons unless such development or production has been authorized by the President or the Secretary of Defense. This provision does not however prohibit the use of the priority and allocations authority to acquire or produce qualified countermeasures that are necessary to treat, identify, or prevent harm from any biological or chemical agent that may pose a public health threat affecting national security.

(b) *Jurisdictional limitations.* Unless authorized by the resource agency with jurisdiction, the provisions of this part are not applicable to the following resources:

(1) Food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer (Resource agency with jurisdiction—Department of Agriculture);

(2) All forms of energy (Resource agency with jurisdiction—Department of Energy);

(3) All forms of civil transportation (Resource agency with jurisdiction—Department of Transportation);

(4) Water resources (Resource agency with jurisdiction—Department of Defense/U.S. Army Corps of Engineers);

(5) All materials, services, and facilities, including construction materials (industrial resources) for which the authority has not been delegated to other agencies under E.O. 13603 (Resource agency with jurisdiction—Department of Commerce);

(6) The priorities and allocations authority of this part may not be applied to communications services (Resource agency with jurisdiction—National Communications System under E.O. 13618 of July 6, 2012).

## Subpart D—Special Priorities Assistance

### § 101.40 General provisions.

(a) Once a priority rating has been authorized pursuant to this part, further action by HHS is generally not needed. However, from time-to-time, production or delivery problems will arise in connection with rated orders for health resources as covered under this part. In this event, a person should immediately contact ASPR for guidance, as specified in § 101.93. ASPR serves as the lead policy office for emergency preparedness and response operations on behalf of HHS and manages the Department's delegated DPA authorities. If ASPR is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, ASPR may forward the request to another agency with resource jurisdiction, such as the Department of Commerce, as appropriate, for action. Special priorities assistance is provided to alleviate problems that do arise.

(b) Special priorities assistance is available for any reason consistent with this part. Generally, special priorities assistance is provided to expedite deliveries, resolve delivery conflicts, place rated orders, locate suppliers, or to verify information supplied by customers and vendors. Special priorities assistance may also be used to request rating authority for items that are not normally eligible for priority treatment.

### § 101.41 Requests for priority rating authority.

(a) *Rating authority for items or services not normally rated.* If a rated order is likely to be delayed because a person is unable to obtain items or services not normally rated under this part, the person may request the authority to use a priority rating in ordering the needed items or services.

(b) *Rating authority for production or construction equipment.* (1) A request for priority rating authority for production or construction equipment must be submitted to the U.S. Department of Commerce on Form BIS–999.

(2) When the use of a priority rating is authorized for the procurement of production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

(c) *Rating authority in advance of a rated prime contract.* (1) In certain cases, and upon specific request HHS may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance-rating authority must obtain sponsorship of

the request from HHS or the appropriate Delegate Agency. The person shall also assume any business risk associated with the placing of rated orders in the event the rated prime contract is not issued.

(2) The person must state the following in the request: It is understood that the authorization of a priority rating in advance of our receiving a rated prime contract from the Department of Health and Human Services (HHS) and our use of that priority rating with our suppliers in no way commits HHS or any other government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government shall not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request.

(3) In reviewing requests for rating authority in advance of a rated prime contract, HHS will consider, among other things, the following criteria:

(i) The probability that the prime contract will be awarded;

(ii) The impact of the resulting rated orders on suppliers and on other authorized programs;

(iii) Whether the contractor is the sole source;

(iv) Whether the item being produced has a long lead time;

(v) The time period for which the rating is being requested;

(4) HHS may require periodic reports on the use of the rating authority granted under paragraph (c) of this section.

(5) If a rated prime contract is not issued, the person shall promptly notify all suppliers who have received rated orders pursuant to the advanced rating authority that the priority rating on those orders is cancelled.

### § 101.42 Examples of assistance.

(a) While special priorities assistance may be provided for any reason in support of this part, it is usually provided in situations where:

(1) A person is experiencing difficulty in obtaining delivery against a rated order by the required delivery date; or

(2) A person cannot locate a supplier for an item or service needed to fill a rated order.

(b) Other examples of special priorities assistance include:

(1) Ensuring that rated orders receive preferential treatment by suppliers;

(2) Resolving production or delivery conflicts between various rated orders;

(3) Assisting in placing rated orders with suppliers;

(4) Verifying the urgency of rated orders; and

(5) Determining the validity of rated orders.

### § 101.43 Criteria for assistance.

Requests for special priorities assistance should be timely, *i.e.,* the request has been submitted promptly and enough time exists for HHS, the Delegate Agency, or the Department of Commerce for industrial resources to affect a meaningful resolution to the problem, and must establish that:

(a) There is an urgent need for the item; and

(b) The applicant has made a reasonable effort to resolve the problem.

### § 101.44 Instances where assistance may not be provided.

Special priorities assistance is provided at the discretion of HHS or the Delegate Agency when it is determined that such assistance is warranted to meet the objectives of this part. Examples where assistance may not be provided include situations when a person is attempting to:

(a) Secure a price advantage;

(b) Obtain delivery prior to the time required to fill a rated order;

(c) Gain competitive advantage;

(d) Disrupt an industry apportionment program in a manner designed to provide a person with an unwarranted share of scarce items; or

(e) Overcome a supplier's regularly established terms of sale or conditions of doing business.

## Subpart E—Allocation Actions

### § 101.50 Policy.

(a) Allocation orders will:

(1) Only be used when there is insufficient supply of a material, service, or facility to satisfy national defense supply requirements through the use of the priorities authority or when the use of the priorities authority would cause a severe and prolonged disruption in the supply of materials, services, or facilities available to support normal U.S. economic activities; and

(2) Not be used to ration materials or services at the retail level.

(b) Allocation orders, when used, will be distributed equitably among the suppliers of the materials, services, or facilities being allocated and not require any person to relinquish a disproportionate share of the civilian market.

### § 101.51 General procedures.

Before the Department of Health and Human Services uses its allocations authority to address a supply problem within its resource jurisdiction, it will develop a plan that includes:

(a) A copy of the written determination made in accordance with section 202 of Executive Order 13603, that the program or programs that would be supported by the allocation action are necessary or appropriate to promote the national defense.

(b) A detailed description of the situation to include any unusual events or circumstances that have created the requirement for an allocation action;

(c) A statement of the specific objective(s) of the allocation action;

(d) A list of the materials, services, or facilities to be allocated;

(e) A list of the sources of the materials, services, or facilities that will be subject to the allocation action;

(f) A detailed description of the provisions that will be included in the allocation orders, including the type(s) of allocation orders, the percentages or quantity of capacity or output to be allocated for each purpose, and the duration of the allocation action (*i.e.,* anticipated start and end dates);

(g) An evaluation of the impact of the proposed allocation action on the civilian market; and

(h) Proposed actions, if any, to mitigate disruptions to civilian market operations.

### § 101.52 Controlling the general distribution of a material in the civilian market.

No allocation action taken by HHS may be used to control the general distribution of a material in the civilian market, unless the Secretary has:

(a) Made a written finding that:

(1) Such material is a scarce and critical material essential to the national defense, and

(2) The requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship;

(b) Submitted the finding for the President's approval through the Assistant to the President and National Security Advisor and the Assistant to the President for Homeland Security and Counterterrorism; and

(c) The President has approved the finding.

### § 101.53 Types of allocation orders.

There are three types of allocation orders available for communicating allocation actions.

(a) *Set-aside.* An official action that requires a person to reserve materials,

services, or facilities capacity in anticipation of the receipt of rated orders.

(b) *Directive.* An official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. A directive can require a person to: Stop or reduce production of an item; prohibit the use of selected materials, services, or facilities; or divert the use of materials, services, or facilities from one purpose to another; and

(c) *Allotment.* An official action that specifies the maximum quantity of a material, service, or facility authorized for a specific use to promote the national defense.

**§ 101.54 Elements of an allocation order.**

Allocation orders may be issued directly to the affected persons or by constructive notice through publication in the **Federal Register**. This section describes the elements that each order must include.

(a) Each allocation order must include:

(1) A detailed description of the required allocation action(s), including its relationship to any received DX rated orders, DO rated orders, and unrated orders;

(2) Specific start and end calendar dates for each required allocation action;

(3) The written signature on a manually placed order or the digital signature on an electronically placed order of the Secretary of HHS.

(b)(1) Elements to be included in orders issued directly to affected persons:

(2) A statement that reads in substance: ''This is an allocation order certified for national defense use. [Insert the name of the person receiving the order] is required to comply with this order, in accordance with the provisions of the Health Resources Priorities and Allocations System regulation (45 CFR part 101).

(c)(1) Elements to be included in an allocation order that gives constructive notice through publication in the **Federal Register**:

(2) A statement that reads in substance: ''This is an allocation order certified for national defense use. [Insert the name(s) of the person(s) to whom the order applies or a description of the class of persons to whom the order applies] is (are) required to comply with this order, in accordance with the provisions of the Health Resources Priorities and Allocations System regulation (45 CFR part 101).

**§ 101.55 Mandatory acceptance of an allocation order.**

(a) Except as otherwise specified in this section (see paragraph (c) of this section), a person shall accept and comply with every allocation order received.

(b) A person shall not discriminate against an allocation order in any manner such as by charging higher prices for materials, services, or facilities covered by the order or by imposing terms and conditions for contracts and orders involving allocated materials, services, or facilities that differ from the person's terms and conditions for contracts and orders for the materials, services, or facilities prior to receiving the allocation order.

(c) If a person is unable to comply fully with the required action(s) specified in an allocation order, the person must notify the ASPR, as specified in § 101.93, immediately, explain the extent to which compliance is possible, and give the reasons why full compliance is not possible. If notification is given verbally, then written or electronic confirmation must be provided within one (1) working day. Such notification does not release the person from complying with the order to the fullest extent possible, until the person is notified by HHS that the order has been changed or cancelled.

**§ 101.56 Changes or cancellations of an allocation order.**

An allocation order may be changed or canceled by an official action of HHS. Notice of such changes or cancellations may be provided directly to persons to whom the order being cancelled or modified applies or constructive notice may be provided by publication in the **Federal Register**.

## Subpart F—Official Actions

**§ 101.60 General provisions.**

(a) HHS may take specific official actions to implement the provisions of this part.

(b) These official actions include, but are not limited to, Rating Authorizations, Directives, and Letters of Understanding (See § 101.20.)

**§ 101.61 Rating Authorizations.**

(a) A Rating Authorization is an official action granting specific priority rating authority that:

(1) Permits a person to place a priority rating on an order for an item or service not normally ratable under this part; or

(2) Authorizes a person to modify a priority rating on a specific order or series of contracts or orders.

(b) To request priority rating authority, see § 101.41.

**§ 101.62 Directives.**

(a) A Directive is an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions.

(b) A person must comply with each Directive issued. However, a person may not use or extend a Directive to obtain any items from a supplier, unless expressly authorized to do so in the Directive.

(c) A Directive takes precedence over all DX rated orders, DO rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the Directive.

**§ 101.63 Letters of Understanding.**

(a) A Letter of Understanding is an official action that may be issued in resolving special priorities assistance cases to reflect an agreement reached by all parties including HHS, the Department of Commerce (if applicable), a Delegate Agency (if applicable), the supplier, and the customer.

(b) A Letter of Understanding is not used to alter scheduling between rated orders, to authorize the use of priority ratings, to impose restrictions under this part. Rather, Letters of Understanding are used to confirm production or shipping schedules that do not require modifications to other rated orders.

## Subpart G—Compliance

**§ 101.70 General provisions.**

(a) HHS may take specific official actions for any reason necessary or appropriate to the enforcement or the administration of the Defense Production Act and other applicable statutes, this part, or an official action. Such actions include Administrative Subpoenas, Demands for Information, and Inspection Authorizations.

(b) Any person who places or receives a rated order or an allocation order must comply with the provisions of this part.

(c) Willful violation of the provisions of title I or section 705 of the DPA and other applicable statutes, this part, or an official action of HHS is a criminal act, punishable as provided in the DPA and other applicable statutes, and as set forth in § 101.74.

**§ 101.71 Audits and investigations.**

(a) Audits and investigations are official examinations of books, records, documents, other writings, and information to ensure that the provisions of the DPA and other applicable statutes, this part, and official actions have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this part.

(b) When undertaking an audit or investigation, HHS shall:

(1) Define the scope and purpose in the official action given to the person under investigation; and

(2) Have ascertained that the information sought, or other adequate and authoritative data are not available from any Federal or other responsible agency.

(c) In administering this part, HHS may issue the following documents that constitute official actions:

(1) *Administrative Subpoenas.* An Administrative Subpoena requires a person to appear as a witness before an official designated by HHS to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the DPA and other applicable statutes, this part, or official actions. An Administrative Subpoena may also require the production of books, papers, records, documents and physical objects or property.

(2) *Demands for Information.* A Demand for Information requires a person to furnish to a duly authorized representative of HHS any information necessary or appropriate to the enforcement or the administration of the DPA and other applicable statutes, this part, or official actions.

(3) *Inspection Authorizations.* An Inspection Authorization requires a person to permit a duly authorized representative of HHS to interview the person's employees or agents, to inspect books, records, documents, other writings, and information, including electronically-stored information, in the person's possession or control at the place where that person usually keeps them or otherwise, and to inspect a person's property when such interviews and inspections are necessary or appropriate to the enforcement or the administration of the DPA and related statutes, this part, or official actions.

(d) The production of books, records, documents, other writings, and information will not be required at any place other than where they are usually kept, if, prior to the return date specified in the Administrative Subpoena or Demand for Information, a duly authorized official of HHS is furnished with copies of such material that are certified under oath to be true copies. As an alternative, a duly authorized representative of HHS may enter into a stipulation with a person as to the content of the material.

(e) An Administrative Subpoena, Demand for Information, or Inspection Authorization shall include the name, title, or official position of the person to be served, the evidence sought to be adduced, and its general relevance to the scope and purpose of the audit, investigation, or other inquiry. If employees or agents are to be interviewed; if books, records, documents, other writings, or information are to be produced; or if property is to be inspected; the Administrative Subpoena, Demand for Information, or Inspection Authorization will describe them with particularity.

(f) Service of documents shall be made in the following manner:

(1) Service of a Demand for Information or Inspection Authorization shall be made personally, or by Certified Mail-Return Receipt Requested at the person's last known address. Service of an Administrative Subpoena shall be made personally. Personal service may also be made by leaving a copy of the document with someone at least 18 years old at the person's last known dwelling or place of business.

(2) Service upon other than an individual may be made by serving a partner, corporate officer, or a managing or general agent authorized by appointment or by law to accept service of process. If an agent is served, a copy of the document shall be mailed to the person named in the document.

(3) Any individual 18 years of age or over may serve an Administrative Subpoena, Demand for Information, or Inspection Authorization. When personal service is made, the individual making the service shall prepare an affidavit as to the manner in which service was made and the identity of the person served, and return the affidavit, and in the case of subpoenas, the original document, to the issuing officer. In case of failure to make service, the reasons for the failure shall be stated on the original document.

### § 101.72 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of HHS to have access to any premises or to the source of information necessary to the administration or the enforcement of the DPA and other applicable statutes, this part, or official actions, HHS, through its authorized representative may seek compulsory process. Compulsory process means the institution of appropriate legal action, including ex parte application for an inspection warrant or its equivalent, in any forum of appropriate jurisdiction.

(b) Compulsory process may be sought in advance of an audit, investigation, or other inquiry, if, in the judgment of the Secretary there is reason to believe that a person will refuse to permit an audit, investigation, or other inquiry, or that other circumstances exist which make such process desirable or necessary.

### § 101.73 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, HHS may inform the person in writing of HHS's position regarding that person's non-compliance with the requirements of the DPA and other applicable statutes, this part, or an official action.

(b) In cases where HHS determines that failure to comply with the provisions of the DPA and other applicable statutes, this part, or an official action was inadvertent, the person may be informed in writing of the particulars involved and the corrective action to be taken. Failure to take corrective action may then be construed as a willful violation of the DPA and other applicable statutes, this part, or an official action.

### § 101.74 Violations, penalties, and remedies.

(a) Willful violation of the provisions of the DPA, and related statutes (when applicable), this part, or an official action, is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. The maximum penalties provided by the DPA are a $10,000 fine, or one year in prison, or both.

(b) The Government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the DPA, this part, or an official action.

(c) In order to secure the effective enforcement of the DPA and other applicable statutes, this part, and official actions, the following are prohibited:

(1) No person may solicit, influence, or permit another person to perform any act prohibited by, or to omit any act required by, the DPA and other applicable statutes, this part, or an official action.

(2) No person may conspire or act in concert with any other person to perform any act prohibited by, or to omit any act required by, the DPA and other applicable statutes, this part, or an official action.

(3) No person shall deliver any item if the person knows or has reason to believe that the item will be accepted, redelivered, held, or used in violation of the DPA and other applicable statutes, this part, or an official action. In such instances, the person must immediately notify HHS that, in accordance with this provision, delivery has not been made.

**§ 101.75 Compliance conflicts.**

If compliance with any provision of the DPA and other applicable statutes, this part, or an official action would prevent a person from filling a rated order or from complying with another provision of the DPA and other applicable statutes, this part, or an official action, the person must immediately notify HHS, as specified in § 101.93, for resolution of the conflict.

## Subpart H—Adjustments, Exceptions, and Appeals

**§ 101.80 Adjustments or exceptions.**

(a) A person may submit a request to HHS for an adjustment or exception on the ground that:

(1) A provision of this part or an official action results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances; or

(2) The consequences of following a provision of this part or an official action are contrary to the intent of the DPA and other applicable statutes, or this part.

(b) Each request for adjustment or exception must be in writing and contain a complete statement of all the facts and circumstances related to the provision of this part or official action from which adjustment is sought and a full and precise statement of the reasons why relief should be provided.

(c) The submission of a request for adjustment or exception shall not relieve any person from the obligation of complying with the provision of this part or official action in question while the request is being considered unless such interim relief is granted in writing by the Secretary or the Secretary's designated representative.

(d) A decision of the Secretary or the Secretary's designated representative under this section may be appealed to the Secretary. (For information on the appeal procedure, see § 101.81.)

**§ 101.81 Appeals.**

(a) Any person whose request for adjustment or exception was denied by the Secretary or the Secretary's designated representative under § 101.80, may appeal to the Secretary who, through the Secretary's designated representative, shall review and reconsider the denial.

(b)(1) Except as provided in paragraph (b)(2) of this section, an appeal must be received by the Secretary no later than 45 days after receipt of a written notice of denial. After this 45-day period, an appeal may be accepted at the discretion of the Secretary.

(2) For requests for adjustment or exception involving rated orders placed for the purpose of emergency preparedness (see § 101.33(e)), an appeal must be received by the Secretary, no later than 15 days after receipt of a written notice of denial. Contract performance under the order shall not be stayed pending resolution of the appeal.

(c) Each appeal must be in writing and contain a complete statement of all the facts and circumstances related to the action appealed from and a full and precise statement of the reasons the decision should be modified or reversed.

(d) In addition to the written materials submitted in support of an appeal, an appellant may request, in writing, an opportunity for an informal hearing. This request may be granted or denied at the discretion of the Secretary or the Secretary's designated representative.

(e) When a hearing is granted, the Secretary may designate an HHS employee to act as the Secretary's representative and hearing officer to conduct the hearing and to prepare a report. The hearing officer shall determine all procedural questions and impose such time or other limitations deemed reasonable. In the event that the hearing officer decides that a printed transcript is necessary, all expenses shall be borne by the appellant.

(f) When determining an appeal, the Secretary may consider all information submitted during the appeal as well as any recommendations, reports, or other relevant information and documents available to HHS or consult with any other persons or groups.

(g) The submission of an appeal under this section shall not relieve any person from the obligation of complying with the provision of this part or official action in question while the appeal is being considered unless such relief is granted in writing by the Secretary.

## Subpart I—Miscellaneous Provisions

**§ 101.90 Protection against claims.**

A person shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of this part, or an official action, notwithstanding that such provision or action shall subsequently be declared invalid by judicial or other competent authority.

**§ 101.91 Records and reports.**

(a) Persons are required to make and preserve for at least three years, accurate and complete records of any transaction covered by this part or an official action.

(b) Records must be maintained in sufficient detail to permit the determination, upon examination, of whether each transaction complies with the provisions of this part or any official action. However, this part does not specify any method or system to be used.

(c) Records required to be maintained by this part must be made available for examination on demand by duly authorized representatives of HHS as provided in § 101.71.

(d) In addition, persons must develop, maintain, and submit any other records and reports to HHS that may be required for the administration of the DPA and other applicable statutes, and this part.

(e) DPA section 705(d), as implemented by E.O. 13603, provides that information obtained under this section which the Secretary deems confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall not be published or disclosed unless the Secretary determines that the withholding of this information is contrary to the interest of the national defense. Information required to be submitted to HHS in connection with the enforcement or administration of the DPA, this part, or an official action, is deemed to be confidential under DPA section 705(d) and shall be handled in accordance with applicable Federal law.

**§ 101.92 Applicability of this part and official actions.**

(a) This part and all official actions, unless specifically stated otherwise, apply to transactions in any state, territory, or possession of the United States and the District of Columbia.

(b) This part and all official actions apply not only to deliveries to other persons but also include deliveries to affiliates and subsidiaries of a person and deliveries from one branch, division, or section of a single entity to another branch, division, or section under common ownership or control.

(c) This part shall not be construed to affect any administrative actions taken by HHS, or any outstanding contracts or orders placed pursuant to any of the regulations, orders, schedules, or delegations of authority previously issued by HHS pursuant to authority granted to HHS, by the President under the DPA and E.O. 13603. Such actions, contracts, or orders shall continue in full force and effect under this part unless modified or terminated by proper authority.

**§ 101.93 Communications.**

All communications concerning this part, including requests for copies of the part and explanatory information,

requests for guidance or clarification, and requests for adjustment or exception shall be addressed to the Administration for Strategic Preparedness and Response, U.S. Department of Health and Human Services, Washington, DC 20201. Ref: HRPAS, or email *aspr.dpa@hhs.gov*.

Dated: July 24, 2023.

**Xavier Becerra,**

*Secretary, U.S. Department of Health, and Human Services.*

[FR Doc. 2023–15952 Filed 8–15–23; 8:45 am]

**BILLING CODE 4150–37–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 46 CFR Part 401

**[Docket No. USCG–2023–0438]**

**RIN 1625–AC89**

## Great Lakes Pilotage Rates—2024 Annual Review

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In accordance with the statutory provisions enacted by the Great Lakes Pilotage Act of 1960, the Coast Guard is proposing new pilotage rates for the 2024 shipping season. The Coast Guard estimates that this proposed rule would result in approximately a 5-percent increase in operating costs compared to the 2023 season.

**DATES:** Comments and related material must be received by the Coast Guard on or before September 15, 2023.

**ADDRESSES:** You may submit comments identified by docket number USCG–2023–0438 using the Federal Decision Making Portal at *www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** For information about this document, call or email Mr. Brian Rogers, Commandant, Office of Waterways and Ocean Policy—Great Lakes Pilotage Division (CG–WWM–2), Coast Guard; telephone 410–360–9260, email *Brian.Rogers@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### Table of Contents for Preamble



## I. Public Participation and Request for Comments

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

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at *www.regulations.gov.* To do so, go to *www.regulations.gov,* type USCG–2023–0438 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *www.regulations.gov* Frequently Asked Questions web page. This web page also explains how to subscribe for email alerts that will notify you when comments are posted or if a final rule is published. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

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

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

## II. Abbreviations

2023 final rule Great Lakes Pilotage Rates—2023 Annual Ratemaking and Review of Methodology final rule
AMOU American Maritime Officers Union
APA American Pilots' Association
BLS Bureau of Labor Statistics
CFR Code of Federal Regulations
CPA Certified public accountant
CPI Consumer Price Index
DHS Department of Homeland Security
Director U.S. Coast Guard's Director of the Great Lakes Pilotage
ECI Employment Cost Index
FOMC Federal Open Market Committee
FR Federal Register
GLPA Great Lakes Pilotage Authority (Canadian)
GLPAC Great Lakes Pilotage Advisory Committee
GLPMS Great Lakes Pilotage Management System
LPA Lakes Pilots Association
NAICS North American Industry Classification System
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
PCE Personal Consumption Expenditures
§ Section
SBA Small Business Administration
SLSPA Saint Lawrence Seaway Pilotage Association
U.S.C. United States Code
WGLPA Western Great Lakes Pilots Association

## III. Executive Summary

In accordance with Title 46 of the United States Code (U.S.C.), Chapter 93,[1] the Coast Guard regulates pilotage for oceangoing vessels on the Great Lakes and St. Lawrence Seaway—including setting the rates for pilotage services and adjusting them on an annual basis for the upcoming shipping season. The shipping season begins when the locks open in the St. Lawrence Seaway, which allows traffic access to and from the Atlantic Ocean. The opening of the locks varies annually, depending on waterway conditions, but is generally in March or April. The rates, which for the 2024 season range from a proposed $413 to $925 per pilot hour (depending on which of the specific 6 areas pilotage service is provided), are paid by shippers to the pilot associations. The three pilot associations, which are the exclusive U.S. source of registered pilots on the Great Lakes, use this revenue to cover operating expenses, maintain infrastructure, compensate apprentice and registered pilots, acquire and implement technological advances, train new personnel, and provide for continuing professional development.

In accordance with statutory and regulatory requirements, the Coast Guard employs the ratemaking methodology introduced in 2016 and finalized in 2023. Our ratemaking methodology calculates the revenue needed for each pilotage association (operating expenses, compensation for the number of pilots, and anticipated inflation), and then divides that amount by the expected demand for pilotage services over the course of the coming year to produce an hourly rate. This is a 10-step methodology to calculate rates, which is explained in detail in section VI., Summary of the Ratemaking Methodology, in the preamble to this proposed rule.

In this notice of proposed rulemaking (NPRM), we are conducting our annual review and interim adjustment to the base pilotage rates for 2024. The Coast Guard last conducted a full ratemaking in 2023, with the ''Great Lakes Pilotage Rates—2023 Annual Ratemaking and Review of Methodology'' final rule (hereafter the ''2023 final rule'') (88 FR 12226, published February 27, 2023).[2] Per title 46 of the Code of Federal Regulations (CFR), section 404.100(b), via this NPRM, the Coast Guard's Director of the Great Lakes Pilotage (''the Director'') proposes to establish base pilotage rates by an interim ratemaking pursuant to §§ 404.101 through 404.110.

The Coast Guard sets base rates to meet the goal of promoting safe, efficient, and reliable pilotage service on the Great Lakes by generating sufficient revenue for each pilotage association to reimburse its necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and provide appropriate funds to use for improvements. A 10-year average is used when calculating traffic to smooth out anomalies caused by unexpected events, such as those caused by the COVID–19 pandemic. The Coast Guard estimates that this proposed rule would result in $1,914,438 of additional costs. This represents an increase in revenue needed for target pilot compensation, an increase in revenue needed for the total apprentice pilot wage benchmark, an increase in the revenue needed for adjusted operating expenses, and an increase in the revenue needed for the working capital fund.

Based on the ratemaking model discussed in this NPRM, the Coast Guard is proposing the rates shown in table 1.

TABLE 1—CURRENT AND PROPOSED 2024 PILOTAGE RATES ON THE GREAT LAKES

| Area | Name | Final 2023 pilotage rate | Proposed 2024 pilotage rate |
|---|---|---|---|
| District One: Designated | St. Lawrence River | $876 | $925 |
| District One: Undesignated | Lake Ontario | 586 | 606 |
| District Two: Designated | Navigable waters from Southeast Shoal to Port Huron, MI | 601 | 660 |
| District Two: Undesignated | Lake Erie | 704 | 586 |
| District Three: Designated | St. Mary's River | 834 | 805 |
| District Three: Undesignated | Lakes Huron, Michigan, and Superior | 410 | 413 |

This proposed rule would affect 56 U.S. Great Lakes pilots, 7 apprentice pilots, 3 pilot associations, and the owners and operators of an average of 277 oceangoing vessels that transit the Great Lakes annually. This proposed rule is not economically significant under Executive Order 12866 and would not affect the Coast Guard's budget or increase Federal spending. The estimated overall annual regulatory economic impact of this rate change would be a net increase of $1,914,438 in estimated payments made by shippers during the 2024 shipping season. This proposed rule would establish the 2024 yearly target compensation for pilots on the Great Lakes at $442,403 per pilot (a $18,005 increase, or 4.24 percent, over their 2023 target compensation). Because the Coast Guard must review, and, if necessary, adjust rates each year, we analyze these as single-year costs and do not annualize them over 10 years. Section X., Regulatory Analyses, in this preamble provides the regulatory impact analyses of this proposed rule.

[1] 46 U.S.C. 9301–9308.

[2] *https://www.govinfo.gov/content/pkg/FR-2023-02-27/pdf/2023-03212.pdf* (last visited 5/12/2023).

## IV. Basis and Purpose

The legal basis of this rulemaking is 46 U.S.C. Chapter 93,[3] which requires foreign merchant vessels and United States vessels operating ''on register'' (meaning United States vessels engaged in foreign trade) to use United States or Canadian pilots while transiting the United States waters of the St. Lawrence Seaway and the Great Lakes system.[4] For U.S. Great Lakes pilots, the statute requires the Secretary to ''prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' [5] The statute requires that rates be established or reviewed and adjusted each year, no later than March 1.[6] The statute also requires that base rates be established by a full ratemaking at least once every 5 years, and, in years when base rates are not established, they must be reviewed and, if necessary, adjusted.[7] The Secretary's duties and authority under 46 U.S.C. Chapter 93 have generally been delegated to the Coast Guard.[8]

Each pilot association is an independent business and is the sole provider of pilotage services in its district of operation. Each pilot association is responsible for funding its own operating expenses, maintaining infrastructure, compensating pilots and apprentice pilots,[9] acquiring and implementing technological advances, and training personnel and partners.

The Coast Guard uses a 10-step ratemaking methodology to derive a pilotage rate, based on the estimated amount of traffic, which covers these expenses.[10] The methodology is designed to measure how much revenue each pilotage association would need to cover expenses and to provide competitive compensation to registered pilots. Since the Coast Guard cannot guarantee demand for pilotage services, target pilot compensation for registered pilots is a goal. The actual demand for service dictates the actual compensation for the registered pilots. We then divide that amount by the historic 10-year average for pilotage demand. We recognize that, in years where traffic is above average, pilot associations will accrue more revenue than projected while, in years where traffic is below average, they will take in less. We believe that, over the long term, however, this system ensures that infrastructure will be maintained, and that pilots will receive adequate compensation and work a reasonable number of hours, with adequate rest between assignments, to ensure retention of highly trained personnel.

The purpose of this proposed rule is to issue new pilotage rates for the 2024 shipping season. The Coast Guard believes that the new rates will continue to promote our goal, as outlined in 46 CFR 404.1, of promoting safe, efficient, and reliable pilotage service in the Great Lakes by generating sufficient revenue for each pilotage association to reimburse its necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and provide appropriate funds to use for improvements.

## V. Background

Pursuant to 46 U.S.C. 9303, the Coast Guard regulates shipping practices and rates on the Great Lakes. Under Coast Guard regulations, all vessels engaged in foreign trade (often referred to as ''salties'') are required to engage United States or Canadian pilots during their transit through the regulated waters.[11] United States and Canadian ''lakers,'' which account for most commercial shipping on the Great Lakes, are not affected.[12] Generally, vessels are assigned a United States or Canadian pilot, depending on the order in which they transit a particular area of the Great Lakes, and do not choose the pilot they receive. If a vessel is assigned a U.S. pilot, that pilot will be assigned by the pilotage association responsible for the district in which the vessel is operating, and the vessel operator will pay the pilotage association for the pilotage services. The Great Lakes Pilotage Authority (Canadian) (GLPA) establishes the rates for Canadian registered pilots.

The U.S. waters of the Great Lakes and the St. Lawrence Seaway are divided into three pilotage districts. Pilotage in each district is provided by an association certified by the Director to operate a pilotage pool. The Saint Lawrence Seaway Pilotage Association (SLSPA) provides pilotage services in District One, which includes all U.S. waters of the St. Lawrence River and Lake Ontario. The Lakes Pilots Association (LPA) provides pilotage services in District Two, which includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. Finally, the Western Great Lakes Pilots Association (WGLPA) provides pilotage services in District Three, which includes all U.S. waters of the St. Mary's River; Sault Ste. Marie Locks; and Lakes Huron, Michigan, and Superior.

Each pilotage district is further divided into ''designated'' and ''undesignated'' areas, depicted in table 2. Designated areas, classified as such by Presidential Proclamation, are waters in which pilots must direct the navigation of vessels at all times.[13] Undesignated areas are open bodies of water not subject to the same pilotage requirements. While working in undesignated areas, pilots must ''be on board and available to direct the navigation of the vessel at the discretion of and subject to the customary authority of the master.'' [14] For these reasons, pilotage rates in designated areas can be significantly higher than those in undesignated areas. Table 2 shows the districts and areas of the Great Lakes and St. Lawrence Seaway.

[3] 46 U.S.C. 9301–9308.

[4] 46 U.S.C. 9302(a)(1).

[5] 46 U.S.C. 9303(f).

[6] *Ibid.*

[7] *Ibid.*

[8] Department of Homeland Security (DHS) Delegation No. 00170.1 (II)(92)(f), Revision No. 01.3. The Secretary retains the authority under Section 9307 to establish, and appoint members to, a Great Lakes Pilotage Advisory Committee.

[9] Apprentice pilots and applicant pilots are compensated by the pilot association they are training with, which is funded through the pilotage rates. The ratemaking methodology accounts for an apprentice pilot wage benchmark in Step 4 per 46 CFR 404.104(d). The applicant pilot salaries are included in the pilot associations' operating expenses used in Step 1 per 46 CFR 404.101.

[10] 46 CFR part 404.101–404.110. *https://www.ecfr.gov/current/title-46/chapter-III/part-404* (Last visited 5/17/23).

[11] See 46 CFR part 401. *https://www.ecfr.gov/current/title-46/chapter-III/part-401* (Last visited 5/17/23).

[12] 46 U.S.C. 9302(f). A ''laker'' is a commercial cargo vessel especially designed for and generally limited to use on the Great Lakes. *https://uscode.house.gov/view.xhtml?req=granuleid:U.S.C.-prelim-title46-section9302&num=0&edition=prelim* (Last visited 5/17/23).

[13] Presidential Proclamation 3385, *Designation of restricted waters under the Great Lakes Pilotage Act of 1960,* December 22, 1960 (*https://www.archives.gov/federal-register/codification/proclamations/03385.html*) (Last visited 5/31/23).

[14] 46 U.S.C. 9302(a)(l)(B).

TABLE 2—AREAS OF THE GREAT LAKES AND ST. LAWRENCE SEAWAY

| District | Pilotage association | Designation | Area Number [15] | Area Name [16] |
|---|---|---|---|---|
| One | Saint Lawrence Seaway Pilotage Association (SLPSA). | Designated | 1 | St. Lawrence River. |
| | | Undesignated | 2 | Lake Ontario. |
| Two | Lakes Pilots Association (LPA) | Designated | 5 | Navigable waters from Southeast Shoal to Port Huron, MI. |
| | | Undesignated | 4 | Lake Erie. |
| Three | Western Great Lakes Pilots Association (WGLPA). | Designated | 7 | St. Marys River. |
| | | Undesignated | 6 | Lakes Huron and Michigan. |
| | | Undesignated | 8 | Lake Superior. |

Over the past several years, the Coast Guard has adjusted the Great Lakes pilotage ratemaking methodology per our authority in 46 U.S.C. 9303(f) to conduct annual reviews of base pilotage rates and adjust such base rates in each intervening year in consideration of the public interest and the costs of providing the services. The current methodology was finalized in the 2023 final rule.[17] We summarize the current methodology in the following section.

## VI. Summary of the Ratemaking Methodology

As stated previously, the ratemaking methodology, outlined in 46 CFR 404.101 through 404.110, consists of 10 steps that are designed to account for the revenues needed and total traffic expected in each district. The first several steps of the methodology establish base pilotage rates. Additional steps to incorporate the weighting factors are necessary to establish the final pilot rates. The result is an hourly rate, determined separately for each of the areas administered by the Coast Guard.

In Step 1, ''Recognize previous operating expenses,'' (§ 404.101), the Director reviews audited operating expenses from each of the three pilotage associations. Operating expenses include all allowable expenses, minus wages and benefits. This number forms the baseline amount that each association is budgeted. Because of the time delay between when the association submits raw numbers and when the Coast Guard receives audited numbers, this number is 3 years behind the projected year of expenses. Therefore, in calculating the 2024 rates in this proposal, we begin with the audited expenses from the 2021 shipping season.

While each pilotage association operates in an entire district (including both designated and undesignated areas), the Coast Guard determines costs by area. We allocate certain operating expenses to designated areas and certain operating expenses to undesignated areas. In some cases, we can allocate the costs based on where they are accrued. For example, we can allocate the costs of insurance for apprentice pilots who operate in undesignated areas only. In other situations, such as general legal expenses, expenses are distributed between designated and undesignated waters on a *pro rata* basis, based upon the proportion of income forecasted from the respective portions of the district.

In Step 2, ''Project operating expenses, adjusting for inflation or deflation,'' (§ 404.102), the Director develops the 2024 projected operating expenses. To do this, we apply inflation adjustors for 3 years to the operating expense baseline received in Step 1. The inflation factors are from the Bureau of Labor Statistics' (BLS) Consumer Price Index (CPI) for the Midwest Region, or, if not available, the Federal Open Market Committee (FOMC) median economic projections for Personal Consumption Expenditures (PCE) inflation. This step produces the total operating expenses for each area and district.

In Step 3, ''Estimate number of registered pilots and apprentice pilots,'' (§ 404.103), the Director calculates how many registered and apprentice pilots, including apprentice pilots with limited registrations, are needed for each district. To do this, we employ a ''staffing model,'' described in § 401.220, paragraphs (a)(1) through (3), to estimate how many pilots would be needed to handle shipping during the beginning and close of the season. This number provides guidance to the Director in approving an appropriate number of pilots.

For the purpose of the ratemaking calculation, we determine the number of pilots provided by the pilotage associations (see § 404.103) and use that figure to determine how many pilots need to be compensated via the pilotage fees collected.

In the first part of Step 4, ''Determine target pilot compensation benchmark and apprentice pilot wage benchmark,'' (§ 404.104(a)), the Director determines the revenue needed for pilot compensation in each area and district and calculates the total compensation for each pilot using a ''compensation benchmark.''

In the second part of Step 4, (§ 404.104(c)), the Director determines the total compensation figure for each district. To do this, the Director multiplies the compensation benchmark by the number of pilots for each area and district (from Step 3), producing a figure for total pilot compensation.

In Step 5, ''Project working capital fund,'' (§ 404.105), the Director calculates an added value to pay for needed capital improvements and other non-recurring expenses, such as technology investments and infrastructure maintenance. This value is calculated by adding the total operating expenses (derived in Step 2) to the total pilot compensation and the total target apprentice pilot wage (derived in Step 4), then by multiplying that figure by the preceding year's average annual rate of return for new issues of high-grade corporate securities. This figure constitutes the ''working capital fund'' for each area and district.

In Step 6, ''Project needed revenue,'' (§ 404.106), the Director simply adds the totals produced by the preceding steps. The projected operating expense for each area and district (from Step 2) is added to the total pilot compensation, including apprentice pilot wage benchmarks (from Step 4), and the working capital fund contribution (from Step 5). The total figure, calculated

[15] Area 3 is the Welland Canal, which is serviced exclusively by the Canadian GLPA and, accordingly, is not included in the United States pilotage rate structure.

[16] The areas are listed by name at 46 CFR 401.405. *https://www.ecfr.gov/current/title-46/chapter-III/part-401/subpart-D/section-401.405* (Last visited 5/17/23).

[17] 88 FR 12226.

separately for each area and district, is the ''needed revenue.''

In Step 7, ''Calculate initial base rates,'' (§ 404.107), the Director calculates an hourly pilotage rate to cover the needed revenue, as calculated in Step 6. This step consists of first calculating the 10-year average of traffic hours for each area. Next, we divide the revenue needed in each area (calculated in Step 6) by the 10-year average of traffic hours to produce an initial base rate.

An additional element, the ''weighting factor,'' is required under § 401.400. Pursuant to that section, ships pay a multiple of the ''base rate'', as calculated in Step 7, by a number ranging from 1.0 (for the smallest ships, or ''Class I'' vessels) to 1.45 (for the largest ships, or ''Class IV'' vessels). This significantly increases the revenue collected, and we need to account for the added revenue produced by the weighting factors to ensure that shippers are not overpaying for pilotage services. We do this in the next step.

In Step 8, ''Calculate average weighting factors by Area,'' (§ 404.108), the Director calculates how much extra revenue, as a percentage of total revenue, has historically been produced by the weighting factors in each area. We do this by using a historical average of the applied weighting factors for each year since 2014 (the first year the current weighting factors were applied).

In Step 9, ''Calculate revised base rates,'' (§ 404.109), the Director modifies the base rates by accounting for the extra revenue generated by the weighting factors. We do this by dividing the initial pilotage rate for each area (from Step 7) by the corresponding average weighting factor (from Step 8), to produce a revised rate.

In Step 10, ''Review and finalize rates,'' (§ 404.110), often referred to informally as ''Director's discretion'', the Director reviews the revised base rates (from Step 9) to ensure that they meet the goals set forth in 46 U.S.C. 9303(f) and 46 CFR 404.1(a), which include promoting efficient, safe, and reliable pilotage service on the Great Lakes; generating sufficient revenue for each pilotage association to reimburse necessary and reasonable operating expenses; compensating trained and rested pilots fairly; and providing appropriate revenue for improvements.

After the base rates are set, § 401.401 permits the Coast Guard to apply surcharges. We are not proposing to use any surcharges in this proposed rule. In previous ratemakings, where apprentice pilot wages were not built into the rate, the Coast Guard used surcharges to cover applicant pilot compensation in those years to help with applicant recruitment. In this proposed rule, we include the applicant trainee compensation in the district's operating expenses used in Step 1. Consistent with the 2021, 2022, and 2023 rulemakings, in this proposed rule, we continue to believe that the pilot associations are able to plan for the costs associated with hiring applicant pilots to fill pilot vacancies without relying on the Coast Guard to impose surcharges to help with recruiting.

## VII. Historic Methodological and Other Changes

The Coast Guard is proposing to use the existing ratemaking methodology for establishing the base rates in this interim ratemaking. The Coast Guard is not proposing any methodological or other policy changes to the ratemaking within this NPRM.

According to 46 U.S.C. 9303(f), and restated in 46 CFR 404.100(a), the Coast Guard must only establish base rates by a full ratemaking at least once every 5 years. The Coast Guard has determined that the current base rate and methodology still adequately adheres to the Coast Guard's goals through rate and compensation stability, while promoting recruitment and retention of qualified U.S.-registered pilots. The Coast Guard has made several changes to the ratemaking methodology over the last several years in consideration of the public interest and the costs of providing services. The recent changes and their impacts are summarized as follows.

In the 2017 ratemaking, Great Lakes Pilotage Rates—2017 Annual Review (82 FR 41466, published August 31, 2017),[18] the Coast Guard modified the methodology to account for the additional revenue produced by the application of weighting factors. This is discussed in detail in Steps 7 through 9 for each district, in section IX., Discussion of Proposed Rate Adjustments, of this preamble.

In the 2018 ratemaking, Great Lakes Pilotage Rates—2018 Annual Review and Revisions to Methodology (83 FR 26162, published June 5, 2018),[19] the Coast Guard adopted a new approach in the methodology for the compensation benchmark, based upon United States mariners, rather than Canadian working pilots.

In the 2020 ratemaking, Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology (85 FR 20088, published April 9, 2020),[20] the Coast Guard revised the methodology to accurately capture all costs and revenues associated with Great Lakes pilotage requirements and to produce an hourly rate that adequately and accurately compensates pilots and covers expenses.

The 2021 ratemaking, Great Lakes Pilotage Rates—2021 Annual Review and Revisions to Methodology (86 FR 14184, published March 12, 2021),[21] changed the inflation calculation in Step 4, § 404.104(b), for interim ratemakings, so that the previous year's target compensation value is first adjusted by actual inflation value using the Employment Cost Index (ECI). That change ensures that the target pilot compensation reimbursed to the association remains current with inflation and competitive with industry pay increases.

The 2022 ratemaking, Great Lakes Pilotage Rates—2022 Annual Review and Revisions to Methodology (87 FR 18488, published March 30, 2022),[22] implemented an apprentice pilot wage benchmark in Steps 3 and 4 to provide predictability and stability to pilot associations training apprentice pilots. The 2022 final rule also codified rounding up the staffing model's final number to ensure that the ratemaking does not undercount the pilot need presented by the staffing model and association circumstances.

## VIII. Individual Target Pilot Compensation Benchmark

The Coast Guard is proposing to set the target pilot compensation benchmark in this NPRM at the target compensation for the ratemaking year 2023, adjusted for inflation. In an interim ratemaking year, the base target pilot compensation would be adjusted annually in accordance with § 404.104(b). The Coast Guard arrived at this proposed compensation benchmark as explained in the following paragraphs.

Before 2016, the Coast Guard based the compensation benchmark on data provided by the American Maritime Officers Union (AMOU) regarding its contract for first mates on the Great Lakes. However, in 2016, the AMOU elected to no longer provide this data to the Coast Guard. In the 2016 ratemaking, Great Lakes Pilotage Rates—2016 Annual Review and Changes to Methodology (81 FR 11908, published

[18] *https://www.govinfo.gov/content/pkg/FR-2017-08-31/pdf/2017-18411.pdf* (last visited 5/12/2023).

[19] *https://www.govinfo.gov/content/pkg/FR-2018-06-05/pdf/2018-11969.pdf* (last visited 5/12/2023).

[20] *https://www.govinfo.gov/content/pkg/FR-2020-04-09/pdf/2020-06968.pdf* (last visited 5/12/2023).

[21] *https://www.govinfo.gov/content/pkg/FR-2021-03-12/pdf/2021-05050.pdf* (last visited 5/12/2023).

[22] *https://www.govinfo.gov/content/pkg/FR-2022-03-30/pdf/2022-06394.pdf* (last visited 5/12/2023).

March 7, 2016),[23] the Coast Guard used the average compensation for a Canadian pilot, plus a 10-percent adjustment. The shipping industry challenged the compensation benchmark, and the court found that the Coast Guard did not adequately support the 10-percent addition to the Canadian GLPA compensation benchmark. *American Great Lakes Ports Association* v. *Zukunft,* 296 F.Supp. 3d 27, 48 (D.D.C. 2017), *aff'd sub nom. American Great Lakes Ports Association* v. *Schultz,* 962 F.3d 510 (D.C. Cir. 2020). The Coast Guard then based the 2018 full ratemaking compensation benchmark on data provided by the AMOU, regarding its contract for first mates on the Great Lakes in the 2011 to 2015 period (83 FR 26162). The 2018 final rule adjusted the AMOU 2015 data for inflation using Federal Open Market FOMC median economic projections for PCE inflation.

In the 2020 interim year ratemaking final rule,[24] the Coast Guard established its most recent pilot compensation benchmark. Given the lack of access to AMOU data, the Coast Guard did not rely on the AMOU aggregated wage and benefit information as the basis for the compensation benchmark. Instead, the Coast Guard adopted the 2019 target pilot compensation (with inflation) as our compensation benchmark going forward. The Coast Guard stated in the 2020 final rule that no other United States or Canadian pilot compensation data was appropriate to use as a benchmark at that time (85 FR 20091). The Director determined that the ratemaking provided adequate compensation for pilots. In the 2020 ratemaking, the Coast Guard announced that the 2020 benchmark will be used for future rates (85 FR 20091).

Based on our experience over the past four ratemakings (2020–2023), the Director continues to believe that the level of target pilot compensation for those years provided an appropriate level of compensation for U.S.-registered pilots. According to § 404.104(a), the Director may make necessary and reasonable adjustments to the benchmark based on current information. However, current circumstances do not indicate that an adjustment, other than for inflation, is necessary. The Director bases this decision on the fact that there is no indication that registered pilots are resigning due to their compensation, or that this compensation benchmark is causing shortfalls in achieving reliable pilotage service. The Coast Guard also does not believe that the pilot compensation benchmark is too high relative to the expertise required to perform the job. The compensation will continue to be adjusted annually, in accordance with published inflation rates, which will ensure the compensation remains competitive and current for upcoming years.

Therefore, the Coast Guard proposes to not seek alternative benchmarks for target compensation at this time and, instead, to simply adjust the amount of target pilot compensation for inflation as our target compensation benchmark for 2024, as shown in Step 4. This target compensation benchmark approach has advanced and will continue to advance the Coast Guard's goals through rate and compensation stability while also promoting recruitment and retention of qualified U.S. pilots.

The proposed compensation benchmark for 2024 is $442,403 per registered pilot and $159,265 per apprentice pilot, using the 2023 compensation as a benchmark. We follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark for inflation. We use a two-step process to adjust target pilot compensation for inflation. First, we adjust the 2023 target compensation benchmark of $424,398 by 1.7 percent for an adjusted value of $431,613. This first adjustment accounts for the difference in actual first quarter 2023 ECI inflation, which is 4.4 percent, and the 2023 PCE estimate of 2.7 percent.[25] The second step accounts for projected inflation from 2023 to 2024, which is 2.5 percent.[26] Based on the projected 2024 inflation estimate, the proposed target compensation benchmark for 2024 is $442,403 per pilot. The proposed apprentice pilot wage benchmark is 36 percent of the target pilot compensation, or $159,265 ($442,403 × 0.36).[27]

## IX. Discussion of Proposed Rate Adjustments

In this NPRM, based on the proposed policy changes described in the previous section, we are proposing new pilotage rates for 2024. We propose to conduct the 2024 ratemaking as an interim ratemaking, as we last did in 2022 (87 FR 18488). Thus, the Coast Guard proposes to adjust the compensation benchmark following the interim ratemaking year procedures under § 404.100(b) rather than the procedures for a full ratemaking year in § 404.100(a).

This section discusses the proposed rate changes using the ratemaking steps provided in 46 CFR part 404. We will detail all 10 steps of the ratemaking procedure for each of the 3 districts to show how we arrive at the proposed new rates.

### District One

*A. Step 1: Recognize Previous Operating Expenses*

Step 1 in the ratemaking methodology requires that the Coast Guard review and recognize the operating expenses for the last full year for which figures are available (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2021 expenses and revenues.[28] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. For costs accrued by the pilot associations generally, such as employee benefits, the cost is divided between the designated and undesignated areas on a *pro rata* basis. The recognized operating expenses for District One are shown in table 3.

Adjustments have been made by the auditors and are explained in the auditor's reports, which are available in the docket for this rulemaking, where indicated under the Public Participation and Request for Comments portion of the preamble.

In the 2021 expenses used as the basis for this proposed rule, districts used the term ''applicant'' to describe applicant trainees and persons who will be called apprentices (applicant pilots), under the definition of ''apprentice pilot'', which was introduced in the 2022 final rule. Therefore, when describing past expenses, the term ''applicant'' is used to match what was reported from 2021, which includes both applicant and apprentice pilots. The term ''apprentice'' is used to distinguish apprentice pilot wages and describe the

[23] *https://www.govinfo.gov/content/pkg/FR-2016-03-07/pdf/2016-04894.pdf* (last visited 5/12/2023).

[24] 85 FR 20088.

[25] Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Annual Average, Series ID: CIU2010000520000A. *https://www.bls.gov/news.release/eci.t05.htm* (Last visited 04/28/23); and Table 1 Summary of Economic Projections, PCE Inflation. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20220316.pdf* (Last visited 05/17/23).

[26] Table 1 Summary of Economic Projections, PCE Inflation December Projection. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20230322.pdf* (Last visited 03/2023).

[27] For more information on the proposed apprentice pilot wage benchmark, see the Coast Guard's 2022 Annual Review and Revisions to Methodology. 87 FR 18488.

[28] These reports are available in the docket for this proposed rule.

impacts of the ratemaking going forward.

The Coast Guard continues to include apprentice salaries as an allowable expense in the 2024 ratemaking, as this proposed rule is based on 2021 operating expenses, when salaries were still an allowable expense. Beginning with the 2025 ratemaking, apprentice pilot salaries will no longer be included as a 2022 operating expense, because apprentice pilot wages will have already been factored into the ratemaking Steps 3 and 4 in calculation of the 2022 rates. Beginning in 2025, the applicant salaries' operating expenses for 2022 will consist of only applicant trainees (those who are not yet apprentice pilots).

TABLE 3—2021 RECOGNIZED EXPENSES FOR DISTRICT ONE

| District One Reported Operating Expenses for 2021 | Designated | Undesignated | Total |
|---|---|---|---|
| | St. Lawrence River | Lake Ontario | |
| *Applicant Pilot Compensation:* | | | |
| Salaries | $247,735 | $165,157 | $412,892 |
| Employee Benefits | 10,367 | 6,911 | 17,278 |
| Total Applicant Pilot Compensation | 258,102 | 172,068 | 430,170 |
| *Other Applicant Cost:* | | | |
| Applicant Subsistence | 1,723 | 1,148 | 2,871 |
| Travel | 1,832 | 1,221 | 3,053 |
| License Insurance | 752 | 502 | 1,254 |
| Payroll taxes | 1,945 | 1,296 | 3,241 |
| Other—Pilotage Cost | 833 | 555 | 1,388 |
| Total Other Applicant Cost | 7,085 | 4,722 | 11,807 |
| *Other Pilotage Cost:* | | | |
| Subsistence | 133,993 | 89,329 | 223,322 |
| Hotel/Lodging | 32,424 | 21,616 | 54,040 |
| Travel | 453,718 | 302,478 | 756,196 |
| License renewal | 1,200 | 800 | 2,000 |
| Payroll Taxes | 198,901 | 132,601 | 331,502 |
| License Insurance | 53,174 | 35,450 | 88,624 |
| Total Other Pilotage Costs | 873,410 | 582,274 | 1,455,684 |
| *Pilot Boat and Dispatch Costs:* | | | |
| Pilot boat expense (Operating) | 200,672 | 133,782 | 334,454 |
| Dispatch expense | 167,291 | 111,527 | 278,818 |
| Employee Benefits | 50,560 | 33,707 | 84,267 |
| Salaries | 249,396 | 166,264 | 415,660 |
| Payroll taxes | 10,269 | 6,846 | 17,115 |
| Total Pilot and Dispatch Costs | 678,188 | 452,126 | 1,130,314 |
| *Administrative Expenses:* | | | |
| Legal—general counsel | 1,078 | 719 | 1,797 |
| Legal—shared counsel (K&L Gates) | 4,402 | 2,935 | 7,337 |
| Legal—USCG Litigation | 14,641 | 9,760 | 24,401 |
| Insurance | 44,108 | 29,405 | 73,513 |
| Employee benefits | 4,470 | 2,980 | 7,450 |
| Payroll Taxes | 42,464 | 28,310 | 70,774 |
| Other taxes | 79,200 | 52,800 | 132,000 |
| Real Estate taxes | 22,918 | 15,278 | 38,196 |
| Travel | 1,568 | 1,045 | 2,613 |
| Depreciation | 186,517 | 124,345 | 310,862 |
| Interest | 54,271 | 36,180 | 90,451 |
| APA Dues | 25,250 | 16,834 | 42,084 |
| APA Dues (D1–21–01) | 2,971 | 1,980 | 4,951 |
| Dues and subscriptions | 4,320 | 2,880 | 7,200 |
| Utilities | 41,343 | 27,562 | 68,905 |
| Salaries | 73,890 | 49,260 | 123,150 |
| Accounting/Professional fees | 4,320 | 2,880 | 7,200 |
| Pilot Training | 4,680 | 3,120 | 7,800 |
| Applicant Pilot Training | 18,911 | 12,607 | 31,518 |
| Other | 28,422 | 18,948 | 47,370 |
| Total Administrative Expenses | 659,744 | 439,828 | 1,099,572 |
| Total Expenses (OPEX + Applicant + Pilot Boats + Admin + Capital) | 2,476,529 | 1,651,018 | 4,127,547 |
| Total Operating Expenses (OpEx + Adjustments) | 2,476,529 | 1,651,018 | 4,127,547 |

*B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation*

In accordance with the text in § 404.102, having identified the recognized 2021 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting for inflation over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2022 inflation rate.[29] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2023 and 2024 inflation modification.[30] Based on that information, the calculations for Step 2 are as presented in table 4.

TABLE 4—ADJUSTED OPERATING EXPENSES FOR DISTRICT ONE

| | District One | | |
|---|---|---|---|
| | Designated | Undesignated | Total |
| Total Operating Expenses (Step 1) | $2,476,529 | $1,651,018 | $4,127,547 |
| 2022 Inflation Modification (@8%) | 198,122 | 132,081 | 330,203 |
| 2023 Inflation Modification (@3.5%) | 93,613 | 62,408 | 156,021 |
| 2024 Inflation Modification (@2.5%) | 69,207 | 46,138 | 115,345 |
| Adjusted 2024 Operating Expenses | 2,837,471 | 1,891,645 | 4,729,116 |

*C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots*

In accordance with the text in § 404.103, the Coast Guard estimates the number of fully registered pilots in each district. We determine the number of fully registered pilots based on data provided by the SLSPA. Using these numbers, we estimate that there will be 18 registered pilots in 2024 in District One. We determine the number of apprentice pilots based on input from the district on anticipated retirements and staffing needs. Using these numbers, we estimate that there will be three apprentice pilots in 2024 in District One. Based on the seasonal staffing model discussed in the 2017 ratemaking (82 FR 41466), a certain number of pilots are assigned to designated waters, and a certain number of pilots are assigned to undesignated waters, as shown in table 5. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 5—AUTHORIZED PILOTS FOR DISTRICT ONE

| Item | District One |
|---|---|
| Proposed Maximum Number of Pilots (per § 401.220(a))* | 18 |
| 2024 Authorized Pilots (total) | 18 |
| Pilots Assigned to Designated Areas | 10 |
| Pilots Assigned to Undesignated Areas | 8 |
| 2024 Apprentice Pilots | 3 |

* For a detailed calculation, refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

*D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark*

In this step, we determine the total pilot compensation for each area. Because we are issuing an ''interim'' ratemaking this year, we follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. First, we adjust the 2023 target compensation benchmark of $424,398 by 1.7 percent for a value of $431,613. This accounts for the difference in actual first quarter 2023 ECI inflation, which is 4.4 percent, and the 2023 PCE estimate of 2.7 percent.[31] [32] The second step accounts for projected inflation from 2023 to 2024, which is 2.5 percent.[33] Based on the projected 2024 inflation estimate, the proposed target compensation benchmark for 2024 is $442,403 per pilot. The proposed apprentice pilot wage benchmark is 36 percent of the target pilot compensation, or $159,265 ($442,403 × 0.36).

Next, the Coast Guard certifies that the number of pilots estimated for 2024 is less than or equal to the number permitted under the staffing model in § 401.220(a). The staffing model suggests that District One needs 18 pilots, which is less than or equal to the number of registered pilots provided by the pilot association. In accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of registered pilots for District One, as shown in table 6. We estimate that the number of apprentice pilots with limited registration needed will be three for District One in the 2024 season. The total target wages for apprentices are allocated with 60 percent for the designated area and 40 percent for the undesignated area, in accordance with the allocation for operating expenses.

[29] The CPI is defined as ''All Urban Consumers (CPI–U), All Items, 1982–4=100.'' Series CUUR0200SAO (Downloaded March 21, 2023). Available at *https://www.bls.gov/cpi/data.htm.,* All Urban Consumers (Current Series), multiscreen data, not seasonally adjusted, 0200 Midwest, Current, All Items, Monthly, 12-month Percent Change and Annual Data.

[30] The 2022 and 2023 inflation rates are available at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20230322.pdf.* We used the Core PCE December Projection found in table 1. (Downloaded April 2023).

[31] Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Annual Average, Series ID: CIU2010000520000A. *https://www.bls.gov/news.release/eci.t05.htm* (Last visited 04/28/23).

[32] Table 1 Summary of Economic Projections, PCE Inflation. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20220316.pdf* (Last visited 05/17/23).

[33] Table 1 Summary of Economic Projections, PCE Inflation December Projection. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20230322.pdf* (Last visited 03/2023).

TABLE 6—TARGET COMPENSATION FOR DISTRICT ONE

| | District One | | |
|---|---|---|---|
| | Designated | Undesignated | Total |
| Target Pilot Compensation | $442,403 | $442,403 | $442,403 |
| Number of Pilots | 10 | 8 | 18 |
| Total Target Pilot Compensation | 4,424,030 | 3,539,224 | 7,963,254 |
| Target Apprentice Pilot Compensation | 159,265 | 159,265 | 159,265 |
| Number of Apprentice Pilots | ..... | ..... | 3 |
| Total Target Apprentice Pilot Compensation | 286,677 | 191,118 | 477,795 |

*E. Step 5: Project Working Capital Fund*

Next, the Coast Guard calculates the working capital fund revenues needed for each area. We first add the figures for projected operating expenses, total pilot compensation, and total target apprentice pilot wage for each area, and then, we find the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 4.0742 percent rounded.[34] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 7.

TABLE 7—WORKING CAPITAL FUND CALCULATION FOR DISTRICT ONE

| | District One | | |
|---|---|---|---|
| | Designated | Undesignated | Total |
| Adjusted Operating Expenses (Step 2) | $2,837,471 | $1,891,645 | $4,729,116 |
| Total Target Pilot Compensation (Step 4) | 4,424,030 | 3,539,224 | 7,963,254 |
| Total Target Apprentice Pilot Compensation (Step 4) | 286,677 | 191,118 | 477,795 |
| Total 2024 Expenses | 7,548,178 | 5,621,987 | 13,170,165 |
| Working Capital Fund (4.0742%) | 307,525 | 229,049 | 536,574 |

*F. Step 6: Project Needed Revenue*

In this step, we add the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), total target apprentice pilot wage (from Step 4), and the working capital fund contribution (from Step 5). We show these calculations in table 8.

TABLE 8—REVENUE NEEDED FOR DISTRICT ONE

| | District One | | |
|---|---|---|---|
| | Designated | Undesignated | Total |
| Adjusted Operating Expenses (Step 2) | $2,837,471 | $1,891,645 | $4,729,116 |
| Total Target Pilot Compensation (Step 4) | 4,424,030 | 3,539,224 | 7,963,254 |
| Total Target Apprentice Pilot Compensation (Step 4) | 286,677 | 191,118 | 477,795 |
| Working Capital Fund (Step 5) | 307,525 | 229,049 | 536,574 |
| Total Revenue Needed | 7,855,703 | 5,851,036 | 13,706,739 |

*G. Step 7: Calculate Initial Base Rates*

Having determined the revenue needed for each area in the previous six steps, we divide that number by the expected number of traffic hours to develop an hourly rate.

Step 7 is a two-part process. The first part is calculating the 10-year traffic average in District One using the total time on task or pilot bridge hours. To calculate the time on task for each district, the Coast Guard uses billing data from SeaPro. The data is pulled from the system filtering by district, year, job status (including only processed jobs), and flagging code (including only U.S. jobs). Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in table 9.

[34] Moody's Seasoned Aaa Corporate Bond Yield, average of 2022 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of ''Aaa'' is the highest bond rating assigned with the lowest credit risk. See *https://fred.stlouisfed.org/series/AAA* (Last visited 03/21/23).

TABLE 9—TIME ON TASK FOR DISTRICT ONE

[Hours]

| Year | District One | |
|---|---|---|
| | Designated | Undesignated |
| 2022 | 6,785 | 8,574 |
| 2021 | 6,188 | 7,871 |
| 2020 | 6,265 | 7,560 |
| 2019 | 8,232 | 8,405 |
| 2018 | 6,943 | 8,445 |
| 2017 | 7,605 | 8,679 |
| 2016 | 5,434 | 6,217 |
| 2015 | 5,743 | 6,667 |
| 2014 | 6,810 | 6,853 |
| 2013 | 5,864 | 5,529 |
| Average | 6,587 | 7,480 |

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. We present the calculations for District One in table 10.

TABLE 10—INITIAL RATE CALCULATIONS FOR DISTRICT ONE

| | Designated | Undesignated |
|---|---|---|
| Revenue needed (Step 6) | $7,855,703 | $5,851,036 |
| Average time on task (hours) | 6,587 | 7,480 |
| Initial rate | 1,193 | 782 |

*H. Step 8: Calculate Average Weighting Factors by Area*

In this step, the Coast Guard calculates the average weighting factor for each designated and undesignated area by first collecting the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this data, we calculate the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in tables 11 and 12.

TABLE 11—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, DESIGNATED AREAS

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Class 1 (2014) | 31 | 1 | 31 |
| Class 1 (2015) | 41 | 1 | 41 |
| Class 1 (2016) | 31 | 1 | 31 |
| Class 1 (2017) | 28 | 1 | 28 |
| Class 1 (2018) | 54 | 1 | 54 |
| Class 1 (2019) | 72 | 1 | 72 |
| Class 1 (2020) | 8 | 1 | 8 |
| Class 1 (2021) | 10 | 1 | 10 |
| Class 1 (2022) | 39 | 1 | 39 |
| Class 2 (2014) | 285 | 1.15 | 328 |
| Class 2 (2015) | 295 | 1.15 | 339 |
| Class 2 (2016) | 185 | 1.15 | 213 |
| Class 2 (2017) | 352 | 1.15 | 405 |
| Class 2 (2018) | 559 | 1.15 | 643 |
| Class 2 (2019) | 378 | 1.15 | 435 |
| Class 2 (2020) | 560 | 1.15 | 644 |
| Class 2 (2021) | 315 | 1.15 | 362 |
| Class 2 (2022) | 466 | 1.15 | 536 |
| Class 3 (2014) | 50 | 1.3 | 65 |
| Class 3 (2015) | 28 | 1.3 | 36 |
| Class 3 (2016) | 50 | 1.3 | 65 |
| Class 3 (2017) | 67 | 1.3 | 87 |
| Class 3 (2018) | 86 | 1.3 | 112 |
| Class 3 (2019) | 122 | 1.3 | 159 |
| Class 3 (2020) | 67 | 1.3 | 87 |
| Class 3 (2021) | 52 | 1.3 | 68 |
| Class 3 (2022) | 104 | 1.3 | 135 |
| Class 4 (2014) | 271 | 1.45 | 393 |
| Class 4 (2015) | 251 | 1.45 | 364 |

TABLE 11—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, DESIGNATED AREAS—Continued

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Class 4 (2016) | 214 | 1.45 | 310 |
| Class 4 (2017) | 285 | 1.45 | 413 |
| Class 4 (2018) | 393 | 1.45 | 570 |
| Class 4 (2019) | 730 | 1.45 | 1059 |
| Class 4 (2020) | 427 | 1.45 | 619 |
| Class 4 (2021) | 407 | 1.45 | 590 |
| Class 4 (2022) | 461 | 1.45 | 668 |
| Total | 7,774 | ..... | 10,019 |
| Average weighting factor (weighted transits ÷ number of transits) | ..... | 1.29 | ..... |

TABLE 12—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, UNDESIGNATED AREAS

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Class 1 (2014) | 25 | 1 | 25 |
| Class 1 (2015) | 28 | 1 | 28 |
| Class 1 (2016) | 18 | 1 | 18 |
| Class 1 (2017) | 19 | 1 | 19 |
| Class 1 (2018) | 22 | 1 | 22 |
| Class 1 (2019) | 30 | 1 | 30 |
| Class 1 (2020) | 3 | 1 | 3 |
| Class 1 (2021) | 19 | 1 | 19 |
| Class 1 (2022) | 32 | 1 | 32 |
| Class 2 (2014) | 238 | 1.15 | 274 |
| Class 2 (2015) | 263 | 1.15 | 302 |
| Class 2 (2016) | 169 | 1.15 | 194 |
| Class 2 (2017) | 290 | 1.15 | 334 |
| Class 2 (2018) | 352 | 1.15 | 405 |
| Class 2 (2019) | 366 | 1.15 | 421 |
| Class 2 (2020) | 358 | 1.15 | 412 |
| Class 2 (2021) | 463 | 1.15 | 532 |
| Class 2 (2022) | 358 | 1.15 | 412 |
| Class 3 (2014) | 60 | 1.3 | 78 |
| Class 3 (2015) | 42 | 1.3 | 55 |
| Class 3 (2016) | 28 | 1.3 | 36 |
| Class 3 (2017) | 45 | 1.3 | 59 |
| Class 3 (2018) | 63 | 1.3 | 82 |
| Class 3 (2019) | 58 | 1.3 | 75 |
| Class 3 (2020) | 35 | 1.3 | 46 |
| Class 3 (2021) | 71 | 1.3 | 92 |
| Class 3 (2022) | 69 | 1.3 | 90 |
| Class 4 (2014) | 289 | 1.45 | 419 |
| Class 4 (2015) | 269 | 1.45 | 390 |
| Class 4 (2016) | 222 | 1.45 | 322 |
| Class 4 (2017) | 285 | 1.45 | 413 |
| Class 4 (2018) | 382 | 1.45 | 554 |
| Class 4 (2019) | 326 | 1.45 | 473 |
| Class 4 (2020) | 334 | 1.45 | 484 |
| Class 4 (2021) | 466 | 1.45 | 676 |
| Class 4 (2022) | 393 | 1.45 | 570 |
| Total | 6,490 | ..... | 8,395 |
| Average weighting factor (weighted transits/number of transits) | ..... | 1.29 | ..... |

*I. Step 9: Calculate Revised Base Rates*

In this step, we revise the base rates so that the total cost of pilotage will be equal to the revenue needed, after considering the impact of the weighting factors. To do this, the initial base rates calculated in Step 7 are divided by the average weighting factors calculated in Step 8, as shown in table 13.

TABLE 13—REVISED BASE RATES FOR DISTRICT ONE

| Area | Initial rate (Step 7) | Average weighting factor (Step 8) | Revised rate (initial rate ÷ average weighting factor) |
|---|---|---|---|
| District One: Designated | $1,193 | 1.29 | $925 |
| District One: Undesignated | 782 | 1.29 | 606 |

*J. Step 10: Review and Finalize Rates*

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the proposed rates incorporate appropriate compensation for pilots to handle heavy traffic periods and whether there are enough pilots to handle those heavy traffic periods. The Director also considers whether the proposed rates would cover operating expenses and infrastructure costs, including average traffic and weighting factions. Based on the financial information submitted by the pilots, the Director is not proposing any alterations to the rates in this step. We propose to modify § 401.405(a)(1) and (2) to reflect the final rates shown in table 14.

TABLE 14—PROPOSED FINAL RATES FOR DISTRICT ONE

| Area | Name | Final 2023 pilotage rate | Proposed 2024 pilotage rate |
|---|---|---|---|
| District One: Designated | St. Lawrence River | $876 | $925 |
| District One: Undesignated | Lake Ontario | 586 | 606 |

**District Two**

*A. Step 1: Recognize Previous Operating Expenses*

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2021 expenses and revenues.[35] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. For costs generally accrued by the pilot associations, such as employee benefits, the cost is divided between the designated and undesignated areas on a *pro rata* basis.

Adjustments have been made by the auditors and are explained in the auditor's reports, which are available in the docket for this rulemaking, where indicated under the Public Participation and Request for Comments portion of the preamble.

In the 2021 expenses used as the basis for this proposed rule, districts used the term ''applicant'' to describe applicant trainees and persons who will be called apprentices (applicant pilots), under the definition of ''apprentice pilot'', which was introduced in the 2022 final rule. Therefore, when describing past expenses, the term ''applicant'' is used to match what was reported from 2021, which includes both applicant and apprentice pilots. The term ''apprentice'' is used to distinguish apprentice pilot wages and describe the impacts of the ratemaking going forward.

The Coast Guard continues to include apprentice salaries as an allowable expense in the 2024 ratemaking, as this proposed rule is based on 2021 operating expenses, when salaries were still an allowable expense. Beginning with the 2025 ratemaking, apprentice pilot salaries will no longer be included as a 2022 operating expense, because apprentice pilot wages will have already been factored into the ratemaking Steps 3 and 4 in calculation of the 2022 rates. Beginning in 2025, the applicant salaries' operating expenses for 2022 will consist of only applicant trainees (those who are not yet apprentice pilots). The recognized operating expenses for District Two are shown in table 15.

TABLE 15—2021 RECOGNIZED EXPENSES FOR DISTRICT TWO

| Reported Operating Expenses for 2021 | District Two | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| | Lake Erie | Southeast Shoal to Port Huron | |
| *Applicant Pilot Compensation:* | | | |
| Salaries | $79,538 | $119,306 | $198,844 |
| Employee Benefits | 11,066 | 16,599 | 27,665 |
| Total Applicant Pilot Compensation | 90,604 | 135,905 | 226,509 |
| *Other Applicant Cost:* | | | |
| Applicant Subsistence | 5,280 | 7,920 | 13,200 |
| Hotel/Lodging Cost | 2,976 | 4,464 | 7,440 |
| *Hotel/Lodging Cost (D2–21–01)* | (2,976) | (4,464) | (7,440) |

[35] These reports are available in the docket for this proposed rule.

TABLE 15—2021 RECOGNIZED EXPENSES FOR DISTRICT TWO—Continued

| Reported Operating Expenses for 2021 | District Two | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| | Lake Erie | Southeast Shoal to Port Huron | |
| Payroll taxes | 6,901 | 10,352 | 17,253 |
| Total Other Applicant Cost | 12,181 | 18,272 | 30,453 |
| *Other Pilotage Cost:* | | | |
| Subsistence | 73,921 | 110,880 | 184,800 |
| Hotel/Lodging | 62,496 | 93,744 | 156,240 |
| *Hotel/Lodging (D2–21–01)* | (55,307) | (82,960) | (138,267) |
| Travel | 42,625 | 63,937 | 106,562 |
| License renewal | 1,958 | 2,938 | 4,896 |
| Payroll Taxes | 87,620 | 131,430 | 219,050 |
| License Insurance | 9,007 | 13,510 | 22,517 |
| Total Other Pilotage Costs | 222,320 | 333,479 | 555,798 |
| *Pilot Boat and Dispatch Costs:* | | | |
| Pilot boat expense (Operating) | 60,067 | 90,101 | 150,168 |
| Employee Benefits | 80,273 | 120,410 | 200,683 |
| Insurance | 4,317 | 6,475 | 10,792 |
| Salaries | 148,260 | 222,391 | 370,651 |
| Payroll taxes | 13,277 | 19,915 | 33,192 |
| Total Pilot and Dispatch Costs | 306,194 | 459,292 | 765,486 |
| *Administrative Expenses:* | | | |
| Legal—general counsel | 2,186 | 3,278 | 5,464 |
| Legal—shared counsel (K&L Gates) | 7,167 | 10,751 | 17,918 |
| Office Rent | 27,627 | 41,440 | 69,067 |
| Insurance | 15,084 | 22,627 | 37,711 |
| Employee benefits | 35,010 | 52,516 | 87,526 |
| Payroll Taxes | 5,161 | 7,741 | 12,902 |
| Other taxes | 55,252 | 82,879 | 138,131 |
| Real Estate taxes | 7,879 | 11,819 | 19,698 |
| Travel | 8,688 | 13,033 | 21,721 |
| Depreciation | 11,121 | 16,682 | 27,803 |
| Interest | 2 | 2 | 4 |
| APA Dues | 14,683 | 22,025 | 36,708 |
| Dues and subscriptions | 505 | 757 | 1,262 |
| Utilities | 24,356 | 36,535 | 60,891 |
| Salaries | 48,532 | 72,797 | 121,329 |
| Accounting/Professional fees | 17,846 | 26,769 | 44,615 |
| Pilot Training | 23,909 | 35,864 | 59,773 |
| Applicant Pilot Training | 209 | 313 | 522 |
| Other | 21,252 | 31,879 | 53,131 |
| Total Administrative Expenses | 326,469 | 489,707 | 816,176 |
| Total Expenses (OPEX + Applicant + Pilot Boats + Admin + Capital) | 957,768 | 1,436,655 | 2,394,423 |
| Total Directors Adjustments | ..... | ..... | ..... |
| Total Operating Expenses (OpEx + Adjustments) | 957,768 | 1,436,655 | 2,394,422 |

*B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation*

In accordance with the text in § 404.102, having identified the recognized 2021 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting for inflation over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2022 inflation rate.[36] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2023 and 2024 inflation modification.[37] Based on that information, the calculations for Step 2 are presented in table 16:

[36] The CPI is defined as ''All Urban Consumers (CPI–U), All Items, 1982–4=100.'' Series CUUR0200SAO (Downloaded March 21, 2023). Available at *https://www.bls.gov/cpi/data.htm.,* All Urban Consumers (Current Series), multiscreen data, not seasonally adjusted, 0200 Midwest, Current, All Items, Monthly, 12-month Percent Change and Annual Data.

[37] The 2023 and 2024 inflation rates are available at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20230322.pdf.* We used the Core PCE December Projection found in table 1. (Last visited 04/2023).

TABLE 16—ADJUSTED OPERATING EXPENSES FOR DISTRICT TWO

| | District Two | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Total Operating Expenses (Step 1) | $957,768 | $1,436,655 | $2,394,422 |
| 2022 Inflation Modification (@8%) | 76,621 | 114,932 | 191,553 |
| 2023 Inflation Modification (@3.5%) | 36,204 | 54,306 | 90,510 |
| 2024 Inflation Modification (@2.5%) | 26,765 | 40,147 | 66,912 |
| Adjusted 2024 Operating Expenses | 1,097,358 | 1,646,040 | 2,743,397 |

*C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots*

In accordance with the text in § 404.103, the Coast Guard estimates the number of fully registered pilots in each district. We determine the number of fully registered pilots based on data provided by the LPA. Using these numbers, we estimate that there will be 16 registered pilots in 2024 in District Two. We determine the number of apprentice pilots based on input from the district on anticipated retirements and staffing needs. Using these numbers, we estimate that there will be two apprentice pilots in 2024 in District Two. Based on the seasonal staffing model discussed in the 2017 ratemaking (82 FR 41466), a certain number of pilots are assigned to designated waters, and a certain number of pilots are assigned to undesignated waters, as shown in table 17. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 17—AUTHORIZED PILOTS FOR DISTRICT TWO

| Item | District Two |
|---|---|
| Proposed Maximum Number of Pilots (per § 401.220(a))* | 16 |
| 2024 Authorized Pilots (total) | 16 |
| Pilots Assigned to Designated Areas | 7 |
| Pilots Assigned to Undesignated Areas | 9 |
| 2024 Apprentice Pilots | 2 |

* For a detailed calculation, refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

*D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark*

In this step, we determine the total pilot compensation for each area. Because we are issuing an interim ratemaking this year, we follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. First, we adjust the 2023 target compensation benchmark of $424,398 by 1.7 percent for a value of $431,613. This accounts for the difference in actual first quarter 2023 ECI inflation, which is 4.4 percent, and the 2023 PCE estimate of 2.7 percent.[38] [39] The second step accounts for projected inflation from 2023 to 2024, which is 2.5 percent.[40] Based on the projected 2024 inflation estimate, the proposed target compensation benchmark for 2024 is $442,403 per pilot. The proposed apprentice pilot wage benchmark is 36 percent of the target pilot compensation, or $159,265 ($442,403 × 0.36).

Next, the Coast Guard certifies that the number of pilots estimated for 2024 is less than or equal to the number permitted under the staffing model in § 401.220(a). The staffing model suggests that District Two needs 16 pilots, which is less than or equal to the number of registered pilots provided by the pilot association. In accordance with § 404.104(c), the Coast Guard uses the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of registered pilots for District Two, as shown in table 18. The Coast Guard estimates that the number of apprentice pilots with limited registration needed will be two for District Two in the 2024 season. The total target wages for apprentices are allocated at 60 percent for the designated area and 40 percent for the undesignated area, in accordance with the allocation for operating expenses.

TABLE 18—TARGET COMPENSATION FOR DISTRICT TWO

| | District Two | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Target Pilot Compensation | $442,403 | $442,403 | $442,403 |
| Number of Pilots | 9 | 7 | 16 |
| Total Target Pilot Compensation | 3,981,627 | 3,096,821 | 7,078,448 |
| Target Apprentice Pilot Compensation | 159,265 | 159,265 | 159,265 |
| Number of Apprentice Pilots | ..... | ..... | 2 |

[38] Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Annual Average, Series ID: CIU2010000520000A. *https://www.bls.gov/news.release/eci.t05.htm* (Last visited 04/28/23).

[39] Table 1 Summary of Economic Projections, PCE Inflation. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20220316.pdf* (Last visited 5/17/23).

[40] Table 1 Summary of Economic Projections, PCE Inflation December Projection. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20230322.pdf* (Last visited 03/2023).

TABLE 18—TARGET COMPENSATION FOR DISTRICT TWO—Continued

| | District Two | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Total Target Apprentice Pilot Compensation | 127,412 | 191,118 | 318,530 |

*E. Step 5: Project Working Capital Fund*

Next, the Coast Guard calculates the working capital fund revenues needed for each area. We first add the figures for projected operating expenses, total pilot compensation, and total target apprentice pilot wage for each area, and then we find the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 4.0742 percent, rounded.[41] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 19.

TABLE 19—WORKING CAPITAL FUND CALCULATION FOR DISTRICT TWO

| | District Two | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Adjusted Operating Expenses (Step 2) | $1,097,358 | $1,646,040 | $2,743,398 |
| Total Target Pilot Compensation (Step 4) | 3,981,627 | 3,096,821 | 7,078,448 |
| Total Target Apprentice Pilot Compensation (Step 4) | 127,412 | 191,118 | 318,530 |
| Total 2024 Expenses | 5,206,397 | 4,933,979 | 10,140,376 |
| Working Capital Fund (4.0742%) | 212,117 | 201,019 | 413,135 |

*F. Step 6: Project Needed Revenue*

In this step, the Coast Guard adds all the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), total target apprentice pilot wage (from Step 4), and the working capital fund contribution (from Step 5). We show these calculations in table 20.

TABLE 20—REVENUE NEEDED FOR DISTRICT TWO

| | District Two | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Adjusted Operating Expenses (Step 2) | $1,097,358 | $1,646,040 | $2,743,398 |
| Total Target Pilot Compensation (Step 4) | 3,981,627 | 3,096,821 | 7,078,448 |
| Total Target Apprentice Pilot Compensation (Step 4) | 127,412 | 191,118 | 318,530 |
| Working Capital Fund (Step 5) | 212,117 | 201,019 | 413,136 |
| Total Revenue Needed | 5,418,514 | 5,134,998 | 10,553,511 |

*G. Step 7: Calculate Initial Base Rates*

Having determined the revenue needed for each area in the previous six steps, the Coast Guard divides that number by the expected number of traffic hours to develop an hourly rate. Step 7 is a two-part process. In the first part, we calculate the 10-year traffic average in District Two, using the total time on task or pilot bridge hours. To calculate the time on task for each district, the Coast Guard uses billing data from SeaPro. We pull the data from the system filtering by district, year, job status (we only include processed jobs), and flagging code (we only include U.S. jobs). Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in table 21.

TABLE 21—TIME ON TASK FOR DISTRICT TWO

[Hours]

| Year | District Two | |
|---|---|---|
| | Undesignated | Designated |
| 2022 | 12,306 | 3,975 |
| 2021 | 8,826 | 3,226 |
| 2020 | 6,232 | 8,401 |
| 2019 | 6,512 | 7,715 |
| 2018 | 6,150 | 6,655 |
| 2017 | 5,139 | 6,074 |

[41] Moody's Seasoned Aaa Corporate Bond Yield, average of 2022 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of ''Aaa'' is the highest bond rating assigned with the lowest credit risk. See *https://fred.stlouisfed.org/series/AAA*. (Last visited 03/21/2023).

TABLE 21—TIME ON TASK FOR DISTRICT TWO—Continued

[Hours]

| Year | District Two | |
|---|---|---|
| | Undesignated | Designated |
| 2016 | 6,425 | 5,615 |
| 2015 | 6,535 | 5,967 |
| 2014 | 7,856 | 7,001 |
| 2013 | 4,603 | 4,750 |
| Average | 7,058 | 5,938 |

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. We present the calculations for District Two in table 22.

TABLE 22—INITIAL RATE CALCULATIONS FOR DISTRICT TWO

| | Undesignated | Designated |
|---|---|---|
| Revenue needed (Step 6) | $5,418,514 | $5,134,998 |
| Average time on task (hours) | 7,058 | 5,938 |
| Initial rate | 768 | 865 |

*H. Step 8: Calculate Average Weighting Factors by Area*

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this data, we calculate the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in tables 23 and 24.

TABLE 23—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, UNDESIGNATED AREAS

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Class 1 (2014) | 31 | 1 | 31 |
| Class 1 (2015) | 35 | 1 | 35 |
| Class 1 (2016) | 32 | 1 | 32 |
| Class 1 (2017) | 21 | 1 | 21 |
| Class 1 (2018) | 37 | 1 | 37 |
| Class 1 (2019) | 54 | 1 | 54 |
| Class 1 (2020) | 1 | 1 | 1 |
| Class 1 (2021) | 7 | 1 | 7 |
| Class 1 (2022) | 79 | 1 | 79 |
| Class 2 (2014) | 356 | 1.15 | 409 |
| Class 2 (2015) | 354 | 1.15 | 407 |
| Class 2 (2016) | 380 | 1.15 | 437 |
| Class 2 (2017) | 222 | 1.15 | 255 |
| Class 2 (2018) | 123 | 1.15 | 141 |
| Class 2 (2019) | 127 | 1.15 | 146 |
| Class 2 (2020) | 165 | 1.15 | 190 |
| Class 2 (2021) | 206 | 1.15 | 237 |
| Class 2 (2022) | 275 | 1.15 | 316 |
| Class 3 (2014) | 20 | 1.3 | 26 |
| Class 3 (2015) | 0 | 1.3 | 0 |
| Class 3 (2016) | 9 | 1.3 | 12 |
| Class 3 (2017) | 12 | 1.3 | 16 |
| Class 3 (2018) | 3 | 1.3 | 4 |
| Class 3 (2019) | 1 | 1.3 | 1 |
| Class 3 (2020) | 1 | 1.3 | 1 |
| Class 3 (2021) | 5 | 1.3 | 7 |
| Class 3 (2022) | 3 | 1.3 | 4 |
| Class 4 (2014) | 636 | 1.45 | 922 |
| Class 4 (2015) | 560 | 1.45 | 812 |
| Class 4 (2016) | 468 | 1.45 | 679 |
| Class 4 (2017) | 319 | 1.45 | 463 |
| Class 4 (2018) | 196 | 1.45 | 284 |
| Class 4 (2019) | 210 | 1.45 | 305 |
| Class 4 (2020) | 201 | 1.45 | 291 |
| Class 4 (2021) | 227 | 1.45 | 329 |

TABLE 23—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, UNDESIGNATED AREAS—Continued

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Class 4 (2022) | 349 | 1.45 | 506 |
| Total | 5,725 | | 7,497 |
| Average weighting factor (weighted transits/number of transits) | | 1.31 | |

TABLE 24—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, DESIGNATED AREAS

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Class 1 (2014) | 20 | 1 | 20 |
| Class 1 (2015) | 15 | 1 | 15 |
| Class 1 (2016) | 28 | 1 | 28 |
| Class 1 (2017) | 15 | 1 | 15 |
| Class 1 (2018) | 42 | 1 | 42 |
| Class 1 (2019) | 48 | 1 | 48 |
| Class 1 (2020) | 7 | 1 | 7 |
| Class 1 (2021) | 12 | 1 | 12 |
| Class 1 (2022) | 34 | 1 | 34 |
| Class 2 (2014) | 237 | 1.15 | 273 |
| Class 2 (2015) | 217 | 1.15 | 250 |
| Class 2 (2016) | 224 | 1.15 | 258 |
| Class 2 (2017) | 127 | 1.15 | 146 |
| Class 2 (2018) | 153 | 1.15 | 176 |
| Class 2 (2019) | 281 | 1.15 | 323 |
| Class 2 (2020) | 342 | 1.15 | 393 |
| Class 2 (2021) | 240 | 1.15 | 276 |
| Class 2 (2022) | 184 | 1.15 | 212 |
| Class 3 (2014) | 8 | 1.3 | 10 |
| Class 3 (2015) | 8 | 1.3 | 10 |
| Class 3 (2016) | 4 | 1.3 | 5 |
| Class 3 (2017) | 4 | 1.3 | 5 |
| Class 3 (2018) | 14 | 1.3 | 18 |
| Class 3 (2019) | 1 | 1.3 | 1 |
| Class 3 (2020) | 5 | 1.3 | 7 |
| Class 3 (2021) | 2 | 1.3 | 3 |
| Class 3 (2022) | 3 | 1.3 | 4 |
| Class 4 (2014) | 359 | 1.45 | 521 |
| Class 4 (2015) | 340 | 1.45 | 493 |
| Class 4 (2016) | 281 | 1.45 | 407 |
| Class 4 (2017) | 185 | 1.45 | 268 |
| Class 4 (2018) | 379 | 1.45 | 550 |
| Class 4 (2019) | 403 | 1.45 | 584 |
| Class 4 (2020) | 405 | 1.45 | 587 |
| Class 4 (2021) | 268 | 1.45 | 389 |
| Class 4 (2022) | 273 | 1.45 | 396 |
| Total | 5,168 | | 6,785 |
| Average weighting factor (weighted transits/number of transits) | | 1.31 | |

*I. Step 9: Calculate Revised Base Rates*

In this step, the Coast Guard revises the base rates so that the total cost of pilotage will be equal to the revenue needed after considering the impact of the weighting factors. To do this, we divide the initial base rates calculated in Step 7 by the average weighting factors calculated in Step 8, as shown in table 25.

TABLE 25—REVISED BASE RATES FOR DISTRICT TWO

| Area | Initial rate (Step 7) | Average weighting factor (Step 8) | Revised rate (initial rate ÷ average weighting factor) |
|---|---|---|---|
| District Two: Undesignated | $768 | 1.31 | $586 |
| District Two: Designated | 865 | 1.31 | 660 |

*J. Step 10: Review and Finalize Rates*

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the proposed rates incorporate appropriate compensation for pilots to handle heavy traffic periods, and whether there are enough pilots to handle those heavy traffic periods. The Director also considers whether the proposed rates would cover operating expenses and infrastructure costs, taking average traffic and weighting factors into consideration. Based on the financial information submitted by the pilots, the Director is not proposing any alterations to the rates in this step. We propose to modify § 401.405(a)(3) and (4) to reflect the final rates shown in table 26.

TABLE 26—PROPOSED FINAL RATES FOR DISTRICT TWO

| Area | Name | Final 2023 pilotage rate | Proposed 2024 pilotage rate |
|---|---|---|---|
| District Two: Designated | Navigable waters from Southeast Shoal to Port Huron, MI. | $601 | $660 |
| District Two: Undesignated | Lake Erie | 704 | 586 |

**District Three**

*A. Step 1: Recognize Previous Operating Expenses*

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we review the independent accountant's financial reports for each association's 2021 expenses and revenues.[42] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. For costs generally accrued by the pilot associations, such as employee benefits, the cost is divided between the designated and undesignated areas on a *pro rata* basis.

Adjustments have been made by the auditors and are explained in the auditor's reports, which are available in the docket for this rulemaking, where indicated under the Public Participation and Request for Comments portion of the preamble.

In the 2021 expenses used as the basis for this proposed rule, districts used the term ''applicant'' to describe applicant trainees and persons who will be called apprentices (applicant pilots), under the definition of ''apprentice pilot'', which was introduced in the 2022 final rule. Therefore, when describing past expenses, the term ''applicant'' is used to match what was reported in 2021, which includes both applicant and apprentice pilots. The term ''apprentice'' is used to distinguish apprentice pilot wages and to describe the impacts of the ratemaking going forward.

The Coast Guard continues to include apprentice salaries as an allowable expense in the 2024 ratemaking, as this proposed rule is based on 2021 operating expenses, when salaries were still an allowable expense. Beginning with the 2025 ratemaking, apprentice pilot salaries will no longer be included as a 2022 operating expense, because apprentice pilot wages will have already been factored into the ratemaking Steps 3 and 4 in calculation of the 2022 rates. Beginning in 2025, the applicant salaries' operating expenses for 2022 will consist of only applicant trainees (those who are not yet apprentice pilots). The recognized operating expenses for District Three are shown in table 27.

TABLE 27—2021 RECOGNIZED EXPENSES FOR DISTRICT THREE

| Reported operating expenses for 2021 | District Three | | | |
|---|---|---|---|---|
| | Undesignated | Designated | Undesignated | Total |
| | Lakes Huron and Michigan | St. Marys River | Lake Superior | |
| *Applicant Cost:* | | | | |
| Applicant Salaries | $336,149 | $140,111 | $176,330 | $652,590 |
| Applicant Benefits | 58,306 | 24,303 | 30,585 | 113,194 |
| Total Applicant Cost | 394,455 | 164,414 | 206,915 | 765,784 |
| *Other Pilotage Costs:* | | | | |
| Pilot subsistence/travel | 149,993 | 62,519 | 78,680 | 291,192 |
| Hotel/Lodging Cost | 136,769 | 57,007 | 71,744 | 265,520 |
| Hotel/Lodging Cost (D3–21–03) | (18,162) | (7,570) | (9,527) | (35,260) |
| Travel | 55,936 | 23,315 | 29,342 | 108,592 |
| License Insurance—Pilots | 881 | 367 | 462 | 1,710 |
| Payroll taxes | ..... | ..... | ..... | ..... |
| Payroll Tax (D3–21–04) | 155,779 | 64,931 | 81,715 | 302,425 |
| License Insurance | 15,328 | 6,389 | 8,040 | 29,757 |
| Total Other Pilotage Costs | 496,524 | 206,958 | 260,456 | 963,938 |
| *Pilot Boat and Dispatch costs:* | | | | |
| Pilot boat costs | 445,549 | 185,710 | 233,716 | 864,975 |

[42] These reports are available in the docket for this proposed rule.

TABLE 27—2021 RECOGNIZED EXPENSES FOR DISTRICT THREE—Continued

| Reported operating expenses for 2021 | District Three | | | |
|---|---|---|---|---|
| | Undesignated | Designated | Undesignated | Total |
| | Lakes Huron and Michigan | St. Marys River | Lake Superior | |
| Pilot Boat Coast (D2–21–02) | (10,901) | (4,544) | (5,718) | (21,163) |
| Dispatch costs | 38,156 | 15,904 | 20,015 | 74,074 |
| Employee Benefits | 1,748 | 729 | 917 | 3,394 |
| Insurance | 20,141 | 8,395 | 10,565 | 39,101 |
| Insurance (D3–21–05, D3–21–09) | 1,735 | 723 | 910 | 3,369 |
| Salaries | 140,294 | 58,476 | 73,592 | 272,363 |
| Payroll taxes | 123 | 51 | 64 | 238 |
| Total Pilot boat and dispatch costs | 636,845 | 265,444 | 334,061 | 1,236,350 |
| *Administrative Cost* | | | | |
| Legal—general counsel | 9,560 | 3,985 | 5,015 | 18,560 |
| Legal—shared counsel (K&L Gates) | 6,227 | 2,595 | 3,266 | 12,088 |
| Legal—shared counsel (K&L Gates) (D3–21–07) | (1,307) | (545) | (686) | (2,538) |
| Travel | 58,104 | 24,219 | 30,479 | 112,802 |
| Travel (D3–21–03) | (14,093) | (5,874) | (7,393) | (27,360) |
| Insurance | 29,480 | 12,288 | 15,464 | 57,232 |
| Insurance (D3–21–05, D3–21–09) | (5,112) | (2,131) | (2,681) | (9,924) |
| Employee benefits | 126,390 | 52,681 | 66,299 | 245,369 |
| Payroll Tax | 54,544 | 22,735 | 28,611 | 105,890 |
| Other taxes | 25,489 | 10,624 | 13,370 | 49,483 |
| Other taxes (D3–21–02) | (25,006) | (10,423) | (13,117) | (48,545) |
| Real Estate Taxes | 1,396 | 582 | 732 | 2,710 |
| Depreciation/Auto leasing/Other | 112,215 | 46,772 | 58,863 | 217,850 |
| Depreciation/Auto leasing/Other (D3–21–02) | (4,465) | (1,861) | (2,342) | (8,668) |
| Interest | 3,432 | 1,431 | 1,800 | 6,663 |
| APA Dues | 25,946 | 10,814 | 13,610 | 50,370 |
| APA Dues (D3–21–08) | (1,297) | (541) | (680) | (2,519) |
| Dues and subscriptions | 4,044 | 1,685 | 2,121 | 7,850 |
| Salaries | 63,591 | 26,506 | 33,357 | 123,454 |
| Utilities | 41,681 | 17,373 | 21,864 | 80,919 |
| Utilities (D3–21–03) | (34,248) | (14,275) | (17,965) | (66,488) |
| Accounting/Professional fees | 22,765 | 9,489 | 11,941 | 44,195 |
| Pilot Training | 44,259 | 18,448 | 23,216 | 85,923 |
| Other expenses | 24,741 | 10,312 | 12,978 | 48,032 |
| Total Administrative Expenses | 568,336 | 236,889 | 298,122 | 1,103,347 |
| Total Operating Expenses (Other Costs+ Applicant Cost + Pilot Boats + Admin) | 2,096,160 | 873,705 | 1,099,554 | 4,069,419 |
| *Directors Adjustments—Applicant Surcharge Collected* | ..... | ..... | ..... | ..... |
| Total Directors Adjustments | ..... | ..... | ..... | ..... |
| Total Operating Expenses (OpEx + Adjustments) | 2,096,160 | 873,705 | 1,099,554 | 4,069,419 |

*B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation*

In accordance with the text in § 404.102, having identified the 2021 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2022 inflation rate.[43] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2023 and 2024 inflation modification.[44] Based on that information, the calculations for Step 2 are as presented in table 28:

[43] The CPI is defined as ''All Urban Consumers (CPI–U), All Items, 1982–4=100.'' Series CUUR0200SAO (Downloaded March 21, 2023). Available at *https://www.bls.gov/cpi/data.htm.,* All Urban Consumers (Current Series), multiscreen data, not seasonally adjusted, 0200 Midwest, Current, All Items, Monthly, 12-month Percent Change and Annual Data.

[44] The 2023 and 2024 inflation rates are available at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20230322.pdf.* We used the Core PCE December Projection found in table 1. (Last visited 04/2023).

TABLE 28—ADJUSTED OPERATING EXPENSES FOR DISTRICT THREE

| | District Three | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Total Operating Expenses (Step 1) | $3,195,714 | $873,705 | $4,069,419 |
| 2022 Inflation Modification (@8%) | 255,657 | 69,896 | 325,553 |
| 2023 Inflation Modification (@3.5%) | 120,798 | 33,026 | 153,824 |
| 2024 Inflation Modification (@2.5%) | 89,304 | 24,416 | 113,720 |
| Adjusted 2024 Operating Expenses | 3,661,473 | 1,001,043 | 4,662,516 |

*C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots*

In accordance with the text in § 404.103, the Coast Guard estimates the number of registered pilots in each district. We determine the number of registered pilots based on data provided by the WGLPA. Using these numbers, we estimate that there will be 22 registered pilots in 2024 in District Three. We determine the number of apprentice pilots based on input from the district on anticipated retirements and staffing needs. Using these numbers, the Coast Guard estimates that there will be two apprentice pilots in 2024 in District Three. Based on the seasonal staffing model discussed in the 2017 ratemaking (82 FR 41466), a certain number of pilots are assigned to designated waters, and a certain number of pilots are assigned to undesignated waters, as shown in table 29. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 29—AUTHORIZED PILOTS FOR DISTRICT THREE

| Item | District Three |
|---|---|
| Proposed Maximum Number of Pilots (per § 401.220(a))* | 22 |
| 2024 Authorized Pilots (total) | 22 |
| Pilots Assigned to Designated Areas | 5 |
| Pilots Assigned to Undesignated Areas | 17 |
| 2024 Apprentice Pilots | 2 |

*For a detailed calculation, refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

*D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark*

In this step, we determine the total pilot compensation for each area. Because we are issuing an ''interim'' ratemaking this year, we follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. First, we adjust the 2023 target compensation benchmark of $424,398 by 1.7 percent for a value of $431,613. This accounts for the difference in actual first quarter 2023 ECI inflation, which is 4.4 percent, and the 2023 PCE estimate of 2.7 percent.[45] [46] The second step accounts for projected inflation from 2023 to 2024, which is 2.5 percent.[47] Based on the projected 2024 inflation estimate, the proposed target compensation benchmark for 2024 is $442,403 per pilot. The proposed apprentice pilot wage benchmark is 36 percent of the target pilot compensation, or $159,265 ($442,403 × 0.36).

Next, we certify that the number of pilots estimated for 2024 is less than or equal to the number permitted under the staffing model in § 401.220(a). The staffing model suggests that District Three needs 22 pilots, which is less than or equal to the number of registered pilots provided by the pilot association. In accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of registered pilots for District Three, as shown in table 30. We estimate that the number of apprentice pilots with limited registration needed will be two for District Three in the 2024 season. The total target wages for apprentices are allocated with 21 percent for the designated area, and 79 percent (52 percent + 27 percent) for the undesignated areas, in accordance with the allocation for operating expenses.

TABLE 30—TARGET COMPENSATION FOR DISTRICT THREE

| | District Three | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Target Pilot Compensation | $442,403 | $442,403 | $442,403 |
| Number of Pilots | 17 | 5 | 22 |
| Total Target Pilot Compensation | $7,520,851 | $2,212,015 | $9,732,866 |
| Target Apprentice Pilot Compensation | $159,265 | $159,265 | $159,265 |
| Number of Apprentice Pilots | | | 2 |

[45] Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Annual Average, Series ID: CIU2010000520000A. *https://www.bls.gov/news.release/eci.t05.htm* (Last visited 04/28/23).

[46] Table 1 Summary of Economic Projections, PCE Inflation. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20220316.pdf* (Last visited 05/17/23).

[47] Table 1 Summary of Economic Projections, PCE Inflation December Projection. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20230322.pdf* (Last visited 03/2023).

TABLE 30—TARGET COMPENSATION FOR DISTRICT THREE—Continued

| | District Three | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Total Target Apprentice Pilot Compensation | $251,639 | $66,891 | $318,530 |

*E. Step 5: Project Working Capital Fund*

Next, the Coast Guard calculates the working capital fund revenues needed for each area. We first add the figures for projected operating expenses, total pilot compensation, and total target apprentice pilot wage for each area, and then, we find the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 4.0742 percent, rounded.[48] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in table 31.

TABLE 31—WORKING CAPITAL FUND CALCULATION FOR DISTRICT THREE

| | District Three | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Adjusted Operating Expenses (Step 2) | $3,661,473 | $1,001,043 | $4,662,516 |
| Total Target Pilot Compensation (Step 4) | $7,520,851 | $2,212,015 | $9,732,866 |
| Total Target Apprentice Pilot Compensation (Step 4) | $251,639 | $66,891 | $318,530 |
| Total 2024 Expenses | $11,433,963 | $3,279,949 | $14,713,912 |
| Working Capital Fund (4.0742%) | $465,839 | $133,631 | $599,470 |

*F. Step 6: Project Needed Revenue*

In this step, we add all the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), and the working capital fund contribution (from Step 5). The calculations are shown in table 32.

TABLE 32—REVENUE NEEDED FOR DISTRICT THREE

| | District Three | | |
|---|---|---|---|
| | Undesignated | Designated | Total |
| Adjusted Operating Expenses (Step 2) | $3,661,473 | $1,001,043 | $4,662,516 |
| Total Target Pilot Compensation (Step 4) | $7,520,851 | $2,212,015 | $9,732,866 |
| Total Target Apprentice Pilot Compensation (Step 4) | $251,639 | $66,891 | $318,530 |
| Working Capital Fund (Step 5) | $465,839 | $133,631 | $599,470 |
| Total Revenue Needed | $11,899,802 | $3,413,580 | $15,313,382 |

*G. Step 7: Calculate Initial Base Rates*

Having determined the revenue needed for each area in the previous six steps, we divide that number by the expected number of traffic hours to develop an hourly rate. Step 7 is a two-part process. In the first part, the 10-year traffic average in District Three is calculated using the total time on task or pilot bridge hours. To calculate the time on task for each district, the Coast Guard uses billing data from SeaPro, pulling the data from the system filtering by district, year, job status (including only processed jobs), and flagging code (including only U.S. jobs). Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in table 33.

TABLE 33—TIME ON TASK FOR DISTRICT THREE (HOURS)

| Year | District Three | |
|---|---|---|
| | Undesignated | Designated |
| 2022 | 23,985 | 4,424 |
| 2021 | 18,286 | 2,516 |
| 2020 | 24,178 | 3,682 |
| 2019 | 24,851 | 3,395 |
| 2018 | 19,967 | 3,455 |
| 2017 | 20,955 | 2,997 |
| 2016 | 23,421 | 2,769 |

[48] Moody's Seasoned Aaa Corporate Bond Yield, average of 2022 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of ''Aaa'' is the highest bond rating assigned with the lowest credit risk. See *https://fred.stlouisfed.org/series/AAA*. (Last visited 03/21/2023).

TABLE 33—TIME ON TASK FOR DISTRICT THREE (HOURS)—Continued

| Year | District Three | |
|---|---|---|
| | Undesignated | Designated |
| 2015 | 22,824 | 2,696 |
| 2014 | 25,833 | 3,835 |
| 2013 | 17,115 | 2,631 |
| Average | 22,142 | 3,240 |

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. The calculations for District Three are set forth in table 34.

TABLE 34—INITIAL RATE CALCULATIONS FOR DISTRICT THREE

| | Undesignated | Designated |
|---|---|---|
| Revenue needed (Step 6) | $11,899,802 | $3,413,580 |
| Average time on task (hours) | 22,142 | 3,240 |
| Initial rate | $537 | $1,054 |

*H. Step 8: Calculate Average Weighting Factors by Area*

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this data, we calculate the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in tables 35 and 36.

TABLE 35—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, UNDESIGNATED AREAS

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| **Area 6** | | | |
| Class 1 (2014) | 45 | 1 | 45 |
| Class 1 (2015) | 56 | 1 | 56 |
| Class 1 (2016) | 136 | 1 | 136 |
| Class 1 (2017) | 148 | 1 | 148 |
| Class 1 (2018) | 103 | 1 | 103 |
| Class 1 (2019) | 173 | 1 | 173 |
| Class 1 (2020) | 4 | 1 | 4 |
| Class 1 (2021) | 8 | 1 | 8 |
| Class 1 (2022) | 94 | 1 | 94 |
| Class 2 (2014) | 274 | 1.15 | 315 |
| Class 2 (2015) | 207 | 1.15 | 238 |
| Class 2 (2016) | 236 | 1.15 | 271 |
| Class 2 (2017) | 264 | 1.15 | 304 |
| Class 2 (2018) | 169 | 1.15 | 194 |
| Class 2 (2019) | 279 | 1.15 | 321 |
| Class 2 (2020) | 332 | 1.15 | 382 |
| Class 2 (2021) | 273 | 1.15 | 314 |
| Class 2 (2022) | 278 | 1.15 | 320 |
| Class 3 (2014) | 15 | 1.3 | 20 |
| Class 3 (2015) | 8 | 1.3 | 10 |
| Class 3 (2016) | 10 | 1.3 | 13 |
| Class 3 (2017) | 19 | 1.3 | 25 |
| Class 3 (2018) | 9 | 1.3 | 12 |
| Class 3 (2019) | 9 | 1.3 | 12 |
| Class 3 (2020) | 4 | 1.3 | 5 |
| Class 3 (2021) | 5 | 1.3 | 7 |
| Class 3 (2022) | 3 | 1.3 | 4 |
| Class 4 (2014) | 394 | 1.45 | 571 |
| Class 4 (2015) | 375 | 1.45 | 544 |
| Class 4 (2016) | 332 | 1.45 | 481 |
| Class 4 (2017) | 367 | 1.45 | 532 |
| Class 4 (2018) | 337 | 1.45 | 489 |
| Class 4 (2019) | 334 | 1.45 | 484 |
| Class 4 (2020) | 339 | 1.45 | 492 |
| Class 4 (2021) | 365 | 1.45 | 529 |
| Class 4 (2022) | 385 | 1.45 | 558 |

TABLE 35—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, UNDESIGNATED AREAS—Continued

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Total for Area 6 | 6,380 | | 8,200 |
| **Area 8** | | | |
| Class 1 (2014) | 3 | 1 | 3 |
| Class 1 (2015) | 0 | 1 | 0 |
| Class 1 (2016) | 4 | 1 | 4 |
| Class 1 (2017) | 4 | 1 | 4 |
| Class 1 (2018) | 0 | 1 | 0 |
| Class 1 (2019) | 0 | 1 | 0 |
| Class 1 (2020) | 1 | 1 | 1 |
| Class 1 (2021) | 5 | 1 | 5 |
| Class 1 (2022) | 13 | 1 | 13 |
| Class 2 (2014) | 177 | 1.15 | 204 |
| Class 2 (2015) | 169 | 1.15 | 194 |
| Class 2 (2016) | 174 | 1.15 | 200 |
| Class 2 (2017) | 151 | 1.15 | 174 |
| Class 2 (2018) | 102 | 1.15 | 117 |
| Class 2 (2019) | 120 | 1.15 | 138 |
| Class 2 (2020) | 180 | 1.15 | 207 |
| Class 2 (2021) | 124 | 1.15 | 143 |
| Class 2 (2022) | 103 | 1.15 | 118 |
| Class 3 (2014) | 3 | 1.3 | 4 |
| Class 3 (2015) | 0 | 1.3 | 0 |
| Class 3 (2016) | 7 | 1.3 | 9 |
| Class 3 (2017) | 18 | 1.3 | 23 |
| Class 3 (2018) | 7 | 1.3 | 9 |
| Class 3 (2019) | 6 | 1.3 | 8 |
| Class 3 (2020) | 1 | 1.3 | 1 |
| Class 3 (2021) | 1 | 1.3 | 1 |
| Class 3 (2022) | 6 | 1.3 | 8 |
| Class 4 (2014) | 243 | 1.45 | 352 |
| Class 4 (2015) | 253 | 1.45 | 367 |
| Class 4 (2016) | 204 | 1.45 | 296 |
| Class 4 (2017) | 269 | 1.45 | 390 |
| Class 4 (2018) | 188 | 1.45 | 273 |
| Class 4 (2019) | 254 | 1.45 | 368 |
| Class 4 (2020) | 265 | 1.45 | 384 |
| Class 4 (2021) | 319 | 1.45 | 463 |
| Class 4 (2022) | 271 | 1.45 | 393 |
| Total for Area 8 | 3,645 | | 4,874 |
| Combined total | 10,025 | | 13,074 |
| Average weighting factor (weighted transits/number of transits) | | 1.30 | |

TABLE 36—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, DESIGNATED AREAS

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Class 1 (2014) | 27 | 1 | 27 |
| Class 1 (2015) | 23 | 1 | 23 |
| Class 1 (2016) | 55 | 1 | 55 |
| Class 1 (2017) | 62 | 1 | 62 |
| Class 1 (2018) | 47 | 1 | 47 |
| Class 1 (2019) | 45 | 1 | 45 |
| Class 1 (2020) | 15 | 1 | 15 |
| Class 1 (2021) | 15 | 1 | 15 |
| Class 1 (2022) | 102 | 1 | 102 |
| Class 2 (2014) | 221 | 1.15 | 254 |
| Class 2 (2015) | 145 | 1.15 | 167 |
| Class 2 (2016) | 174 | 1.15 | 200 |
| Class 2 (2017) | 170 | 1.15 | 196 |
| Class 2 (2018) | 126 | 1.15 | 145 |
| Class 2 (2019) | 162 | 1.15 | 186 |
| Class 2 (2020) | 218 | 1.15 | 251 |
| Class 2 (2021) | 131 | 1.15 | 151 |
| Class 2 (2022) | 176 | 1.15 | 202 |
| Class 3 (2014) | 15 | 1.3 | 20 |
| Class 3 (2015) | 0 | 1.3 | 0 |
| Class 3 (2016) | 6 | 1.3 | 8 |
| Class 3 (2017) | 14 | 1.3 | 18 |

TABLE 36—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, DESIGNATED AREAS—Continued

| Vessel class/year | Number of transits | Weighting factor | Weighted transits |
|---|---|---|---|
| Class 3 (2018) | 6 | 1.3 | 8 |
| Class 3 (2019) | 3 | 1.3 | 4 |
| Class 3 (2020) | 1 | 1.3 | 1 |
| Class 3 (2021) | 2 | 1.3 | 3 |
| Class 3 (2022) | 5 | 1.3 | 7 |
| Class 4 (2014) | 321 | 1.45 | 465 |
| Class 4 (2015) | 245 | 1.45 | 355 |
| Class 4 (2016) | 191 | 1.45 | 277 |
| Class 4 (2017) | 234 | 1.45 | 339 |
| Class 4 (2018) | 225 | 1.45 | 326 |
| Class 4 (2019) | 308 | 1.45 | 447 |
| Class 4 (2020) | 336 | 1.45 | 487 |
| Class 4 (2021) | 258 | 1.45 | 374 |
| Class 4 (2022) | 344 | 1.45 | 499 |
| Total | 4,428 | ..... | 5,780 |
| Average weighting factor (weighted transits/number of transits) | ..... | 1.31 | ..... |

*I. Step 9: Calculate Revised Base Rates*

In this step, we revise the base rates so that the total cost of pilotage will be equal to the revenue needed, after considering the impact of the weighting factors. To do this, we divide the initial base rates calculated in Step 7 by the average weighting factors calculated in Step 8, as shown in table 37.

TABLE 37—REVISED BASE RATES FOR DISTRICT THREE

| Area | Initial rate (Step 7) | Average weighting factor (Step 8) | Revised rate (initial rate ÷ average weighting factor) |
|---|---|---|---|
| District Three: Undesignated | $537 | 1.30 | $413 |
| District Three: Designated | $1,054 | 1.31 | $805 |

*J. Step 10: Review and Finalize Rates*

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the proposed rates incorporate appropriate compensation for pilots to handle heavy traffic periods, and whether there are enough pilots to handle those heavy traffic periods. The Director also considers whether the proposed rates would cover operating expenses and infrastructure costs, taking average traffic and weighting factors into consideration. Based on this information, the Director is not proposing any alterations to the rates in this step. We propose to modify § 401.405(a)(5) and (6) to reflect the proposed rates shown in table 38.

TABLE 38—PROPOSED FINAL RATES FOR DISTRICT THREE

| Area | Name | Final 2023 pilotage rate | Proposed 2024 pilotage rate |
|---|---|---|---|
| District Three: Designated | St. Marys River | $834 | $805 |
| District Three: Undesignated | Lakes Huron, Michigan, and Superior | 410 | 413 |

## X. Regulatory Analyses

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

*A. Regulatory Planning and Review*

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed this regulatory action.

The purpose of this proposed rule is to establish new pilotage rates, as 46 U.S.C. 9303(f) requires that rates be established or reviewed and adjusted each year. The statute also requires that base rates be established by a full ratemaking at least once every 5 years, and, in years when base rates are not established, they must be reviewed and, if necessary, adjusted. The Coast Guard

concluded the last full ratemaking in February of 2023.[49] For this NPRM, the Coast Guard estimates an increase in cost of approximately $1.91 million to industry. This is approximately a 5-percent increase because of the change in revenue needed in 2024 compared to the revenue needed in 2023. See table 39.

TABLE 39—ECONOMIC IMPACTS DUE TO PROPOSED CHANGES

| Change | Description | Affected population | Costs | Benefits |
|---|---|---|---|---|
| Rate changes .... | In accordance with 46 U.S.C. Chapter 93, the Coast Guard is required to review and adjust pilotage rates annually. | Owners and operators of 277 vessels transiting the Great Lakes system annually, 56 United States Great Lakes pilots, 7 apprentice pilots, and 3 pilotage associations. | Increase of $1,914,438 due to change in revenue needed for 2024 ($39,573,633) from revenue needed for 2023 ($37,659,195) as shown in table 40. | New rates cover an association's necessary and reasonable operating expenses.<br>Promotes safe, efficient, and reliable pilotage service on the Great Lakes.<br>Provides fair compensation, adequate training, and sufficient rest periods for pilots.<br>Ensures the association receives sufficient revenues to fund future improvements. |

The Coast Guard is required to review and adjust pilotage rates on the Great Lakes annually. See section IV., Basis and Purpose, of this preamble for detailed discussions of the legal basis and purpose for this rulemaking. Based on our annual review for this rulemaking, we are adjusting the pilotage rates for the 2024 shipping season to generate sufficient revenues for each district to reimburse its necessary and reasonable operating expenses, fairly compensate properly trained and rested pilots, and provide an appropriate working capital fund to use for improvements. The result would be an increase in rates for both areas in District One, the designated area for District Two, and the undesignated area in District Three. The result would be a decrease in rates for the undesignated area for District Two and the designated area for District Three. These changes would also lead to a net increase in the cost of service to shippers. The change in per-unit cost to each individual shipper would depend on their area of operation.

A detailed discussion of our economic impact analysis follows.

Affected Population

This proposed rule affects United States Great Lakes pilots and apprentice pilots, the 3 pilot associations, and the owners and operators of 277 oceangoing vessels that transit the Great Lakes annually on average from 2020 to 2022. The Coast Guard estimates that there will be 56 registered pilots and 7 apprentice pilots during the 2024 shipping season. The shippers affected by these rate changes are those owners and operators of domestic vessels operating ''on register'' (engaged in foreign trade) and the owners and operators of non-Canadian foreign vessels on routes within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. The statute applies only to commercial vessels, not to recreational vessels. United States-flagged vessels not operating on register, and Canadian ''lakers,'' which account for most commercial shipping on the Great Lakes, are not required by 46 U.S.C. 9302 to have pilots. However, these United States- and Canadian-flagged lakers may voluntarily choose to engage a Great Lakes registered pilot. Vessels that are U.S.-flagged may opt to have a pilot for varying reasons, such as unfamiliarity with designated waters and ports, or for insurance purposes.

The Coast Guard used billing information from the years 2020 through 2022 from the GLPMS to estimate the average annual number of vessels affected by the rate adjustment. The GLPMS tracks data related to managing and coordinating the dispatch of pilots on the Great Lakes, and billing in accordance with the services. As described in Step 7 of the ratemaking methodology, we use a 10-year average to estimate the traffic. We used 3 years of the most recent billing data to estimate the affected population. When we reviewed 10 years of the most recent billing data, we found the data included vessels that have not used pilotage services in recent years. We believe that using 3 years of billing data is a better representation of the vessel population currently using pilotage services and impacted by this proposed rule.

We found that 444 unique vessels used pilotage services during the years 2020 through 2022. That is, these vessels had a pilot dispatched to the vessel, and billing information was recorded in SeaPro. Of these vessels, 412 were foreign-flagged vessels and 32 were U.S.-flagged vessels. As stated previously, U.S.-flagged vessels not operating on register are not required to have a registered pilot per 46 U.S.C. 9302, but they can voluntarily choose to have one.

Numerous factors affect vessel traffic, which varies from year to year. Therefore, rather than using the total number of vessels over the time period, the Coast Guard took an average of the unique vessels using pilotage services from the years 2020 through 2022 as the best representation of vessels estimated to be affected by the rates in this proposed rule. From 2020 through 2022, an average of 277 vessels used pilotage services annually.[50] On average, 266 of these vessels were foreign-flagged and 11 were U.S.-flagged vessels that voluntarily opted into the pilotage service (these figures are rounded averages).

Total Cost to Shippers

The rate changes resulting from this adjustment to the rates would result in a net increase in the cost of service to shippers. However, the change in per-

[49] Great Lakes Pilotage Rates—2023 Annual Ratemaking and Review of Methodology (88 FR 12226), published February 27, 2023.

[50] Some vessels entered the Great Lakes multiple times in a single year, affecting the average number of unique vessels using pilotage services in any given year.

unit cost to each individual shipper would be dependent on their area of operation.

The Coast Guard estimates the effect of the rate changes on shippers by comparing the total projected revenues needed to cover costs in 2023 with the total projected revenues to cover costs in 2024. We set pilotage rates so pilot associations receive enough revenue to cover their necessary and reasonable expenses. Shippers pay these rates when they engage a pilot as required by 46 U.S.C. 9302. Therefore, the aggregate payments of shippers to pilot associations are equal to the projected necessary revenues for pilot associations. The revenues each year represent the total costs that shippers must pay for pilotage services. The change in revenue from the previous year is the additional cost to shippers discussed in this proposed rule.

The impacts of the rate changes on shippers are estimated from the district pilotage projected revenues (shown in tables 8, 20, and 32 of this preamble). The Coast Guard estimates that, for the 2024 shipping season, the projected revenue needed for all three districts is $39,573,633.

To estimate the change in cost to shippers from this proposed rule, the Coast Guard compared the 2024 total projected revenues to the 2023 projected revenues. Because we review and prescribe rates for Great Lakes pilotage annually, the effects are estimated as a single-year cost rather than annualized over a 10-year period. In the 2023 final rule, we estimated the total projected revenue needed for 2023 as 37,659,195.[51] This is the best approximation of 2023 revenues, as, at the time of publication of this proposed rule, the Coast Guard does not have enough audited data available for the 2023 shipping season to revise these projections. Table 40 shows the revenue projections for 2023 and 2024 and details the additional cost increases to shippers by area and district as a result of the rate changes on traffic in Districts One, Two, and Three.

TABLE 40—EFFECT OF THE PROPOSED RULE BY AREA AND DISTRICT

[U.S. dollars; non-discounted]

| Area | Revenue needed in 2023 | Revenue needed in 2024 | Additional costs of this rule |
|---|---|---|---|
| Total, District One | $12,609,601 | $13,706,739 | $1,097,138 |
| Total, District Two | 10,392,542 | 10,553,511 | 160,969 |
| Total, District Three | 14,657,052 | 15,313,382 | 656,330 |
| System Total | 37,659,195 | 39,573,633 | 1,914,438 |

* All figures are rounded to the nearest dollar and may not sum.

The resulting difference between the projected revenue in 2023 and the projected revenue in 2024 is the annual change in payments from shippers to pilots as a result of the rate changes proposed by this NPRM. The effect of the rate changes to shippers would vary by area and district. After considering the change in pilotage rates, the proposed rate changes would lead to affected shippers operating in District One experiencing an increase in payments of $1,097,138 over the previous year. Affected shippers operating in District Two and District Three would experience an increase in payments of $160,969 and $656,330, respectively, when compared with 2023. The overall adjustment in payments would increase payments by shippers of $1,914,438 across all three districts (a 5-percent increase when compared with 2023). Again, because the Coast Guard reviews and sets rates for Great Lakes pilotage annually, we estimate the impacts as single-year costs rather than annualizing them over a 10-year period.

Table 41 shows the difference in revenue by revenue-component from 2023 to 2024 and presents each revenue-component as a percentage of the total revenue needed. In both 2023 and 2024, the largest revenue-component was pilotage compensation (63 percent of total revenue needed in 2023, and 63 percent of total revenue needed in 2024), followed by operating expenses (32 percent of total revenue needed in 2023, and 31 percent of total revenue needed in 2024). The large increase in the working capital fund, 56 percent from 2023 to 2024, is driven by a large increase in the Target Rate of Return on Investment from 2.7033 percent in 2021 to 4.0742 percent in 2022.[52]

TABLE 41—DIFFERENCE IN REVENUE BY REVENUE-COMPONENT

| Revenue component | Revenue needed in 2023 | Percentage of total revenue needed in 2023 | Revenue needed in 2024 | Percentage of total revenue needed in 2024 | Difference (2024 revenue—2023 revenue) | Percentage change from previous year |
|---|---|---|---|---|---|---|
| Adjusted Operating Expenses | $11,984,950 | 32 | $12,135,029 | 31 | $150,079 | 1 |
| Total Target Pilot Compensation | 23,766,288 | 63 | 24,774,568 | 63 | 1,008,280 | 4 |
| Total Target Apprentice Pilot Compensation | 916,700 | 2 | 1,114,856 | 3 | 198,156 | 22 |
| Working Capital Fund | 991,257 | 3 | 1,549,180 | 4 | 557,923 | 56 |
| Total Revenue Needed | 37,659,195 | 100 | 39,573,633 | 100 | 1,914,438 | 5 |

* All figures are rounded to the nearest dollar and may not sum.

[51] 88 FR 12226, 12252. See table 42. *https://www.govinfo.gov/content/pkg/FR-2023-02-27/pdf/2023-03212.pdf* (Last visited 5/17/23).

[52] Moody's Seasoned Aaa Corporate Bond Yield, average of 2022 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of ''Aaa'' is the highest bond rating assigned with the lowest credit risk. See *https://fred.stlouisfed.org/series/AAA.* (Last visited 03/21/2023).

As stated above, we estimate that there would be a total increase in revenue needed by the pilot associations of $1,914,438. This represents an increase in revenue needed for target pilot compensation of $1,008,280, an increase in revenue needed for the total apprentice pilot wage benchmark of $198,156, an increase in the revenue needed for adjusted operating expenses of $150,079, and an increase in the revenue needed for the working capital fund of $557,923.

The change in revenue needed for pilot compensation, $1,008,280, is due to two factors: (1) The changes to adjust 2023 pilotage compensation to account for the difference between actual ECI inflation [53] (4.4 percent) and predicted PCE inflation [54] (2.7 percent) for 2023; and (2) projected inflation of pilotage compensation in Step 2 of the methodology, using predicted inflation through 2024.

The target compensation is $442,403 per pilot in 2024, compared to $424,398 in 2023. The proposed changes to modify the 2023 pilot compensation to account for the difference between predicted and actual inflation would increase the 2023 target compensation value by 1.7 percent. As shown in table 42, this inflation adjustment increases total compensation by $7,215 per pilot, and the total revenue needed by $404,027, when accounting for all 56 pilots.

TABLE 42—CHANGE IN REVENUE RESULTING FROM THE CHANGE TO INFLATION OF PILOT COMPENSATION CALCULATION IN STEP 4

| | |
|---|---|
| 2023 Target Pilot Compensation | $424,398 |
| Adjusted 2023 Compensation ($424,398 × 1.017) | 431,613 |
| Difference between Adjusted Target 2023 Compensation and Target 2023 Compensation ($431,613 − $424,398) | 7,215 |
| Increase in total Revenue for 56 Pilots ($7,215 × 56) | 404,027 |

*All figures are rounded to the nearest dollar and may not sum.

Similarly, table 43 shows the impact of the difference between predicted and actual inflation on the target apprentice pilot compensation benchmark. The inflation adjustment increases the compensation benchmark by $2,597 per apprentice pilot, and the total revenue needed by $18,181 when accounting for all seven apprentice pilots.

TABLE 43—CHANGE IN REVENUE RESULTING FROM THE CHANGE TO INFLATION OF APPRENTICE PILOT COMPENSATION CALCULATION IN STEP 4

| | |
|---|---|
| Target Apprentice Pilot Compensation | $152,783 |
| Adjusted Compensation ($152,783 × 1.017) | 155,381 |
| Difference between Adjusted Target Compensation and Target Compensation ($155,381 − $152,783) | 2,597 |
| Increase in total Revenue for Apprentices ($2,597 × 7) | 18,181 |

*All figures are rounded to the nearest dollar and may not sum.

As noted earlier, the Coast Guard predicts that 56 pilots would be needed for the 2024 season. This is the same number of pilots as the 2023 season, so we do not estimate a change in revenue needed for pilot compensation separate from the changes to inflation.

Similarly, the Coast Guard predicts that seven apprentice pilots would be needed for the 2024 season. This would be an increase of one from the 2023 season. Table 44 shows the increase of $156,668 in revenue needed solely for apprentice pilot compensation. As noted previously, to avoid double counting, this value excludes the change in revenue resulting from the change to adjust 2023 apprentice pilotage compensation to account for the difference between actual and predicted inflation.

TABLE 44—CHANGE IN REVENUE RESULTING FROM INCREASE OF ONE APPRENTICE PILOT

| | |
|---|---|
| 2024 Apprentice Target Compensation | $159,265 |
| Total Number of New Apprentices | 1 |
| Total Cost of new Apprentices ($159,265 × 1) | 159,265 |
| Difference between Adjusted Target 2023 Compensation and Target 2023 Compensation ($159,265 − $155,381) | 2,597 |
| Increase in total Revenue for due to increase of 1 apprentice ($2,597 × 1) | 2,597 |
| Net Increase in total Revenue for increase of 1 − Apprentice (159,265 − $2,597) | 156,668 |

*All figures are rounded to the nearest dollar and may not sum.

Another increase, $604,253, would be the result of increasing compensation for the 56 pilots to account for future inflation of 2.5 percent in 2024. This would increase total compensation by $10,790 per pilot, as shown in table 45.

TABLE 45—CHANGE IN REVENUE RESULTING FROM INFLATING 2023 COMPENSATION TO 2024

| | |
|---|---|
| Adjusted 2023 Compensation | $431,613 |
| 2024 Target Compensation ($431,613 × 1.025) | 442,403 |
| Difference between Adjusted 2023 Compensation and Target 2024 Compensation $442,403 − $431,613) | 10,790 |

[53] Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Annual Average, Series ID: CIU2010000520000A. *https://www.bls.gov/news.release/eci.t05.htm* (Last visited 04/28/23).

[54] Table 1 Summary of Economic Projections, PCE Inflation December Projection. *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20220316.pdf* (Last visited 5/17/23).

TABLE 45—CHANGE IN REVENUE RESULTING FROM INFLATING 2023 COMPENSATION TO 2024—Continued

| | |
|---|---|
| Increase in total Revenue for 56 Pilots ($10,790 × 56) | 604,253 |

*All figures are rounded to the nearest dollar and may not sum.

Similarly, an increase of $27,191 would be the result of increasing compensation for the 7 apprentice pilots to account for future inflation of 2.5 percent in 2024. This would increase total compensation by $3,884 per apprentice pilot, as shown in table 46.

TABLE 46—CHANGE IN REVENUE RESULTING FROM INFLATING 2023 APPRENTICE PILOT COMPENSATION TO 2024

| | |
|---|---|
| Adjusted 2023 Compensation | $155,381 |
| 2024 Target Compensation ($442,403 × 36%) | 159,265 |
| Difference between Adjusted Compensation and Target Compensation ($159,265 − $155,381) | 3,884 |
| Increase in total Revenue for 7 Apprentices ($3,884 × 7) | 27,191 |

*All figures are rounded to the nearest dollar and may not sum.

Table 47 presents the percentage change in revenue by area and revenue-component, excluding surcharges, as they are applied at the district level.[55]

[55] The 2023 projected revenues are from the Great Lakes Pilotage Rate-2023 Annual Review and Revisions to Methodology final rule (88 FR 12226), tables 10, 22, and 34. The 2024 projected revenues are from tables 8, 20, and 32 of this proposed rule.

## Table 47 — Difference in Revenue by Revenue-Component and Area

| | Adjusted Operating Expenses | | | Total Target Pilot Compensation | | | Total Target Apprentice Pilot Compensation | | | Working Capital Fund | | | Total Revenue Needed | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2023 | 2024 | Percentage Change | 2023 | 2024 | Percentage Change | 2023 | 2024 | Percentage Change | 2023 | 2024 | Percentage Change | 2023 | 2024 | Percentage Change |
| District One: Designated | $2,599,777 | $2,837,471 | 9% | $4,243,980 | $4,424,030 | 4% | $183,340 | $286,677 | 56% | $189,966 | $307,525 | 62% | $7,217,063 | $7,855,703 | 8.8% |
| District One: Undesignated | $1,733,186 | $1,891,645 | 9% | $3,395,184 | $3,539,224 | 4% | $122,227 | $191,118 | 56% | $141,941 | $229,049 | 61% | $5,392,538 | $5,851,036 | 8.5% |
| District Two: Undesignated | $1,270,338 | $1,097,358 | (14%) | $4,243,980 | $3,981,627 | (6%) | $61,113 | $127,412 | 108% | $150,722 | $212,117 | 41% | $5,726,153 | $5,418,514 | (5.4%) |
| District Two: Designated | $1,905,503 | $1,646,040 | (14%) | $2,546,388 | $3,096,821 | 22% | $91,670 | $191,118 | 108% | $122,828 | $201,019 | 64% | $4,666,389 | $5,134,998 | 10% |
| District Three: Undesignated | $3,515,118 | $3,661,473 | 4% | $7,214,766 | $7,520,851 | 4% | $359,942 | $251,639 | (30%) | $299,795 | $465,839 | 55% | $11,389,621 | $11,899,802 | 4.5% |
| District Three: Designated | $961,028 | $1,001,043 | 4% | $2,121,990 | $2,212,015 | 4% | $98,408 | $66,891 | (32%) | $86,005 | $133,631 | 55% | $3,267,430 | $3,413,580 | 4.5% |

*All figures are rounded to the nearest dollar and may not sum.

Benefits

This proposed rule allows the Coast Guard to meet the requirements in 46 U.S.C. 9303 to review the rates for pilotage services on the Great Lakes. The rate changes promote safe, efficient, and reliable pilotage service on the Great Lakes by (1) ensuring that rates cover an association's operating expenses, (2) providing fair pilot compensation, adequate training, and sufficient rest periods for pilots, and (3) ensuring pilot associations produce enough revenue to fund future improvements. The rate changes also help recruit and retain pilots, which ensures enough pilots to meet peak shipping demand, helping to reduce delays caused by pilot shortages.

*B. Small Entities*

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For this proposed rule, the Coast Guard reviewed recent company size and ownership data for the vessels identified in SeaPro, and we reviewed business revenue and size data provided by publicly available sources such as ReferenceUSA.[56] As described in section X., Regulatory Analyses, and section III., Executive Summary, of this preamble, we found that 444 unique vessels used pilotage services during the years 2020 through 2022. These vessels are owned by 53 entities, of which 47 are foreign entities that operate primarily outside the United States, and the remaining 6 entities are U.S. entities. We compared the revenue and employee data found in the company search to the Small Business Administration's (SBA) small business threshold, as defined in the SBA's ''Table of Size Standards'' for small businesses, to determine how many of these companies are considered small entities.[57] Table 48 shows the North American Industry Classification System (NAICS) codes of the U.S. entities and the small entity standard size established by the SBA.

TABLE 48—NAICS CODES AND SMALL ENTITIES SIZE STANDARDS

| NAICS | Description | Small entity size standard |
|---|---|---|
| 238910 | Site Preparation Contractors | $19,000,000. |
| 425120 | Wholesale Trade Agents And Brokers | 125 Employees. |
| 483211 | Inland Water Freight Transportation | 1,050 Employees. |
| 483212 | Inland Water Transportation | 550 Employees. |
| 484230 | Specialized Freight (Except Used Goods) Trucking, Long-Distance | $34,000,000. |
| 488330 | Navigational Services to Shipping | $47,000,000. |
| 561599 | All Other Travel Arrangement And Reservation Services | $32,500,000. |
| 713930 | Marinas | $11,000,000. |
| 813910 | Business Associations | $15,500,000. |

Of the six U.S. entities, two exceed the SBA's small business standards for small entities. To estimate the potential impact on the remaining four small entities, the Coast Guard used their 2022 invoice data to estimate their pilotage costs in 2024. We increased their 2022 costs to account for the changes in pilotage rates resulting from this proposed rule and the 2023 final rule. We estimated the change in cost to these entities resulting from this proposed rule by subtracting their estimated 2023 pilotage costs from their estimated 2024 pilotage costs and found the average costs to small firms would be approximately $7,345.04, with a range of $4,198.62 to $11,322.27. We then compared the estimated change in pilotage costs between 2023 and 2024 with each firm's annual revenue. In all but one case, the impact of the change in estimated pilotage expenses would be below 1 percent of revenues. For one entity, the impact would be 1.62 percent of revenues.

In addition to the owners and operators discussed previously, three U.S. entities that receive revenue from pilotage services would be affected by this proposed rule. These are the three pilot associations that provide and manage pilotage services within the Great Lakes districts. These associations are designated collectively as the Lake Carrier's Association, as well as individually by each separate district association, all with the same NAICS code, ''Business Association'' [58] with a small-entity size standard of $15,500,000. Based on the reported revenues from audit reports, the associations individually qualify as small entities, but are not considered small by the reported revenue of the Lake Carrier's Association.

Finally, the Coast Guard did not find any small not-for-profit organizations that are independently owned and operated and are not dominant in their fields that would be impacted by this proposed rule. We also did not find any small governmental jurisdictions with populations of fewer than 50,000 people that would be impacted by this proposed rule. Based on this analysis, we conclude this proposed rule would not affect a substantial number of small entities, nor have a significant economic impact on any of the affected entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the docket at the address listed in the Public Participation and Request for

[56] See *https://resource.referenceusa.com/* (Last visited 05/18/2023).

[57] See *https://www.sba.gov/document/support--table-size-standards* (Last visited 5/17/23). SBA has established a ''Table of Size Standards'' for small businesses that sets small business size standards by NAICS code. A size standard, which is usually stated in number of employees or average annual receipts (''revenues''), represents the largest size that a business (including its subsidiaries and affiliates) may be in order to remain classified as a small business for SBA and Federal contracting programs.

[58] In previous rulemakings, the associations used a different NAICS code, 483212 Inland Water Passenger Transportation, which had a size standard of 500 employees (as of the latest SBA [published March 17, 2023] small business size table, that NAICS has a small business size threshold of 550 employees) and, therefore, designated the associations as small entities. The change in NAICS code comes from an update to the association's ReferenceUSA profile in February 2022.

Comments section of this preamble. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

*C. Assistance for Small Entities*

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

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

*D. Collection of Information*

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

*E. Federalism*

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

Congress directed the Coast Guard to establish ''rates and charges for pilotage services.'' See 46 U.S.C. 9303(f). This regulation is issued pursuant to that statute and is preemptive of State law as specified in 46 U.S.C. 9306. Under 46 U.S.C. 9306, a ''State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.'' As a result, States or local governments are expressly prohibited from regulating within this category. Therefore, this proposed rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

*F. Unfunded Mandates*

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

*G. Taking of Private Property*

This proposed 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).

*H. Civil Justice Reform*

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

*I. Protection of Children*

We have analyzed this proposed rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This proposed 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.

*J. Indian Tribal Governments*

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

*K. Energy Effects*

We have analyzed this proposed rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not 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.

*L. Technical Standards*

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

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

*M. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that

do not individually or cumulatively have a significant effect on the human environment. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the Public Participation and Request for Comments section of this preamble. This proposed rule would be categorically excluded under paragraphs A3 and L54 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. Paragraph A3 pertains to the promulgation of rules of the following nature: (a) those of a strictly administrative or procedural nature; (b) those that implement, without substantive change, statutory or regulatory requirements; (c) those that implement, without substantive change, procedures, manuals, and other guidance documents; (d) those that interpret or amend an existing regulation without changing its environmental effect; (e) those that provide technical guidance on safety and security matters; and (f) those that provide guidance for the preparation of security plans. Paragraph L54 pertains to regulations which are editorial or procedural.

This proposed rule involves adjusting the pilotage rates for the 2024 shipping season to account for changes in district operating expenses, changes in the number of pilots, and anticipated inflation. All changes are consistent with the Coast Guard's maritime safety missions. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 46 CFR Part 401**

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 401 as follows:

## PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. The authority citation for part 401 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 2104(a), 6101, 7701, 8105, 9303, 9304; DHS Delegation No. 00170.1, Revision No. 01.3, paragraphs (II)(92)(a), (d), (e), (f).

■ 2. Amend § 401.405 by revising paragraphs (a)(1) through (6) to read as follows:

**§ 401.405 Pilotage rates and charges.**

(a) * * *

(1) The St. Lawrence River is $925;

(2) Lake Ontario is $606;

(3) Lake Erie is $586;

(4) The navigable waters from Southeast Shoal to Port Huron, MI is $660;

(5) Lakes Huron, Michigan, and Superior is $413; and

(6) The St. Mary's River is $805.

* * * * *

Dated: August 10, 2023.

**W.R. Arguin,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.*

[FR Doc. 2023–17474 Filed 8–15–23; 8:45 am]

**BILLING CODE 9110–04–P**

# Notices

Federal Register
Vol. 88, No. 157
Wednesday, August 16, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Notice of public meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of the meeting is for the Committee to discuss next civil rights project.

**DATES:** Wednesday, September 6, 2023, from 12 p.m.–1 p.m. eastern time.

**ADDRESSES:** The meeting will be held via Zoom: *https://www.zoomgov.com/j/1616870874?pwd=cUdtRVZkVG5Gc05EUHdrSnFKRnhDQT09.*

*Join by Phone (Audio Only):* 1–833–435–1820 USA Toll-Free; Meeting ID: 161 687 0874.

**FOR FURTHER INFORMATION CONTACT:** David Mussatt, Chief of RPCU, at *dmussatt@usccr.gov* or (312) 353–8311.

**SUPPLEMENTARY INFORMATION:** This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *csanders@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Mussatt at *dmussatt@usccr.gov* Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 794–9856.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Pennsylvania Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *canders@usccr.gov.*

**Agenda**

I. Welcome & Roll Call
II. Discussion:
III. Public Comment
IV. Next
V. Adjournment

Dated: August 10, 2023.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2023–17546 Filed 8–15–23; 8:45 am]

**BILLING CODE P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Maine Advisory Committee to the U.S. Commission on Civil Rights

**AGENCY:** Commission on Civil Rights.

**ACTION:** Notice of public meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Maine Advisory Committee (Committee) to the U.S. Commission on Civil Rights will meet on Thursday, September 14, 2023, at 12:00 p.m. (ET). The committee will discuss and possibly vote to approve their report on indigent legal services.

**DATES:** Thursday, September 14, 2023; at 12:00 p.m. (ET).

**ADDRESSES:** The meeting will be held via Zoom.

*Zoom Link (Audio/Visual): https://tinyurl.com/5yr4dspy;* password: USCCR–ME.

*Join by Phone (Audio Only):* 1–551–285–1373; Meeting ID: 161 655 9331#.

**FOR FURTHER INFORMATION CONTACT:** Mallory Trachtenberg, Designated Federal Official at *mtrachtenberg@usccr.gov* or via phone at 202–809–9618.

**SUPPLEMENTARY INFORMATION:** This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available. To request additional accommodations, please email *ebohor@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 202–809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Maine

Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *ebohor@usccr.gov.*

**Agenda**

I. Welcome & Roll Call
II. Discussion: Final Edits to Draft Report on Indigent Legal Services
III. Public Comment
IV. Potential Vote: Report on Indigent Legal Services
V. Next Steps
VI. Adjournment

Dated: August 10, 2023.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2023–17549 Filed 8–15–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–26–2023]**

### Foreign-Trade Zone (FTZ) 204; Authorization of Limited Production Activity; GSM Engineered Fabrics, LLC; (Industrial Belts); Kingsport, Tennessee

On April 12, 2023, the Tri-Cities Airport Authority, grantee of FTZ 204, submitted a notification of proposed production activity to the FTZ Board on behalf of GSM Engineered Fabrics, LLC, within FTZ 204 in Kingsport, Tennessee.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 23620, April 18, 2023). On August 10, 2023, the applicant was notified of the FTZ Board's decision that further review of part of the proposed activity is warranted. The FTZ Board authorized the production activity described in the notification on a limited basis, subject to the FTZ Act and the Board's regulations, including section 400.14, and further subject to a restriction requiring that the following components be admitted in privileged foreign status (19 CFR 146.41): (1) rolls of woven plastic polyester belt material and (2) rolls of spiral polyphenylene sulfide plastic belt material.

Dated: August 10, 2023.

**Elizabeth Whiteman,**

*Executive Secretary.*

[FR Doc. 2023–17525 Filed 8–15–23; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### In the Matter of: Omran Ismail, 8630 Moody Avenue, Burbank, IL 60459; Order Denying Export Privileges

On December 3, 2019, in the U.S. District Court for the Northern District of Illinois, Omran Ismail (''Ismail'') was convicted of violating 18 U.S.C. 371. Specifically, Ismail was convicted of conspiring to straw purchase several handguns on behalf of co-defendant Ola Sayed, who allegedly tried to smuggle the firearms into Egypt, in violation of 18 U.S.C. 371. As a result of his conviction, the Court sentenced Ismail to 18 months in prison, one year of supervised release, and an assessement of $200.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Ismail's conviction for violating 18 U.S.C. 371. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Ismail to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Ismail.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Ismail's export privileges under the Regulations for a period of seven years from the date of Ismail's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Ismail had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

*First,* from the date of this Order until December 3, 2026, Omran Ismail, with a last known address of 8630 Moody Avenue, Burbank, IL 60459, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

*Second,* no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned,

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Third,* pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Ismail by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

*Fourth,* in accordance with part 756 of the Regulations, Ismail may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

*Fifth,* a copy of this Order shall be delivered to Ismail and shall be published in the **Federal Register**.

*Sixth,* this Order is effective immediately and shall remain in effect until December 3, 2026.

**Jason Seltzer,**

*Acting Director, Office of Export Enforcement.*

[FR Doc. 2023–17540 Filed 8–15–23; 8:45 am]

**BILLING CODE 3510–DT–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### In the Matter of: Bradley Jon Matheny, 1701 10th Street, Marion, IA 52302; Order Denying Export Privileges

On November 12, 2021, in the U.S. District Court for the Northern District of Iowa, Bradley Jon Matheny (''Matheny'') was convicted of violating 18 U.S.C. 554(a). Specifically, Matheny was convicted of smuggling from the United States to Arad, Israel, .117 caliber hunting pellets and smuggling from the United States to Sderot, Israel and Scottsville, South Africa, a Winchester 42-piece firearm brush cleaning kit. As a result of his conviction, the Court sentenced Matheny to 36 months of confinement, three years of supervised release, $1,000 assessment, $10,000 criminal fine and $256,441.78 in restitution.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Matheny's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Matheny to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Matheny.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Matheny's export privileges under the Regulations for a period of seven years from the date of Matheny's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Matheny had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

*First,* from the date of this Order until November 12, 2028, Bradley Jon Matheny, with a last known address of 1701 10th Street, Marion, IA 52302, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

*Second,* no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Third,* pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Matheny by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

*Fourth,* in accordance with part 756 of the Regulations, Matheny may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

*Fifth,* a copy of this Order shall be delivered to Matheny and shall be published in the **Federal Register**.

*Sixth,* this Order is effective immediately and shall remain in effect until November 12, 2028.

**Jason Seltzer,**

*Acting Director, Office of Export Enforcement.*

[FR Doc. 2023–17542 Filed 8–15–23; 8:45 am]

**BILLING CODE 3501–DT–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### In the Matter of: Vladimir Volgaev, 1300 Boulevard of the Arts, Apt. 502, Sarasota, FL 34236; Order Denying Export Privileges

On August 4, 2020, in the U.S. District Court for the Middle District of Florida, Vladimir Volgaev (''Volgaev'') was convicted of violating 18 U.S.C. 554(a). Specifically, Volgaev was convicted of smuggling and attempting to smuggle firearm parts from the United States to Ukraine without having obtained a license or other approval from the U.S. Department of State. As a result of his conviction, the Court sentenced Volgaev to 33 months of confinement, one year of supervised release, $200 assessment and $6,835 in restitution.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Volgaev's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Volgaev to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Volgaev.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Volgaev's export privileges under the Regulations for a period of 10 years from the date of Volgaev's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Volgaev had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

*First,* from the date of this Order until August 4, 2030, Vladimir Volgaev, with a last known address of 1300 Boulevard of the Arts, Apt. 502, Sarasota, FL 34236, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

*Second,* no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Third,* pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Volgaev by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

*Fourth,* in accordance with part 756 of the Regulations, Volgaev may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

*Fifth,* a copy of this Order shall be delivered to Volgaev and shall be published in the **Federal Register**.

*Sixth,* this Order is effective immediately and shall remain in effect until August 4, 2030.

**Jason Seltzer,**

*Acting Director, Office of Export Enforcement.*

[FR Doc. 2023–17541 Filed 8–15–23; 8:45 am]

**BILLING CODE 3510–DT–P**

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### In the Matter of: Emilie Voissem, 172 Forsyth Road, Azle, TX 76020; Order Denying Export Privileges

On January 12, 2022, in the U.S. District Court for the Southern District of Florida, Emilie Voissem (''Voissem'') was convicted of violating 18 U.S.C. 371, the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) (''IEEPA'') and 18 U.S.C. 554. Specifically, Voissem was convicted of conspiracy to violate IEEPA, exporting and attempting to export, and smuggling four (4) rEvo III rebreathers from the United States to Libya without the required license or written approval. As a result of her conviction, the Court sentenced her to five months in prison, three years of supervised release and a $300 special assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371, IEEPA and 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Voissem conviction for violating 18 U.S.C. 371, IEEPA and 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Voissem to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Voissem.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Voissem's export privileges under the Regulations for a period of seven years from the date of Voissem's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Voissem had an interest at the time of her conviction.[3]

Accordingly, it is hereby *Ordered:*

*First,* from the date of this Order until January 12, 2029, Emilie Voissem, with a last known address of 172 Forsyth Road, Azle, TX 76020, and when acting for or on her behalf, her successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

*Second,* no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Third,* pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Voissem by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

*Fourth,* in accordance with Part 756 of the Regulations, Voissem may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

*Fifth,* a copy of this Order shall be delivered to Voissem and shall be published in the **Federal Register**.

*Sixth,* this Order is effective immediately and shall remain in effect until January 12, 2029.

Issued this 10th day of August, 2023.

**Jason Seltzer,**

*Acting Director, Office of Export Enforcement.*

[FR Doc. 2023–17543 Filed 8–15–23; 8:45 am]

**BILLING CODE 3510–DT–P**

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730 through 774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–883]**

### Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2021–2022

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) determines that

certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea) were not sold at less than normal value during the period of review (POR), October 1, 2021, through September 30, 2022.

**DATES:** Applicable August 16, 2023.

**FOR FURTHER INFORMATION CONTACT:** Dmitry Vladimirov or Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0665 or (202) 482–0410, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On June 13, 2023, Commerce published in the **Federal Register** the preliminary results of the 2021–2022 administrative review [1] of the antidumping duty order on hot-rolled steel from Korea.[2] We invited interested parties to comment on the *Preliminary Results*.[3] No interested party submitted comments. Accordingly, the final results of review remain unchanged from the *Preliminary Results.* Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

## Scope of the Order

The products covered by this *Order* are hot-rolled steel from Korea. A full description of the scope of the *Order* is provided in the *Preliminary Results* PDM.[4]

## Final Determination of No Shipments

As noted in the *Preliminary Results,* we received a no-shipments claim from Aekyung Chemical Co., Ltd. (Aekyung), and we preliminarily determined that Aekyung had no shipments during the POR.[5] Following the publication of the *Preliminary Results,* we received no comments from interested parties regarding Aekyung, nor has any party submitted record evidence which calls our preliminary determination of no shipments for this company into question. Therefore, for the final results of review, we continue to find that Aekyung had no shipments of subject merchandise during the POR. Accordingly, consistent with Commerce's practice, we intend to instruct U.S. Customs and Border Protection (CBP) to liquidate any existing entries of merchandise produced by Aekyung, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.[6]

## Final Results of Review

We determine that the following weighted-average dumping margin exists for the period October 1, 2021, through September 30, 2022:

| Producer/exporter | Weighted-average dumping margin (percent) |
|---|---|
| Hyundai Steel Company | 0.00 |
| POSCO; POSCO International Corporation [7] | 0.00 |
| Companies Not Individually Examined [8] | 0.00 |

## Disclosure

Because Commerce received no comments on the *Preliminary Results,* we have not modified our analysis and no decision memorandum accompanies this **Federal Register** notice. We are adopting the *Preliminary Results* as the final results of this review. Consequently, there are no new calculations to disclose in accordance with 19 CFR 351.224(b) for these final results of review.

## Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Because both of the respondents' weighted-average dumping margins or an importer-specific assessment rates are zero or *de minimis* in the final results of review, we intend to instruct CBP to liquidate entries without regard to antidumping duties.[9] The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[10]

For entries of subject merchandise during the POR produced by either of the respondents for which they did not know that the merchandise was destined to the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[11] For the companies identified in the Appendix that were not selected for individual examination, we will instruct CBP to liquidate entries without regard to antidumping duties.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

## Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of hot-rolled steel from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section

[1] *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2021–2022,* 88 FR 38489 (June 13, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders,* 81 FR 67962 (October 3, 2016) (*Order*).

[3] *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2021–2022,* 88 FR 38489, 38490 (June 13, 2023).

[4] *See Preliminary Results* PDM.

[5] *See Preliminary Results,* 88 FR at 38489.

[6] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[7] We initiated this review with respect to the following companies: POSCO and POSCO International Corporation. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 74404, 74407. Commerce previously treated POSCO and POSCO International Corporation as a single entity. *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 59985 (October 29, 2021), and accompanying PDM at 6–13, unchanged in *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2019–2020,* 87 FR 12660 (March 7, 2022).

[8] *See* the appendix for a full list of companies not individually examined in this review.

[9] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8102–03 (February 14, 2012); *see also* 19 CFR 351.106(c)(2).

[10] *See* section 751(a)(2)(C) of the Act.

[11] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

751(a)(2)(C) of the Act: (1) the cash deposit rate for the respondents will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review or the original investigation but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 6.05 percent, the all-others rate established in the less-than-fair-value investigation.[12] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of countervailing duties.

**Administrative Protective Order**

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

**Notification to Interested Parties**

Commerce is issuing and publishing the final results of this review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 351.221(b)(5).

[12] *See Order,* 81 FR at 67965.

Dated: August 10, 2023.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix—List of Companies Not Selected for Individual Examination**

1. AJU Besteel Co., Ltd.
2. Ameri Source Korea
3. Chemaven Co., Ltd.
4. Cj Cheiljedang Corp.
5. Cj Global Logistics Service Inc.
6. Dongkuk Industries Co., Ltd.
7. Dongkuk Steel Mill Co., Ltd.
8. Geco Industries Co., Ltd.
9. Geumok Tech. Co., Ltd.
10. Goi Tech Industries Co., Ltd.
11. Golden State Corporation
12. Gs Global Corp.
13. Gs Holdings Corp.
14. Hanawell Co., Ltd.
15. Hanjin Gls Co., Ltd.
16. Hankook Co., Ltd.
17. HISTEEL
18. Hyosung Corporation
19. Hyosung Tnc Corporation
20. Hyundai Glovis Co., Ltd.
21. Hyundai Rb Co., Ltd.
22. Il Jin Nts Co., Ltd.
23. Inchang Electronics Co., Ltd.
24. J&K Korea Co., Ltd.
25. Jeil Industries Co., Ltd.
26. Jeil Metal Co., Ltd.
27. Jin Young Metal
28. Jun Il Co., Ltd.
29. KG Dongbu Steel Co., Ltd.
30. KG Steel Corporation
31. Kumkang Kind Co., Ltd.
32. Lg Electronics Inc.
33. Maxflex Corp.
34. Mitsubishi Corp. Korea
35. Mitsui Chemicals & Skc Polyurethane
36. Nexteel Co., Ltd.
37. Samsung Electronics Co., Ltd.
38. SeAH Steel Corporation
39. Sja Inc. (Korea)
40. Solvay Silica Korea
41. Soon Ho Co., Ltd.
42. Sumitomo Corp. Korea Ltd.
43. Sungjin Precision
44. Wintec Korea Inc.
45. Wonbangtech Co., Ltd.

[FR Doc. 2023–17524 Filed 8–15–23; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Application No. 99–15A05]**

### Export Trade Certificate of Review

**ACTION:** Notice of issuance of an amended export trade certificate of review.

**SUMMARY:** The Secretary of Commerce, through the Office of Trade and Economic Analysis (OTEA), issued an amended Export Trade Certificate of Review (Certificate) to California Almond Export Association, LLC (CAEA) on June 26, 2023.

**FOR FURTHER INFORMATION CONTACT:** Joseph Flynn, Director, OTEA, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4011–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Certified Conduct**

CAEA's Certificate has been amended as follows:

1. Removed the following Member:

- Baldwin-Minkler Farms (Orland, CA)

2. Changed the names of the following Members:

- Fair Trade Corner, Inc. (Chico, CA) is now Farmer's International, Inc. (Chico, CA)
- Nutco, LLC d.b.a. Spycher Brothers (Turlock, CA) is now Nutco, LLC d.b.a. Spycher Brothers—Select Harvest (Turlock, CA)

3. Corrected the name of the following Member:

- VF Marking Corporation DBA Vann Family Orchards (Williams, CA) is now VF Marketing Corporation DBA Vann Family Orchards (Williams, CA)

CAEA's amended Certificate Membership is as follows:

Almonds California Pride, Inc., Caruthers, CA
Bear Republic Nut, Chico, CA
Blue Diamond Growers, Sacramento, CA
Campos Brothers, Caruthers, CA
Chico Nut Company, Chico, CA
Del Rio Nut Company, Livingston, CA
Farmer's International, Inc., Chico, CA
Fisher Nut Company, Modesto, CA
Hilltop Ranch, Inc., Ballico, CA
Hughson Nut, Inc., Hughson, CA

JSS Almonds, LLC, Bakersfield, CA
Mariani Nut Company, Winters, CA
Nutco, LLC d.b.a. Spycher Brothers—Select Harvest, Turlock, CA
Pearl Crop, Inc., Stockton, CA
P–R Farms, Inc., Clovis, CA
Roche Brothers International Family Nut Co., Escalon, CA
RPAC, LLC, Los Banos, CA
South Valley Almond Company, LLC, Wasco, CA
Stewart & Jasper Marketing, Inc., Newman, CA
SunnyGem, LLC, Wasco, CA
VF Marketing Corporation DBA Vann Family Orchards, Williams, CA
Western Nut Company, Chico, CA
Wonderful Pistachios & Almonds, LLC, Los Angeles, CA

The effective date of the amended certificate is March 29, 2023, the date on which CAEA's application to amend was deemed submitted.

Dated: August 11, 2023.

**Joseph Flynn,**

*Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.*

[FR Doc. 2023–17573 Filed 8–15–23; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD254]**

### Endangered Species; File No. 27490; Extension of Public Comment Period

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

**ACTION:** Notice; receipt of application; reopening of public comment period.

**SUMMARY:** On July 6, 2023, NMFS published a notice of receipt of application for an Endangered Species Act incidental take permit, with comments due by August 7, 2023. In response to two requests to extend the public comment period, NMFS has decided to reopen the public comment period for an additional 15 calendar days. All comments received will become part of the public record and will be available for review.

**DATES:** The comment period for the notice of receipt of application published on July 6, 2023 (88 FR 43082) is reopened from August 16, 2023 to August 31, 2023. NMFS must receive written comments and information on or before August 31, 2023. Comments previously submitted do not need to be resubmitted.

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

You may submit comments, identified by NOAA–NMFS–2023–0090, by:

*Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal *https://www.regulations.gov* and enter NOAA–NMFS–2023–0090 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. We will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous).

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

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 6, 2023, we published a notice of receipt of application from University of Massachusetts Dartmouth School for Marine Science and Technology (SMAST) for an incidental take permit pursuant to the Endangered Species Act of 1973, as amended (ESA). In that notice we made the incidental take permit application available for public comment. The permit application is for the incidental take of ESA-listed sturgeon and sea turtles associated with the otherwise lawful fisheries survey activities within and adjacent to the Massachusetts/Rhode Island Wind Energy Area.

We received two requests to extend the public comment period by 15 and 30 calendar days in order to provide the public with additional time to gather relevant information and adequately comment on the application in a meaningful and constructive manner. We considered the requests and concluded that a 15-day extension should allow sufficient time for responders to submit comments without significantly delaying the completion of our review. We are therefore reopening the public comment period from August 16, 2023, to August 31, 2023. Comments previously submitted do not need to be resubmitted.

*Authority:* The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 10, 2023.

**Shannon Bettridge,**

*Chief, Marine Mammal and Sea Turtle Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2023–17523 Filed 8–15–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Hydrographic Services Review Panel Meeting, September 27th–29th, 2023

**AGENCY:** National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice of public meeting; request for comment.

**SUMMARY:** This serves as notice of a public meeting for the NOAA Hydrographic Services Review Panel (HSRP) Federal Advisory Committee between September 27th, and September 29th, 2023. The agenda for the HSRP public meeting will be posted in advance of the meeting on the HSRP website. Individuals or groups who would like to comment on NOAA navigation, observation, and positioning services topics are encouraged to submit public comments in advance of the HSRP public meeting via email or during the public meeting via the ''Questions'' function in the webinar for the public meeting.

**DATES:** Members of the public may attend the NOAA HSRP public meeting in person or virtually on the following dates and at the following times:

1. September 27th, 2023, 9 a.m.–5:30 p.m. Eastern Time (ET).
2. September 28th, 2023, 9 a.m.–5:30 p.m. ET.
3. September 29th, 2023, 9 a.m.–12:30 p.m. ET.

**ADDRESSES:** Instructions for how to register to attend the HSRP public meeting in person and virtually can be found at the following website: *https://attendee.gotowebinar.com/register/7026716459954703189.* The HSRP public meeting agenda, draft meeting documents, presentations, and

background materials are posted and updated online and can be found at the following HSRP websites: *https://www.nauticalcharts.noaa.gov/hsrp/hsrp.html* and *https://www.nauticalcharts.noaa.gov/hsrp/meetings.html.* The agenda is subject to change. Past HSRP recommendation letters, issue papers, and position papers may be found online at: *https://www.nauticalcharts.noaa.gov/hsrp/recommendations.html.*

Comments for the HSRP public meeting record may be submitted by one of the following methods:

- *Email:* Send written comments in advance of the HSRP public meeting to *hydroservices.panel@noaa.gov,* with ''September 2023 HSRP meeting public comments'' in the subject line of the email message.
- *Webinar:* Submit written comments during the HSRP public meeting through the HSRP webinar's ''Questions'' function. As time allows, commenters may be invited to orally expand on their written comments submitted during the public meeting's public comment periods.

**FOR FURTHER INFORMATION CONTACT:** Virginia Dentler, Acting NOAA HSRP Program Manager, email: *hydroservices.panel@noaa.gov,* phone: 240–507–0585.

**SUPPLEMENTARY INFORMATION:** The Hydrographic Services Improvement Act of 1998, as amended (HSIA; 33 U.S.C. 892 *et seq.*), established the HSRP as a Federal Advisory Committee (*see* 33 U.S.C. 892c) to advise the NOAA Administrator ''on matters related to the responsibilities and authorities set forth in [33 U.S.C. 892a]'' of the HSIA, ''and such other appropriate matters as the Administrator refers to the [HSRP] for review and advice.''

The HSRP invites NOAA stakeholder feedback and welcomes public comments in advance of and during the upcoming HSRP public meeting on the use of NOAA's navigation, observations, and positioning data, science, products, and services for the National Ocean Service's Center for Operational Oceanographic Products and Services, National Geodetic Survey, and Office of Coast Survey, and the NOAA/University of New Hampshire Joint Hydrographic Center. Public comments sent in advance of the HSRP public meeting will be shared with the HSRP members, posted on the meeting website, and included in the public record for the meeting. Individuals and groups may also submit public comments during the meeting through the webinar's ''Questions'' function. These public comments will be read into the record during public comment periods. As time allows, commenters may be invited to orally expand on their written comments during the meeting's public comment periods. Due to time constraints, all public comments may not be addressed orally during the meeting.

**Matters to Be Considered**

The HSRP members will focus on the mission and issues relevant to NOAA's navigation, observations, and positioning services, and the value these services bring the nation, and invite suggestions from stakeholders and partners for improvements to these services. This suite of NOAA services supports safe and efficient navigation, the blue economy, resilient coasts and communities, and the nationwide positioning information infrastructure to support America's climate needs and commerce. Specifically, the HSRP will consider:

- National Ocean Service programs' recent activities such as the update to the National Spatial Reference System, datums, national ocean and coastal mapping goals and the Standard Ocean Mapping Protocol, hydrographic surveying, nautical charting, uncrewed systems, coastal remote sensing and bathymetric lidar, photogrammetry, positioning, sea level rise and water levels in support of ''seamless data.''
- The status of NOAA's navigation services in the context of recent legislation (*e.g.,* the National Defense Authorization Act, Bipartisan Infrastructure Law, and Inflation Reduction Act).
- Measuring, monitoring, and mitigating flooding and sea level change and the contribution of NOAA's critical foundational geospatial data to projects.
- NOAA navigation data, products, and services that enable further economic growth and impact safe navigation.
- The geodesy education and training crisis.
- The exploration of possible benefits and applicability of Digital Twin technology to help manage coastal mapping data, maritime navigation, fleet management and related applications. Digital Twin uses Artificial Intelligence, deep learning, data analytics, and modeling to maximize use of tremendous amounts of data.
- Other topics related to NOAA programs and activities may be discussed, such as bathymetric and coastal/ocean modeling, tide and current observations, contributions to resilience and coastal data and information systems to support planning for climate change, flooding, inundation, contributions to the Blue Economy, Physical Oceanographic Real-Time System (PORTS®) ( ) sensor enhancements and expansion, Precision Marine Navigation, the transition from raster paper charts to Electronic Navigational Charts, geodetic observations, gravity modeling, and data stewardship.
- And, the scientific mapping and technology research projects tied to the cooperative agreements between NOAA and partners at the University of New Hampshire and the University of South Florida.

**Special Accommodations**

This public meeting is accessible to people with disabilities and there will be sign language interpretation and captioning services. Please direct requests for other auxiliary aids to Melanie Colantuno at *hydroservices.panel@noaa.gov* at least 10 business days in advance of the meeting.

**Benjamin K. Evans,**

*Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2023–17556 Filed 8–15–23; 8:45 am]

**BILLING CODE 3510–JE–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD260]**

### Fisheries of the Gulf of Mexico; National Marine Fisheries Service—Public Meetings

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The National Marine Fisheries Service will hold an in-person Gulf of Mexico shrimp listening session on September 20, 2023.

**DATES:** The listening session will be held on Wednesday, September 20, 2023, from 4 p.m. until 7 p.m. EDT.

**ADDRESSES:** *Meeting address:* The meeting is open to members of the public. The listening session will be held at the Gulf of Mexico Fishery Management Council, 4107 W Spruce St. #200, Tampa, FL 33607. Those interested in participating should contact Molly Stevens (see **FOR FURTHER INFORMATION CONTACT** below).

**FOR FURTHER INFORMATION CONTACT:** Molly Stevens, Lead Shrimp

Assessment Analyst, NMFS Southeast Fisheries Science Center, 305–361–4489, *molly.stevens@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** NMFS is embarking on a stakeholder listening session to generate local ecological knowledge on the Gulf of Mexico shrimp fishery. Stakeholder input will serve to inform the research-track stock assessment for Gulf of Mexico shrimp. The goal of this listening session is to increase information flow from fishermen and stakeholders to scientists and managers to support improved fishery resources in the Gulf of Mexico.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to Molly Stevens (see **FOR FURTHER INFORMATION CONTACT** above) 5 days prior to the meeting.

*Note:* the times and sequence specified in this agenda are subject to change.

*Authority:* 16 U.S.C. 1801 *et seq.*

Dated: August 10, 2023.

**Jennifer M. Wallace,**

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

[FR Doc. 2023–17537 Filed 8–15–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–OS–0024]**

### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by September 15, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Independent Analysis and Recommendations on Domestic Abuse in the Armed Forces: Field Research; OMB Control Number: 0704–DAFR.

*Type of Request:* New.

*Number of Respondents:* 560.

*Responses per Respondent:* 1.

*Annual Responses:* 560.

*Average Burden per Response:* 1 Hour.

*Annual Burden Hours:* 560.

*Needs and Uses:* A comprehensive, independent analysis on the military-specific risk factors for domestic abuse (DA) and the best approaches across the coordinated community response system to mitigate those factors has never been conducted and is necessary to inform sustainable solutions to decrease incidents and prevent violence before it occurs. This project is required by the FY21 NDAA, section 549C, and will support (a) the programmatic needs of the sponsoring office—the Family Advocacy Program within the Military Community Advocacy Directorate in Military Community and Family Policy, (b) Congressional requirements per Section 549C of the FY21 National Defense Authorization Act, (c) the current administration's priority to address gender-based violence, and (d) implementation of some recommendations contained in the U.S. Government Accountability Office Report 21–289 (May 2021). The overall project is wide ranging, from an epidemiological analysis to predict stages of military service where risk is highest for domestic violence, to an analysis of age-appropriate and positively focused prevention training for school-aged children, to assessing whether prevention would be enhanced by raising the disposition authority for domestic violence offenses.

*Affected Public:* Individuals and households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 10, 2023.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–17545 Filed 8–15–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–HA–0069]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

**ACTION:** 60-Day information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency (DHA) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 16, 2023.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Transgender Practice Patterns among Urologists, OMB Number 0720–TPPU.

*Needs and Uses:* Transgender patients have only recently been allowed to serve in the military. These patients are medically complex, and we suspect that most military physicians lack specialty training in gender affirming treatments. This is especially true for surgeons, as gender-affirming surgeries are often complex and require specialty training. We need to identify how many providers have adequate training in gender-affirming care and then use this data to bridge the gap and train up the other military physicians. Identifying current gaps in training and barriers to care is essential to improve transgender care. This has the potential to improve transgender care throughout the DoD, and is a vital part of the DoD's Diversity, Equity, and Inclusion (DEI) goals.

The respondents will be urologists and urology trainees in the DoD, to include tri-service military providers and Veterans Affairs providers. They will respond to the information collection as they will be eager to share their experiences and work to improve transgender care. There is only 1 survey instrument, and it will be collected via Qualtrics, which is a secure web-based survey platform. All responses will be anonymous and no protected health information will be collected. The survey will be accessed via a link and QR code sent via email. This invitation will be sent for OMB review. The survey will be electronically submitted. We will consider the results a success if we can get more than 50 responses.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 12.5 hours.

*Number of Respondents:* 50.

*Responses per Respondent:* 1.

*Annual Responses:* 50.

*Average Burden per Response:* 0.25 hours.

*Frequency:* On Occasion.

Dated: August 11, 2023.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–17624 Filed 8–15–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–HA–0068]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

**ACTION:** 60-Day information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 16, 2023.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Health Agency Uniform Business Office, 8111 Gatehouse Road, Suite #221, Falls Church, VA 22042–5101, DeLisa Prater, or call 703–275–6380.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Third Party Collection Program (Insurance Information); DD Form 2569; OMB Control Number 0720–0055.

*Needs and Uses:* The DoD is authorized to collect ''reasonable charges'' from third party payers for the cost of inpatient and outpatient services rendered at military treatment facilities (MTFs) to military retirees, all dependents, and other eligible beneficiaries who have private health insurance. The DoD may also collect the cost of trauma or other medical care provided from civilians (or their insurers), and/or the average cost of health care provided to beneficiaries at DoD MTFs from other federal agencies. For DoD to perform such collections, eligible beneficiaries may elect to provide DoD with other health insurance information. For civilian non-beneficiary and interagency patients, DD Form 2569 is necessary and serves as an assignment of benefits, approval to submit claims to payers on behalf of the patient, and authorizes the release of medical information. This form is available to third-party payers upon request.

The collection of personal information from individuals of the public for use in medical services is authorized by Title 10 U.S.C. 1095, ''Health Care Services Incurred on Behalf of Covered Beneficiaries: Collection from Third-Party Payers'' Title 32 CFR part 220, ''Collection From Third Party Payers of Reasonable Charges for Healthcare Services,'' Title 10 U.S.C. 1079b(a), ''Procedures for Charging Fees for Care Provided to Civilians; Retention and Use of Fees Collected,'' and Title 10 U.S.C. 1085, ''Medical and Dental Care from Another

Executive Department: Reimbursement.''

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 357,000.

*Number of Respondents:* 2,142,000.

*Responses per Respondent:* 1.5.

*Annual Responses:* 3,213,000.

*Average Burden per Response:* 4 Minutes.

*Frequency:* On occasion.

Dated: August 10, 2023.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–17548 Filed 8–15–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2023–OS–0067]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

**ACTION:** 60-Day information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995,* the Defense Suicide Prevention Office and Naval Postgraduate School announce a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 16, 2023.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

*Instructions:* All submissions received must include the agency name, docket number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to: Naval Postgraduate School, 1411 Cunningham Rd., Suite 225, Monterey CA 93943, Dr. Nita Shattuck, 831–656–2281.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Longitudinal Study of Sleep Patterns and their Impact on Performance, Behavior, and Health; OMB Control Number: 0704–SLEP.

*Needs and Uses:* The decisions and actions of active-duty service members (ADSMs) determine the success of military missions and the health and safety of their team members. ADSMs must be prepared to respond to complex, unexpected, uncertain, and, at times, dangerous events at a moment's notice. Sleep deprivation and fatigue negatively impact the state, health, decision-making, and performance of ADSMs, thereby jeopardizing their ability to meet operational demands and ensure safe operations.

The overarching aim of the project is to assess the unique challenges ADSMs experience in military occupational environments as they perform their regular duties. The data collected will provide more reliable insight into the chronic effect of occupational stressors on the sleep/wake patterns and health status of ADSMs. Findings will provide useful data to assist in assessing the status and impact of fatigue in military operations as the DoD seeks to positively influence the readiness, health, and performance of personnel.

*Affected Public:* Individuals or households (Marines and Sailors).

**Enrollment Questionnaire**

*Annual Burden Hours:* 83.3.

*Number of Respondents:* 200.

*Responses per Respondent:* 1.

*Annual Responses:* 2,000.

*Average Burden per Response:* 25 minutes.

**Intermediate Assessment Questionnaire**

*Annual Burden Hours:* 53.3.

*Number of Respondents:* 200.

*Responses per Respondent:* 8 (16 over two-year study).

*Annual Responses:* 1,600.

*Average Burden per Response:* 2 minutes.

**Study Questionnaire**

*Annual Burden Hours:* 266.67.

*Number of Respondents:* 200.

*Responses per Respondent:* 4 (8 over two-year study).

*Annual Responses:* 800.

*Average Burden per Response:* 20 minutes.

**Total Burden**

*Annual Burden Hours:* 403.3.

*Number of Respondents:* 200.

*Annual Responses:* 4,400.

*Frequency:* Approximately Monthly. Data will first be collected on the demographics of respondents to include age, diet, sleep health, etc. Standardized questionnaires will then be used to determine the sleep health, fatigue, and stress levels of respondents throughout the 24-month longitudinal study.

Dated: August 10, 2023.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–17539 Filed 8–15–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2022–HQ–0018]**

### Submission for OMB Review; Comment Request

**AGENCY:** Department of the Navy, Department of Defense (DoD).

**ACTION:** 30-day information collection notice.

**SUMMARY:** The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by September 15, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open

for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Community Environmental Concerns Survey for U.S. Navy Clean-Up Actions; OMB Control Number: 0703–EGEN.

*Type of Request:* Existing collection in use without an OMB Control Number.

*Number of Respondents:* 178.

*Responses per Respondent:* 1.

*Annual Responses:* 178.

*Average Burden per Response:* 20 minutes.

*Annual Burden Hours:* 59.

*Needs and Uses:* The Department of the Navy (DON) recognizes all Americans have the right to be involved in government decisions that may affect their lives. Because of this, the Navy develops site-specific Community Involvement Plans (CIPs) for installations undergoing environmental restoration activities. This ensures nearby community members have opportunities to learn about and participate in this important clean-up process. The development and execution of a CIP promotes community involvement and provides information on how community members can stay informed and share information or concerns. This is an important component to the overall success of the Navy's Environmental Restoration Program (ERP).

Per Environmental Readiness Program Manual (OPNAV M–5090.1) and Environmental Compliance and Protection Manual (MCO P5090.2A), DON requires a formal CIP at all DON ERP sites, whether or not they are National Priorities List (NPL) sites. The CIP is based on information gathered from the community through qualitative surveys or interviews with local officials, residents, public interest groups, and other interested or affected parties to ascertain community concerns, community information needs, and how or when citizens would like to be involved in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process. To strengthen and maintain community involvement as a useful tool for these purposes, DoD has directed installations to combine pertinent data gathered from surveys or interviews and the U.S. Bureau of the Census and various databases maintained by the military departments, defense agencies, local and tribal agencies, and other agencies to ensure that the CIP adequately characterizes the affected community and addresses community needs.

To ascertain community concerns, community information needs, and how or when citizens would like to be involved in the CERCLA process, the Navy typically provides a qualitative survey several months before the development of a CIP. The survey includes multiple choice questions on areas of concern, as well as a section for open comments. The survey is typically open for one to three months. Survey respondents include local officials, residents, public interest groups, and other interested or affected parties within a specific mile range of the given ERP site. Community members are responding to the information collection to provide input for the required updated CIP. The survey is also used to solicit new RAB members and inform the Navy on community awareness and understanding of the ERP process.

*Affected Public:* Individuals or households; Businesses or other for-profit; Not-for-profit Institutions; State, Local, or Tribal Government.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 10, 2023.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–17536 Filed 8–15–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2023–HQ–0010]**

### Submission for OMB Review; Comment Request

**AGENCY:** Department of the Navy, Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by September 15, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Navy Reserve Health of the Force Survey; OMB Control Number: 0703–RHOF.

*Type of Request:* New.

*Number of Respondents:* 10,000.

*Responses per Respondent:* 1.

*Annual Responses:* 10,000.

*Average Burden per Response:* 25 minutes.

*Annual Burden Hours:* 4,167.

*Needs and Uses:* The Navy Reserve Health of the Force Survey is a strategic level engagement survey of the Navy Reserve population that addresses core measures relating to the health of the force. This survey is being conducted at the request of the Office of the Chief of Navy Reserves to inform reports to the Vice Chief of Naval Operations (VCNO) and Congress. While similar topics are covered in other DOD surveys, this is the only one that directly addresses the full spectrum of topics of interest to senior Navy leaders. All Reserve Component Navy personnel will have the opportunity to participate in the survey. Distribution of the survey will be via an open link that will be emailed by the Navy Reserve Forces Command to all Reservists. Information about the

survey will also be shared through command messaging.

*Affected Public:* Individuals or households.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 10, 2023.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–17544 Filed 8–15–23; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### President's Board of Advisors on Historically Black Colleges and Universities

**AGENCY:** President's Board of Advisors on Historically Black Colleges and Universities, Office of Secretary, Department of Education.

**ACTION:** Notice. Cancelled open public meeting.

**SUMMARY:** This notice is to advise members of the public of the cancellation of the open meeting of the President's Board of Advisors on Historically Black Colleges and Universities scheduled to be held on September 27, 2023 at 1:00 p.m. (EDT). The open meeting was announced in the **Federal Register** on Friday, May 19, 2023, in FR Doc. 2023–10716 page 32206–32208.

**FOR FURTHER INFORMATION CONTACT:** Sedika Franklin, Associate Director/Designated Federal Official, U.S. Department of Education, White House Initiative on Historically Black Colleges and Universities, 400 Maryland Avenue SW, Washington, DC 20204; telephone: (202) 453–5634 or (202) 453–5630, or email *sedika.franklin@ed.gov.*

**Donna M. Harris-Aikens,**

*Deputy Chief of Staff for Strategy, Office of the Secretary.*

[FR Doc. 2023–17570 Filed 8–15–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF ENERGY

### High Energy Physics Advisory Panel

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of renewal.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, and Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the High Energy Physics Advisory Panel (HEPAP) has been renewed for a two-year period.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Kogut at (301) 903–1298 or email: *john.kogut@science.doe.gov.*

**SUPPLEMENTARY INFORMATION:** The Panel will provide advice and recommendations to the Director, Office of Science (DOE), and the Assistant Director, Directorate for Mathematical and Physical Sciences (NSF), on scientific priorities within the field of basic high energy physics research.

Additionally, the Secretary of Energy has determined that renewal of the HEPAP is essential to conduct business of the Department of Energy and the National Science Foundation and is in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Panel will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, adhering to the rules and regulations in implementation of that Act.

### Signing Authority

This document of the Department of Energy was signed on August 10, 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 11, 2023.

**Treena V. Garrett,**

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

[FR Doc. 2023–17564 Filed 8–15–23; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Notice of Availability of Tribal Allocation Formula for the Tribal Home Electrification and Appliance Rebates Programs

**AGENCY:** Office of State and Community Energy Programs, Department of Energy.

**ACTION:** Notice of availability; request for comment.

**SUMMARY:** The Department of Energy (DOE or the Department) is publishing its intended allocation formula that will be used to distribute funds to Indian Tribes through the $225 million Tribal Home Electrification and Appliance Rebates program. The purpose of the Tribal Home Electrification and Appliance Rebates program is to help Tribal households to reduce energy bills, increase home comfort, improve indoor air quality, and reduce emissions by providing direct funding for energy efficiency and electrification home upgrades. This notice provides the tentative allocation formula developed by the Department to distribute funds to Tribes, as well as the allocation amounts and data used to calculate allocations. This notice also describes how Tribes may partner with other Tribes through consortia to submit a single application to DOE, and how Tribes may authorize a third-party agent to handle the application and administration of a grant award.

**DATES:** DOE is accepting public comment through September 15, 2023. Comments must be sent to *irahomerebates@hq.doe.gov* by midnight EST, September 15, 2023.

**ADDRESSES:** Interested parties are to submit comments electronically to *irahomerebates@hq.doe.gov* and include the subject line ''Comment on FRN for Tribal Rebates.''

**FOR FURTHER INFORMATION CONTACT:** Mr. Adam Hasz, U.S. Department of Energy, Office of State and Community Energy Programs, Home Energy Rebates

program, SCEP–50, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 617–9081. Email: *irahomerebates@hq.doe.gov. Electronic communications are recommended for correspondence.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

DOE is publishing its intended allocation formula for the Tribal Home Electrification and Appliance Rebates program. Through the Inflation Reduction Act (IRA), Public Law 117–169, section 50122,[1] Congress appropriated $225 million to DOE ''to award grants to Indian Tribes to develop and implement a high-efficiency electric home rebate program . . . to remain available through September 30, 2031.'' [2] Congress also authorized DOE to utilize 3% of the appropriated funds for program administration and technical assistance, which then provides $218.25 million to be awarded as grants directly to Indian Tribes to develop and implement Tribal rebates programs.[3] Through these grants, Indian Tribes may establish rebates programs to help reduce the upfront cost of efficient electric appliances and other accompanying home energy upgrades in single-family and multi-family homes. As all Federally Recognized Tribes and Tribal entities are Justice40 communities, whether or not they have land, this program also advances the President's historic Justice40 Initiative, established by Executive Order 14008, which set the goal that 40% of the overall benefits of certain Federal investments, such as in climate, clean energy and other areas, flow to disadvantaged or Justice40 communities.[4]

While DOE is still developing the program requirements for the Tribal Home Electrification and Appliance Rebates program, DOE intends that this tentative formula and the accompanying information regarding the application process will help Indian Tribes to begin planning collaboratively with Tribally Designated Housing Entities (TDHEs), regional Tribal organizations, Tribal utilities, State Energy Offices, and other important Tribal partner organizations in advance of the release of the program requirements in late 2023.

This notice describes the intended allocation formula that DOE intends to use when issuing Tribal rebates program grant funds to Indian Tribes.[5] The allocation formula described in this notice take into consideration feedback provided by Indian Tribes during a Tribal Consultation DOE hosted in March 2023. DOE also consulted with Tribal housing organizations, other Tribal entities and partners, and other federal agencies with Tribal housing programs as it considered options for this formula.

Appendix A provides the mathematical formula DOE plans to use to allocate funding amounts for each Tribe for the Tribal Home Electrification and Appliance Rebates program. Appendix B contains the data sources used by the formula to determine the allocations. Appendix C contains a table with the intended formula allocations for Indian Tribes.

DOE requests feedback on all topics discussed in this notice.

## II. Tribal Home Electrification and Appliance Rebates Program Allocation Formula

Section 50122(a)(2)(B) of the IRA directs DOE to ''reserve funds made available [for Indian Tribes] . . . in a manner determined appropriate by the Secretary.'' [6] Through this direction, DOE set several goals for its planned Tribal Home Electrification and Appliance Rebates program allocation formulation based on feedback received during its Tribal Consultation and request for information submissions.[7] This notice describes these goals and the corresponding allocation formula components.

First, DOE intends to provide an allocation to every Indian Tribe that wants to administer a home electrification and appliance rebates program. To achieve this goal, the formula must provide sufficient funding so that small and under-resourced Tribes can successfully administer rebate programs. While small Tribes often lack existing staff capacity, Tribes may utilize 20% of their grant to cover administrative expenses to help address this issue. DOE intends for the minimum award to each Tribe to provide a meaningful amount of funding for administrative costs, particularly if small Tribes choose to apply via a consortium as described in Section III of this **Federal Register** Notice. To meet this goal, DOE intends to set the minimum allocation per Tribe at $150,000; this amount will provide each Tribe with a minimum of $30,000 for administrative expenses. This minimum funding will also ensure that each Tribe can provide upgrades for at least eight households at the maximum rebate level of $14,000.

Second, DOE intends to distribute Tribal rebates program grant funds based on Tribal housing and energy upgrade needs. DOE evaluated several potential datasets for housing and energy upgrade needs, but unfortunately most datasets lacked detailed information on housing conditions and energy burden or did not provide full data for all Tribal nations. The best available dataset to describe Tribal housing upgrade needs is the formula data used by the Department of Housing and Urban Development to allocate funding for its Indian Housing Block Grant (IHBG) program.[8] DOE intends to adopt the IHBG formula by using the proportion that each Tribe received out of the total allocations for IHBG grants in FY2023. Specifically, DOE will use the ''Unadjusted FY 2023 Allocation'' data from the FY 2023 IHBG Final Summary sheet.[9] The Unadjusted FY 2023 Allocation data sums two components from the IHBG formula, the ''Need'' component and the ''Formula Current Assisted Stock'' component, with small additional adjustments as required by IHBG regulations.[10] The IHBG formula's ''Need'' component uses datapoints on housing cost burden, households lacking kitchens or plumbing, low-income housing shortages, low-income Tribal households, and local American Indian and Alaska Native population within the Tribe's IHBG formula area.[11] The IHBG formula's ''Formula Current Assisted Stock'' component is a factor that incorporates the number of subsidized housing units that are

[1] Codified at 42 U.S.C. 18795a. For more information about the high-efficiency electric home rebate program, commonly referred to as the ''Home Electrification and Appliance Rebates Program'', please visit *www.energy.gov/scep/tribal-home-energy-rebates.*

[2] 42 U.S.C. 18795a(a)(1)(B).

[3] 42 U.S.C. 18795a(a)(3).

[4] E.O. 14008, Tackling the Climate Crisis at Home and Abroad, 86 FR 7619 (Feb. 1, 2021).

[5] For this program, the term ''Indian Tribe'' has the meaning given the term in section 5304 of title 25. 42 U.S.C. 18795a(d)(3).

[6] 42 U.S.C. 18795a(a)(2)(B). Grant awards are to be distributed to an Indian Tribe if the application is approved.

[7] The DOE Home Energy Rebates Request for Information is available at *https://eere-exchange.energy.gov/Default.aspx?utm_medium=email&utm_source=govdelivery#FoaId01172e95-5645-4356-8f3b-96fd144f9213.*

[8] The IHBG program website is available at *www.hud.gov/program_offices/public_indian_housing/ih/grants/ihbg.*

[9] The ''Unadjusted FY 2023 Allocation'' is found in Column T of the IHBG FY 2023 Final Summary Sheets, available at *https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.hud.gov%2Fsites%2Fdfiles%2FPIH%2Fdocuments%2FFY_2023_Final_Summary_Sheets.xlsx&wdOrigin=BROWSELINK.*

[10] The full regulations governing the IHBG formula are available at *www.ecfr.gov/current/title-24/subtitle-B/chapter-IX/part-1000/subpart-D.*

[11] See 24 CFR 1000.324 for more information on this requirement.

directly managed by the Tribe prior to the enactment of the Native American Housing Assistance and Self-Determination Act of 1996, as amended, (NAHASDA), Public Law 104–330.[12] Because the ''Need'' component captures various current housing needs variables, and the ''Formula Current Assisted Stock'' component captures operation and modernization costs of Tribal housing developed pre-NAHASDA, DOE believes that together they may serve as a reasonable proxy of Tribal need for the home electrification and appliance rebates. DOE notes that the IHBG formula was developed through a negotiated rulemaking process. HUD and Tribal leaders and housing professionals representing geographically diverse small, medium, and large Indian Tribes used a unanimous consensus decision-making process to develop the formula. DOE also notes that under the IHBG formula regulations, Indian Tribes are authorized to challenge formula data used in any given year should they feel that the data does not accurately reflect their housing needs.[13]

Third, DOE intends to distribute Tribal rebates program grant funds in an equitable manner that avoids the double-counting of the need of Tribal households with overlapping membership at multiple Tribal levels. For example, in the case of Indian Tribes in Alaska, a Tribal citizen may simultaneously be a member of an Alaska Native Village, Alaska Native Village Corporation, and Alaska Native Regional Corporation. To avoid double-counting, DOE plans to provide funding through the method utilized by the IHBG formula, which credits data on local American Indian and Alaska Native (AIAN) population and housing needs for the ''Need'' formula to the Alaska Native Village. Because each Alaska Native Village Corporation has no ''Need'' data, it does not receive a formula allocation from the IHBG program. If ''Need'' data exists that is outside of the area of jurisdiction of the Alaska Native Village, HUD credits data on AIAN population and housing needs outside the Alaska Native Village area to the regional Indian Tribe, and if there is no regional Indian Tribe, to the Alaska Native Regional Corporation for the area.[14]

*Formula Factors.* The Tribal allocation formula DOE intends to implement for the Tribal Home Electrification and Appliance Rebate Program will use the following factors:

- Minimum Allocation of $150,000 per Indian Tribe.
- The relative share of the funding an Indian Tribe would receive from the IHBG formula, calculated by using the Tribe's ''Unadjusted FY 2023 Allocation'' divided the sum total of the ''Unadjusted FY 2023 Allocation'' components for all Tribes.

*Funding Allocation Design:* DOE's formula establishes a minimum level of funding of $150,000 per Indian Tribe. The formula then distributes the remaining funds via the relative share of the funding the Tribe would receive from the IHBG formula. For more detail on the Tribal rebates program grant funds allocation formula, see Appendix A of this notice.

DOE requests feedback on its intended allocation formula for the Tribal rebates program.

## III. Designation of Tribal Consortium and Third-Party Agents That Can Submit on Behalf of a Tribe

To assist Tribes in accessing rebates program grant funds, DOE intends to offer two alternative ways for Tribes to apply. First, a group of Tribes may form a Tribal consortium and submit a single application package. This consortium will consist of two or more Indian Tribes, as defined within IRA section 50122(d)(3), that have designated a single Indian Tribe to act on their behalf as lead Indian Tribe of the Tribal consortium. The lead Indian Tribe would be the awardee and would be responsible for meeting all grant requirements on behalf of the Tribal consortium.

Second, DOE intends to allow for an individual Tribe or a Tribal consortium to authorize a third-party agent to prepare its grant application, submit the application, and manage grant funds for a Tribal Home Electrification and Appliance Rebates program. Tribes may choose any organization to serve as a third-party agent, including existing affiliates such as Tribally Designated Housing Entities (TDHEs), Tribal utilities, and regional Tribal organizations, so long as that organization is properly authorized to act on the Tribe's behalf via a ''Tribal Council Resolution'' or ''Head of Government Letter.''

If authorized by a Tribe or consortium, a third-party agent may draw funds from the Automated Standard Application for Payments (ASAP) system and deposit them into a designated bank account for a Tribe or a Tribal consortium as needed to pay for allowable costs. The third-party agent may also be allowed to submit the required reporting for the Indian Tribe or Tribal consortium pursuant to the award. However, only the Indian Tribe or the lead Indian Tribe of the Tribal consortium may be the awardee. The Indian Tribe and/or the lead Indian Tribe of the Tribal consortium, as applicable, will ultimately be responsible for satisfying all grant requirements. Additionally, the application must be submitted in the name of the Indian Tribe (or lead Indian Tribe if using a Tribal consortium) and use the Indian Tribe's (or lead Indian Tribe's) Unique Entity Identifier (UEI) in FedConnect.

A consortium application package or application package submitted by a third-party agent must include a ''Tribal Council Resolution'' or ''Head of Government Letter'' from each participating Indian Tribe designating the lead Indian Tribe of the Tribal consortium or third-party to act on its behalf and receive the funding allocated to that specific Tribe. The lead Indian Tribe in a Tribal consortium must also submit a ''Tribal Council Resolution'' or ''Head of Government Letter'' stating that it will apply for grant funding and administer the grant on behalf of all Tribes in the consortium; if the lead Tribe plans to work with a third-party agent, it must also identify the third-party agent's responsibilities within the ''Tribal Council Resolution'' or ''Head of Government Letter''.

DOE requests feedback on the Tribal consortium process and use of third-party agents working on behalf of a Tribe.

## Appendix A. Tribal Home Electrification and Appliance Rebates Program Allocation Formula

$$A_i = m + (F - n \cdot m) \cdot \frac{E_i}{\sum E_i}$$

$A_i$ = Total amount of funding allocated to Indian Tribe i
m = $150,000 (minimum funding each Indian Tribe must receive)
F = $218,250,000 (total amount of Tribal rebates program funding allocated to grants)
n = number of Indian Tribes receiving funding allocations[15]

[12] See 24 CFR 1000.316 for more information on the ''Formula Current Assisted Stock'' component.

[13] See 24 CFR 1000.336 for more information on the annual HUD challenge process data used in the IHBG formula.

[14] The HUD regulations for the ''Need'' component of the IHBG formula for Alaska Native Villages, Native Village Corporations, Regional Tribes, and Native Regional Corporations is available at *www.ecfr.gov/current/title-24/subtitle-B/chapter-IX/part-1000/subpart-D/section-1000.327.*

[15] See Appendix B for details on small changes made to the list of Indian Tribes eligible for funding from this formula compared to the list of Tribes included in the HUD FY2023 IHBG Summary Allocations spreadsheet.

$E_i$ = The tribe's ''Unadjusted FY 2023 Allocation'' from the IHBG allocation [16]

$\Sigma E_i$ = The sum of all tribes' ''Unadjusted FY 2023 Allocation'' numbers from the IHBG allocations

## Appendix B. Data Used in the Tribal Rebates Program Allocation Formula

The formula included in Appendix A uses data from a slightly modified version of the ''FY_2023_Final_Summary_Sheets'' excel document made available by the HUD Indian Housing Block Grant (IHBG) program.[17] In consultation with HUD, DOE made the following changes to the original excel document:

1. DOE removed state-recognized Tribes that receive IHBG allocation under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) [18] but that are not eligible to receive allocations under IRA section 50122. These five Tribes are the Coharie Tribe, the Haliwa-Saponi Indian Tribe, the Lumbee Tribe of North Carolina, the MOWA Band of Choctaw Indians, and the Waacamaw Siouan Tribe.

2. DOE asked HUD to calculate the FY2023 allocation that the Chicken Ranch Rancheria of Me-Wuk Indians of California would have received had they accepted IHBG funding. This allocation was then used as the basis of calculating the Tribal rebates program grant funds to be allocated to the Chicken Ranch Rancheria of Me-Wuk Indians of California Tribe.

3. HUD informed DOE that the Arctic Slope Regional Corporation received the Inupiat Community of the Arctic Slope (ICAS) regional Tribe did not receive its FY2023 IHBG allocation but intends to be the recipient of its IHBG funding in FY2024. DOE asked HUD to switch the FY2023 allocation from the Arctic Slope Regional Corporation to ICAS. This follows the IHBG formula regulations for Tribes in Alaska, which assigns the data for the ''Need'' factor first to the Alaska Native Village, then the regional Tribe, and then to the Alaska Native Regional Corporation.[19]

After completing these changes to the ''FY_2023_Final_Summary_Sheets'' excel document with HUD assistance, DOE used the revised document as the basis for the data inputs for the formula included in Appendix A:

- n = 591, which is the number of Tribes included in the revised IHBG FY2023 allocations spreadsheet.
- $E_i$ = The Tribe's ''Unadjusted FY 2023 Allocation'' in Column T of the revised spreadsheet.
- $\Sigma E_i$ = The sum of all Tribes' ''Unadjusted FY 2023 Allocation'' numbers in Column T of the revised spreadsheet.

The HUD Regulations that govern the collection of data and calculations using that data to create the ''Unadjusted FY 2023 Allocation'' numbers found within Column T of the revised spreadsheet under 24 CFR 1000.301, available at *www.ecfr.gov/current/title-24/subtitle-B/chapter-IX/part-1000/subpart-D/.*

Additional information and data related to the IHBG formula is available at *www.hud.gov/program_offices/public_indian_housing/ih/codetalk/onap/ihbgformula.*

## Appendix C. List of Intended Formula Allocations for the Tribal Rebates Program

While the data components used to calculate the intended formula allocations for the Tribal Rebates Program are from IHBG FY 2023 data, DOE updated the Tribal names included in the following table to match the Tribal names that HUD updated and published on the FY 2024 estimates on June 1, 2023.[20] States are listed to assist with potential coordination of rebate programs between Tribes and State Energy Offices. However, all Tribal Rebates program allocations will be made directly to Tribes.

| State | Tribe | Allocation |
|---|---|---|
| OK | Absentee-Shawnee Tribe | $735,103 |
| NM | Acoma Pueblo | 343,645 |
| AK | Afognak | 156,621 |
| AK | Agdaagux Tribe of King Cove | 176,859 |
| CA | Agua Caliente Band of Cahuilla Indians | 176,929 |
| AK | AHTNA, Incorporated | 463,566 |
| AZ | Ak-Chin Indian Community | 248,214 |
| AK | Akhiok | 150,147 |
| AK | Akiachak | 229,218 |
| AK | Akiak | 193,948 |
| AK | Akutan | 151,449 |
| TX | Alabama-Coushatta Tribe of Texas | 169,280 |
| OK | Alabama-Quassarte Tribal Town | 173,013 |
| AK | Alakanuk | 240,628 |
| AK | Alatna | 150,147 |
| AK | Aleknagik | 158,737 |
| AK | Aleut Corporation | 440,822 |
| AK | Algaaciq (St. Mary's) | 218,930 |
| AK | Allakaket | 187,417 |
| CA | Alturas Indian Rancheria | 150,147 |
| AK | Alutiiq (Old Harbor) | 165,909 |
| AK | Ambler | 183,419 |
| AK | Anaktuvuk Pass | 173,409 |
| AK | Angoon | 162,139 |
| AK | Aniak | 194,462 |
| AK | Anvik | 159,273 |
| OK | Apache Tribe | 335,887 |
| AK | Arctic Village | 179,374 |
| AK | Asa'Carsarmiut Tribe (Mountain Village) | 252,076 |
| MT | Assiniboine & Sioux Tribes of Ft. Peck | 1,068,123 |
| AK | Atka | 150,147 |

[16] See Appendix B for details on the slight adjustments made to the HUD FY2023 IHBG Summary Allocations spreadsheet, which is the source of this datapoint for each Tribe.

[17] The summary spreadsheet of the HUD FY2023 IHBG allocations can be viewed at the following link: *https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.hud.gov%2Fsites%2Fdfiles%2FPIH%2Fdocuments%2FFY_2023_Final_Summary_Sheets.xlsx&wdOrigin=BROWSELINK.*

[18] The NAHASDA is available at *https://www.congress.gov/104/plaws/publ330/PLAW-104publ330.pdf.*

[19] The HUD regulations for the ''Need'' component of the IHBG formula for Alaska Native Villages, Native Village Corporations, Regional Tribes, and Native Regional Corporations is 24 CFR 1000.327, available at *www.ecfr.gov/current/title-24/subtitle-B/chapter-IX/part-1000/subpart-D/section-1000.327.*

[20] The FY2024 estimated IHBG allocations that uses the updated list of Tribal names is available at *https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.hud.gov%2Fsites%2Fdfiles%2FPIH%2Fdocuments%2FFY_2024_Estimate_Allocation_Sheets.xlsx&wdOrigin=BROWSELINK.*

| State | Tribe | Allocation |
|---|---|---|
| AK | Atmauthluak | 183,153 |
| AK | Atqasuk (Atkasook) | 155,937 |
| CA | Augustine Band of Cahuilla Indians | 150,147 |
| WI | Bad River Band of the Lake Superior Tribe of Chippewa | 452,016 |
| AK | Barrow Inupiat Traditional Government | 508,214 |
| MI | Bay Mills Indian Community | 290,230 |
| CA | Bear River Band of the Rohnerville Rancheria | 150,147 |
| AK | Beaver | 156,524 |
| AK | Belkofski | 150,147 |
| AK | Bering Straits Native Corporation | 370,925 |
| CA | Berry Creek Rancheria of Maidu Indians | 250,532 |
| CA | Big Lagoon Rancheria | 150,147 |
| CA | Big Pine Paiute Tribe of the Owens Valley | 211,803 |
| CA | Big Sandy Rancheria of Western Mono Indians | 198,943 |
| CA | Big Valley Band of Pomo Indians | 254,872 |
| AK | Bill Moore's Slough | 150,147 |
| AK | Birch Creek | 150,147 |
| CA | Bishop Paiute Tribe | 367,598 |
| MT | Blackfeet Tribe | 1,433,051 |
| CA | Blue Lake Rancheria | 150,147 |
| MN | Bois Forte Band, Minnesota Chippewa Tribe | 329,048 |
| AK | Brevig Mission | 197,069 |
| CA | Bridgeport Indian Colony | 176,839 |
| AK | Bristol Bay Native Corporation | 394,605 |
| AK | Buckland | 202,969 |
| CA | Buena Vista Rancheria of Me-Wuk Indians | 150,147 |
| OR | Burns Paiute Tribe | 182,688 |
| CA | Cabazon Band of Mission Indians | 150,147 |
| CA | Cachil DeHe Band of Wintun Indians, Colusa Rancheria | 150,147 |
| OK | Caddo Nation | 266,778 |
| CA | Cahto Tribe of the Laytonville Rancheria | 219,302 |
| CA | Cahuilla Band of Indians | 150,147 |
| CA | California Valley Miwok Tribe | 150,147 |
| AK | Calista Corporation | 816,006 |
| CA | Campo Band of Diegueno Mission Indians | 253,980 |
| AK | Cantwell | 150,147 |
| CA | Capitan Grande Band of Diegueno Mission Indians | 169,870 |
| SC | Catawba Indian Nation | 493,421 |
| NY | Cayuga Nation | 205,532 |
| CA | Cedarville Rancheria | 150,147 |
| AK | Chalkyitsik | 168,759 |
| AK | Cheesh-Na | 150,147 |
| AK | Chefornak | 206,280 |
| CA | Chemehuevi Indian Tribe | 296,843 |
| AK | Chenega (Chanega) | 150,147 |
| CA | Cher-Ae Heights Indian Community (Trinidad Rancheria) | 150,155 |
| OK | Cherokee Nation | 6,489,212 |
| AK | Chevak | 275,983 |
| OK | Cheyenne and Arapaho Tribes | 595,299 |
| SD | Cheyenne River Sioux | 1,201,976 |
| VA | Chickahominy Indian Tribe | 195,617 |
| VA | Chickahominy Indian Tribe-Eastern Division | 150,606 |
| AK | Chickaloon | 164,514 |
| OK | Chickasaw Nation | 2,520,908 |
| CA | Chicken Ranch Rancheria of Me-Wuk Indians | 150,147 |
| AK | Chignik Bay Tribal Council | 150,147 |
| AK | Chignik Lagoon | 150,147 |
| AK | Chignik Lake | 150,147 |
| AK | Chilkat (Klukwan) | 150,147 |
| AK | Chilkoot (Haines) | 153,719 |
| AK | Chinik (Golovin) | 163,788 |
| MT | Chippewa Cree Indians of the Rocky Boy's Reservation | 642,286 |
| LA | Chitimacha Tribe | 167,176 |
| AK | Chitina | 150,147 |
| OK | Choctaw Nation | 2,451,562 |
| AK | Chuathbaluk (Russian Mission, Kuskokwim) | 153,606 |
| AK | Chugach Alaska Corporation | 611,511 |
| AK | Chuloonawick | 150,147 |
| AK | Circle | 155,282 |
| OK | Citizen Potawatomi Nation | 716,072 |
| AK | Clarks Point | 150,147 |
| CA | Cloverdale Rancheria of Pomo Indians | 198,261 |
| NM | Cochiti Pueblo | 192,865 |
| AZ | Cocopah Tribe | 320,614 |

| State | Tribe | Allocation |
|---|---|---|
| ID | Coeur D'Alene Tribe | 338,414 |
| CA | Cold Springs Rancheria of Mono Indians | 219,621 |
| AZ | Colorado River Indian Tribes | 651,565 |
| OK | Comanche Nation | 644,586 |
| MT | Confederated Salish and Kootenai Tribes | 1,132,555 |
| WA | Confederated Tribes and Bands of the Yakama Nation | 1,359,390 |
| OR | Confederated Tribes of Siletz Indians | 1,048,085 |
| WA | Confederated Tribes of the Chehalis Reservation | 357,665 |
| WA | Confederated Tribes of the Colville Reservation | 1,424,873 |
| OR | Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians | 358,967 |
| UT | Confederated Tribes of the Goshute Reservation | 233,443 |
| OR | Confederated Tribes of the Grand Ronde Community | 853,041 |
| OR | Confederated Tribes of the Umatilla Indian Reservation | 529,179 |
| OR | Confederated Tribes of the Warm Springs Reservation | 458,722 |
| AK | Cook Inlet Region, Inc | 3,193,036 |
| OR | Coquille Indian Tribe | 396,269 |
| AK | Council | 150,147 |
| LA | Coushatta Tribe | 150,147 |
| OR | Cow Creek Band of Umpqua Tribe | 381,416 |
| WA | Cowlitz Indian Tribe | 514,054 |
| CA | Coyote Valley Band of Pomo Indians | 252,840 |
| AK | Craig | 173,374 |
| AK | Crooked Creek | 158,734 |
| SD | Crow Creek Sioux Tribe | 462,133 |
| MT | Crow Tribe | 741,631 |
| AK | Curyung (Dillingham) | 278,419 |
| AK | Deering | 159,079 |
| OK | Delaware Nation (Western) | 157,890 |
| OK | Delaware Tribe of Indians (Eastern) | 238,265 |
| AK | Diomede (Inalik) | 167,022 |
| AK | Dot Lake | 150,147 |
| AK | Douglas | 216,213 |
| AK | Doyon, Ltd | 1,254,404 |
| CA | Dry Creek Rancheria Band of Pomo Indians | 314,934 |
| NV | Duck Valley Shoshone-Paiute Tribes | 606,641 |
| NV | Duckwater Shoshone Tribe | 238,553 |
| AK | Eagle | 150,147 |
| NC | Eastern Band of Cherokee Indians | 759,899 |
| MO | Eastern Shawnee Tribe | 153,406 |
| WY | Eastern Shoshone Tribe of the Wind River Reservation | 456,868 |
| AK | Eek | 228,954 |
| AK | Egegik | 150,147 |
| AK | Eklutna | 150,119 |
| AK | Ekuk | 150,147 |
| AK | Ekwok | 151,724 |
| CA | Elem Indian Colony of Pomo Indians (Sulphur Bank Rancheria) | 155,421 |
| AK | Elim | 197,456 |
| CA | Elk Valley Rancheria | 150,147 |
| NV | Ely Shoshone Tribe | 281,431 |
| AK | Emmonak | 230,911 |
| CA | Enterprise Rancheria of Maidu Indians | 269,631 |
| AK | Evansville (Bettles Field) | 150,147 |
| CA | Ewiiaapaayp Band of Kumeyaay Indians | 150,147 |
| AK | Eyak | 163,398 |
| NV | Fallon Paiute-Shoshone Tribe | 454,550 |
| AK | False Pass | 150,147 |
| SD | Flandreau Santee Sioux Tribe | 225,675 |
| MN | Fond Du Lac Band, Minnesota Chippewa Tribe | 971,518 |
| WI | Forest County Potawatomi Community | 210,225 |
| MT | Fort Belknap Indian Community | 552,541 |
| CA | Fort Bidwell Indian Community | 235,617 |
| CA | Fort Independence Indian Community of Paiute Indians | 156,591 |
| NV | Fort McDermitt Paiute and Shoshone Tribes | 274,535 |
| AZ | Fort McDowell Yavapai Nation | 180,413 |
| CA | Fort Mojave Indian Tribe | 441,202 |
| OK | Fort Sill Apache Tribe | 157,148 |
| AK | Fort Yukon | 219,957 |
| AK | Gakona | 150,147 |
| AK | Galena (Louden Village) | 179,973 |
| AK | Gambell | 252,459 |
| AK | Georgetown | 150,147 |
| AZ | Gila River Indian Community | 1,718,043 |
| AK | Goodnews Bay | 164,872 |
| MN | Grand Portage Band, Minnesota Chippewa Tribe | 210,246 |

| State | Tribe | Allocation |
|---|---|---|
| MI | Grand Traverse Band of Ottawa and Chippewa Indians | 429,210 |
| CA | Graton Rancheria Federated Indians | 319,552 |
| AK | Grayling (Hokikachuk) | 180,893 |
| CA | Greenville Rancheria | 167,645 |
| CA | Grindstone Rancheria of Wintun-Wailaki Indians | 225,874 |
| CA | Guidiville Rancheria | 182,718 |
| AK | Gulkana | 150,118 |
| CA | Habematolel Pomo of Upper Lake | 179,031 |
| AK | Hamilton | 150,147 |
| MI | Hannahville Indian Community | 185,496 |
| AZ | Havasupai Tribe | 158,998 |
| AK | Healy Lake | 150,147 |
| WI | Ho-Chunk Nation | 1,005,433 |
| WA | Hoh Indian Tribe | 168,840 |
| AK | Holy Cross | 173,698 |
| AK | Hoonah | 174,884 |
| CA | Hoopa Valley Tribe | 446,251 |
| AK | Hooper Bay | 299,004 |
| AZ | Hopi Tribe | 1,723,928 |
| CA | Hopland Band of Pomo Indians | 307,850 |
| ME | Houlton Band of Maliseet Indians | 258,504 |
| AZ | Hualapai Indian Tribe | 458,027 |
| AK | Hughes | 156,407 |
| AK | Huslia | 189,808 |
| AK | Hydaburg | 162,095 |
| AK | Igiugig | 150,147 |
| CA | Iipay Nation of Santa Ysabel | 153,696 |
| AK | Iliamna | 150,147 |
| CA | Inaja Band of Diegueno Mission Indians | 150,147 |
| AK | Inupiat Community of the Arctic Slope | 636,168 |
| CA | Ione Band of Miwok Indians | 213,808 |
| KS | Iowa Tribe of Kansas and Nebraska | 228,709 |
| OK | Iowa Tribe of Oklahoma | 159,704 |
| AK | Iqugmiut Traditional Council (Iqurmuit) | 164,445 |
| NM | Isleta Pueblo | 346,034 |
| AK | Ivanof Bay | 150,147 |
| CA | Jackson Band of Miwuk Indians | 150,147 |
| WA | Jamestown S'Klallam Tribe | 214,200 |
| CA | Jamul Indian Village | 150,147 |
| NM | Jemez Pueblo | 253,169 |
| LA | Jena Band of Choctaw Indians | 150,147 |
| NM | Jicarilla Apache Nation | 385,038 |
| AK | Kaguyak | 150,147 |
| AZ | Kaibab Band of Paiute Indians | 225,524 |
| AK | Kake | 170,327 |
| AK | Kaktovik | 161,665 |
| WA | Kalispel Indian Community | 204,963 |
| AK | Kalskag | 177,783 |
| AK | Kaltag | 160,253 |
| AK | Kanatak | 150,147 |
| AK | Karluk | 150,147 |
| CA | Karuk Tribe | 984,218 |
| AK | Kasaan | 150,147 |
| CA | Kashia Band of Pomo Indians, Stewarts Point Rancheria | 290,500 |
| AK | Kasigluk | 209,298 |
| OK | Kaw Nation | 292,410 |
| AK | Kenaitze | 403,026 |
| AK | Ketchikan | 350,849 |
| MI | Keweenaw Bay Indian Community | 522,062 |
| OK | Kialegee Tribal Town | 190,567 |
| AK | Kiana | 174,743 |
| TX | Kickapoo Traditional Tribe of Texas | 178,142 |
| KS | Kickapoo Tribe of Kansas | 297,606 |
| OK | Kickapoo Tribe of Oklahoma | 242,090 |
| AK | King Island | 193,760 |
| AK | King Salmon | 151,059 |
| OK | Kiowa Indian Tribe | 400,643 |
| AK | Kipnuk | 265,729 |
| AK | Kivalina | 221,466 |
| OR | Klamath Tribes | 886,618 |
| AK | Klawock | 161,338 |
| CA | Kletsel Dehe Wintun Nation of the Cortina Rancheria | 159,288 |
| AK | Kluti Kaah (Copper Center) | 150,000 |
| AK | Knik | 430,655 |

| State | Tribe | Allocation |
|---|---|---|
| AK | Kobuk | 156,619 |
| CA | Koi Nation of Northern California (Lower Lake) | 150,147 |
| AK | Kokhanok | 165,042 |
| AK | Kongiganak | 207,079 |
| AK | Koniag, Incorporated | 866,019 |
| ID | Kootenai Tribe | 155,772 |
| AK | Kotlik | 241,676 |
| AK | Kotzebue | 378,657 |
| AK | Koyuk | 179,205 |
| AK | Koyukuk | 164,751 |
| AK | Kwethluk | 233,817 |
| AK | Kwigillingok | 185,873 |
| AK | Kwinhagak (Quinhagak) | 243,947 |
| CA | La Jolla Band of Luiseno Indians | 188,293 |
| CA | La Posta Band of Diegueno Mission Indians | 150,147 |
| WI | Lac Courte Oreilles Band of Lake Superior Chippewa | 782,707 |
| WI | Lac Du Flambeau Band of Lake Superior Chippewa | 503,265 |
| MI | Lac Vieux Desert Band of Lake Superior Chippewa Indians | 193,461 |
| NM | Laguna Pueblo | 409,157 |
| AK | Larsen Bay | 150,147 |
| NV | Las Vegas Tribe of Paiute Indians | 150,147 |
| MN | Leech Lake Band, Minnesota Chippewa Tribe | 1,013,163 |
| AK | Levelock | 156,582 |
| AK | Lime Village | 150,147 |
| MI | Little River Band of Ottawa Indians | 203,452 |
| MT | Little Shell Tribe of Chippewa Indians | 703,094 |
| MI | Little Traverse Bay Band of Odawa Indians | 292,627 |
| CA | Lone Pine Paiute-Shoshone Tribe | 194,877 |
| CA | Los Coyotes Band of Cahuilla and Cupeno Indians | 150,147 |
| NV | Lovelock Paiute Tribe | 175,626 |
| SD | Lower Brule Sioux Tribe | 410,837 |
| WA | Lower Elwha Tribal Community | 269,914 |
| AK | Lower Kalskag | 192,677 |
| MN | Lower Sioux Indian Community | 187,778 |
| WA | Lummi Tribe | 891,738 |
| CA | Lytton Rancheria of California | 176,378 |
| WA | Makah Indian Tribe | 311,253 |
| CA | Manchester Band of Pomo Indians | 349,561 |
| AK | Manley Hot Springs | 150,147 |
| AK | Manokotak | 229,634 |
| CA | Manzanita Band of Diegueno Mission Indians | 150,147 |
| AK | Marshall (Fortuna Ledge) | 186,548 |
| AK | Mary's Igloo | 150,147 |
| CT | Mashantucket Pequot Indian Tribe | 150,147 |
| MA | Mashpee Wampanoag Tribe | 352,476 |
| MI | Match-e-be-nash-she-wish Band of Pottawatomi Indians | 178,601 |
| AK | McGrath | 159,061 |
| CA | Mechoopda Indian Tribe of Chico Rancheria | 225,101 |
| AK | Mekoryuk | 177,210 |
| WI | Menominee Indian Tribe | 687,663 |
| AK | Mentasta | 160,874 |
| CA | Mesa Grande Band of Diegueno Mission Indians | 193,801 |
| NM | Mescalero Apache Tribe | 573,991 |
| AK | Metlakatla (Annette Island) | 399,219 |
| OK | Miami Tribe | 152,756 |
| FL | Miccosukee Tribe | 150,147 |
| CA | Middletown Rancheria of Pomo Indians | 169,529 |
| ME | Mi'Kmaq Nation (Aroostook) | 308,077 |
| MN | Mille Lacs Band, Minnesota Chippewa Tribe | 438,763 |
| AK | Minto | 174,002 |
| MS | Mississippi Band of Choctaw Indians | 868,318 |
| NV | Moapa Band of Paiute Indians | 221,921 |
| OK | Modoc Tribe | 166,583 |
| CT | Mohegan Tribe of Indians of Connecticut | 150,147 |
| VA | Monacan Indian Nation | 221,778 |
| CA | Mooretown Rancheria of Maidu Indians | 331,989 |
| CA | Morongo Band of Mission Indians | 201,017 |
| WA | Muckleshoot Indian Tribe | 430,708 |
| OK | Muscogee (Creek) Nation | 3,793,027 |
| AK | Naknek | 155,221 |
| NM | Nambe Pueblo | 196,173 |
| AK | NANA Corporation | 600,244 |
| VA | Nansemond Indian Tribe | 171,986 |
| AK | Nanwelek (English Bay) | 156,194 |

| State | Tribe | Allocation |
|---|---|---|
| AK | Napaimute | 150,147 |
| AK | Napakiak | 213,210 |
| AK | Napaskiak | 196,958 |
| RI | Narragansett Indian Tribe | 234,440 |
| AZ | Navajo Nation | 16,494,460 |
| AK | Nelson Lagoon | 150,147 |
| AK | Nenana | 161,731 |
| AK | New Koliganek | 162,260 |
| AK | New Stuyahok | 211,925 |
| AK | Newhalen | 151,375 |
| AK | Newtok | 197,733 |
| ID | Nez Perce Tribe | 407,903 |
| AK | Nightmute | 173,520 |
| AK | Nikolai | 155,326 |
| AK | Nikolski | 150,147 |
| AK | Ninilchik | 242,402 |
| WA | Nisqually Indian Tribe | 271,034 |
| AK | Noatak | 190,010 |
| AK | Nome Eskimo Community | 354,590 |
| AK | Nondalton | 150,147 |
| WA | Nooksack Indian Tribe | 323,427 |
| AK | Noorvik | 207,974 |
| WY | Northern Arapaho Tribe of the Wind River Reservation | 619,186 |
| MT | Northern Cheyenne Tribe | 699,715 |
| CA | Northfork Rancheria of Mono Indians | 397,522 |
| AK | Northway | 169,445 |
| UT | Northwestern Band of the Shoshone Nation | 186,149 |
| MI | Nottawaseppi Huron Band of Potawatomi | 250,771 |
| AK | Nuiqsut (Nooiksut) | 181,025 |
| AK | Nulato | 173,660 |
| AK | Nunakauyarmiut (Toksook Bay) | 219,391 |
| AK | Nunam Iqua (Sheldon's Point) | 162,930 |
| AK | Nunapitchuk | 226,523 |
| SD | Oglala Sioux Tribe | 2,450,321 |
| NM | Ohkay Owingeh (San Juan Pueblo) | 274,032 |
| AK | Ohogamiut | 150,147 |
| NE | Omaha Tribe | 461,351 |
| NY | Oneida Indian Nation of New York | 295,488 |
| WI | Oneida Nation, Wisconsin | 1,104,088 |
| NY | Onondaga Nation | 150,147 |
| AK | Orutsararmuit (Bethel) | 585,262 |
| OK | Osage Nation | 448,649 |
| AK | Oscarville | 150,147 |
| OK | Otoe-Missouria Tribe | 204,799 |
| OK | Ottawa Tribe | 203,458 |
| AK | Ouzinkie | 151,651 |
| AK | Paimiut | 150,147 |
| UT | Paiute Indian Tribe of Utah | 484,458 |
| CA | Pala Band of Mission Indians | 234,191 |
| VA | Pamunkey Indian Tribe | 150,147 |
| AZ | Pascua Yaqui Tribe | 1,164,013 |
| CA | Paskenta Band of Nomlaki Indians | 200,364 |
| ME | Passamaquoddy Tribe | 310,985 |
| AK | Pauloff Harbor Village | 150,147 |
| CA | Pauma Band of Luiseno Mission Indians | 150,569 |
| OK | Pawnee Nation | 261,466 |
| CA | Pechanga Band of Indians | 154,073 |
| AK | Pedro Bay | 150,147 |
| ME | Penobscot Nation | 416,658 |
| OK | Peoria Tribe | 408,645 |
| AK | Perryville | 152,571 |
| AK | Petersburg | 164,006 |
| CA | Picayune Rancheria of Chukchansi Indians | 364,650 |
| NM | Picuris Pueblo | 155,867 |
| AK | Pilot Point | 150,147 |
| AK | Pilot Station | 218,145 |
| CA | Pinoleville Pomo Nation | 188,740 |
| CA | Pit River Tribe | 423,574 |
| AK | Pitka's Point | 159,624 |
| AK | Platinum | 150,114 |
| ME | Pleasant Point | 287,593 |
| AL | Poarch Band of Creeks | 416,301 |
| AK | Point Hope | 204,412 |
| AK | Point Lay | 172,190 |

| State | Tribe | Allocation |
|---|---|---|
| NM | Pojoaque Pueblo | 161,798 |
| MI | Pokagon Band of Potawatomi Indians | 762,067 |
| OK | Ponca Tribe of Indians of Oklahoma | 310,988 |
| NE | Ponca Tribe of Nebraska | 642,855 |
| WA | Port Gamble S'Klallam Tribe | 359,207 |
| AK | Port Graham | 155,150 |
| AK | Port Heiden | 150,147 |
| AK | Port Lions | 150,147 |
| AK | Portage Creek | 150,147 |
| CA | Potter Valley Tribe | 150,147 |
| KS | Prairie Band Potawatomi Nation | 198,302 |
| MN | Prairie Island Indian Community | 150,147 |
| WA | Puyallup Tribe | 911,893 |
| NV | Pyramid Lake Paiute Tribe | 503,408 |
| AK | Qagan Tayagungin (Sand Point) | 185,543 |
| AK | Qawalangin (Unalaska) | 157,765 |
| OK | Quapaw Tribe | 180,793 |
| CA | Quartz Valley Indian Community | 240,027 |
| AZ | Quechan Tribe | 440,597 |
| WA | Quileute Tribe | 250,740 |
| WA | Quinault Indian Nation | 586,321 |
| CA | Ramona Band of Cahuilla | 150,147 |
| AK | Rampart | 151,067 |
| VA | Rappahannock Tribe, Inc | 153,217 |
| WI | Red Cliff Band of Lake Superior Chippewa | 375,294 |
| AK | Red Devil | 150,147 |
| MN | Red Lake Band of Chippewa Indians | 945,181 |
| CA | Redding Rancheria | 178,860 |
| CA | Redwood Valley Rancheria | 190,780 |
| NV | Reno-Sparks Indian Colony | 429,378 |
| CA | Resighini Rancheria | 150,147 |
| CA | Rincon Band of Luiseno Mission Indians | 199,419 |
| CA | Robinson Rancheria | 217,750 |
| SD | Rosebud Sioux Tribe | 1,658,047 |
| CA | Round Valley Indian Tribes | 897,335 |
| AK | Ruby | 179,514 |
| IA | Sac & Fox Tribe of the Mississippi, IA | 197,241 |
| KS | Sac and Fox Nation of Missouri | 180,929 |
| OK | Sac and Fox Nation, Oklahoma | 455,270 |
| MI | Saginaw Chippewa Indian Tribe | 437,586 |
| AK | Saint George Island | 150,147 |
| AK | Saint Michael | 216,459 |
| AK | Saint Paul Island | 166,895 |
| NY | Saint Regis Mohawk Tribe | 441,321 |
| AK | Salamatof | 151,650 |
| AZ | Salt River Pima-Maricopa Indian Community | 669,857 |
| WA | Samish Indian Nation | 400,258 |
| AZ | San Carlos Apache Tribe | 1,417,171 |
| NM | San Felipe Pueblo | 247,121 |
| NM | San Ildefonso Pueblo | 197,744 |
| AZ | San Juan Southern Paiute Tribe | 163,770 |
| CA | San Pasqual Band of Diegueno Mission Indians | 196,514 |
| NM | Sandia Pueblo | 176,721 |
| NM | Santa Ana Pueblo | 184,365 |
| NM | Santa Clara Pueblo | 279,204 |
| CA | Santa Rosa Band of Cahuilla Indians | 150,147 |
| CA | Santa Rosa Indian Community | 243,462 |
| CA | Santa Ynez Band of Chumash Mission Indians | 184,019 |
| NE | Santee Sioux Nation | 312,801 |
| NM | Santo Domingo Pueblo | 311,742 |
| WA | Sauk-Suiattle Indian Tribe | 240,655 |
| MI | Sault Ste. Marie Tribe of Chippewa Indians | 1,199,867 |
| AK | Savoonga | 292,683 |
| AK | Saxman | 161,123 |
| AK | Scammon Bay | 226,581 |
| CA | Scotts Valley Band of Pomo Indians | 174,414 |
| AK | Selawik | 256,701 |
| AK | Seldovia | 150,147 |
| OK | Seminole Nation | 499,035 |
| FL | Seminole Tribe of Florida | 310,795 |
| NY | Seneca Nation of New York | 643,131 |
| OK | Seneca-Cayuga Nation | 174,702 |
| AK | Shageluk | 161,249 |
| MN | Shakopee Mdewakanton Sioux Community | 171,967 |

| State | Tribe | Allocation |
|---|---|---|
| AK | Shaktoolik | 172,073 |
| OK | Shawnee Tribe | 150,147 |
| CA | Sherwood Valley Rancheria of Pomo Indians | 252,257 |
| CA | Shingle Springs Band of Miwok Indians | 188,922 |
| NY | Shinnecock Indian Nation | 153,757 |
| AK | Shishmaref | 238,944 |
| WA | Shoalwater Bay Indian Tribe | 187,901 |
| ID | Shoshone-Bannock Tribes, Ft. Hall Reservation | 446,127 |
| AK | Shungnak | 172,318 |
| SD | Sisseton-Wahpeton Oyate | 881,398 |
| AK | Sitka Tribe (Baranof Island) | 408,917 |
| AK | Skagway | 151,020 |
| WA | Skokomish Indian Tribe | 266,877 |
| UT | Skull Valley Band of Goshute Indians | 150,147 |
| AK | Sleetmute | 155,353 |
| WA | Snoqualmie Indian Tribe | 202,607 |
| CA | Soboba Band of Luiseno Indians | 194,268 |
| WI | Sokaogon Chippewa Community | 317,192 |
| AK | Solomon | 150,147 |
| AK | South Naknek | 150,147 |
| CO | Southern Ute Indian Tribe | 408,002 |
| ND | Spirit Lake Tribe | 715,203 |
| WA | Spokane Tribe | 663,069 |
| WA | Squaxin Island Tribe | 327,613 |
| WI | St. Croix Chippewa Indians | 428,383 |
| ND | Standing Rock Sioux Tribe | 1,257,983 |
| AK | Stebbins Community Association | 237,840 |
| AK | Stevens Village | 150,147 |
| WA | Stillaguamish Tribe | 187,334 |
| WI | Stockbridge-Munsee Community | 233,473 |
| AK | Stony River | 150,147 |
| NV | Summit Lake Paiute Tribe | 150,147 |
| AK | Sun'aq Tribe of Kodiak (Shoonaq') | 221,514 |
| WA | Suquamish Indian Tribe | 334,754 |
| CA | Susanville Indian Rancheria | 299,971 |
| WA | Swinomish Indian Tribal Community | 383,295 |
| CA | Sycuan Band of Kumeyaay Nation | 150,147 |
| CA | Table Mountain Rancheria | 150,147 |
| AK | Takotna | 150,147 |
| AK | Tanacross | 157,472 |
| AK | Tanana | 177,226 |
| AK | Tangirnaq (Lesnoi) | 150,147 |
| NM | Taos Pueblo | 223,153 |
| AK | Tatitlek | 150,147 |
| AK | Tazlina | 150,147 |
| CA | Tejon Indian Tribe | 150,147 |
| AK | Telida | 150,147 |
| AK | Teller | 178,153 |
| NV | Te-Moak Tribe of Western Shoshone Indians | 382,149 |
| NM | Tesuque Pueblo | 160,492 |
| AK | Tetlin | 165,753 |
| OK | Thlopthlocco Tribal Town | 197,627 |
| ND | Three Affiliated Tribes of Fort Berthold | 840,237 |
| CA | Timbisha Shoshone Tribe (Death Valley) | 165,495 |
| AK | Tlingit and Haida Indian Tribes Central Council | 1,122,121 |
| AK | Togiak | 231,335 |
| AZ | Tohono O'odham Nation | 3,029,950 |
| CA | Tolowa Dee-ni' Nation (Smith River Rancheria) | 359,727 |
| NY | Tonawanda Band of Seneca | 150,147 |
| OK | Tonkawa Tribe | 239,692 |
| AZ | Tonto Apache Tribe of Arizona | 150,147 |
| CA | Torres-Martinez Desert Cahuilla Indians | 177,629 |
| WA | Tulalip Tribes | 824,467 |
| CA | Tule River Indian Tribe | 471,504 |
| AK | Tuluksak | 206,706 |
| LA | Tunica-Biloxi Tribe | 231,339 |
| AK | Tuntutuliak | 251,666 |
| AK | Tununak | 190,668 |
| CA | Tuolumne Band of Me-Wuk Indians | 214,943 |
| ND | Turtle Mountain Band of Chippewa Indians | 1,590,715 |
| NY | Tuscarora Nation | 150,147 |
| CA | Twenty-Nine Palms Band of Mission Indians | 150,147 |
| AK | Twin Hills | 157,700 |
| AK | Tyonek | 181,678 |

| State | Tribe | Allocation |
|---|---|---|
| AK | Ugashik | 150,147 |
| AK | Umkumiut | 150,147 |
| AK | Unalakleet | 191,280 |
| AK | Unga | 150,147 |
| CA | United Auburn Indian Community | 179,384 |
| OK | United Keetoowah Band of Cherokee Indians | 421,409 |
| VA | Upper Mattaponi Tribe | 177,339 |
| MN | Upper Sioux Community | 193,837 |
| WA | Upper Skagit Tribe | 418,390 |
| UT | Ute Indian Tribe of the Uintah & Ouray Reservation | 460,479 |
| CO | Ute Mountain Ute Tribe | 437,798 |
| CA | Utu Utu Gwaiti Paiute Tribe | 150,147 |
| AK | Venetie | 174,797 |
| CA | Viejas Group of Capitan Grande Band | 171,756 |
| AK | Wainwright | 202,468 |
| AK | Wales | 184,835 |
| NV | Walker River Paiute Tribe | 637,169 |
| MA | Wampanoag Tribe of Gay Head (Aquinnah) | 218,538 |
| NV | Washoe Tribe | 464,204 |
| MN | White Earth Band, Minnesota Chippewa Tribe | 796,991 |
| AK | White Mountain | 170,835 |
| AZ | White Mountain Apache (Fort Apache) | 1,845,814 |
| OK | Wichita and Affiliated Tribes | 226,465 |
| CA | Wilton Rancheria | 255,758 |
| NE | Winnebago Tribe | 433,218 |
| NV | Winnemucca Indian Colony | 150,147 |
| CA | Wiyot Tribe (Table Bluff) | 150,147 |
| AK | Wrangell | 174,561 |
| OK | Wyandotte Nation | 257,115 |
| AK | Yakutat Tlingit Tribe | 158,159 |
| SD | Yankton Sioux Tribe | 551,918 |
| AZ | Yavapai-Apache Nation (Camp Verde) | 327,173 |
| AZ | Yavapai-Prescott Indian Tribe | 150,147 |
| NV | Yerington Paiute Tribe | 316,605 |
| CA | Yocha Dehe Wintun Nation (Rumsey Rancheria) | 150,147 |
| NV | Yomba Shoshone Tribe | 204,468 |
| TX | Ysleta Del Sur Pueblo | 601,545 |
| CA | Yuhaaviatam of San Manuel Nation (San Manuel) | 150,147 |
| AK | Yupiit of Andreafski | 158,077 |
| CA | Yurok Tribe | 1,152,502 |
| NM | Zia Pueblo | 195,243 |
| NM | Zuni Tribe | 701,430 |

**Signing Authority**

This document of the Department of Energy was signed on August 10, 2023, by Dr. Henry McKoy, Director of the Office of State and Community Energy Programs, 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 11, 2023.

**Treena V. Garrett,**

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

[FR Doc. 2023–17571 Filed 8–15–23; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Staff Attendance at North American Electric Reliability Corporation Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation: Member Representatives Committee and Board of Trustees Meetings, Board of Trustees Corporate Governance and Human Resources Committee, Finance and Audit Committee, Compliance Committee, and Technology and Security Committee Meetings

Westin Ottawa Hotel, 11 Colonel By Dr., Ottawa, ON K1N 9H4, Canada

August 16, 2023 (8:30 a.m.–6:00 p.m. Eastern)

August 17, 2023 (9:00 a.m.–12:00 p.m. Eastern)

Further information regarding these meetings may be found at: *https://www.nerc.com/gov/bot/Pages/Calendar.aspx.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceeding:

Docket No. EL23–69–000 Petition for Rulemaking

Docket No. EL21–99–000 Complaint

Docket No. RR23–1–000 North American Electric Reliability Corp.

For further information, please contact Leigh Anne Faugust, 202–502–6396, or *Leigh.Faugust@ferc.gov.*

Dated: August 10, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–17610 Filed 8–15–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER23–2590–000]**

### Grover Hill Wind, 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 Grover Hill Wind, 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 30, 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 10, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–17611 Filed 8–15–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP23–521–000]**

### Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on July 28, 2023, Columbia Gas Transmission, LLC (Columbia) filed a prior notice request for authorization, in accordance with Sections 157.205 and 157.216, of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act and Columbia's blanket certificate issued in Docket No. CP83–76–000,[1] to abandon one injection/withdrawal storage well, connecting pipeline, and appurtenant facilities located in the Weaver Storage Field in Richland County, Ohio (2023 Weaver Well 8889 Abandonment Project). Columbia has determined that plugging and abandoning the Weaver Well is the best course of action to maintain Weaver Field's integrity and efficiency and aligns with the Pipeline and Hazardous Materials Safety Administration Storage Final Rule. The estimated cost of the project is approximately $624,800, all as more fully set forth in its request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions concerning this application should be directed to David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas, 77002, by telephone (832) 320–5477, or by email *david_alonzo@tcenergy.com.*

**Public Participation**

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on October 9, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice

[1] *Columbia Gas Transmission Corporation* (predecessor to Columbia Gas Transmission, LLC), 22 FERC ¶ 62,029 (1983).

communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

**Protests**

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is October 9, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

**Interventions**

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is October 9, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

**Comments**

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before October 9, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

**How To File Protests, Interventions, and Comments**

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–521–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [7]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–521–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other method: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas, 77002, by telephone (832) 320–5477, or by email *david_alonzo@tcenergy.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

**Tracking the Proceeding**

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: August 10, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–17613 Filed 8–15–23; 8:45 am]

**BILLING CODE 6717–01–P**

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

[7] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings # 1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC23–114–000.
*Applicants:* Blythe Mesa Solar II, LLC, IP Oberon, LLC, IP Oberon II, LLC.
*Description:* Joint Application for Authorization Under Section 203 of the Federal Power Act of Blythe Mesa Solar II, LLC, et al.
*Filed Date:* 8/8/23.
*Accession Number:* 20230808–5136.
*Comment Date:* 5 p.m. ET 8/29/23.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER23–2359–001.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Tariff Amendment: Amendment to ISA/CSA SA Nos. 6967 & 6968; Queue AD2–100/131—Docket No. ER23–2359 to be effective 9/6/2023.
*Filed Date:* 8/10/23.
*Accession Number:* 20230810–5056.
*Comment Date:* 5 p.m. ET 8/31/23.

*Docket Numbers:* ER23–2442–001.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Tariff Amendment: Amendment to WMPA, SA No. 7022; Queue No. AG1–478—Docket No. ER23–2442 to be effective 9/18/2023.
*Filed Date:* 8/10/23.
*Accession Number:* 20230810–5015.
*Comment Date:* 5 p.m. ET 8/31/23.

*Docket Numbers:* ER23–2596–000.
*Applicants:* Dairyland Power Cooperative, South Shore Energy, LLC, Nemadji River Generation, LLC.
*Description:* Request for Limited Waiver, et al. of South Shore Energy, LLC.
*Filed Date:* 8/9/23.
*Accession Number:* 20230809–5106.
*Comment Date:* 5 p.m. ET 8/30/23.

*Docket Numbers:* ER23–2600–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Revisions to Posting of Information Relevant to RPM Auctions to be effective 10/8/2023.
*Filed Date:* 8/9/23.
*Accession Number:* 20230809–5143.
*Comment Date:* 5 p.m. ET 8/30/23.

*Docket Numbers:* ER23–2601–000.
*Applicants:* Stony Creek Wind Farm, LLC.
*Description:* Compliance filing: Request for Waiver and Request for Expedited Consideration to be effective N/A.
*Filed Date:* 8/9/23.
*Accession Number:* 20230809–5156.
*Comment Date:* 5 p.m. ET 8/30/23.

*Docket Numbers:* ER23–2602–000.
*Applicants:*Blossburg Power, LLC, Brunot Island Power, LLC, Gilbert Power, LLC, Hamilton Power, LLC, Hunterstown Power, LLC, Mountain Power, LLC, New Castle Power, LLC, Orrtanna Power, LLC, Portland Power, LLC, Sayreville Power, LLC, Shawnee Power, LLC, Shawville Power, LLC, Titus Power, LLC, Tolna Power, LLC, Warren Generation, LLC.
*Description:* Blossburg Power LLC, et al. respectfully request a one-time, limited waiver of the 90-day prior notice requirement set forth in Schedule 2 to the PJM Interconnection, L.L.C. Open Access Transmission Tariff.
*Filed Date:* 8/9/23.
*Accession Number:* 20230809–5160.
*Comment Date:* 5 p.m. ET 8/30/23.

*Docket Numbers:* ER23–2603–000.
*Applicants:* Twelvemile Solar Energy, LLC.
*Description:* Request for Limited Waiver, et al. of Twelvemile Solar Energy, LLC.
*Filed Date:* 8/9/23.
*Accession Number:* 20230809–5177.
*Comment Date:* 5 p.m. ET 8/30/23.

*Docket Numbers:* ER23–2604–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Tariff Amendment: Notice of Cancellation of WMPA, SA No. 5695; Queue No. AF1–133 re: withdrawal to be effective 8/8/2023.
*Filed Date:* 8/10/23.
*Accession Number:* 20230810–5089.
*Comment Date:* 5 p.m. ET 8/31/23.

Take notice that the Commission received the following public utility holding company filings:

*Docket Numbers:* PH23–14–000.
*Applicants:* New Jersey Resources Corporation.
*Description:* New Jersey Resources Corporation submits FERC 65–A Exemption Notification.
*Filed Date:* 8/8/23.
*Accession Number:* 20230808–5134.
*Comment Date:* 5 p.m. ET 8/29/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, 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 10, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–17616 Filed 8–15–23; 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:* RP23–964–000.
*Applicants:* Equitrans, L.P.
*Description:* § 4(d) Rate Filing: Negotiated Rate Agreements—8/10/2023 to be effective 8/10/2023.
*Filed Date:* 8/9/23.
*Accession Number:* 20230809–5130.
*Comment Date:* 5 p.m. ET 8/21/23.

*Docket Numbers:* RP23–965–000.
*Applicants:* Northern Natural Gas Company.
*Description:* § 4(d) Rate Filing: 20230810 Carlton Flow Obligation to be effective 11/1/2023.
*Filed Date:* 8/10/23.
*Accession Number:* 20230810–5057.
*Comment Date:* 5 p.m. ET 8/22/23.

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 10, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–17615 Filed 8–15–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP23–492–000]**

### Florida Gas Transmission Company, LLC; Notice of Schedule for the Preparation of an Environmental Assessment for the South Louisiana Project

On June 2, 2023, Florida Gas Transmission Company, LLC (FGT) filed an application in Docket No. CP23–492–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the South Louisiana Project (Project) and would provide 100 billion British thermal units per day of additional natural gas firm transportation capacity to Florida Power & Light Company. The Project would expand Florida Power & Light Company's flow path back into FGT's Zone 2 pool and provide gas to downstream customers, which includes power generation and local distribution companies.

On June 12, 2023, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing Federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a Federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.[1]

#### Schedule for Environmental Review

Issuance of EA December 15, 2023
90-day Federal Authorization Decision Deadline[2] March 14, 2024

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

#### Project Description

FGT proposes to increase its certificated capacity and throughput at certain compressor stations, and construct, modify, install, own, operate, and maintain certain compression and auxiliary facilities in Louisiana and Mississippi.

The South Louisiana Project would consist of the following facilities at existing compressor stations:

- Compressor Station 7.5, St. Landry Parish, Louisiana—Uprate two existing natural gas-fired compressor turbines (Units 7501 and 7502) from 6,500 horsepower (hp) to 7,700 hp, for an overall certificated compressor station increase of 2,400 hp.
- Compressor Station 8, East Baton Rouge, Louisiana—Add process cooling units to support the existing gas compressors. No change to the certificated horsepower is proposed at Compressor Station 8.
- Compressor Station 9, Washington Parish, Louisiana—Install one new 7,700 hp natural gas-fired turbine (Solar Taurus 60) compressor unit.
- Compressor Station 10, Perry County, Mississippi—Install one new 15,900 hp natural gas-fired turbine (Solar Mars 100) compressor unit.

#### Background

On July 7, 2023, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed South Louisiana Project* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. No comments were filed in response to the Notice of Scoping.

#### Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP23–492), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also

[1] 40 CFR 1501.10 (2020).

[2] The Commission's deadline applies to the decisions of other Federal agencies, and State agencies acting under federally delegated authority, that are responsible for Federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by Federal law.

provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: August 10, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–17612 Filed 8–15–23; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–11256–01–R9]**

### Revision of Approved State Primacy Program for the State of Nevada

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of approval.

**SUMMARY:** Notice is hereby given that the State of Nevada revised its approved State primacy program under the Federal Safe Drinking Water Act (SDWA) by adopting regulations that effectuate the Federal Stage 1 Disinfectants and Disinfection Byproducts Rule (DBPR). The Environmental Protection Agency (EPA) has determined that Nevada's revision request meets the applicable SDWA program revision requirements and the regulations adopted by Nevada are no less stringent than the corresponding Federal regulations. Therefore, EPA approves this revision to Nevada's approved State primacy program. However, this determination on Nevada's request for approval of a program revision shall take effect in accordance with the procedures described below in the **SUPPLEMENTARY INFORMATION** section of this notice after the opportunity to request a public hearing.

**DATES:** A request for a public hearing must be received or postmarked before September 15, 2023.

**ADDRESSES:** Documents relating to this determination that were submitted by Nevada as part of its program revision request are available for public inspection online at *http://ndep.nv.gov/posts.* In addition, documents relating to this determination are available by appointment between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, except official State or Federal holidays, at the following address: Nevada Division of Environmental Protection, Administration Office, 901 South Stewart Street, Suite 4001, Carson City, NV 89701. Please contact the Bureau of Safe Drinking Water at (775) 687–9521 to schedule an appointment.

**FOR FURTHER INFORMATION CONTACT:** Samantha Bishop, EPA Region 9, Drinking Water Section; via telephone at (415) 972–3411 or via email address at *bishop.samantha@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.* EPA approved Nevada's initial application for primary enforcement authority (''primacy'') of drinking water systems on February 27, 1978 (43 FR 8030). Since initial primacy approval, EPA has approved various revisions to Nevada's primacy program. For the revision covered by this action, EPA promulgated the DBPR at 40 CFR 141 subparts G, L and U on December 16, 1998 (63 FR 69390–69476) with revisions to the Stage 1 DBPR on January 16, 2001 (66 FR 3770–3780). EPA has determined that Nevada has adopted into state law Stage 1 DBPR requirements that are comparable to and no less stringent than the Federal requirements. EPA has also determined that the State's program revision request meets all of the regulatory requirements for approval, as set forth in 40 CFR 142.12, including a side-by-side comparison of the Federal requirements demonstrating the corresponding State authorities, additional materials to support special primacy requirements of 40 CFR 142.16, a review of the requirements contained in 40 CFR 142.10 necessary for States to attain and retain primary enforcement responsibility, and a statement by the Nevada Attorney General certifying that Nevada's laws and regulations to carry out the program revision were duly adopted and are enforceable. The Attorney General's statement also affirms that there are no environmental audit privilege and immunity laws that would impact Nevada's ability to implement or enforce the Nevada laws and regulations pertaining to the program revision. Therefore, EPA approves this revision of Nevada's approved State primacy program. The Technical Support Document, which provides EPA's analysis of Nevada's program revision request, is available by submitting a request to the following email address: *R9dw-program@epa.gov.* Please note ''Technical Support Document'' in the subject line of the email.

*Public Process.* Any interested person may request a public hearing on this determination. A request for a public hearing must be received or postmarked before September 15, 2023 and addressed to the Regional Administrator of EPA Region 9, via the following email address: *R9dw-program@epa.gov,* or by contacting the EPA Region 9 contact person listed above in this notice by telephone if you do not have access to email. Please note ''State Program Revision Determination'' in the subject line of the email. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. If a timely request for a public hearing is made, then EPA Region 9 may hold a public hearing. Any request for a public hearing shall include the following information: 1. The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; 2. A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and 3. The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

If EPA Region 9 does not receive a timely request for a hearing or a request for a hearing was denied by the Regional Administrator for being frivolous or insubstantial, and the Regional Administrator does not elect to hold a hearing on their own motion, EPA's approval shall become final and effective on September 15, 2023, and no further public notice will be issued.

*Authority:* Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300g–2 (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: August 1, 2023.

**Martha Guzman Aceves,**

*Regional Administrator, EPA Region 9.*

[FR Doc. 2023–16980 Filed 8–15–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OGC–2020–0020; FRL11341–01–OMS]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Confidentiality Rules (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Confidentiality Rules (EPA ICR Number 1665.15, OMB Control Number 2020–0003) to the Office of Management and Budget (OMB) for review and approval

in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through September 20, 2023. Public comments were previously requested via the **Federal Register** on January 25, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

**DATES:** Comments may be submitted on or before September 15, 2023.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA–HQ–OGC–2020–0020, to EPA online using *www.regulations.gov* (our preferred method), by email to *hq.foia@epa.gov,* 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.

Submit written comments and recommendations to OMB for the proposed information collection 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:** Brandon A. Levine, Office of General Counsel, (2310A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–6625; email address: *levine.brandon@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This is a proposed extension of the ICR, which is currently approved through September 20, 2023. 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.

Public comments were previously requested via the **Federal Register** on January 25, 2023 during a 60-day comment period (88 FR 4822). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the 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 *http://www.epa.gov/dockets.*

*Abstract:* EPA established the requirements set forth in 40 CFR part 2, subpart B, ''Confidentiality of Business Information.'' The requirements govern CBI claims. The requirements include the handling by the Agency of business information, which is or may be entitled to confidential treatment; requiring business submitters to substantiate CBI claims; and determining whether such information is entitled to confidential treatment for reasons of business confidentiality. This request to renew an existing ICR allows the Agency to continue collecting information the Agency requires to make final determinations regarding whether information claimed as confidential is entitled to confidential treatment under EPA's CBI regulations.

*Form numbers:* None.

*Respondents/affected entities:* Any entity submitting information claimed as CBI to EPA.

*Respondent's obligation to respond:* Required to obtain or retain benefits.

*Estimated number of respondents:* 225 (per year) (total).

*Frequency of response:* One-time submission for information claimed as CBI.

*Total estimated burden:* 3,217.5 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $1,287,000 (per year), includes $0 annualized capital or operation & maintenance costs.

*Changes in the estimates:* There is an increase of 2,465.1 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to a combination of factors. Since the last ICR renewal, the Agency has experienced a modest increase in the number of respondents. Additionally, after consulting with a sample of respondent businesses (or respective outside counsels), EPA determined the average estimated burden for each response has increased compared with the ICR currently approved by OMB. Calculating the burden for responding to a substantiation request letter is fact-specific, and the burden can vary based on the following factors: a respondent's familiarity with recent changes in the applicable law, the volume and complexity of the CBI claims asserted, and/or familiarity with the CBI substantiation request letters and substantiation process. As part of consulting with respondent businesses, EPA received burden estimates ranging from as few as 5 hours to as many as nearly 40 hours to substantiate varying amounts of CBI claims. The average estimated burden across the responses that the Agency received is approximately 14.3 hours per response. The median estimated burden is approximately 10 hours per response. For purposes of this ICR renewal, the Agency calculated the estimated burden using the average.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2023–17572 Filed 8–15–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–ORD–2018–0774; FRL–11340–01–OMS]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluating End User Satisfaction of EPA's Research Products (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency has submitted an information collection request (ICR), Evaluating End User Satisfaction of EPA's Research Products (EPA ICR Number 2593.02, OMB Control Number 2080–0085) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). This is a proposed extension of the ICR, which is currently approved through August 31, 2023. Public comments were previously requested via the **Federal Register** on December 19, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

**DATES:** Comments may be submitted on or before September 15, 2023.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA–HQ–ORD–2018–0774, to EPA online using *www.regulations.gov* (our preferred method), by email to *ord.docket@epa.gov,* 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.

Submit written comments and recommendations to OMB for the proposed information collection 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:** Alyssa Gurkas, U.S. Environmental Protection Agency, Office of Research and Development, Office of Resource Management, Improvement and Accountability Division, Mail Code 41182, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–731–7553; email address: *Gurkas.alyssa@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This is a proposed extension of the ICR, which is currently approved through August 31, 2023. 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.

Public comments were previously requested via the **Federal Register** on December 19, 2022 during a 60-day comment period (87 FR 77602). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the 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 *http://www.epa.gov/dockets.*

*Abstract:* The purpose of this information collection is to survey partners currently using the EPA's Office of Research and Development's (ORD) scientific research products to increase transparency and public participation, and to ascertain the quality, usability, and timeliness of the research products. ORD will collect these data to inform the annual end-of-year performance reporting to the Office of Management and Budget (OMB) that will be published each year in the Annual Performance Report (APR), which is part of the President's Budget Request and mandated under the Government Performance and Results Act (GPRA). The survey results will be used to estimate the degree to which ORD research products meet partner needs and will enable the improvement of the development and delivery of products. Some of the information reported on the form is confidential, which will be withheld from the public pursuant to Section 107(1) of the Ethics in Government Act of 1978. Participation is voluntary.

*Form Numbers:* 6000–021.

*Respondents/affected entities:* Life, physical and social science professionals.

*Respondent's obligation to respond:* Voluntary.

*Estimated number of respondents:* 270 (total).

*Frequency of response:* Annually.

*Total estimated burden:* 68 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $4,344.30 (per year), which includes no annualized capital or operation & maintenance costs.

*Changes in the Estimates:* There is a decrease of 15 hours in the total estimated respondent burden compared with the ICR previously approved by OMB. This burden reduction is attributed to a decrease in time needed for survey completion.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2023–17550 Filed 8–15–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R08–SFUND–2023–0334; FRL: 11151–02–R8]**

## Administrative Settlement Agreement for Response Action by Bona Fide Prospective Purchaser, Central City/Clear Creek Superfund Site, Four Points Funding, LLC, Clear Creek County, Colorado; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice, correction.

**SUMMARY:** The Environmental Protection Agency (EPA) published a notice in the **Federal Register** on August 1, 2023, requesting comments on a prospective administrative settlement agreement for response action between the United States, the State of Colorado, and Four Points Funding, LLC, at the Central City/Clear Creek Superfund Site in Clear Creek County, Colorado. This notice corrects errors contained in the document.

**ADDRESSES:** The proposed agreement and additional background information relating to the agreement will be available upon request and will be posted at *https://www.epa.gov/superfund/centralcity.* Comments are still being accepted and requests for an electronic copy of the proposed agreement should be addressed to Crystal Kotowski-Edmunds, Enforcement Specialist, Superfund and Emergency Management Division, Environmental Protection Agency-Region 8, Mail Code 8SEM–PAC, 1595 Wynkoop Street, Denver, Colorado 80202, or telephone number: (303) 312–6124, or email address: *edmunds.crystal@epa.gov* and should reference the Central City/Clear Creek Superfund Site.

You may also send comments, identified by Docket ID No. EPA–R08–SFUND–2022–0281 to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Crystal Kotowski-Edmunds, Superfund and Emergency Management Division, Cost Recovery and Liability Analysis Section, 4224, Environmental Protection Agency, 1595 Wynkoop Ave., Denver, CO 80202; telephone number: (303) 312–6124; email address: *edmunds.crystal@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Correction

In the **Federal Register** of August 1, 2023, at 88 FR 50149, in FR Doc. 2023–16219, on page 50149:

1. In the second column, in the heading, correct the ''Agency Docket Number'' reading ''EPA–R05–SFUND–2023–0334'' to read ''EPA–R08–SFUND–2023–0334''; and

2. In **SUPPLEMENTARY INFORMATION**, in the third column, at the end of the seventh line, add a parenthesis after ''costs.'' to read ''costs.''). ''

**Ben Bielenberg,**

*Acting Division Director, Superfund and Emergency Management Division, Region 8.*

[FR Doc. 2023–17553 Filed 8–15–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OW–2006–0369; FRL–11290–01–OMS]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Estuary Program (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), ''National Estuary Program (Renewal)'' (EPA ICR Number 1500.11, OMB Control Number 2040–0138) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through September 30, 2023. Public comments were previously requested via the **Federal Register** on January 4, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

**DATES:** Comments may be submitted on or before September 15, 2023.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA–HQ–OW–2006–0369, to EPA online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* 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.

Submit written comments and recommendations to OMB for the proposed information collection 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:** Vince Bacalan, Oceans, Wetlands and Communities Division; Office of Wetlands, Oceans and Watersheds; Mail Code 4504T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0930; fax number: 202–566–1336; email address: *bacalan.vince@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This is a proposed extension of the ICR, which is currently approved through September 30, 2023. 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.

Public comments were previously requested via the **Federal Register** on January 4, 2023 during a 60-day comment period (88 FR 352). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the 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 *http://www.epa.gov/dockets.*

*Abstract:* The National Estuary Program (NEP) involves collecting information from the state or local entity or nongovernmental organization that receives funds under section 320 of the Clean Water Act (CWA). The regulation requiring this information is found in 40 CFR part 35.

Prospective grant recipients seek funding to develop and coordinate the implementation of Comprehensive Conservation Management Plans (CCMPs) for estuaries of national significance. To receive funds, grantees must submit annual work plans to EPA, which are used to track performance of each of the 28 estuary program locations currently in the NEP. EPA provides funding to the 28 NEPs to support long-term implementation of CCMPs in the form of assistance agreements, and each NEP is evaluated on its progress every five years. The primary purpose of the program evaluation process is to help EPA determine whether the 28 programs included in the NEP are making adequate progress implementing their CCMPs. EPA also requests that each of the 28 NEPs receiving section 320 funds report annually on performance measures that allow EPA to maintain effective program management, execute its fiduciary responsibility to the program, and summarize environmental results achieved within the overall NEP. Information gathered may be included in agency reports along with other EPA program measures.

The passage of the Infrastructure Investment and Jobs Act, also known as Bipartisan Infrastructure Law (BIL), on November 15, 2021, enhances the work of the NEPs with additional funding to accelerate and more extensively implement CCMPs, ensure that benefits reach disadvantaged communities, and build the adaptive capacity of ecosystems and communities. As part of this expanded investment, the NEP is also required to track certain investments and benefits under the Justice40 Initiative (part II section 223 of 86 FR 7619), which will be informed by equity strategies submitted on a one-time basis by each of the 28 NEPs. These additional requirements under BIL and Justice40 contribute to the significant increase in the overall burden estimates for this renewal.

*Form Numbers:* None.

*Respondents/affected entities:* Entities potentially affected by this action are those state or local entities or nongovernmental organizations in the NEP that receive assistance agreements under section 320 of the Clean Water Act.

*Respondent's obligation to respond:* Required to obtain or retain a benefit (section 320 of the Clean Water Act).

*Estimated number of respondents:* 28 (total).

*Frequency of response:* Annual.

*Total estimated burden:* 11,872 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $763,844 (per year), which includes $0 annualized capital or operation & maintenance costs.

*Changes in the Estimates:* There is increase of 6,512 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to (1) year-end reporting of activities and accomplishments in Work Plans; (2) Program Evaluations taking place in the next three years compared to two years in the currently approved ICR; (3) expanded reporting of existing information collection (Work Plans, Program Evaluation Packages, Performance Measures) under BIL; and (4) requirement to develop Equity Strategies designed to meet expectations under the Justice40 Initiative, as well as to waive the remaining NEP non-federal match/cost-share requirements for BIL funds in FY2024–FY2026.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2023–17551 Filed 8–15–23; 8:45 am]

**BILLING CODE 6560–50–P**

## OFFICE OF THE NATIONAL CYBER DIRECTOR

**[Docket ID Number: ONCD–2023–0001]**

**RIN 0301–AA00**

## Request for Information on Cyber Regulatory Harmonization; Request for Information: Opportunities for and Obstacles To Harmonizing Cybersecurity Regulations

**AGENCY:** Office of the National Cyber Director, Executive Office of the President.

**ACTION:** Request for information (RFI).

**SUMMARY:** The Office of the National Cyber Director (ONCD) invites public comments on opportunities for and obstacles to harmonizing cybersecurity regulations, per Strategic Objective 1.1 of the National Cybersecurity Strategy. ONCD seeks input from stakeholders to understand existing challenges with regulatory overlap, and explore a framework for reciprocity (the recognition or acceptance by one regulatory agency of another agency's assessment, determination, finding, or conclusion with respect to the extent of a regulated entity's compliance with certain cybersecurity requirements) in regulator acceptance of other regulators' recognition of compliance with baseline requirements.

**DATES:** The original comment deadline for this RFI was 5 p.m. EDT September 15, 2023. ONCD has extended the deadline for comments to be received to 5 p.m. EDT October 31, 2023.

**ADDRESSES:** Interested parties may submit comments through *www.regulations.gov.* For detailed instructions on submitting comments and additional information on this process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information may be sent to: Elizabeth Irwin, 202–881–6791, *regharmonization@ncd.eop.gov* .

**SUPPLEMENTARY INFORMATION:** In this RFI, ONCD invites public comments on cybersecurity regulatory conflicts, inconsistencies, redundancies, challenges, and priorities, in response to the questions below. Strategic Objective 1.1 of the National Cybersecurity Strategy [1] recognizes that while voluntary approaches to critical infrastructure cybersecurity have produced meaningful improvements, the lack of mandatory requirements has resulted in inadequate and inconsistent outcomes. The Strategy calls for establishing cybersecurity regulations to secure critical infrastructure where existing measures are insufficient, harmonizing and streamlining new and existing regulations, and enabling regulated entities to afford to achieve security. ONCD, in coordination with the Office of Management and Budget (OMB), has been tasked with leading the Administration's efforts on cybersecurity regulatory harmonization.[2] We will work with independent and executive branch regulators to identify opportunities to harmonize baseline cybersecurity requirements for critical infrastructure.[3]

ONCD is particularly interested in regulatory harmonization as it may apply to critical infrastructure sectors and sub-sectors identified in Presidential Policy Directive 21 and the National Infrastructure Protection Plan, and providers of communications, IT, and cybersecurity services to owners and operators of critical infrastructure. ''Harmonization'' as used in this RFI refers to a common set of updated baseline regulatory requirements that would apply across sectors. Sector regulators could go beyond the harmonized baseline to address cybersecurity risks specific to their sectors. ONCD is also interested in newer technologies, such as cloud services, or other ''Critical and Emerging Technologies'' identified by the National Science and Technology Council,[4] that are being introduced into critical infrastructure.

ONCD strongly encourages academics, non-profit entities, industry associations, regulated entities and others with expertise in cybersecurity regulation, risk management, operations, compliance, and economics to respond to this RFI. We also welcome state, local, Tribal, and territorial (SLTT) entities to submit responses in their capacity as regulators and as critical infrastructure entities, specifying the sector(s) in which they are regulated or regulate.

*Guidance for submitting comments:*

- Please limit your narrative response to twenty-five (25) pages total. Additional analysis and/or contextual information specific to a question(s) may be submitted in a supplemental appendix.
- Respondents are encouraged to comment on any issues or concerns you believe are relevant or appropriate for our consideration and to submit written data, facts, and views addressing this subject, including but not limited to the questions below.
- Respondents do not need to answer all questions listed—only the question(s) for which you have relevant information. The written RFI response should address ONLY the topics for which the respondent has knowledge or expertise.
- Wherever possible, please provide credible data and specific examples to support your views. If you cite academic or other studies, they should be publicly available to be considered.
- Please provide the name of the critical infrastructure sector(s) to which you are aligned or support.
- Do not submit comment(s) in this RFI regarding harmonization of cyber incident reporting requirements. Such requirements are being analyzed through a separate effort led by the Cyber Incident Reporting Council established by the Secretary of Homeland Security as required by the Cyber Incident Reporting for Critical Infrastructure Act of 2022.
- All submissions are public records and may be published on *www.regulations.gov.* Do NOT submit sensitive, confidential, or personally identifiable information.

*Questions for respondents:*

1. Conflicting, mutually exclusive, or inconsistent regulations—If applicable, please provide examples of any conflicting, mutually exclusive, or inconsistent Federal and SLTT regulations affecting cybersecurity—including broad enterprise-wide requirements or specific, targeted requirements—that apply to the same information technology (IT) or operational technology (OT) infrastructure of the same regulated entity. Be as clear, specific, and detailed as possible.

a. Please include specific examples with legal citations or hyperlinks to the particular Federal or SLTT cybersecurity rules or enforceable guidance that impose conflicting, mutually exclusive, or inconsistent requirements, and explain the specific conflicts or inconsistencies you identify.

b. Have these conflicting, mutually exclusive, or inconsistent rules or guidance been updated to meet new cybersecurity risks, vulnerabilities, or threats (*e.g.,* supply chain risk)? If so,

[1] *https://www.whitehouse.gov/wp-content/uploads/2023/03/National-Cybersecurity-Strategy-2023.pdf.*

[2] Pursuant to the National Cybersecurity Strategy: ''ONCD, in coordination with the Office of Management and Budget (OMB), will lead the Administration's efforts on cybersecurity regulatory harmonization.''

[3] Pursuant to the National Cybersecurity Strategy, the Cyber Incident Reporting Council will coordinate, deconflict, and harmonize Federal incident reporting requirements. ONCD is not requesting views from respondents on incident reporting regulations.

[4] *https://www.whitehouse.gov/wp-content/uploads/2022/02/02-2022-Critical-and-Emerging-Technologies-List-Update.pdf.*

were those separate rules or guidance updated at close to the same time?

c. How do regulated entities comply with these conflicting mutually exclusive, or inconsistent requirements (*e.g.,* follow the most demanding standard)? Please describe your experiences managing such compliance requirements.

d. For entities subject to conflicting, mutually exclusive, or inconsistent regulations, what monetary, executive or cyber defense team work hours, or other resource costs do they incur as a result of managing compliance with the different requirements that apply to them from different regulators?

e. Please identify cybersecurity requirements imposed by industry bodies, Federal or SLTT agencies that you believe may be redundant.[5] Please explain in detail how the requirements in question are redundant.

f. As to the above questions, please provide the estimated annual cost over the past three years in terms of expenses or additional staff to comply with the conflicting, mutually exclusive, inconsistent, or redundant cybersecurity regulatory requirements you cite, and describe your methodology for developing those estimates.

g. Currently, how resource intensive is it for regulated entities to achieve cybersecurity compliance?

h. How often do prohibitive costs of compliance lead to meaningful security gaps?

i. How can future regulations address any prohibitive costs which lead to meaningful security gaps?

j. How can future regulations be implemented in ways which allow regulated entities to achieve security improvements at an acceptable cost?

2. Use of Common Guidelines—Through the Federal Financial Institutions Examination Council (FFIEC), regulators of certain financial institutions have issued common Interagency Guidelines Establishing Information Security Standards and have developed a Common Self-Assessment Tool and an Information Security Booklet to guide examinations of entities in the financial sector.

a. Is such a model effective at providing harmonized requirements and why?

b. What challenges are associated with such a model?

c. Are there opportunities to adapt such a model to other sectors—or across multiple sectors—and if so, how?

d. Are there sectors or subsectors for which such a model would not be appropriate, and if so, why?

e. How does or could such a model apply outside the context of examination-based compliance regimes?

f. Are there opportunities to improve on such a model through common oversight approaches, and, if so, how?

g. Does your organization voluntarily apply a self-assessment tool regularly? What are good examples of helpful tools?

h. Would a common self-assessment tool improve the ability of entities to meet regulatory requirements?

3. Use of Existing Standards or Frameworks—The practice of using existing standards or frameworks in setting regulatory requirements can reduce burdens on regulated entities and help to achieve the goals of regulatory harmonization. Under existing law,[6] Federal executive agencies use voluntary consensus standards for regulatory activities unless use of such standards is inconsistent with law or otherwise impractical. In a recent report[7] from the President's National Security Telecommunications Advisory Council (NSTAC) that addressed cybersecurity regulatory harmonization, the NSTAC noted that ''even though most regulations cite consensus standards as the basis for their requirements, variations in implementations across regulators often result in divergent requirements.''

a. To what extent are cybersecurity requirements applicable to your industry or sector based on, consistent with, or aligned with existing standards or frameworks?

i. Which standards or frameworks have been applied to your industry or sector?

ii. Have these standards or frameworks been adopted in whole, either through the same requirements or incorporation by reference, or have they been modified by regulators?

If modified, how were they modified by particular regulators? Has your entity or have others in your sector provided input that the regulator used to develop or adapt existing standards for your sector? If so, what are the mechanisms, frequency, and nature of the inputs?

b. Is demonstrating conformity with existing standards or frameworks that your industry is required by regulation to use readily auditable or verifiable and why?

c. What, if any, additional opportunities exist to align requirements to existing standards or frameworks and, if there are such opportunities, what are they?

4. Third-Party Frameworks—Both the government (for example, through the NIST Cybersecurity Framework) and non-government third parties have developed frameworks and related resources that map cybersecurity standards and controls to cybersecurity outcomes. These frameworks and related resources have also been applied to map controls to regulatory requirements, including where requirements are leveled by multiple agencies.

a. Please identify such frameworks and related resources, both governmental and non-governmental, currently in use with respect to mitigating cybersecurity risk.

b. How well do such frameworks and related resources work in practice to address disparate cybersecurity requirements?

5. Tiered Regulation—Different levels of risk across and within sectors may in part be addressed through a tiered model (*e.g.,* low, moderate, or high risk),[8] potentially assisting in tailoring baseline requirements for each regulatory purpose. Tiering may also help smaller businesses meet requirements commensurate with their risk. For example, while these are not regulations, tiering into several baselines is a feature of Federal Information Processing Standard 199 and the NIST Risk Management Framework.

a. Could such a model be adapted to apply to multiple regulated sectors? If so, how would tiers be structured?

b. How could this tiered approach be defined across disparate operational environments and what might be some of the opportunities and challenges associated with doing so?

6. Oversight—Please provide examples of cybersecurity oversight by multiple regulators of the same entity, and describe whether the oversight involved IT or OT infrastructure. Some of these questions reference a potential ''regulatory reciprocity'' model, under which cybersecurity oversight and enforcement as to cross-sector baseline cybersecurity requirements would be divided among regulators, with the ''primary'' or ''principal'' regulator for an entity having authority to oversee

[5] For the purpose of this RFI, ''redundant'' would mean that (1) the same regulated entity must comply with more than one Federal or SLTT cybersecurity requirements covering the same systems and (2) one or more of those regulations could be eliminated while the regulating agencies that issued the regulations are still able to fulfill the purpose of the regulation.

[6] Public Law 104–113.

[7] *https://www.cisa.gov/sites/default/files/2023-04/NSTAC_Strategy_for_Increasing_Trust_Report_%282-21-23%29_508_0.pdf.*

[8] FIPS 199, Standards for Security Categorization of Federal Information and Information Systems (*nist.gov*).

and enforce compliance with that baseline.

a. Please identify the Federal, state or local agencies that are engaged in cybersecurity oversight of the same IT or OT systems, components, or data (''infrastructure'') at the same regulated entity. This may be multiple Federal regulatory schema or multiple intergovernmental bodies (*e.g.,* Federal, state, local, Tribal, territorial).

b. Please describe the method(s) of cybersecurity oversight utilized by the agencies identified in your response to the question above.

c. To what extent, if any, are you aware that the agencies engaged in cybersecurity oversight of the same IT or OT infrastructure coordinate their oversight activities? Please describe.

d. Where multiple agencies are engaged in cybersecurity oversight of the same IT or OT infrastructure:

i. Is the role of a ''primary'' or ''principal'' agency recognized? If so, please describe how.

ii. To what extent do one or more of these agencies rely on or accept the findings, assessments or conclusions of another agency with respect to compliance with regard to certain cybersecurity requirements (''regulatory reciprocity'')? Please provide specific examples.

iii. What are the barriers to regulatory reciprocity (legal, cultural, sector-specific technical expertise, or other)?

e. Are there situations in which regulations related to physical security, safety, or other matters are intertwined with cybersecurity in such a way that baseline cybersecurity regulatory requirements from a separate Federal entity might have unintended consequences on physical security, safety, or another matter? If so, please provide specific examples.

f. If you are a regulated entity, what is the estimated annual cost over the past five years in terms of expenses or additional staff to address overlapping cybersecurity oversight of the same IT or OT infrastructure? Please describe the methodology used to develop the cost estimate.

g. Do multiple public sector agencies examine or audit your cybersecurity compliance for the same IT or OT infrastructure? If so, how many entities examine or audit the infrastructure and how often do these audits occur?

h. What, if any, obstacles or inefficiencies have you experienced with regard to cybersecurity oversight, examination or enforcement related to OT components, systems, or data?

i. Please provide examples of regulatory reciprocity between two or more Federal agencies with respect to cybersecurity, including the recognition or acceptance by one regulatory agency of another agency's assessment, determination, finding, or conclusion with respect to the extent of a regulated entity's compliance with certain IT or OT cybersecurity requirements.

j. Are you aware of examples of regulatory reciprocity in contexts other than cybersecurity? If so, please describe briefly the agencies and the context.

k. Please provide examples of self-attestation in cybersecurity regulation. What are the strengths and weaknesses of this model?

l. Please comment on models of third-party assessments of cybersecurity compliance that may be effective at reducing burdens and harmonizing processes. For example, FedRAMP relies on Third Party Assessment Organizations (3PAOs) to perform initial assessments to inform decisions on FedRAMP eligibility. 3PAOs are accredited by an independent accreditation body.

i. Are there circumstances under which use of third-party assessors would be most appropriate?

ii. Are there circumstances under which use of third-party assessors would not be appropriate?

7. Cloud and Other Service Providers—Information technology, as a sector, is not regulated directly by the Federal government. However, regulated entities' use of cloud and other service provider infrastructure is often regulated. To date, regulators have typically not directly regulated cloud providers operating in their sector. Rather, regulatory agencies have imposed obligations on their regulated entities that are passed along by contract to the cloud provider/service provider.

a. Please provide specific examples of conflicting, mutually exclusive, or inconsistent cybersecurity regulatory requirements that are passed along by contract to third-party service providers.

b. Please provide examples of direct cybersecurity regulation of third-party service providers.

c. Please provide information regarding the costs to third-party service providers of conflicting, mutually exclusive, or inconsistent cybersecurity regulatory requirements that are passed on to them through their contracts with regulated customers. Please also provide estimated costs to a regulated customer of using a third-party service provider when conflicting, mutually exclusive, or inconsistent cybersecurity regulatory requirements are passed to the customer through contracts. In either case, please detail the methodology for developing the cost estimate.

d. Describe any two or more conflicting, mutually exclusive, or inconsistent regulation, one of which permits the use of cloud, while another does not. How does this impact your sector? Explain if these requirements also restrict the use of Managed Security Service Providers (MSSPs) and security tools that utilize the cloud.

e. Have any non-U.S. governments instituted effective models for regulating the use of cloud services by regulated entities in a harmonized and consistent manner? Please provide examples and explain why these models are effective.

f. The Department of Defense allows defense industrial base contractors to meet security requirements for the use of the cloud by using FedRAMP-approved infrastructure. Please provide examples of how the FedRAMP process differs, positively or negatively, from other requirements. What, if anything, would need to change about the FedRAMP certification process and requirements for it to be usable to meet other cybersecurity regulatory requirements?

g. To the extent not included in response to any other question, please identify any specific Critical or Emerging Technologies that are subject to conflicting, mutually exclusive, or inconsistent regulation related to cybersecurity.

8. State, Local, Tribal, and Territorial Regulation. State, local, Tribal and territorial entities often impose regulatory requirements that affect critical infrastructure owners and operators across state lines, as well as entities that do not neatly fall into a defined critical infrastructure sector. The New York Department of Financial Services, for example, established cybersecurity requirements for financial services companies.[9] California similarly passed a cybersecurity law requiring manufacturers of the internet-of-things (IoT) devices to take certain measures.[10] Dozens of states have followed suit to date. Companies that operate in multiple states are often required to comply with a variety of overlapping state and Federal cybersecurity requirements.

a. Please provide examples where SLTT cybersecurity regulations are effectively harmonized or aligned with Federal regulations.

b. Please provide examples of regulatory reciprocity between Federal and SLTT regulatory agencies.

c. Please highlight any examples or models for harmonizing regulations

[9] See 23 NYCRR Part 500.

[10] See Senate Bill No. 327.

across multiple SLTT jurisdictions, to include Federal support for such efforts.

d. Please provide examples, if any, where regulatory requirements related to cybersecurity are conflicting, mutually exclusive or inconsistent within one jurisdiction (for example, state regulatory requirements that conflict with regulations at the local level).

9. International—Many regulated entities within the United States operate internationally. A recent report from the NSTAC noted that foreign governments have been implementing regulatory regimes with ''overlapping, redundant or inconsistent requirements. . .''.

a. Identify specific instances in which U.S. Federal cybersecurity requirements conflict with foreign government cybersecurity requirements.

b. Are there specific countries or sectors that should be prioritized in considering harmonizing cybersecurity requirements internationally?

c. Which international dialogues are engaged in work on harmonizing or aligning cybersecurity requirements? Which would be the most promising venues to pursue such alignment?

d. Please identify any ongoing initiatives by international standards organizations, trade groups, or non-governmental organizations that are engaged in international cybersecurity standardization activities relevant to regulatory purposes. Describe the nature of those activities. Please identify any examples of regulatory reciprocity within a foreign country.

e. Please identify any examples of regulatory reciprocity between foreign countries or between a foreign country and the United States.

10. Additional Matters—Please provide any additional comments or raise additional matters you feel relevant that are not in response to the above questions.

*Comments must be received no later than 5 p.m. EDT, October 31, 2023.*

By October 31, 2023, all interested respondents should submit a written RFI response, in MS Word or PDF format, with their answers to questions on which they have expertise and insights for the Government through *regulations.gov*.

Inputs that meet most of the following criteria will be considered most valuable:

- *Concise:* Please limit your narrative response to twenty-five (25) pages total. Additional analysis and/or contextual information specific to a question may be submitted in a supplemental appendix.
- *Easy to review and understand:* Content that is modularly organized in the order of the questions in the RFI and presented in such a fashion that it can be readily lifted (by topic area) and shared with relevant stakeholders in an easily consumable format.
- *Expert:* The Government, through this effort, is seeking insights to understand current best practices and approaches applicable to the above topics, as well as new and emerging solutions.
- *Clearly worded/not vague*: Clear, descriptive, and concise language is appreciated. Please avoid generalities and vague statements.
- *Actionable:* Please provide enough detail so that we can understand how to apply the information you provide.
- *Cost effective & impactful:* If applicable, respondents should consider whether their suggestions have a clear return on investment that can be articulated to secure funding and support.
- *Strategic shifts:* Challenges that seem to be intractable and overwhelmingly complex can often be resolved with a change in perspective that unlocks hidden opportunities and aligns stakeholder interests. We welcome these ideas as well.

**Kemba E. Walden,**

*Acting National Cyber Director.*

[FR Doc. 2023–17424 Filed 8–15–23; 8:45 am]

**BILLING CODE 3340–D3–P**

## FEDERAL MARITIME COMMISSION

**[Docket No. FMC–2023–0016]**

### Request for Information

**AGENCY:** Federal Maritime Commission.

**ACTION:** Request for information.

**SUMMARY:** The Federal Maritime Commission (Commission) seeks public comment on questions related to maritime data transmission, accessibility, and accuracy. Information received in response to this request will supplement information gathered during the public meetings of the Maritime Transportation Data Initiative and to better inform the Commission about commercial activities.

**DATES:** Submit comments on or before October 16, 2023.

**ADDRESSES:** The Commission will collect comments through the Federal eRulemaking Portal at *www.regulations.gov* under Docket No. FMC–2023–0016. Please refer to the ''Public Participation'' heading under the **SUPPLEMENTARY INFORMATION** section of this notice for detailed instructions on how to submit comments, including instructions on how to request confidential treatment.

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

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Cargo in international trade moves between the control of numerous entities. While some key data elements are readily shared between supply chain participants, the lack of timely and accurate access to some data elements can lead to inefficiencies, as was seen during the COVID–19 pandemic. Additionally, the lack of data standardization reduces the ability to move cargo in an effective way.

Improved communication and data availability could ease the flow of data and potentially provide positive results including fewer and shorter duration instances of congestion; quicker movement of import and export shipments; assessment of fewer storage fees; and a reduction in in cargo holds thereby improving supply chain effectiveness and efficiency.

#### II. Request for Information

The purposes of the Shipping Act as stated in 46 U.S.C. 40101 include ensuring an efficient, economical ocean transportation supply system. The data challenges of the supply chain were examined during the Maritime Transportation Data Initiative (MTDI) led by Commissioner Carl W. Bentzel. A report summarizing the information was released by Commissioner Bentzel in May 2023.[1] The Commission seeks additional information from the shipping public to expand the information gathered from the MTDI sessions and address additional topics related to data availability, accuracy, and exchange.

During the MTDI sessions, Commissioner Bentzel heard comments from many supply chain participants regarding the methods that are used to transmit data between parties involved in moving ocean containers. Participants discussed frequently having to email information regarding the movement and availability of cargo or needing to visit a website to check the status of containers/shipments. In some cases, the only way to know the status of cargo was to call various supply chain service providers and ask for information about specific shipments. These were all presented as examples of common, but inefficient, ways to learn the status of cargo. MTDI session

[1] Available at *https://www.fmc.gov/wp-content/uploads/2023/04/MTDIReportandViews.pdf.*

participants also discussed the industry being slow to move to more accurate and efficient methods for data transmission, such as Electronic Data Interchange (EDI) and Application Programming Interface (API), which are more timely and often more accurate. To build on the information gathered during these meetings, the Commission is seeking public comments on the following questions related to maritime data transmission, accessibility, and accuracy. The purpose of these questions is to seek information about data sharing practices, not information about specific customers/partners and commenters should not name specific customers/partners when responding. The Commission has segmented the questions into categories specific to certain stakeholders but is also interested in hearing from the public who may respond to all of the questions.

*Transportation Service Providers (e.g., Ocean Carriers, Marine Terminal Operators (MTOs), Licensed Motor Carriers (LMCs), Railroad Operators Who Transport International Maritime Cargo)*

1. What are the largest barriers that currently exist that prevent you from sharing data with shippers/Beneficial Cargo Owners (BCOs)?
2. How much effort and/or cost would it take to adapt your existing computer systems to be able to share more data with shippers/BCOs?
3. What concerns do you have about providing additional data to shippers/BCOs?
4. What are your preferred means to provide data to shippers/BCOs. (*e.g.,* EDI, API, email)?
5. Are there innovative methods you use for transmitting information with your highest volume shippers/BCOs?
6. What can shippers/BCOs do to better predict container availability, earliest return date, etc.?
7. What data would you be willing to provide openly to the public? What would you only provide to the shipper/BCO/others in the direct supply chain for a container?
8. What data are collected and controlled by other parties in the supply chain that influence your business operations?

*Importers/Exporters (e.g., BCOs, Shippers)*

1. What are the data points during the shipping process that are least likely to be available/accurate? What are the most accurate and visible data points?
2. What data points are the most important to have accurate and in advance to facilitate planning of service? How often do you receive them accurately and in advance? How are changes communicated to you?
3. What is the best way for you to receive data from carriers/MTOs/etc. (*e.g.,* EDI, API, email)?
4. How do you currently receive data from carriers/MTOs/etc. (*e.g.,* EDI, API, email)?
5. What share of containers do you believe to be available but when you attempt to pick them up, they are not available? What is the cost impact of these delays?
6. What share of containers could you have picked up earlier if you had been notified that they were available earlier? What is the cost impact of these delays?

**III. Public Participation**

*How do I prepare and submit comments?*

You may submit comments by using the Federal eRulemaking Portal at *www.regulations.gov* under Docket No. FMC–2023–0016. Please follow the instructions provided on the Federal eRulemaking Portal to submit comments.

*How do I submit confidential business information?*

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If you would like to request confidential treatment, pursuant to 46 CFR 502.5, you must submit the following, by email, to *secretary@fmc.gov:*

- A transmittal letter requesting confidential treatment that identifies the specific information in the comment for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comment, consisting of the complete filing with a cover page marked ''Confidential-Restricted,'' and the confidential material clearly marked on each page.
- A public version of your comment with the confidential information excluded. The public version must state ''Public Version—confidential materials excluded'' on the cover page and on each affected page and must clearly indicate any information withheld.

*Will the Commission consider late comments?*

The Commission will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date.

*How can I read comments submitted by other people?*

You may read the comments received by the Commission at *www.regulations.gov* under Docket No. FMC–2023–0016.

By the Commission.

**William Cody,**

*Secretary.*

[FR Doc. 2023–17593 Filed 8–15–23; 8:45 am]

**BILLING CODE 6730–02–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 201228–003.

*Agreement Name:* Port of Seattle/Port of Tacoma Alliance Agreement.

*Parties:* Port of Seattle; Port of Tacoma.

*Filing Party:* Juliet Campbell; The Northwest Seaport Alliance.

*Synopsis:* The Amendment updates the Charter to clarify certain issues related to finances, litigation and insurance practices, and process related to negotiations and funding of tribal agreements. The Amendment also restates the Agreement.

*Proposed Effective Date:* 9/18/2023.

*Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/2077.*

Dated: August 11, 2023.

**William Cody,**

*Secretary.*

[FR Doc. 2023–17595 Filed 8–15–23; 8:45 am]

**BILLING CODE 6730–02–P**

## FEDERAL MARITIME COMMISSION

**[Docket No. 23–08]**

### Mediterranean Shipping Company, S.A.; Possible Violations of the Shipping Act; Order of Investigation and Hearing

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of order of investigation and hearing.

**DATES:** The Order of Investigation and Hearing was issued on August 10, 2023.

**SUPPLEMENTARY INFORMATION:** On August 10, 2023, the Federal Maritime Commission (the ''Commission'') instituted an Order of Investigation and Hearing against Mediterranean Shipping Company, S.A. (the ''Respondent'') for possible violations of the Shipping Act, 46 U.S.C. chs. 401–413. The Order of Investigation and Hearing was issued to determine whether the Respondent has violated:

(1) section 41102(c) of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property by (a) holding parties who have not consented to be bound by its bill of lading or sea waybill liable for detention and demurrage or per diem charges, and (b) misapplying its operating reefer rates to non-operating reefer (NOR) shipments;

(2) section 40501 of the Shipping Act by failing to: (a) publish in its tariff separate detention and demurrage rates for nonoperating reefers for public inspection; (b) publish its tariffs and state each charge under its control and any rules that in any way change, affect or determine any part of the total of its rates or charges; and (c) publish the nonoperating reefer rate for public inspection; and

(3) section 41104(a)(2)(A) of the Shipping Act by providing transportation in the liner trade that was not in accordance with the rates, charges, classifications, rules, and practices contained in its published tariff.

The full text of the Order of Investigation and Hearing can be found in the Commission's electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/23-08/.*

*Authority:* 46 U.S.C. chs. 401–413.

**William Cody,**

*Secretary.*

[FR Doc. 2023–17574 Filed 8–15–23; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than August 31, 2023.

*A. Federal Reserve Bank of Kansas City* (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org:*

1. *The Richard D. Goppert Revocable Inter Vivos Trust dated 6/25/87, Lee's Summit, Missouri, and Thomas Goppert, as trustee, Lake Winnebago, Missouri; the Douglas R. Goppert and Rita A Goppert Family Trust dated 10/13/2011, Douglas Goppert and Rita Goppert, as co-trustees, all of Lake Lotawana, Missouri; Lawrence A. Goppert, Blue Springs, Missouri; the Kathryn Goppert Revocable Living Trust dated 8/11/2018, Kathryn Goppert, as trustee, both of Taneyville, Missouri; the Cynthia H. Goppert Intervivos Trust dated 4/8/1988, Cynthia Goppert, as trustee, both of Pueblo, Colorado; James Goppert, West Lafayette, Indiana; Amy Goppert, Dallas, Texas; Dusty Goppert, Lake Winnebago, Missouri; Henry Goppert, Claire Goppert, Autumn Markley, Kirsten Markley, and Lauren Markley, all of Lee's Summit, Missouri; and Brandi Howard, Montesano, Washington;* to become members of the Goppert Family Group, a group acting in concert, to retain voting shares of Goppert Financial Corporation, Lee's Summit, Missouri, and thereby indirectly retain voting shares of Goppert State Service Bank, Garnett, Kansas, and Goppert Financial Bank, Lathrop, Missouri. Board of Governors of the Federal Reserve System.

**Erin Cayce,**

*Assistant Secretary of the Board.*

[FR Doc. 2023–17614 Filed 8–15–23; 8:45 am]

**BILLING CODE P**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–XXXX; Docket No. 2022–0001; Sequence No. 18]**

### Submission for OMB Review; Federal Audit Clearinghouse

**AGENCY:** Technology Transformation Services (TTS), General Services Administration (GSA).

**ACTION:** Notice of request for comments regarding a request for a new OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (PRA), the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement.

**DATES:** Submit comments on or before September 15, 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 Review—Open for Public Comments''; or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Shelley Goss, Administrative Officer, Federal Acquisition Service, GSA, at *shelley.goss@gsa.gov* at 571–837–0799. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### A. Purpose

Non-Federal entities (States, local governments, Indian Tribes, institutions of higher education, and nonprofit organizations) are required by the Single Audit Act Amendments of 1996 (31 U.S.C. 7501, et. seq.) (Act) and 2 CFR part 200, ''Uniform Administrative

Requirements, Cost Principles, and Audit Requirements for Federal Awards,'' (Uniform Guidance) to have audits conducted of their federal award expenditures, and to file the resulting reporting packages (Single Audit reports) and data collection Form SF–SAC (Form) with the Federal Audit Clearinghouse. The Form SF–SAC is appendix X to 2 CFR part 200.

The Single Audit process is the primary method Federal agencies and pass-through entities use to provide oversight of Federal awards and reduce risk of non-compliance and improper payments. This oversight includes following up on audit findings and questioned costs.

The Office of Management and Budget has historically designated the U.S. Census Bureau (Census) as the FAC, to serve as the government-wide repository of record for Single Audit reports collected under OMB control number 0607–0518. At the direction of OMB, GSA will become the new FAC repository of record, by September 30, 2023, with collection of Single Audits with fiscal periods ending in 2023 and later. GSA will also begin data collection of 2016–2022 Single Audit reports currently collected by Census. All of these collections will be conducted under this PRA clearance application.

Single Audit reports under this clearance will be collected electronically through GSA's new FAC internet collection portal at *https://www.fac.gov/.*

There are few proposed changes to the existing data elements and data collection method in this clearance. Planned changes are intended to make the reporting process easier, improve data integrity, and ensure compliance with the GREAT Act. All changes listed below are intended to take effect for all audit years collected by GSA, unless specified otherwise.

The proposed changes include:

- end collection of the DUNS number
- upload the majority of data via templates rather than graphical user interface (GUI) in the initial GSA system, subject to creation of a GUI for additional data submission options before expiration of this proposed clearance (collection items are not changing, just the means of collection)
- collect auditee's Unique Entity Identifier (UEI) for audits with fiscal periods ending in 2016–2021 (already approved to be collected for audits with fiscal periods 2022 and future)
- when possible, import the auditee name and address directly from SAM.gov (when the auditee's UEI is entered, their auditee name and address will be pulled from *SAM.gov* into Part I of the Form)
- update terminology, similar to the following, in order to be in compliance with the GREAT Act: *change* ''*award*'' *to* ''*federal award*''*;* ''*CFDA*'' *to* ''*Assistance Listing*''
- clarify on-screen and/or Form instructions to improve data collection and accuracy, as part of the creation of an updated data collection and dissemination system

**B. Annual Reporting Burden**

*Respondents:* 90,000 (45,000 auditees and 45,000 auditors.

*Responses per Respondent:* 1.

*Total Annual Responses:* 90,000 (45,000 auditees and 45,000 auditors).

*Hours per Response:* 100 hours for each of the 450 large respondents and 21 hours for each of the 89,550 small respondents.

*Total Burden Hours:* 1,925,550.

**C. Public Comments**

A 60-day notice published in the **Federal Register** at 87 FR 78684 on December 22, 2022. Four comments were received. To view a summary of the comments and responses, go to *https://www.regulations.gov,* search for ''OMB control number 3090–XXXX Federal Audit Clearinghouse'', click ''Open Docket'', and view ''Supporting Documents''.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–XXXX, Federal Audit Clearinghouse, in all correspondence.

**Lesley Briante,**

*Deputy Chief Information Officer.*

[FR Doc. 2023–17518 Filed 8–15–23; 8:45 am]

**BILLING CODE 6820–AB–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–7072–N]**

### Announcement of the Advisory Panel on Outreach and Education (APOE) In-Person Meeting

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice announces the next meeting of the APOE (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Health Insurance Marketplace®, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). This meeting is open to the public.

**DATES:**

*Meeting Date:* Thursday, September 21, 2023 from 8:30 a.m. to 4:00 p.m. eastern daylight time (e.d.t).

*Deadline for Meeting Registration, Presentations, Special Accommodations, and Comments:* Thursday, September 7, 2023, 5:00 p.m. (e.d.t).

**ADDRESSES:**

*Meeting Location:* U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

*Presentations and Written Comments:* Presentations and written comments should be submitted to: Lisa Carr Designated Federal Official (DFO), Office of Communications, Centers for Medicare & Medicaid Services, 200 Independence Avenue SW, Mailstop 325G HHH, Washington, DC 20201, 202–690–5742, or via email at *APOE@cms.hhs.gov.*

*Registration:* Persons wishing to attend this meeting must register at the website *http://CMS-APOE-September2023.rsvpify.com* or by contacting the DFO listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Lisa Carr, Designated Federal Official, Office of Communications, 200 Independence Avenue SW, Mailstop 325G HHH, Washington, DC 20201, 202–690–5742, or via email at *APOE@cms.hhs.gov.*

Additional information about the APOE is available at: *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

**SUPPLEMENTARY INFORMATION:**

## I. Background and Charter Renewal Information

### A. Background

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. appendix 2), which sets forth standards for the formation and use of federal advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (the Act) (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Panel, which was first chartered in 1999, advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (the Department) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare, Medicaid, Children's Health Insurance Program (CHIP) and Health Insurance Marketplace outreach and education programs.

The APOE has focused on a variety of laws, including the Medicare Modernization Act of 2003 (Pub. L. 108–173), and the Affordable Care Act (Patient Protection and Affordable Care Act, (Pub. L. 111–148) and Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152)).

The APOE helps the Department determine the best communication channels and tactics for various programs and priorities, as well as new rules and laws. In the coming years, we anticipate the American Rescue Plan, the Inflation Reduction Act, and the SUPPORT Act will be some of the topics the Panel will discuss. The Panel will provide feedback to CMS staff on outreach and education strategies, communication tools and messages and how to best reach minority, vulnerable and Limited English Proficiency populations.

### B. Charter Renewal

The Panel's charter was renewed on January 19, 2023, and will terminate on January 19, 2025, unless renewed by appropriate action. The Charter can be found at *https://www.cms.gov/regulations-and-guidance/guidance/faca/apoe.*

In accordance with the renewed charter, the APOE will advise the Secretary and the CMS Administrator concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, the CHIP, and coverage available through the Health Insurance Marketplace® and other CMS programs.
- Enhancing the federal government's effectiveness in informing Medicare, Medicaid, CHIP, or the Health Insurance Marketplace® consumers, issuers, providers, and stakeholders, pursuant to education and outreach programs regarding these programs, including public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, partners and stakeholders.
- Expanding outreach to minority and underserved communities, including racial and ethnic minorities, in the context of Medicare, Medicaid, CHIP, and the Health Insurance Marketplace® education programs and other CMS programs as designated.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health coverage options.
- Building and leveraging existing community infrastructure for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel as of June 22, 2023, are as follows:

- Mitchell Balk, President, The Mt. Sinai Health Foundation.
- Ted Henson, Director of Health Center Performance and Innovation, National Association of Community Health Centers.
- Joan Ilardo, Director of Research Initiatives, Michigan State University, College of Human Medicine.
- Lydia Isaac, Vice President for Health Equity and Policy, National Urban League.
- Vacheria Keys, Director of Policy and Regulatory Affairs, National Association of Community Health Centers.
- Daisy Kim, Principal Legislative Analyst, University of California System.
- Erin Loubier, Senior Director for Health and Legal Integration and Payment Innovation, Whitman-Walker Health.
- Dr. Alister Martin, CEO, A Healthier Democracy; Physician, Massachusetts General Hospital; Assistant Professor, Harvard Medical School.
- Cori McMahon, Behavioral Medicine Psychologist and Digital Health Clinical Leader, Cooper University Health Care.
- Alan Meade, Director of Rehabilitation Services, Holston Medical Group.
- Neil Meltzer, President and CEO, LifeBridge Health.
- Dr. Carol Podgorski, Professor of Psychiatry, Associate Chair of Academic Affairs, University of Rochester Medical Center.
- Melanie Prince, President/CEO MAPYourWay, LLC; Immediate Past President, Case Management Society of America.
- Jina Ragland, Associate State Director of Advocacy and Outreach, AARP Nebraska.
- Morgan Reed, Executive Director, Association for Competitive Technology.
- Carrie Rogers, Associate Director, Community Catalyst.
- Mina Schultz, Health Policy and Advocacy Manager, Young Invincibles.
- Matthew Snider, JD, Senior Policy Analyst, Unidos US.
- Daniel Spirn, Vice President, Government Relations, Utilization Review Accreditation Commission.
- Emily Whicheloe, Director of Education, Medicare Rights Center.

## II. Meeting Format and Agenda

In accordance with section 10(a) of the FACA, this notice announces a meeting of the APOE. The agenda for the September 21, 2023 meeting will include the following:

- Welcome and opening remarks from CMS leadership
- Recap of the previous (June 22, 2023) meeting
- Presentations on CMS programs, initiatives, and priorities; discussion of panel recommendations
- An opportunity for public comment
- Meeting adjourned

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

## III. Meeting Participation

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this

meeting must register at the following weblink *http://CMS-APOE-September2023.rsvpify.com* by contacting the DFO at the address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

This meeting will be held in a federal government building, the Hubert H. Humphrey (HHH) Building; therefore, federal security measures are applicable.

The REAL ID Act of 2005 (Pub. L. 109–13) establishes minimum standards for the issuance of state-issued driver's licenses and identification (ID) cards. It prohibits federal agencies from accepting an official driver's license or ID card from a state for any official purpose unless the Secretary of the Department of Homeland Security determines that the state meets these standards. Beginning October 2015, photo IDs (such as a valid driver's license) issued by a state or territory not in compliance with the Real ID Act will not be accepted as identification to enter federal buildings. Visitors from these states/territories will need to provide alternative proof of identification (such as a valid passport) to gain entrance into federal buildings. The current list of states from which a federal agency may accept driver's licenses for an official purpose is found at *http://www.dhs.gov/real-id-enforcement-brief.*

We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of a government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection, via metal detector or other applicable means, of all persons entering the building. We note that all items brought into the HHH Building, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

**Note:** Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.

## IV. Collection of Information

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. chapter 35).

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 11, 2023.

**Evell J. Barco Holland,**

*Federal Register Liaison, Centers for Medicare & Medicaid Services.*

[FR Doc. 2023–17569 Filed 8–15–23; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2023–D–1275]**

### Demonstrating Bioequivalence for Type A Medicated Articles Containing Active Pharmaceutical Ingredient(s) Considered To Be Poorly Soluble in Aqueous Media, That Exhibit Little to No Systemic Bioavailability, and Are Locally Acting; Draft Guidance for Industry; Availability; Reopening of the Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability; reopening of the comment period.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is reopening the comment period for the notice of availability that published in the **Federal Register** of June 8, 2023. In that notice, FDA requested comments on the draft guidance for industry (GFI) #279 entitled ''Demonstrating Bioequivalence for Type A Medicated Articles Containing Active Pharmaceutical Ingredient(s) Considered To Be Poorly Soluble in Aqueous Media, That Exhibit Little to No Systemic Bioavailability, and Are Locally Acting.'' The Agency is taking this action in response to a request for an extension to allow interested persons additional time to develop and submit comments.

**DATES:** FDA is reopening the comment period on the notice of availability published June 8, 2023 (88 FR 37551). Submit either electronic or written comments on the draft guidance by October 16, 2023 to ensure that the Agency considers your comments 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–1275 for ''Demonstrating Bioequivalence for Type A Medicated Articles Containing Active Pharmaceutical Ingredient(s) Considered To Be Poorly Soluble in Aqueous Media, That Exhibit Little to No Systemic Bioavailability, and Are Locally Acting.'' 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.

**FOR FURTHER INFORMATION CONTACT:** Ian Hendricks, Center for Veterinary Medicine (HFV–172), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–5661, *Ian.Hendricks@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 8, 2023 (88 FR 37551), FDA published a notice announcing the availability of draft GFI #279 entitled ''Demonstrating Bioequivalence for Type A Medicated Articles Containing Active Pharmaceutical Ingredient(s) Considered To Be Poorly Soluble in Aqueous Media, That Exhibit Little to No Systemic Bioavailability, and Are Locally Acting.'' Interested persons were originally given until August 7, 2023, to comment on the draft guidance.

The Agency received a request for a 60-day extension of the comment period for the draft guidance. The requestor indicated they needed more time to complete development of comments to submit in response to the draft guidance. FDA has considered the request and is reopening the comment period for the draft guidance for 60 days, until October 16, 2023. The Agency believes that a 60-day reopening of the comment period allows adequate time for interested persons to submit comments to ensure that the Agency can consider the comments on this draft guidance before it begins work on the final version of the guidance.

Dated: August 10, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–17507 Filed 8–15–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2006–D–0031]**

### Informed Consent: Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Informed Consent: Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors.'' The guidance announced in this notice is intended to assist institutional review boards (IRBs), clinical investigators, and sponsors involved in clinical investigations of FDA-regulated products in carrying out their responsibilities related to informed consent. The guidance provides the Agency's recommendations regarding informed consent and describes FDA regulatory requirements to help assure the protection of the rights and welfare of human subjects in clinical investigations. This guidance finalizes the draft guidance entitled, ''Informed Consent Information Sheet: Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors,'' issued on July 15, 2014, and supersedes FDA's guidance entitled ''A Guide to Informed Consent,'' issued in September 1998.

**DATES:** The announcement of the guidance is published in the **Federal Register** on August 16, 2023.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2006–D–0031 for the final guidance entitled ''Informed Consent: Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors.'' 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 this 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 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; or the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Kevin A. Prohaska, Office of Clinical Policy, Office of Clinical Practice and Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5110, Silver Spring, MD 20993–0002, 301–796–3707, *kevin.prohaska@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a guidance for industry entitled ''Informed Consent: Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors.'' The guidance announced in this notice is intended to assist IRBs, clinical investigators, and sponsors involved in clinical investigations of FDA-regulated products in carrying out their responsibilities related to informed consent. The guidance provides the Agency's recommendations regarding informed consent and describes FDA regulatory requirements to help assure the protection of the rights and welfare of human subjects in clinical investigations.

This guidance supersedes FDA's guidance entitled ''A Guide to Informed Consent,'' issued in September 1998, and finalizes the draft guidance entitled, ''Informed Consent Information Sheet: Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors,'' issued on July 15, 2014 (79 FR 41291). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include references and links to other relevant guidance issued since 2014. Additionally, the document was reorganized to first present general guidance on FDA's regulatory requirements for informed consent and a discussion of roles of IRBs, clinical investigators, sponsors, and FDA related to informed consent, followed by a series of frequently asked questions. Editorial changes were also made to improve clarity.

FDA notes that, since 2014 when we issued the draft informed consent guidance, HHS and a number of other Federal Departments and Agencies issued revisions to the Federal Policy for the Protection of Human Subjects (codified for HHS at 45 CFR 46, subpart A; ''the 2018 Common Rule''). The 2018 Common Rule sets forth requirements for the protection of human subjects involved in research that is conducted or supported by HHS and these Federal Departments and Agencies.[1]

FDA is currently engaged in notice and comment rulemaking to harmonize with the 2018 Common Rule to the extent practicable and consistent with other statutory provisions.[2] This guidance does not address possible future changes to FDA's informed consent regulations that may be developed as part of these harmonization efforts. FDA may amend this guidance to reflect such changes or to address new questions related to informed consent.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on, ''Informed Consent: Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors.'' 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. The use of the word ''should'' in Agency guidance means that something is suggested or recommended, but not required.

## 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 parts 50 and 56 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 312 have been approved under OMB control

[1] A final rule to revise the Federal Policy for the Protection of Human Subjects was issued on January 19, 2017 (82 FR 7149; *https://www.govinfo.gov/content/pkg/FR-2017-01-19/pdf/2017-01058.pdf*). That final rule was modified by an interim final rule that delayed the effective date and general compliance date (83 FR 2885, January 22, 2018; *https://www.govinfo.gov/content/pkg/FR-2018-01-22/pdf/2018-00997.pdf*) and a final rule that delayed the general compliance date, while allowing use of three burden-reducing provisions for certain research during the delay period (83 FR 28497, June 19, 2018; *https://www.govinfo.gov/content/pkg/FR-2018-06-19/pdf/2018-13187.pdf*).

[2] On September 28, 2022, FDA issued proposed rules to harmonize certain provisions of 21 CFR parts 50 and 56 with the 2018 Common Rule to the extent practicable and consistent with other statutory provisions (see 87 FR 58733 at *https://www.federalregister.gov/documents/2022/09/28/2022-21088/protection-of-human-subjects-and-institutional-review-boards,* and 87 FR 58752 at *https://www.federalregister.gov/documents/2022/09/28/2022-21089/institutional-review-boards-cooperative-research*).

number 0910–0014, and the collections of information under 21 CFR part 812 have been approved under OMB control number 0910–0078.

### III. Electronic Access

Persons with access to the internet may obtain the guidance at *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 11, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–17594 Filed 8–15–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2023–N–3329]**

### Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; establishment of a public docket; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Oncologic Drugs Advisory Committee (the Committee). The general function of the Committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

**DATES:** The meeting will be held on October 4, 2023, from 9:30 a.m. to 3 p.m. Eastern Time.

**ADDRESSES:** All meeting participants will be heard, viewed, captioned, and recorded for this advisory committee meeting via an online teleconferencing and/or video conferencing platform.

Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2023–N–3329. The docket will close on October 3, 2023. 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 3, 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.

Comments received on or before September 20, 2023, will be provided to the Committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments 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–N–3329 for ''Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' 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.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information 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 the 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:** Joyce Frimpong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–

796–7973, email: *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

**SUPPLEMENTARY INFORMATION:**

*Agenda:* The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform. The Committee will discuss new drug application (NDA) 215500, for eflornithine tablets, submitted by USWM, LLC (doing business as U.S. WorldMeds). The proposed indication (use) for this product is to reduce the risk of relapse in pediatric patients with high-risk neuroblastoma who have completed multiagent, multimodality therapy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference and/or video conference meeting will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio and video components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before September 20, 2023, will be provided to the Committee. Oral presentations from the public will be scheduled between approximately 1:15 p.m. and 2:15 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 12, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 13, 2023.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Joyce Frimpong (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform. This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. No participant will be prejudiced by this waiver, and that the ends of justice will be served by allowing for this modification to FDA's advisory committee meeting procedures.

Dated: August 10, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–17510 Filed 8–15–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Meeting of the National Advisory Committee on Rural Health and Human Services

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice announces that the Secretary's National Advisory Committee on Rural Health and Human Services (NACRHHS) scheduled a public meeting. Information about NACRHHS and the agenda for this meeting can be found on the NACRHHS website at *https://www.hrsa.gov/advisory-committees/rural-health/index.html.*

**DATES:**

- Wednesday, September 6, 2023, 9 a.m.–5 p.m. Mountain Daylight Time (MDT);
- Thursday, September 7, 2023, 9 a.m.–5 p.m. MDT; and
- Friday, September 8, 2023, 9 a.m.–12 p.m. MDT.

**ADDRESSES:** This meeting will be held in the Hilton Garden Inn—Downtown, 125 N Cascade Avenue, Colorado Springs, Colorado. The meeting will also be accessible to the public via Zoom. Meeting details are included below. Please use the following information to join the meeting: *https://us02web.zoom.us/j/83751255130?pwd=eU5RMzhCMm5WNmh4SXlHNUloS3ViUT09* Passcode: 884256.

**FOR FURTHER INFORMATION CONTACT:** Sahira Rafiullah, Executive Secretary of NACRHHS, 5600 Fishers Lane, Rockville, Maryland 20857; 240–316–5874; or *srafiullah@hrsa.gov.*

**SUPPLEMENTARY INFORMATION:** NACRHHS provides advice and recommendations to the Secretary of Health and Human Services on policy, program development, and other matters of significance concerning both rural health and rural human services. At the September meeting, NACRHHS will discuss the availability of disability services in rural areas. Members of the public will have the opportunity to provide comments. Public participants wishing to provide oral comments must submit a written version of their statement at least 3 business days in advance of the scheduled meeting. Oral comments will be honored in the order

they are requested and may be limited as time permits. Public participants wishing to offer a written statement should send it to Sahira Rafiullah, using the contact information above, at least 3 business days prior to the meeting. Individuals who plan to attend and need special assistance or other reasonable accommodation should notify Sahira Rafiullah at the address and phone number listed above at least 10 business days prior to the meeting.

**Amy P. McNulty,**

*Deputy Director, Executive Secretariat.*

[FR Doc. 2023–17526 Filed 8–15–23; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood 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:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Factors Determining Blood Group Immunity.

*Date:* September 14, 2023.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Michael P. Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–Z, Bethesda, MD 20892, (301) 827–7975, *reillymp@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 11, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17600 Filed 8–15–23; 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 Special Emphasis Panel; Digestive Diseases Research Core Centers (P30).

*Date:* November 16–17, 2023.

*Time:* 10:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Jian Yang, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Boulevard, Room: 7011, Bethesda, MD 20892–2542, (301) 594–7799 *yangj@extra.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 10, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17520 Filed 8–15–23; 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 Special Emphasis Panel; Defining the Social Epigenome in Type 2 Diabetes Development in a High-Risk Diverse Population.

*Date:* November 2, 2023.

*Time:* 12:00 p.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, NIDDK Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7345, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.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 10, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17561 Filed 8–15–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Advancing Translational Sciences; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Advancing Translational Sciences Special Emphasis Panel; SBIR OMNIBUS.

*Date:* September 20, 2023.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, National Center for Advancing Translational Sciences, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Rahat (Rani) Khan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1078, Bethesda, MD 20892, 301–594–7319, *khanr2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: August 10, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17559 Filed 8–15–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public, 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 open session will be videocast and can be accessed from the NIH Videocast website *https://www.nhlbi.nih.gov/about/advisory-and-peer-review-committees/advisory-council.*

*Name of Committee:* National Heart, Lung, and Blood Advisory Council.

*Date:* September 12, 2023.

*Open:* 9:00 a.m. to 12:00 p.m.; 3:00 p.m. to 5:00 p.m.

*Agenda:* To discuss program policies and issues.

*Place:* National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Rockville, MD 20872.

*Videocast link: https://www.nhlbi.nih.gov/about/advisory-and-peer-review-committees/advisory-council.*

*Contact Person:* Laura K. Moen, Ph.D., Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 206–Q, Bethesda, MD 20892, 301–827–5517, *moenl@mail.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.nhlbi.nih.gov/meetings/nhlbac/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 10, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17560 Filed 8–15–23; 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 NIH Clinical Center Research Hospital Board.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below. Individuals who plan to attend in-person or view the virtual meeting and need special assistance or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: *https://videocast.nih.gov/.*

*Name of Committee:* NIH Clinical Center Research Hospital Board.

*Date:* October 20, 2023.

*Time:* 9:00 a.m. to 1:00 p.m.

*Agenda:* NIH and Clinical Center (CC) Leadership Announcements, CC CEO Update of Recent Activities and Organizational Priorities, Status Report on Key CC Strategic Plan Initiatives, and Other Business of the Clinical Center Research Hospital Board (CCRHB).

*Place:* National Institutes of Health, Building 31, Conference Room 6C02 A & B, 9000 Rockville Pike, Bethesda, MD 20892 (Hybrid Meeting).

*Contact Persons:*

Patricia Piringer, RN, MSN (C), National Institutes of Health Clinical Center, 10 Center Drive, Bethesda, MD 20892, *ppiringer@cc.nih.gov*, (301) 402–2435, (202) 460–7542 (direct).

Natascha Pointer, Management Analyst, Executive Assistant to Dr. Gilman, Office of the Chief Executive Officer, National Institutes of Health Clinical Center, 10 Center Drive, Bethesda, MD 20892, *npointer@cc.nih.gov*, (301) 496–4114, (301) 402–2434 (direct).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person(s) 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 CCRHB website: *https://www.ccrhb.od.nih.gov/* where an agenda and any additional information for the meeting will be posted when available.

(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 10, 2023.

**Patricia B. Hansberger,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–17576 Filed 8–15–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2023–0583]**

### National Merchant Mariner Medical Advisory Committee; September 2023 Virtual Meetings

**AGENCY:** U.S. Coast Guard, Department of Homeland Security.

**ACTION:** Notice of Federal Advisory Committee virtual meeting.

**SUMMARY:** The National Merchant Mariner Medical Advisory Committee (Committee) will conduct virtual meetings over a series of 2 days to discuss matters relating to medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents, medical standards, and guidelines for the physical qualifications of operators of commercial vessels, medical examiner education, and medical research. The Subcommittee on proposed Task Statement 23–X1—Directed Review of the Merchant Mariner Medical Manual will also meet on Day 1. These virtual meetings will be open to the public.

**DATES:** *Meetings:* The Committee and one of its Subcommittees will meet virtually on Tuesday, September 12, 2023, from 10 a.m. until 3 p.m. Eastern Daylight Time, (EDT), and Wednesday, September 13, 2023, from 10 a.m. until 2:15 p.m. EDT. The virtual meetings may adjourn early if the Committee has completed its business.

*Comments and supporting documentation:* To ensure your comments are received by Committee members before the virtual meetings, submit your written comments no later than September 5, 2023.

**ADDRESSES:** To join the virtual meetings or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. EDT on September 5, 2023, to obtain the needed information. The number of virtual lines is limited and will be available on a first-come, first-served basis.

The Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please email Ms. Pamela Moore at *pamela.j.moore@uscg.mil* as soon as possible.

*Instructions:* You are free to submit comments at any time, including orally at the virtual meetings as time permits, but if you want Committee members to review your comments before the virtual meetings, please submit your comments no later than September 5, 2023. We are particularly interested in comments on the topics in the ''Agenda'' section below. We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number USCG–2023–0583. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy and Security Notice found via link on the homepage of *https://www.regulations.gov.* For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

*Docket Search:* Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

**FOR FURTHER INFORMATION CONTACT:** Ms. Pamela Moore, Alternate Designated Federal Officer of the National Merchant Mariner Medical Advisory Committee, telephone 202–372–1361 or email *pamela.j.moore@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** Notice of these meetings is in compliance with the *Federal Advisory Committee Act* (Pub. L. 117–286, 5 U.S.C. ch. 10). The National Merchant Mariner Medical Advisory Committee is authorized by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (Pub. L. 115–282, 132 Stat. 4192) and is codified in 46 U.S.C. 15104. The Committee operates under the provisions of the *Federal Advisory Committee Act* and 46 U.S.C section 15109. The Committee advises the Secretary of Homeland Security through the Commandant of the United States Coast Guard on matters relating to: (a) medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents; (b) medical standards and guidelines for the physical qualifications of operators of commercial vessels; (c) medical examiner education; and (d) medical research.

*Agenda:* The National Merchant Mariner Medical Advisory Committee will meet on Tuesday, September 12, 2023, and Wednesday, September 13, 2023, to review, discuss, deliberate, and formulate recommendations, as appropriate on the following topics. The Subcommittee on proposed Task Statement 23–X1—Directed Review of the Merchant Mariner Medical Manual will also meet on Day 1. Officer elections will be held on Day 2.

**DAY 1**

The agenda for the September 12, 2023, virtual meeting is as follows:

(1) The full Committee will meet briefly to discuss the Subcommittee Business and task statement, which is listed under paragraph (6) under Day 2 below.

(2) The Subcommittee will then separately address and work on Task Statement 23–X1, Directed Review of the Merchant Mariner Medical Manual.

(3) Report of the Subcommittee. At the end of the day, the Chair of the Subcommittee will report to the full Committee on what was accomplished. The full Committee will not take action on this date and the Subcommittee will present a full report to the Committee on Day 2 of the meeting.

(4) Adjournment of meeting.

**DAY 2**

The agenda for the September 13, 2023, virtual meeting is as follows:

(1) Introduction.

(2) Designated Federal Officer Remarks.

(3) Remarks from U.S. Coast Guard Leadership.

(4) Roll call of Committee members and determination of a quorum.

(5) Election of Chair and Vice Chair.

(5) Acceptance of Minutes from NMEDMAC Meeting 4.

(6) Presentation of Task: Task Statement 23–X1, Directed Review of the Merchant Mariner Medical Manual.

(7) U.S. Coast Guard Presentations.

(8) Presentations from Subcommittee Chairs.

The Committee will review the information presented on the following issues and deliberate on recommendations presented by the Subcommittee Chairs, approve and formulate recommendations and close any completed tasks. Official action on these recommendations may be taken:

(a) Task Statement 21–01, Recommendations on Mariner Mental Health;

(b) Task Statement 21–02, Communication Between External

Stakeholders and the Mariner Credentialing Program;

(c) Task Statement 21–03, Medical Certifications for Military to Mariner Applicants;

(d) Task Statement 21–04, Recommendations on Appropriate Diets and Wellness for Mariners While Onboard Merchant Vessels;

(e) Task Statement 21–06, Review of Medical Regulations and Policy to Identify Potential Barriers to Women in the U.S. Maritime Workforce;

(f) Task Statement 22–01, Sexual Assault and Sexual Harassment Prevention and Culture Change in the Merchant Marine; and

(g) Task Statement 23–X1, Directed Review of the Merchant Mariner Medical Manual.

(9) Public comment period.

(10) Closing remarks.

(11) Adjournment of meeting.

A copy of all meeting documentation will be available at *https://homeport.uscg.mil/missions/federal-advisory-committees/national-merchant-mariner-medical-advisory-committee-(nmedmac)* no later than September 5, 2023. Alternatively, you may contact the individual noted in the **FOR FURTHER INFORMATION** section above.

During the September 13, 2023, virtual meeting, a public comment period will be held immediately after the Presentation of Subcommittee Reports and Recommendations, at approximately 1:30 p.m. EDT. Public comments will be limited to 3 minutes per speaker. Please note that the public comments period will end following the last call for comments. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to register as a speaker.

Dated: August 8, 2023.

**Jeffrey G. Lantz,**

*Director of Commercial Regulations and Standards.*

[FR Doc. 2023–17516 Filed 8–15–23; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[Docket No. FWS–HQ–ES–2023–N021; FF09E42000–FXES111609BFEDR–234]**

### John H. Chafee Coastal Barrier Resources System; Availability of Final Revised Maps for Michigan, Minnesota, Mississippi, Ohio, South Carolina, Texas, and Wisconsin

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The Coastal Barrier Resources Act requires the Secretary of the Interior to review the maps of the John H. Chafee Coastal Barrier Resources System (CBRS) at least once every 5 years and make any minor and technical modifications to the boundaries of the CBRS as are necessary to reflect changes that have occurred in the size or location of any unit as a result of natural forces. We, the U.S. Fish and Wildlife Service, have conducted this review for all of the CBRS units in Michigan, Minnesota, Mississippi, North Carolina, Ohio, Texas, and Wisconsin, and 10 units in South Carolina. This notice announces the findings of our review and the availability of final revised maps for 116 CBRS units in the project area, except for the North Carolina units. We did not prepare final revised maps for the North Carolina units because sufficient data was not available in some areas.

**DATES:** Changes to the CBRS depicted on the final revised maps, dated December 30, 2022, become effective on August 16, 2023.

**ADDRESSES:** For information about how to get copies of the maps or where to go to view them, see the Availability of Final Maps and Related Information section.

**FOR FURTHER INFORMATION CONTACT:** Katie Niemi, Coastal Barriers Coordinator, via telephone at 703–358–2071 or email at *CBRA@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:**

#### Background and Methodology

Background information on the Coastal Barrier Resources Act (CBRA; 16 U.S.C. 3501 *et seq.*) and the John H. Chafee Coastal Barrier Resources System (CBRS), as well as information on the 5-year review effort and the methodology used to produce the revised maps, can be found in a notice the U.S. Fish and Wildlife Service (Service) published in the **Federal Register** on November 22, 2022 (87 FR 71352).

#### Announced Map Modifications

This notice announces modifications to the maps for several CBRS units in Michigan, Minnesota, Mississippi, Ohio, South Carolina, Texas, and Wisconsin. Most of the modifications were made to reflect changes to the CBRS units as a result of natural forces (*e.g.,* erosion and accretion). CBRA requires the Secretary of the Interior (Secretary) to review the maps of the CBRS at least once every 5 years and make, in consultation with the appropriate Federal, State, and local officials, such minor and technical modifications to the boundaries of the CBRS as are necessary solely to reflect changes that have occurred in the size or location of any unit as a result of natural forces (16 U.S.C. 3503(c)).

The Service's review resulted in a set of 118 final revised maps, dated December 30, 2022, depicting a total of 116 CBRS units. The set of maps includes:

- 36 maps for 46 CBRS units located in Michigan
- 1 map for 1 CBRS unit located in Minnesota
- 9 maps for 7 CBRS units located in Mississippi
- 7 maps for 10 CBRS units located in Ohio
- 7 maps for 10 CBRS units located in South Carolina
- 53 maps for 35 CBRS units located in Texas
- 5 maps for 7 CBRS units located in Wisconsin

The Service made modifications to a total of 18 CBRS units (of the 133 units reviewed) due to natural changes in their size or location since they were last mapped. No revised maps were prepared for the 17 North Carolina units that were included in our initial review. Because of ongoing geomorphic change in certain units and the need for additional data, the North Carolina units will be reviewed again in the future.

**Consultation With Federal, State, and Local Officials**

CBRA requires consultation with the appropriate Federal, State, and local officials (stakeholders) on the proposed CBRS boundary modifications to reflect changes that have occurred in the size or location of any CBRS unit as a result of natural forces (16 U.S.C 3503(c)). The Service fulfilled this requirement by holding a 30-day comment period on the draft revised boundaries for Federal, State, and local stakeholders, from November 22, 2022, through December 22, 2022. This comment period was announced in a notice published in the **Federal Register** (87 FR 71352) on November 22, 2022.

The Service notified approximately 340 stakeholders concerning the availability of the draft revised boundaries, including: (1) the Chair and Ranking Member of the House of Representatives Committee on Natural Resources, the Chair and Ranking Member of the Senate Committee on Environment and Public Works, and the members of the Senate and House of Representatives for the affected areas; (2) the governors of the affected areas; (3) State and local officials with floodplain management and/or land use responsibilities; and (4) Federal officials with knowledge of the coastal geomorphology within the project area.

*Comments and Service Responses*

Below is a summary of the 10 written comments and/or acknowledgements received from stakeholders (Federal, State, and local officials) and the Service's responses. One additional anonymous comment not pertaining to the 5-year review was received but is not summarized below. Interested parties may view the comments received during the stakeholder review period at *https://www.regulations.gov* under Docket No. FWS–HQ–ES–2022–0107 or may contact the Service individual identified in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements to view copies of the comments.

(1.) *Comment from the Manistee County Planning Department, Michigan:* Manistee County indicated that the proposed change in the CBRS boundary around Snake Island appeared to be accurate. However, they raised a concern with the inland shoreline of Arcadia Lake, which they assert is not accurately shown on the point (located on the north side of the lake) and asked that it be corrected.

*Our Response:* We reviewed the official November 2, 1994, map for Unit MI–21, which is based upon a 1983 U.S. Geological Survey topographic quadrangle, and found that the boundary in question was not drawn to follow the shoreline of Arcadia Lake. Because this particular segment of boundary was not drawn to follow a geomorphic feature on the official map, no changes are warranted through the 5-year review process.

(2.) *Comment from Representative Gregory F. Murphy, MD, House of Representatives, 3rd District, North Carolina:* Representative Murphy requested that the Service exclude the lots serviced by infrastructure along North Carolina Highway 210 and New River Inlet Road from Unit L06, because he asserts these lots were mistakenly placed in the unit when the CBRS was first mapped.

*Our Response:* Changes to the CBRS boundaries through the 5-year review effort are limited to the administrative modifications the Secretary is authorized to make under CBRA (16 U.S.C. 3503(c)–(e)). Changes that are outside the scope of this authority must be made through the comprehensive map modernization process, which entails Congressional enactment of legislation to make the revised maps effective. Unit L06 has already undergone the comprehensive map modernization process, and the revised maps for the unit were adopted by Congress via the Strengthening Coastal Communities Act of 2018 (Pub. L. 115–358). These maps (dated December 21, 2018) removed about 78 structures from the CBRS and added about 170 acres to the CBRS (mostly wetlands). The results of the Service's review of the level of infrastructure within Unit L06 are described in our response to Comment 15 in Appendix E of our 2016 *Final Report to Congress: John H. Chafee Coastal Barrier Resources System Digital Mapping Pilot Project.* While we found some structures on the ground and a main trunk line of infrastructure that ran along the length of the unit in 1982 when it was first included within the CBRS, the area still met the CBRA criteria for an undeveloped coastal barrier. Therefore, we do not recommend remapping to remove the land currently in the CBRS unit except for a minor and technical correction to address an error in the vicinity of Barton Bay Court (affecting two existing structures) that was identified in 2021. We transmitted a draft revised map (dated April 30, 2021) correcting this minor error to Congress on August 10, 2021. That revised map will not take effect unless adopted by Congress through legislation. Additional information about this map is available on our website at *https://www.fws.gov/project/current-coastal-barrier-resources-system-remapping-projects.*

(3.) *Comment from the Mayor of the Town of North Topsail Beach, North Carolina:* The Town supports Representative Murphy's and Representative David Rouzer's efforts to exclude from Unit L06 the portions of North Topsail Beach serviced by infrastructure. The Town asserts that the Service did not consider the full complement of infrastructure in place at the time the area was first included in 1982 within the CBRS.

*Our Response:* See above response to Representative Murphy.

(4.) *Comment from the Carteret County Beach Commission, North Carolina:* Carteret County had no comment regarding the CBRS units in North Carolina, as no changes to the current maps are recommended at this time.

(5.) *Comment from the National Park Service (NPS):* The NPS commented in response to the Service's decision that we plan to revisit the North Carolina units due to ongoing geomorphic change and the need for additional data (including the NPS's completed Cape Hatteras and Cape Lookout National Seashores boundary surveys). The NPS provided a point of contact for further information about the status of the seashore boundary surveys, which were ongoing at the time of the 2022 5-year review.

(6.) *Comment from the North Carolina Department of Public Safety:* The State of North Carolina had no comment on the proposed modifications. They appreciate the Service's deferral of proposed changes in North Carolina due to the dynamic coast and the survey being conducted by the NPS.

(7.) *Comment from the Ohio Department of Natural Resources (ODNR):* The ODNR commented that the proposed change to the southern boundary of Unit OH–06 includes a portion of a Federal navigation channel in Sandusky Bay. They assert that the existing area is adequate to account for potential accretion of the Bay Point sand spit and therefore no modification to the existing boundary is needed. However, if the boundary is to be modified, ODNR recommends that the proposed boundary be adjusted to eliminate inclusion of the Federal navigation channel. Additionally, ODNR commented that the revision of the CBRS units is a Federal agency activity that will have reasonably foreseeable effects on coastal uses and resources in Ohio's coastal zone. As ODNR is the designated State agency charged with implementing Ohio's federally approved Coastal Management Program under the

Coastal Zone Management Act (CZMA; 16 U.S.C. 1451–1464 and 15 CFR part 930), they assert that the Service is required to submit a Federal consistency determination to ODNR for this project. After the comment period closed, we received an email from the Buffalo District of the U.S. Army Corps of Engineers concurring with ODNR's comment.

*Our Response:* We reviewed the expansion of Unit OH–06 and agree that the proposed change was larger than necessary to account for geomorphic change at Bay Point. We have reduced the proposed addition to include only the area where accretion is occurring, and the Federal navigation channel is no longer proposed for inclusion within the unit. However, CBRA does exempt Federal expenditures (following consultation between the action agency and the Service) for ''the maintenance or construction of improvements of existing Federal navigation channels (including the Intracoastal Waterway) and related structures (such as jetties), including the disposal of dredge materials related to such maintenance or construction'' (16 U.S.C. 3505(a)(2)).

Regarding ODNR's CZMA comment, the Service has determined that the modification of the CBRS boundaries to comply with the statutory 5-year review requirement does not require a consistency review under the CZMA. Federal agencies are responsible for ensuring that consistency review under the CZMA is completed as needed for each action they fund, authorize, or carry out. The CZMA's implementing regulations at 15 CFR 930.31(a) define ''Federal agency activity'' in part as any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities. The term includes a range of activities where a Federal agency makes a proposal for action initiating an activity or series of activities when coastal effects are reasonably foreseeable (*e.g.,* a Federal agency's proposal to physically alter coastal resources, a plan that is used to direct future agency actions, a proposed rulemaking that alters uses of the coastal zone). Thus, as the CZMA regulation makes clear, the consistency requirement is directed at Federal agency activities that result in effects to coastal zone resources or uses.

CBRA encourages the conservation of storm-prone and dynamic coastal barriers by requiring that no new Federal expenditures or financial assistance be made available within CBRS units unless allowed under CBRA. The units were originally designated on a set of maps adopted by Congress through legislation, and these maps are maintained by the Service. CBRA does not restrict activities conducted with private, State, or local funds, and it also contains exceptions that allow Federal agencies to fund certain projects and provide financial assistance within the CBRS following consultation with the Service.

Inclusion of areas within the CBRS through the 5-year review (which makes minor and technical modifications to existing CBRS units to address geomorphic change) results in a requirement that Federal agencies ensure that any action they fund, authorize, or carry out is compliant with CBRA and its consultation requirement. Even in a case where Federal funding for a project is prohibited by CBRA, it may still be carried out with an alternative non-Federal funding source. Therefore, while we understand the ODNR's position, we have determined that the 5-year review is not a Federal agency activity itself, and a CZMA Federal consistency review is not needed.

(8.) *Comment from the Town Administrator of the Town of Pawleys Island, South Carolina:* Pawleys Island commented that there are no proposed changes to CBRS Unit M02; however, they have concerns with the inclusion of a jetty (located on the south side of Midway Inlet on the north end of Pawleys Island) within the current boundary of the unit. In particular, the Town requests clarity on the implications of the CBRS on making repairs to the jetty, which are anticipated to occur in the next couple of years. The Town also requested a meeting with the Service to discuss this matter further.

*Our Response:* Changes to the CBRS boundaries through the 5-year review process are limited to the administrative modifications the Secretary is authorized to make under CBRA (16 U.S.C. 3503(c)–(e)). Changes that are outside the scope of this authority must be made through the comprehensive map modernization process, which requires Congressional enactment of legislation to make the revised maps effective. Unit M02 has already undergone the comprehensive map modernization process, and the revised maps for the unit were adopted by Congress via the Strengthening Coastal Communities Act of 2018 (Pub. L. 115–358). At that time, the Service carefully reviewed the area where the jetty is located, and we determined that the jetty was not included within the CBRS as the result of a mapping error.

Our historical background records indicate that in 1982, when Unit M02 was established, the Department of the Interior (Department) was aware of the shoreline stabilizing structures (at that time, it was rock revetments and a small pile-driven groin) at the north end of Pawleys Island. The Department considered the presence of these structures and found no basis for excluding the property where the structures were located from the CBRS. This issue is addressed in the response to Comment 21 in Appendix E of our 2016 *Final Report to Congress: John H. Chafee Coastal Barrier Resources System Digital Mapping Pilot Project.* The Service met with the Town Administrator in January 2023 to discuss as requested.

(9.) *Comment from FEMA, Region 6, Mitigation Division:* FEMA requested that we contact the floodplain administrator for the City of Rio Grande City, Texas, for the review of this CBRS mapping project (including possible permit requirements). In addition, FEMA requested that the CBRS mapping project comply with Executive Orders (EOs) 11988 and 11990 if it is federally funded.

*Our Response:* The Service did not contact Rio Grande City, as it is over 100 miles inland and our mapping project is along the coast of Texas. However, the Service did specifically contact State and local officials with floodplain management and/or land use responsibilities in the affected areas. Additionally, EOs 11988 and 11990 do not apply to the Service's CBRS mapping activities, as there is no associated on-the-ground activity or financial assistance. Furthermore, CBRA does not plan, regulate, or license any land use or development (it merely limits the use of Federal funds for certain prohibited activities, with no restrictions on private, State, or locally funded projects). CBRA is consistent with the spirit of both EOs (which seek to avoid adverse impacts associated with the modification or development of floodplains and wetlands) because it discourages development and modification of coastal barriers and their associated aquatic habitat.

(10.) *Comment from the U.S. Geological Survey (USGS), Coastal/Marine Hazards and Resources Program:* USGS concurred with the CBRS review process, indicating that updated imagery detected necessary changes resulting from natural processes to a handful of the CBRS units. USGS identified some minor inconsistencies between boundaries and current imagery in a few cases and a difference in the level of fidelity to small-scale features defining boundaries in some areas. USGS recommended that boundary changes in submerged areas

(*e.g.,* Unit WI–04) be more clearly explained.

*Our Response:* We met with USGS to discuss the specific issues raised. Based on the comments USGS provided, we found that the summary of change for Unit WI–04 needed to be updated to provide additional explanation for the change. We acknowledge that there are some inconsistencies and differences in the level of fidelity to small-scale features, due to a variety of reasons. Some inconsistencies were inherited from the original mapping of the units in the 1980s and 1990s (which was done by hand on 1:24,000 scale USGS topographic quadrangles). We are limited in our authority to make administrative changes to the boundaries under CBRA (16 U.S.C. 3503(c)–(e)) and cannot make changes solely to make the boundaries more consistent with each other.

Additionally, we declined to make changes to certain boundaries where there may be a relationship between the boundary and another feature (such as a park boundary or an international boundary); This can lead to perceived inconsistencies. However, in such cases, further review may be warranted through the comprehensive remapping process. Furthermore, some changes in the units cannot be addressed through our 5-year review authority, because they are caused by human activity rather than by natural forces.

**Changes to Draft Boundaries**

As a result of a stakeholder comment received during the comment period, the Service made one change to the boundaries (which were displayed on a web mapping application on the Service's website and are now depicted on the final revised maps, dated December 30, 2022). This boundary change is to Ohio Unit OH–06, and the justification for this change is described in the Consultation with Federal, State, and Local Officials section of this notice. The remaining CBRS boundaries depicted on the final revised maps, dated December 30, 2022, are identical to those that were announced for stakeholder review.

**Summary of Modifications to the CBRS Maps**

Below is a summary of the changes depicted on the final revised maps of December 30, 2022.

*Michigan*

The Service's review found that 3 of the 46 CBRS units in Michigan required changes due to natural forces. The imagery that was used for this review and the revised maps is dated 2020. Additionally, one adjustment was needed to the northern lateral boundary of Sadony Bayou Unit MI–22 to maintain the relationship between the boundary and a structure that was on the ground prior to the designation of the CBRS unit in 1990. This structure appeared to be outside of the unit on the 2012 NAIP imagery used for the previous official map but appears to be within the unit on the 2020 imagery due to an approximately 10-foot difference in location between the two images. The boundary has been adjusted to the south by about 10 feet to maintain the relationship between the boundary and the structure that was depicted on the previous map, and the structure remains outside of the unit.

In September 2022, the U.S. Board on Geographic Names voted to replace the names of nearly 650 geographic features that had previously featured a derogatory word for indigenous women. These name changes affect three Michigan units, which have been updated accordingly.

*MI–05:* HURON CITY. The boundary of the unit has been modified to account for shoreline erosion along Lake Huron to the east of Willow Creek.

*MI–13:* BIRDSONG BAY. The name of this unit has been changed from ''Squaw Bay'' to ''Birdsong Bay'' to reflect the new name of the underlying feature.

*MI–21:* ARCADIA LAKE. The boundary of the unit has been modified to account for natural changes along the shoreline of the peninsula located between Arcadia Lake and Lake Michigan.

*MI–25:* MINO–KWE POINT. The name of this unit has been changed from ''Squaw Point'' to ''Mino-kwe Point'' to reflect the new name of the underlying feature.

*MI–40:* GREEN ISLAND. The boundary of the unit has been modified to account for shoreline erosion along Lake Michigan at Point la Barbe.

*MI–64:* MINO–KWE JIIGIBIIK. The name of this unit has been changed from ''Squaw Beach'' to ''Mino-kwe jiigibiik'' to reflect the new name of the underlying feature.

*Minnesota*

The Service's review found that the boundaries of Unit MN–01 (the only CBRS unit in Minnesota) did not need to be modified due to changes from natural forces. The imagery that was used for this review and the revised map is dated 2021.

*Mississippi*

The Service's review found that two of the seven CBRS units in Mississippi required changes due to natural forces. The imagery that was used for this review and the revised maps is dated 2021.

*R02:* DEER ISLAND. The western boundary of the unit has been modified to account for accretion at the western end of Deer Island.

*R03:* CAT ISLAND. The southern boundary of the eastern segment of the unit has been modified to account for accretion of the spit at the south end of Cat Island.

*North Carolina*

The Service reviewed the 17 CBRS units in North Carolina, but made no changes. Revised maps have not been produced for this State. The imagery that was used on the currently effective maps is dated 2010, 2012, or 2014, depending on the unit. The imagery that was used for this review is dated 2020.

While no changes have been made to the CBRS boundaries in North Carolina at this time, future changes may be warranted for the boundaries of Unit NC–03P, which were updated by Congress in 1999 through Public Law 106–116 to align with the boundaries of Cape Hatteras National Seashore at that time. However, significant shoreline erosion has occurred along the Atlantic coast of Hatteras Island, particularly in the villages of Rodanthe, Waves, Avon, and Buxton, and the CBRS boundary is now hundreds of feet offshore in some places. Erosion is occurring at a rate of 2–4 meters per year in some areas.

In those places where the shoreline has eroded significantly, the boundary of Cape Hatteras National Seashore is now the mean high-water line. Numerous structures may be located seaward of the mean high-water line due to erosion and may be on property owned by the National Park Service. Some of these structures have been deemed uninhabitable due to compromised septic systems and/or other issues. At the time of our review, the National Park Service was planning to conduct a boundary survey. As the survey was incomplete before our 5-year review effort was completed, we have not made any boundary modifications at this time. We will also continue to monitor geomorphic change occurring in other areas in North Carolina, including the northwestern boundary of Unit L03AP (where geomorphic change is occurring very near to the CBRS boundary along Shackleford Banks).

In the future, we plan to revisit the North Carolina CBRS units through the 5-year review authority, provided that sufficient data is available at the time of our review. More information about our review of North Carolina units can be found in a notice the Service published

in the **Federal Register** on November 22, 2022 (87 FR 71352).

*Ohio*

The Service's review found that 1 of the 10 CBRS units in Ohio required changes due to natural forces. The imagery that was used for this review and the revised maps is dated 2021.

*OH–06:* BAY POINT. The southern boundary of the unit has been modified to account for the southward accretion of Bay Point.

*South Carolina*

The Service's review found that 3 of the 10 CBRS units in South Carolina that are included in this review (Units M02, M03, M08, M09/M09P, M10, M13, SC–01, SC–03, and SC–10P) required changes due to natural forces. The imagery that was used for this review and the revised maps is dated 2021.

The remaining 13 South Carolina units were not included in this review because they were either comprehensively reviewed in 2021 or they will be included in a more comprehensive review (beyond the scope of the 5-year review) at a later date, at which time the Service will also complete an assessment of changes necessary due to natural forces.

*M03:* PAWLEYS INLET. The southwestern boundary of the unit has been modified to account for natural changes in the wetlands.

*M09:* EDISTO COMPLEX. The coincident boundary between Units M09 and M09P has been modified to follow the current location of Jeremy Inlet. The landward boundary of the unit has been modified to reflect natural changes in the configuration of the wetlands along the Townsend River.

*M09P:* EDISTO COMPLEX. The coincident boundary between Units M09 and M09P has been modified to follow the current location of Jeremy Inlet.

*Texas*

The Service's review found that 6 of the 35 CBRS units in Texas required changes due to natural forces. The imagery that was used for this review and the revised maps is dated 2020.

*T03A:* BOLIVAR PENINSULA. The boundary of the unit has been modified to reflect natural changes in the configuration of the wetlands on and around the Bolivar Peninsula.

*T04:* FOLLETS ISLAND. The boundary of the unit (a portion of which is coincident with Unit T04P) has been modified to reflect erosion along the shorelines of Mud Island and Moody Island.

*T04P:* FOLLETS ISLAND. The boundary of the unit (a portion of which is coincident with Unit T04) has been modified to reflect erosion along the shoreline of Moody Island.

*T07:* MATAGORDA PENINSULA. The coincident boundary between Units T07 and T07P has been modified to account for natural changes at the mouth of Caney Creek.

*T07P:* MATAGORDA PENINSULA. The coincident boundary between Units T07 and T07P has been modified to account for natural changes at the mouth of Caney Creek.

*T12:* BOCA CHICA. The boundary of the unit has been modified to account for natural changes along the shoreline of the Rio Grande.

*Wisconsin*

The Service's review found that three of the seven CBRS units in Wisconsin required changes due to natural forces. The imagery that was used for this review and the revised maps is dated 2020.

*WI–03:* PESHTIGO POINT. The southern boundary of the western segment of the unit has been modified to account for erosion and an increased lake level in Green Bay.

*WI–04:* DYERS SLOUGH. The eastern boundary of the unit has been modified to account for erosion and an increased lake level in Green Bay and maintain a relationship between the boundary and the shoreline of the landform at the mouth of the Peshtigo River.

*WI–07:* FLAG RIVER. The western boundary of the unit has been modified to reflect natural changes in the configuration of the wetlands at the mouth of the Flag River.

**Availability of Final Maps and Related Information**

The final revised maps dated December 30, 2022, can be accessed and downloaded from the Service's website at *https://www.fws.gov/cbra.* The boundaries are available for viewing in the CBRS Mapper. Additionally, a shapefile and Web Map Service (WMS) of the boundaries, which can be used with GIS software, are available online. These data are best viewed using the base imagery to which the boundaries were drawn; the base imagery sources and dates are included in the metadata for the digital boundaries and are also printed on the official maps. The Service is not responsible for any misuse or misinterpretation of the shapefile or WMS.

Interested parties may also contact the Service individual identified in **FOR FURTHER INFORMATION CONTACT** to make arrangements to view the final maps at the Service's Headquarters office. Interested parties who are unable to access the maps via the Service's website or at the Service's Headquarters office may contact the Service individual identified in **FOR FURTHER INFORMATION CONTACT**, and reasonable accommodations will be made.

**Signing Authority**

Gary Frazer, Assistant Director for Ecological Services, approved this action on August 9, 2023, for publication. On August 9, 2023, Gary Frazer authorized the undersigned to sign the document electronically and submit it to the Office of the Federal Register for publication as an official document of the U.S. Fish and Wildlife Service.

**Martha E. Balis-Larsen,**

*Acting Assistant Director for Ecological Services, U.S. Fish and Wildlife Service.*

[FR Doc. 2023–17552 Filed 8–15–23; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

**[DOI–2023–0006; 234G0804MD GGHDFA3540 GF0200000 GX23FA35SA40000]**

### Privacy Act of 1974; System of Records

**AGENCY:** United States Geological Survey, Interior.

**ACTION:** Notice of a new system of records.

**SUMMARY:** Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior (DOI) is issuing a public notice of its intent to create the United States Geological Survey (USGS) Privacy Act system of records, INTERIOR/USGS–28, USGS Store Customer Records. This system of records is being established to manage customer records for earth science and information products available through the USGS Store. This newly established system will be included in DOI's inventory of record systems.

**DATES:** This new system will be effective upon publication. New routine uses will be effective September 15, 2023. Submit comments on or before September 15, 2023.

**ADDRESSES:** You may send comments identified by docket number [DOI–2023–0006] by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.

• *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2023–0006] in the subject line of the message.

• *U.S. Mail or Hand-Delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

*Instructions:* All submissions received must include the agency name and docket number [DOI–2023–0006]. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Cozenja Berry, Associate Privacy Officer, Office of the Associate Chief Information Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 159, Reston, VA 20192, *privacy@usgs.gov* or (571) 455–2415.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The USGS maintains the INTERIOR/USGS–28, USGS Store Customer Records, system of records. Through partnerships with the National Parks Service, Bureau of Land Management, United States Fish and Wildlife Service, United States Forest Service, and other federal agencies, the USGS provides a centralized point of sales for recreational land passes, earth science products, and forestry products via the USGS Store. The USGS Store (referred to as store throughout this notice) is a component of the USGS Science Information Delivery Branch, Office of the Associate Chief Information Officer. Products available for purchase or issuance to the general public through the store include: America the Beautiful—the National Parks and Federal Recreational lands passes; government produced maps; satellite imagery prints; science publications; and a variety of educational materials.

The USGS Store utilizes the Integrated Business Solutions (IBiS) system to process transactions and administer customer records. The records in IBiS are currently covered by two system of records notices (SORNs): INTERIOR/USGS–15, Earth Science Information Customer Records, 63 FR 60375 (November 9, 1998); modification published at 74 FR 23430 (May 19, 2009), and INTERIOR/DOI–06, America the Beautiful—The National Parks and Federal Recreational Lands Pass System, 80 FR 63246 (October 19, 2015); modification published at 86 FR 50156 (September 7, 2021). Records pertaining to the sale of earth science and forestry products (government produced maps, satellite imagery prints, science publications, and educational materials) were previously managed by the USGS Earth Science Information Office (ESIO), National Mapping Division, and maintained under INTERIOR/USGS–15. With the establishment of the USGS Store, the program responsibility and associated records transferred from ESIO to the store to provide a single point of sales within the bureau, thereby prompting the creation of this new system of records. The USGS intends to rescind the SORN for INTERIOR/USGS–15 after the public comment period for this notice has expired and comments received have been adjudicated. All records pertaining to the sale of passes through the America the Beautiful—The National Parks and Federal Recreational Lands Pass System, which are sold on behalf of the National Parks Service, will continue to be maintained in accordance with the INTERIOR/DOI–06 notice as published in the **Federal Register**.

## II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations at 43 CFR part 2, subpart K, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. The INTERIOR/USGS–28, USGS Store Customer Records, SORN is published in its entirety below. In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

## III. Public Participation

You should be aware your entire comment including your personally identifiable information, such as your address, phone number, email address, or any other personal information in your comment, may be made publicly available at any time. While you may request to withhold your personally identifiable information from public review, we cannot guarantee we will be able to do so.

**SYSTEM NAME AND NUMBER:**

INTERIOR/USGS–28, USGS Store Customer Records.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Records are maintained by the Science Information Delivery Branch, Office of the Associate Chief Information Officer, U.S. Geological Survey, Denver Federal Center, Denver, CO 80225.

**SYSTEM MANAGER(S):**

Chief, Science Information Delivery Branch, Office of the Associate Chief Information Officer, U.S. Geological Survey, Mail Stop 306, Denver Federal Center, P.O. Box 25286, Denver, CO 80225.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 7 U.S.C 1387, Photographic reproductions and maps; 16 U.S.C. 6804, Recreation passes; 31 U.S.C. 9701, Fees and charges for Government services and things of value; 43 U.S.C. 1457, Duties of Secretary; 43 U.S.C. 31, Director of United States Geological Survey; 43 U.S.C 31c, Geologic mapping program; 43 U.S.C. 41, Publications and reports; preparation and sale; 43 U.S.C. 42, Distribution of maps and atlases, etc.; 43 U.S.C. 44, Sale of transfers or copies of data; 43 U.S.C. 45, Production and sale of copies of photographs and records; disposition of receipts; and 7 CFR 2.60, Chief, Forest Service.

**PURPOSE(S) OF THE SYSTEM:**

The purpose of this records system is to process orders and respond to customer inquiries from individuals who have requested earth science and forestry products (government produced maps, satellite imagery prints, science publications, and other educational materials) through the USGS Store. In addition, feedback provided by individuals may be used by the USGS to propose process improvements.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

This system includes individuals who have ordered products from, or sent an inquiry or comment to, the USGS Store by telephone, mail, email, or the online storefront.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system maintains records related to individual inquiries, customer order history, and payment information, and customer feedback. Individuals may use their personally identifiable information or business information for transactions and communications with the USGS Store. Information collected on individuals includes: first and last name, email address, telephone number, mailing address, billing address, debit or credit card information (card number, expiration date and security code), and purchase order number. Although not required, some customers may provide their company name or other organizational affiliation.

**RECORD SOURCE CATEGORIES:**

The individual provides the personal information collected to process orders and respond to inquiries they initiate through the USGS Store. USGS personnel and contractors may contribute information to customer records as it pertains to order status and fulfilment, purchase issues, product shipping, and responding to general inquiries.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOI as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

(1) DOI or any component of DOI;

(2) Any other Federal agency appearing before the Office of Hearings and Appeals;

(3) Any DOI employee or former employee acting in his or her official capacity;

(4) Any DOI employee or former employee acting in his or her individual capacity when DOI or DOJ has agreed to represent that employee or pay for private representation of the employee; or

(5) The United States Government or any agency thereof, when DOJ determines that DOI is likely to be affected by the proceeding.

B. To a congressional office when requesting information on behalf of, and at the request of, the individual who is the subject of the record.

C. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

D. To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

E. To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

F. To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

G. To representatives of the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

H. To state, territorial and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

I. To an expert, consultant, grantee, shared service provider, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

J. To appropriate agencies, entities, and persons when:

(1) DOI suspects or has confirmed that there has been a breach of the system of records;

(2) DOI has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOI (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 DOI's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when DOI 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.

L. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

M. To the Department of the Treasury to process credit card payments and recover debts owed to the United States.

N. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Customer records are maintained with appropriate administrative, physical and technical controls to protect individual privacy. Electronic records are stored in secure facilities. Paper records are contained in file folders stored in file cabinets in secure office locations.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records may be retrieved by the system generated customer number, last name/first name, email address, or phone number. Records may also be retrieved by a search of the individual's address, purchase order number, and by company or organizational affiliation.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records in this system are maintained under the USGS General Records Disposition Schedule (GRDS), Item 305–06—IBiS System. GRDS Item 305–06 is a USGS-wide records schedule that supports the Natural Science Network program in the distribution of all USGS published materials such as maps, books, and scientific reports. Files consist of the scanned original customer correspondence for orders, copies of checks, and deposit slips. Records are destroyed six years and three months after the end of the fiscal year in which they were collected.

Approved destruction methods for temporary records that have met their retention period include shredding or pulping paper records and erasing or degaussing electronic records in accordance with NARA guidelines and Departmental policy.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security and privacy rules and policies. During normal hours of operation, paper records are maintained in locked file cabinets under the control of authorized personnel. Electronic records are stored on encrypted servers located in secured Federal agency and contractor facilities with physical, technical and administrative levels of security to prevent unauthorized access to information. Access is only granted to authorized personnel and each person granted access to the system must be individually authorized to use the system. A Privacy Act Warning Notice appears on computer monitor screens when records containing information on individuals are first displayed. Data exchanged between the servers and the system is encrypted in accordance with DOI security policy. Backup tapes are encrypted and stored in a locked and controlled room in a secure, off-site location.

Electronic records are maintained in information systems that are regulated by National Institute of Standards and Technology privacy and security standards as developed to comply with the Privacy Act of 1974, as amended, 5 U.S.C. 552a; Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.;* Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551 *et seq.;* and the Federal Information Processing Standards 199: Standards for Security Categorization of Federal Information and Information Systems. A Privacy Impact Assessment was conducted on IBiS, the host information system, to ensure that Privacy Act requirements are met and appropriate privacy controls were implemented to safeguard the personally identifiable information contained in the system. Security controls include user identification, multi-factor authentication, database permissions, encryption, firewalls, audit logs, network system security monitoring, and software controls. Customer data is stored separately from order data. All credit card data is encrypted when entered and only the accounting team has access to unencrypt this data. This database is on an internal server behind numerous firewalls and other security measures.

Access to records in the system is limited to authorized personnel who have a need to access the records in the performance of their official duties, and each user's access is restricted to only the functions and data necessary to perform that person's job responsibilities. System administrators and authorized users are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training and sign the DOI Rules of Behavior.

**RECORD ACCESS PROCEDURES:**

An individual requesting access to their records should send a written inquiry to the System Manager identified in this notice. DOI forms and instructions for submitting a Privacy Act request may be obtained from the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must include a general description of the records sought and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS'' on both the envelope and letter. A request for access must meet the requirements of 43 CFR 2.238.

**CONTESTING RECORD PROCEDURES:**

An individual requesting amendment of their records should send a written request to the System Manager as identified in this notice. DOI instructions for submitting a request for amendment of records are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must clearly identify the records for which amendment is being sought, the reasons for requesting the amendment, and the proposed amendment to the record. The request must include the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT REQUEST FOR AMENDMENT'' on both the envelope and letter. A request for amendment must meet the requirements of 43 CFR 2.246.

**NOTIFICATION PROCEDURES:**

An individual requesting notification of the existence of records about them should send a written inquiry to the System Manager as identified in this notice. DOI instructions for submitting a request for notification are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must include a general description of the records and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT INQUIRY'' on both the envelope and letter. A request for notification must meet the requirements of 43 CFR 2.235.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

None.

**Teri Barnett,**

*Departmental Privacy Officer, Department of the Interior.*

[FR Doc. 2023–17577 Filed 8–15–23; 8:45 am]

**BILLING CODE 4338–11–P**

## DEPARTMENT OF THE INTERIOR

**[233D0102DM, DS6CS00000, DLSN00000.000000, DX.6CS25; OMB Control Number 1093–0010]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Youth Conservation Corps Application and Medical History

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Department of the Interior (Interior) are proposing to renew an information collection

**DATES:** Interested persons are invited to submit comments on or before September 15, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Jeffrey Parrillo, Departmental Information Collection Clearance Officer, 1849 C Street NW, Washington, DC 20240; or by email to *PRA-DOI@ios.doi.gov;* or by telephone at 202–208–7072. Please reference OMB Control Number 1093–0010 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this information collection request (ICR), contact Lucy Hurlbut, Outreach and Digital Communications Specialist, Washington, DC Area Support Office (WASO) at *lucy_hurlbut@nps.gov* (email); or at (202) 513–7161 (telephone). 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.

On April 6, 2023, we published the 60-day **Federal Register** Notice in the **Federal Register** (88 FR 20548) to request OMB to approve the renewal of the information collection associated with the Youth Conservation Corps Application and Medical History Forms. We solicited public comments for 60 days, ending June 5, 2023. We did not receive any comments from the public.

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:* The Youth Conservation Corps (YCC) is a summer youth employment program that engages young people in meaningful work experiences at national parks, forests, wildlife refuges, and fish hatcheries while developing an ethic of environmental stewardship and civic responsibility. YCC programs are generally eight to ten weeks and members are paid at least the state or federal minimum wage (whichever is higher) for a 40-hour work week. YCC opportunities provide paid daytime work activities with members who commute to the federal unit daily. Authorized by the Youth Conservation Corps Act of August 13, 1970, as amended (U.S. 1701–1706), participating agencies (National Park Service, U.S. Fish and Wildlife Service, Forest Service) use common forms: DI–4014, ''Youth Conservation Corps Application'' and DI–4015, ''Youth Conservation Corps Medical History'' to collect information to determine the eligibility of each youth for employment with the YCC. Parents or guardians must sign both forms if the applicant is under 18 years of age.

*Title of Collection:* Youth Conservation Corps Application and Medical History Form.

*OMB Control Number:* 1093–0010.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Youths 15 through 18 years old seeking seasonal employment in the YCC Program.

*Total Estimated Number of Annual Respondents:* 11,409 (8,599/application 2,810/medical history).

*Total Estimated Number of Annual Responses:* 11,409 (8,599/application 2,810/medical history).

*Estimated Completion Time per Response:* 25 minutes/application and 14 minutes/medical history form.

*Total Estimated Number of Annual Burden Hours:* 4,239 hours (3,583 hours/application and 656 hours/medical history forms).

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Non-Hour 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.*).

**Jeffrey Parrillo,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2023–17562 Filed 8–15–23; 8:45 am]

**BILLING CODE 4334–63–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[BLM_CA_FRN_MO4500170074]**

## Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Mojave Precious Metals Exploratory Drilling Project, Ridgecrest, Inyo County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Ridgecrest Field Office, Ridgecrest, California intends to prepare an environmental impact statement (EIS) to consider the effects of the proposed Mojave Precious Metals Exploratory Drilling Project in Inyo County, California, and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

**DATES:** This notice initiates the public scoping process for the EIS. The BLM requests that the public submit comments concerning the scope of the analysis, potential alternatives, and identification of relevant information, and studies by October 10, 2023. To afford the BLM the opportunity to consider comments in the Draft EIS, please ensure your comments are received prior to the close of the 60-day scoping period.

**ADDRESSES:** You may submit comments related to the Mojave Precious Metals Exploratory Drilling Project by any of the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/project/2022050/510.*
- *Email: BLM_CA_RI_MojavePMetals@blm.gov.*
- *Fax:* (760) 384–5499.
- *Mail:* BLM Ridgecrest Field Office, Attn: Mojave Exploration Project, 300 S. Richmond Rd., Ridgecrest, CA 93555.

Documents pertinent to this proposal may be examined online at *https://eplanning.blm.gov/eplanning-ui/project/2022050/510* and at the BLM Ridgecrest Field Office during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Tamara Faust, Project Manager, telephone: (505) 427–6759; address: Bureau of Land Management Ridgecrest Field Office, 300 S. Richmond Rd., Ridgecrest, CA 93555; email *BLM_CA_RI_MojavePMetals@blm.gov.* Contact Ms. Faust to have your name added to our mailing list. 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 Ms. Faust. 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:**

### Purpose and Need for the Proposed Action

The BLM's need for the action is established by FLPMA, 43 U.S.C. 1732(b), and the surface management regulations promulgated under the authority of FLPMA, 43 CFR subpart 3809. The BLM's purpose is to provide Mojave Precious Metals, Inc. (MPM) with the opportunity to explore its existing mining claims on BLM-managed lands, while ensuring compliance with applicable land management plans, protection of resources, and compliance with Federal and State laws related to environmental protection (*e.g.,* 43 CFR 3809.420).

### Preliminary Proposed Action and Alternatives

MPM proposes an exploratory drilling plan of operations modification (Plan Modification) on public lands. The plan would modify the 2018 approved plan of operations that was originally submitted by Silver Standard US Holdings, Inc. and reviewed under NEPA in a 2017 environmental assessment (DOI–BLM–CA–0050–2017–0037–EA; Perdito Exploration Project). The Plan Modification is for additional exploratory drilling activities within a portion of its mining claims termed the ''Mojave Property'' and would require development of additional access routes. The Plan Modification would include 25 additional drill sites and reopening a reclaimed access road. The project is in conformance with the California Desert Conservation Area Plan, as amended.

The Mojave Property is located near Conglomerate Mesa in west-central Inyo County, approximately 3.4 miles east of Keeler, California, and 15.5 miles (25 km) southeast of Lone Pine, California. The property is located within Township 16 and 17 south, Range 38 and 39 east, San Bernardino Base and Meridian. The project would access and drill up to 30 drill sites with a total estimated 120 boreholes, each averaging 300 meters (984 feet) below ground surface. The plan would access the drill sites along a combination of overland travel and reconstruction of about 7 miles of previously developed (now reclaimed) roads. The total amount of land disturbed by the drilling program would be up to 15 acres. The project would be limited to exploration activities; no mining or processing of minerals is proposed. The project would be completed within 5 to 10 months and reclamation would be completed within 3 years.

Any hydrocarbons and petroleum lubricants used on site would be stored on the equipment, and fueling of equipment would be done with mobile fuel/lube trucks. Diesel fuel used on the site would comply with California Air Resources Board low-sulfur diesel requirements. Spills would be managed and contained according to the project's spill contingency plan. An estimated 500 to 1,000 gallons of water would be required per day. Water would be supplied from a permitted/authorized source and delivered via water truck by a licensed commercial delivery service. Portable water storage tanks would be kept on site for drilling, dust suppression, and firefighting assistance.

Reclamation of disturbed areas resulting from mining operations would be completed in accordance with BLM and the California Surface Mining Control and Regulation Act of 1975 regulations. Reclamation activities would include the following:

- Plugging of boreholes;
- Regrading and reshaping of disturbed topography to approximate the original contour;
- Restoring existing public roads in project area to pre-project conditions;
- Rehabilitating wildlife habitat;
- Revegetating disturbed areas;
- Removing equipment and temporary and mobile support facilities; and
- Monitoring and maintenance.

A range of reasonable alternatives will be developed and analyzed in the EIS after considering information received during the scoping period. Preliminary action alternatives include using an alternative route with less ground disturbance. The range of reasonable alternatives will include a no action alternative, under which the BLM would deny the Plan Modification and MPM's Exploratory Drilling Plan of Operations would remain as analyzed in the original environmental assessment. The BLM welcomes comments on all preliminary alternatives as well as suggestions for additional alternatives, including the feasibility of using a helicopter alternative to satisfy the objectives of the project.

**Summary of Expected Impacts**

Preliminary issues, either beneficial or adverse and of varying intensity, for the Project have been identified by BLM personnel and in consultation with Federal, State, and local agencies, Tribes, and other cooperating agencies. These preliminary issues include potential impacts to:

- Cultural resources;
- Biological resources, including Joshua trees and the Inyo thread plant;
- Special designations, including California Desert National Conservation Lands and the Conglomerate Mesa Area of Critical Environmental Concern; and
- Water resources.

The public scoping process will guide determination of relevant issues that will influence the scope of the environmental analysis, including alternatives and mitigation measures. The EIS will identify and describe the effects of the proposed action and alternatives on the human environment. The BLM also requests the identification of potential impacts that should be analyzed. Impacts should be a result of the action; therefore, please identify the activity along with the potential impact.

**Anticipated Permits and Authorizations**

In addition to the requested authorization to perform mineral exploration under a mining plan of operations, other Federal, State, and local authorizations will be required for the project. These include authorizations under the Bald and Golden Eagle Protection Act, the Endangered Species Act, Clean Water Act, and other laws and regulations determined to be applicable to the project.

**Schedule for the Decision-Making Process**

The BLM will provide additional opportunities for public participation consistent with the NEPA process, including a 60-day comment period on the Draft EIS. The Draft EIS is anticipated to be available for public review in Fall/Winter 2023, and the Final EIS is anticipated to be released in Summer 2024 with a record of decision (ROD) in Fall 2024.

**Public Scoping Process**

This notice of intent initiates the scoping period. The BLM will accept public scoping comments via letter or email. Should the BLM decide to hold public meetings, the specific date(s) and location(s) of any meeting will be announced in advance through public notices, media releases, mailings, and the BLM website (see **ADDRESSES**).

**Lead and Cooperating Agencies**

The National Park Service has agreed to participate in the development of the EIS as a cooperating agency. Inyo County is also a cooperating agency. Federal, State, and local agencies, along with Indian Tribal Nations and stakeholders that may be interested in or affected by the proposed Mojave Precious Metals Exploratory Drilling Project that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

**Responsible Official**

The BLM California Ridgecrest Field Manager is the responsible official who will make the decisions below.

**Nature of Decision To Be Made**

The BLM will use the analysis in the EIS to inform the following: whether to approve, approve with conditions, or deny the applicant's proposed Plan Modification. The BLM may: (a) decide to approve the complete Plan Modification; (b) approve the Plan Modification subject to certain conditions imposed to ensure the operation meets the performance standards and does not result in unnecessary or undue degradation (UUD); or (c) disapprove or withhold approval of the Plan Modification. The ROD will explain how the selected alternative meets the requirement to prevent UUD and is in conformance with the applicable land use plans.

**Additional Information**

The BLM will identify, analyze, and consider mitigation to address the reasonably foreseeable impacts to resources from the proposed action and all analyzed reasonable alternatives and, in accordance with 40 CFR 1502.14(e), include appropriate mitigation measures not already included in the proposed action or alternatives. Mitigation may include avoidance, minimization, rectification, reduction or elimination over time, and compensation, and may be considered at multiple scales, including the landscape scale.

The BLM will utilize and coordinate the NEPA process to help support compliance with applicable procedural requirements under the Endangered Species Act (16 U.S.C. 1536) and Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3), including public involvement requirements of Section 106. The information about historic and cultural resources and threatened and endangered species within the area potentially affected by the proposed plan will assist the BLM in identifying and evaluating impacts to such resources. The BLM is the lead Federal agency for this EIS and the related National Historic Preservation Act Section 106 process and Endangered Species Act consultation process.

The BLM will consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. The BLM intends to hold a series of government-to-government consultation meetings. The BLM will send invitations to potentially affected Tribal Nations prior to the meetings. The BLM will provide additional opportunities for government-to-government consultation during the NEPA process.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Authority:* 40 CFR 1501.9.

**Thomas Bickauskas,**

*Bureau of Land Management Ridgecrest Field Manager (Acting).*

[FR Doc. 2023–17297 Filed 8–15–23; 8:45 am]

**BILLING CODE 4331–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[BLM_NV_FRN_MO#4500172218]**

### Notice of Public Meeting: Sierra Front-Northern Great Basin Resource Advisory Council

**AGENCY:** Bureau of Land Management, Department of Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior's Bureau of Land Management (BLM) Sierra Front-Northern Great Basin Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The Sierra Front-Northern Great Basin RAC will hold an in-person meeting with a virtual participation option on Thursday, September 21, 2023. The RAC will also host a field tour on Friday, September 22. The meeting will be held from 8 a.m. to 5 p.m. PDT and may end earlier or later depending on the needs of group members. The field tour will begin at 8 a.m. and conclude at approximately 1 p.m. PDT.

**ADDRESSES:** The meeting will be held at the BLM Winnemucca District Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445. Individuals that prefer to participate in the September 21 meeting virtually must register by visiting the RAC's web page at least one week in advance of the meeting at *https://www.blm.gov/get-involved/resource-advisory-council/near-me/nevada.* Individuals participating in the September 22 field tour will meet at 8 a.m. at the Winnemucca District Office (5100 East Winnemucca Blvd.) and travel to Orovada, Nevada.

Written comments can be mailed to: BLM Carson City District Office, Attn: Lisa Ross, RAC Coordinator; 5665 Morgan Mill Road, Carson City, NV 89701. Comments can also be submitted by email to *lross@blm.gov* with the subject line: BLM Sierra Front-Northern Great Basin RAC.

**FOR FURTHER INFORMATION CONTACT:** Lisa Ross, RAC Coordinator, by telephone at (775) 885–6107, or by email at *lross@blm.gov.* Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** The 15-member BLM Sierra Front-Northern Great Basin RAC serves in an advisory capacity concerning issues relating to land use planning and the management of the public land resources located within the BLM's Elko, Winnemucca, and Carson City Districts. Meetings are open to the public in their entirety and a public comment period will be held near the end of the meeting.

Agenda items for the September 21 meeting include district updates, a wild horse & burro update, Assessment Inventory & Monitoring Survey, proposed new lands bill/rules, and Inflation Reduction Act funding. The field tour will offer participants the opportunity to view a land conveyance for a new public school and the site of a new fire station. Included in the tour is an opportunity to see the new infrastructure of the Winnemucca Sand Dunes Recreation Area (which includes shade structures, interpretive signage, and vault toilets) located north of Winnemucca, NV. Another stop will be the land conveyance expansion for the Humboldt County Shooting Range Facility. The field tour will conclude at approximately 1 p.m. PDT. Members of the public are welcome on field tours but must provide their own transportation and meals.

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

The final meeting agenda will be available two weeks in advance of the meeting on the RAC's web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-me/nevada.*

Interested persons may make verbal presentations to the RAC during the meeting or file written statements. Such requests should be made to RAC Coordinator Lisa Ross prior to the public comment period. Depending on the number of people who wish to speak, the time for individual comments may be limited.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 1784.4–2)

**Gerald Dixon,**

*Designated Federal Officer, BLM Elko District Manager.*

[FR Doc. 2023–17580 Filed 8–15–23; 8:45 am]

**BILLING CODE 4331–21–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–709 (Fifth Review)]**

## Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Germany

### Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Germany would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### Background

The Commission instituted this review on January 3, 2023 (88 FR 110) and determined on April 10, 2023 that it would conduct an expedited review (88 FR 31006, May 15, 2023).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on August 11, 2023. The views of the Commission are contained in USITC Publication 5452 (August 2023), entitled *Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Germany: Investigation No. 731–TA–709 (Fifth Review).*

By order of the Commission.

Issued: August 11, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–17581 Filed 8–15–23; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation. No. 337–TA–1369]**

## Certain Icemaking Machines and Components Thereof; Institution of Investigation

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

12, 2023, under section 337 of the Tariff Act of 1930, as amended, on behalf of Hoshizaki America, Inc. of Peachtree City, Georgia. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain icemaking machines and components thereof by reason of the infringement of certain claims of U.S. Patent No. 10,107,538 B2 (''the '538 patent''); U.S. Patent No. 10,113,785 B2 (''the '785 patent''); and U.S. Patent No. 10,458,692 B2 (''the '692 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

**ADDRESSES:** The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

**SUPPLEMENTARY INFORMATION:**

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on August 11, 2023, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–3, 6–8, and 11–20 of the '538 patent; claims 1–4, 10–13, and 16 of the '785 patent; and claims 1, 2, 5–9, and 11–14 of the '692 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''automatic icemaking machines, evaporators, and evaporator plate assemblies'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Hoshizaki America, Inc., 618 Highway 74 South, Peachtree City, GA 30269

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Blue Air FSE LLC, 223 West Rosecrans Avenue, Gardena, CA 90248

Bluenix Co., Ltd., 17 Emtibeui 3-ro, Danwon-gu, Ansan-si, Gyeonggi-do, Republic of Korea (15658)

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondents to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

*Authority:* The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2023).

Issued: August 11, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–17589 Filed 8–15–23; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### 218th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 218th open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held on September 19–21, 2023.

On Tuesday, September 19, 2023, the meeting will begin at 1:00 p.m. and end at approximately 4:45 p.m. (ET). On Wednesday, September 20, 2023, the meeting will begin at 8:30 a.m. and end at approximately 4:30 p.m. (ET), with a break for lunch. On Thursday, September 21, 2023, the meeting will begin at 8:30 a.m. and end at approximately 3:00 p.m. (ET), with a break for lunch.

The three-day meeting will take place at the U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210 in Room 6, C5320. The meeting will also be accessible via teleconference and some participants, as well as members of the public, may elect to attend virtually. Instructions for public teleconference access will be available on the ERISA Advisory Council's web page at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council* approximately one week prior to the meeting.

The purpose of the open meeting is for Advisory Council members to hear testimony from invited witnesses on the 2023 study topics: (1) Long-Term Disability Benefits and Mental Health Disparity, and (2) Recordkeeping in the Electronic Age. Descriptions of the 2023

study topics are available on the ERISA Advisory Council's web page at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council.* Also, the ERISA Advisory Council members will receive an update from leadership of the Employee Benefits Security Administration (EBSA).

Organizations or members of the public wishing to submit a written statement on the 2023 study topics may do so on or before Tuesday, September 12, 2023, to Christine Donahue, Executive Secretary, ERISA Advisory Council. Statements should be transmitted electronically as an email attachment in text or pdf format to *donahue.christine@dol.gov.* Statements transmitted electronically that are included in the body of the email will not be accepted. Relevant statements received on or before Tuesday, September 12, 2023, will be included in the record of the meeting and made available through the EBSA Public Disclosure Room. No deletions, modifications, or redactions will be made to the statements received as they are public records. *Warning:* Do not include any personally identifiable or confidential business information that you do not want publicly disclosed.

Individuals or representatives of organizations interested in addressing the ERISA Advisory Council at the public meeting must submit a written request to the Executive Secretary on or before Tuesday, September 12, 2023, via email to *donahue.christine@dol.gov.* Requests to address the ERISA Advisory Council must include: (1) the name, title, organization, address, email address, and telephone number of the individual who would appear; (2) if applicable, the name of the organization(s) whose views would be represented; and (3) a concise summary of the statement that would be presented. Any oral presentation to the Council will be limited to ten minutes, but as indicated above, an extended written statement may be submitted for the record on or before September 12, 2023.

Individuals who need special accommodations should contact the Executive Secretary on or before Tuesday, September 12, 2023, via email to *donahue.christine@dol.gov* or by telephoning (202) 693–8641.

For more information about the meeting, contact the Executive Secretary at the address or telephone number above.

Signed at Washington, DC, this 11th day of August, 2023.

**Lisa M. Gomez,**

*Assistant Secretary, Employee Benefits Security Administration.*

[FR Doc. 2023–17622 Filed 8–15–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Consent To Receive Employee Benefit Plan Disclosures Electronically

**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 15, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** This information collection contains a third-party disclosure. The consent serves to demonstrate to the plan administrator that an individual has the ability to access information in the electronic form that will be used for disclosure purposes. Such confirmation will ensure the compatibility of the hardware and software between the individual and the plan and will also serve to demonstrate that the administrator has taken appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents results in actual receipt, as required under the Employee Retirement Income Security Act. 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:* Consent to Receive Employee Benefit Plan Disclosures Electronically.

*OMB Control Number:* 1210–0121.

*Affected Public:* Private Sector—Businesses or other for-profits.

*Total Estimated Number of Respondents:* 760,585.

*Total Estimated Number of Responses:* 55,055,864.

*Total Estimated Annual Time Burden:* 982,079 hours.

*Total Estimated Annual Other Costs Burden:* $3,101,381.

(Authority: 44 U.S.C. 3507(a)(1)(D))

**Nicole Bouchet,**

*Acting Departmental Clearance Officer.*

[FR Doc. 2023–17527 Filed 8–15–23; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Default Investment Alternatives Under Participant Directed Individual Account Plans

**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 15, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

*Comments are invited on:* (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** This information collection requires annual notices to participants and beneficiaries whose account assets could be invested in a ''qualified default investment alternative'' (QDIA) and requires plans to pass any pertinent materials they receive from a QDIA to those participants and beneficiaries with assets invested in the QDIA. This information collection is necessary to inform participants and beneficiaries, who do not make investment elections, of the consequences of their failure to elect investments, the ways in which their account assets will be invested through the QDIA, and of their continuing opportunity to make other investment elections, including options available under the plan. 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:* Default Investment Alternatives under Participant Directed Individual Account Plans.

*OMB Control Number:* 1210–0132.

*Affected Public:* Private Sector—Businesses or other for-profits; Not-for-profit institutions.

*Total Estimated Number of Respondents:* 384,183.

*Total Estimated Number of Responses:* 49,546,060.

*Total Estimated Annual Time Burden:* 87,978 hours.

*Total Estimated Annual Other Costs Burden:* $2,183,990.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

**Nicole Bouchet,**

*Acting Departmental Clearance Officer.*

[FR Doc. 2023–17623 Filed 8–15–23; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petition for Modification of Application of Existing Mandatory Safety Standard

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

**DATES:** All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before September 15, 2023.

**ADDRESSES:** You may submit comments identified by Docket No. MSHA–2023–0040 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2023–0040.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

*Attention:* S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

#### I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

**II. Petition for Modification**

*Docket Number:* M–2023–010–C.

*Petitioner:* Peabody Twentymile Coal Mining, LLC, 29515 Routt County Road 27, Oak Creek, Colorado 80467.

*Mine:* Foidel Creek Mine, MSHA ID No. 05–03836, located in Routt County, Colorado.

*Regulation Affected:* 30 CFR 75.507–1(a) (Electrical equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

*Modification Request:* The petitioner requests a modification of 30 CFR 75.500(d) to permit the use of Versaflo TR–800 and CleanSpace EX powered respirators, nonpermissible batter powered air-purifying respirators (PAPR) in return air outby the last open crosscut.

The petitioner states that:

(a) The mine utilizes the continuous mining method.

(b) Petitioner uses the 3M Airstream PAPR under an existing decision and order to provide additional protection for its miners against exposure to respirable coal mine dust on the long wall faces.

(c) 3M discontinued the Airstream PAPR June 1, 2020, due to disruption in their component supply.

(d) Currently, there is no PAPRs that meets MSHA's permissibility requirements. The 3M Versaflo TR–800 PAPR is available, but it is not permissible, and 3M is currently not pursuing approval.

(e) The Versaflo TR–800 motor/blower and battery qualify as intrinsically safe in the U.S., Canada, and countries that accept the International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmosphere (IECEx). The Versaoflo TR–800 motor/blower is UL-certified with an intrinsically safe (IS) rating of Division 1: IS Class I, II, III; Division 1 (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6* Edition, 2013). It is also ATEX-certified with an intrinsically safe (IS) rating of ''ia.'' The Versaflo TR–800 is also rated and marked with Ex ia, I Ma, Ex ia IIB T4 Ga, Ex ia IIIC 135''C Da, $-20\ ^{\circ}C < Ta < +55$''C, under the current standard (IEC 60079).

(f) The CleanSpace EX PAPR is not currently approved as permissible by MSHA and CleanSpace is pursuing approval.

(g) The CleanSpace EX PAPR is certified by TestSafe Australia (TSA) according to the IEC 60079–0:2011(General Requirements) and IEC 60079–11:2011 (Intrinsic Safety) standards. The certificate, issued to PAFtec Australia Pty Ltd (PAFtec), allows PAFtec to mark the device as ''Ex ib IIB T4 Gb'' and ''Ex ia I Ma.'' Therefore, the CleanSpace EX has been determined to be intrinsically safe under IECEx and other international standards.

(h) In 2017, the National Institute for Occupational Safety and Health (NIOSH) published ''An Evaluation of the Relative Safety of U.S. Mining Explosion-Protected Equipment Approval Requirements versus those of International Standards'' in which NIOSH determined that electrical and electronic equipment which meets two-fault intrinsic safety as defined in the ANSI/UL 60079 standard would provide at least an equivalent level of safety as that provided by equipment approved to MSHA permissibility standards.[1]

(i) The UL-certification, TSA certification, and PAFtec listing material (drawings, certificate and text report) support the conclusion that the Versaflo TR–800 and the CleanSpace EX meet the applicable ''two fault'' intrinsic safety requirements for mining equipment as found in the ANSI/UL standard.

(j) The Versaflo TR–800 carries an ingress protection (IP) rating of IP64. The CleanSpace EX carries an IP rating of IP66. Both ratings exceed the minimum rating of IP54 required by the ANSI/UL and IEC standards for intrinsically safe mining equipment.

The petitioner proposes the following alternative method:

(a) The PAPRs, including battery packs, all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defect is found, the PAPR shall be removed from service.

(b) The operator shall maintain a separate logbook for each of the PAPRs that shall be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CPR 75.512–1 and the examination results shall be recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the ''high filter load alarm'' on the Versaflo TR–800, and the ''blocked filter'' alarm on the CleanSpace EX PAPR. Examination entries shall be maintained for at least one year.

(c) All Versaflo TR–800 and CleanSpace EX PAPRs to be used in the return air outby the last open crosscut, shall be physically examined prior to initial use and each PAPR shall be assigned a unique identification number. Each PAPR shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition.

(d) The examinations for the Versaflo TR–800 shall include:

1. Check the equipment for any physical damage and the integrity of the case;

2. Remove the battery and inspect for corrosion;

3. Inspect the contact points to ensure a secure connection to the battery;

4. Reinsert the battery and power up and shut down to ensure proper connections; and

5. Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

6. For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(e) The CleanSpace EX does not have an accessible or removeable battery. The battery and motor assembly are both contained within the sealed power pack assembly and cannot be removed, reinserted, or fastened. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(f) The operator shall ensure that all Versaflo TR–800 and CleanSpace EX units are serviced according to the manufacturer's recommendations. Dates of service shall be recorded in the equipment's logbook and shall include a description of the work performed.

(g) The Versaflo TR–800 and CleanSpace EX PAPRs used in the return air outby the last open crosscut, or in areas where methane may enter the air current, shall not be put in service until MSHA has initially inspected the equipment and determined that it is in

[1] William Calder, David P. Snyder, John F. Burr, (2017). *An Evaluation of the Relative Safety of U.S. Mining Explosion-Protected Equipment Approval Requirements versus those of International Standards,* Transactions of Society for Mining, Metallurgy, and Exploration, Inc, 342, 43–50.

compliance with the proposed decision and order (PDO).

(h) Methane tests shall be made in accordance with 30 CFR 75.323(a) before taking or energizing the Versaflo TR–800 or the CleanSpace EX in the return air outby the last open crosscut.

(i) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.

(j) A qualified person as defined in existing 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the Versaflo TR–800 or CleanSpace EX in the return air outby the last open crosscut.

(k) Neither the Versaflo TR–800 nor the CleanSpace EX shall be used in methane concentrations detected at or above 1.0 percent methane. When 1.0 percent or more of methane is detected while the Versaflo TR–800 or CleanSpace EX is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(l) The Versaflo TR–800 PAPRs only use the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133. The CleanSpace EX PAPRs shall use the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133.

(m) The battery packs must be ''changed out'' in intake air outby the last open crosscut. Before each shift when the Versaflo TR–800 or CleanSpace EX is to be used, all batteries and power units for the equipment must be charged sufficiently so that they are not expected to be replaced on that shift.

(n) The following maintenance and use conditions shall apply to the equipment Versaflo TR–800 or the CleanSpace EX containing lithium-type batteries:

1. The petitioner shall always correctly use and maintain the lithium-ion battery packs. Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit may be dissembled or modified by anyone other than permitted by the manufacturer of the equipment.

2. The 3M TR–830 Battery Pack must only be charged in an area free of combustible material, readily monitored and located on the surface of the mine. The 3M TR–830 Battery Pack is to be charged by either:

i. 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N, or,

ii. 3M 4- Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

3. The CleanSpace EX Power Unit is to be charged only by the CleanSpace Battery Charger EX, Product Code PAF–0066.

4. The batteries shall be kept dry and shall not be exposed to water. This does not preclude incidental exposure of sealed battery packs.

5. The batteries shall not be used, charged, or stored in locations where the manufacturer's recommended temperature limits are exceeded. The batteries shall not be placed in direct sunlight or used or stored near a source of heat.

6. The battery shall not be used at the end of its life cycle (*e.g.* when there is a performance decrease of greater than 20 percent in battery operated equipment). The battery must be disposed of properly.

(o) Affected mine employees must be trained in the proper use and maintenance of the Versaflo TR–800 and the CleanSpace EX PAPRs in accordance with established manufacturer guidelines. This training shall alert the affected employees to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present and that neither the Versaflo TR–800 nor the CleanSpace EX is approved under 30 CFR part 18. The affected mine employees shall also be trained to de-energize the PAPRs when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, mine employees shall be trained to inspect the units before use to determine if there is any damage to the PAPRs that would negatively impact intrinsic safety as well as all stipulations in the PDO.

(p) Mine employees shall be trained regarding proper procedures for donning Self-Contained Self Rescuers (SCSRs) during a mine emergency while wearing the Versaflo TR–800 or CleanSpace EX. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502.

(q) Within 60 days after the PDO becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the MSHA District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the PDO. When training is conducted on the terms and conditions in the PDO, an MSHA Certificate of Training (Form 5000–23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the Versaflo TR–800 or CleanSpace EX.

(r) All personnel who will be involved with or affected by the use of the Versaflo TR–800 or CleanSpace EX shall receive training in accordance with 30 CFR 48.7 on the requirements of the PDO within 60 days of the date the PDO becomes final. Such training shall be completed before any Versflo TR–800 or CleanSpace EX can be used in return air outby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the Versaflo TR–800 or CleanSpace EX in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the PDO in accordance with 30 CFR 48.5 and shall train experienced miners on its requirements of this Order in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) The final PDO shall be posted in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

**Song-ae Aromie Noe,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 2023–17619 Filed 8–15–23; 8:45 am]

**BILLING CODE 4520–43–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

**[OMB Control No. 1219–0015]**

### Proposed Extension of Information Collection; Refuse Piles and Impoundment Structures

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Refuse Piles and Impoundment Structures, Recordkeeping and Reporting Requirements.

**DATES:** All comments must be received on or before October 16, 2023.

**ADDRESSES:** You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

*Electronic Submissions:* Submit electronic comments in the following way:

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2023–0042.
- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.
- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act) Public Law 95–164 as amended, 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

30 CFR 77, subpart C, sets forth standards for surface installations to prevent accidents and injuries to coal miners. More specifically, this supporting statement will address impoundments (30 CFR 77.216) and refuse piles (30 CFR 77.215). The failure of these structures can have a devastating effect on mine employees, communities, and nearby areas. To avoid or minimize such failures, MSHA has promulgated standards for the design, construction, and maintenance of these structures; for annual certifications; for certification for hazardous refuse piles; for the frequency of inspections; and the methods of abandonment for impoundments and impounding structures.

30 CFR 77.217(c) defines impoundments are structures that can impound water, sediment, or slurry or any combination of materials. 30 CFR 77.217(e) defines refuse piles as deposits of coal mine waste (other than overburden or spoil) that are excavated during mining operations or separated from mined coal and deposited on the surface as waste byproducts. 30 CFR 77.217(a) also defines ''abandoned'' as work on refuse pile or impounding structure being completed in accordance with a plan for abandonment approved by the District Manager.

30 CFR 77.215–1 through 77.215–4 require refuse piles to be constructed, maintained, identified, reported and certified in accordance with the requirements described in the rule. Actions to be taken in the event of modification or abandonment are likewise described in the rule.

30 CFR 77.216–1 through 77.216–5 require impoundments to be constructed, maintained, identified, reported and certified in accordance with the requirements described in the rule. Actions to be taken in the event of modification or abandonment are likewise described in the rule.

### *A. Construction Plans and Modified Plans*

30 CFR 77.215–2(a) requires the operator to report and acknowledge in writing from the District Manager prior to any work associated with the construction of a proposed refuse pile.

30 CFR 77.215–2(b) requires the operator to submit to the District Manager a report in triplicate with details of the refuse pile within 180 days of acknowledgment. Reports required under 30 CFR 77.215–2(b) contain, among other things, a topographic map showing the present and proposed maximum extent of the refuse pile including an area 500 feet around the perimeter, a statement of whether or not the refuse pile is burning, a description of measures taken to prevent water from being impounded by the refuse pile or contained within, a cross section of the length and width of the refuse pile at intervals to show the approximate original ground surface, and any other information pertaining to the stability of the pile.

30 CFR 77.216(b) requires plans for the design and construction of all new impounding structures to be submitted in triplicate to and be approved by the District Manager prior to the beginning of any work associated with construction of the impounding structure.

30 CFR 77.215–3 requires, within 180 days of written notification by the District Manager of potential hazard, a certification by a registered engineer to be filed indicating construction or modification of the refuse pile. The yearly report and certification are required until the District Manager notifies the operator that the hazard has been eliminated.

30 CFR 77.216–2 lists the required information for the impoundment plan. 30 CFR 77.216–2(b) requires any changes or modifications to be approved by the District Manager prior to the modification.

### *B. Fire Extinguishing Plans*

30 CFR 77.215(j) requires the mine operators to have a plan approved by the District Manager, with provisions specifying authorized persons, method, and procedure in extinguishing fires in refuse piles.

30 CFR 77.216(e) requires the mine operator to have a plan approved by the District Manager, with provisions specifying authorized persons, method, and procedure in extinguishing fires in impounding structures.

### *C. Abandonment Plans*

30 CFR 77.215–4 requires written notification to the District Manager when a refuse pile is to be abandoned. If the refuse pile presents a hazard, it must be abandoned following a plan approved by the District Manager.

30 CFR 77.216–5 requires approval from the District Manager prior to abandonment of any impoundment based on current, prudent engineering practices. An abandonment plan does not preclude future impoundment of

water if it is approved by the District Manager and contains the required certification by a registered professional engineer, a certification by the owner, and a permit.

*D. Annual Status Report and Certification*

If the District Manager has determined that a refuse pile can present a hazard, 30 CFR 77.215–2(c) requires that the following information is reported every 12 months: topographic map, whether the refuse pile is burning, measures taken to prevent impounded water, the scale of the refuse pile, and stability.

30 CFR 77.216–4 requires that the submission of a report to the District Manager every 12 months, including a certification by a registered professional engineer. Reports required under 30 CFR 77.216–4(a) contain, among other things, changes in the geometry of the impounding structure for the reporting period; data showing the minimum, maximum and present depth of the impoundment; the storage capacity of the impounding structure; and the volume of the impounded water, sediment, or slurry for the reporting period. The report is not required if a registered professional engineer certifies that there have been no changes in the impoundment.

*E. Permanent Identification Marker Posting*

30 CFR 77.215–1 requires permanent identification markers at least six feet high to be used to show the refuse pile identification information.

30 CFR 77.216–1 requires permanent identification markers at least six feet high to be used to show the impoundment identification information.

*F. Weekly Inspections and Instrumentation Monitoring*

30 CFR 77.216–3(a) requires all impoundments to be examined for appearances of structural weakness and other hazardous conditions and all instruments be monitored at intervals not exceeding seven days. All inspections must be performed by a qualified person designated by the owner or operator of the impoundment.

30 CFR 77.216–3(b) requires that, in case of a potentially hazardous condition, actions to be taken to eliminate the condition, notify the District Manager, notify and prepare to evacuate all coal miners if necessary, and direct a qualified person to monitor all instruments and examine the structure at least once every eight hours.

30 CFR 77.216–3(c) requires results of examination and instrumentation monitoring to be promptly recorded, available at the mine for inspection by a MSHA inspector. 30 CFR 77.216–3(d) requires the records include a report of the action taken to abate hazardous condition and be promptly signed or countersigned by the mine foreman or other designated person.

**II. Desired Focus of Comments**

MSHA is soliciting comments concerning the proposed information collection related to Refuse Piles and Impoundment Structures. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- 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.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

**III. Current Actions**

This information collection request concerns provisions for Refuse Piles and Impoundment Structures. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

*Type of Review:* Extension, without change, of a currently approved collection.

*Agency:* Mine Safety and Health Administration.

*OMB Number:* 1219–0015.

*Affected Public:* Business or other for-profit.

*Number of Annual Respondents:* 907.

*Frequency:* On occasion.

*Number of Annual Responses:* 22,533.

*Annual Burden Hours:* 55,933 hours.

*Annual Respondent or Recordkeeper Cost:* $1,55,051.

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 request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

**Song-ae Aromie Noe,**

*Certifying Officer, Mine Safety and Health Administration.*

[FR Doc. 2023–17621 Filed 8–15–23; 8:45 am]

**BILLING CODE 4510–43–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

**[[OMB Control No. 1219–0127]**

### Proposed Extension of Information Collection; Certification and Qualification To Examine, Test, Operate Hoists and Perform Other Duties

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Certification and Qualification to Examine, Test, Operate Hoists and Perform Other Duties.

**DATES:** All comments must be received on or before October 16, 2023.

**ADDRESSES:** Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late, untimely filed comments will not be considered.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2023–0043.
- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.
- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Deputy Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act) Public Law 95–164 as amended, 30 U.S.C. 813(h), authorizes the Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

30 CFR 75.100 and 77.100 defines a certified person as a person who has been certified as a mine foreman (mine manager), an assistant mine foreman (section foreman), or a preshift examiner (mine examiner). The certified persons are qualified to perform duties under 30 CFR 75 and 77, such as examining for hazardous conditions, testing for methane and oxygen deficiency, conducting tests of air flow, performing electrical work, repairing energized surface high-voltage lines, and performing the duties of hoisting engineer. In addition to experience in coal mines, the certified person is required to make the required examinations and tests, including being qualified to test for methane and for oxygen deficiency.

30 CFR 75.155 outlines the requirements necessary to be qualified as a hoisting engineer to operate a steam-driven hoist or electrically driven hoist in underground coal mines if the person has at least one year experience as an engineer in a steam-driven or electrically driven hoisting plant and is qualified by the State in which the mine is located as a steam-hoisting engineer.

30 CFR 77.105 outlines the requirements necessary to be qualified as a hoistman to a hoist at a slope or shaft sinking operation in surface coal mines if the person has at least one year of experience operating a hoist plant or maintaining hoist equipment and is qualified by any State as a hoistman or its equivalency.

Under 30 CFR 75.160, 75.161, 77.107, and 77.107–1, the mine operator must have an approved training plan developed to train and retrain the qualified and certified persons to effectively perform their tasks.

30 CFR 75.159 and 30 CFR 77.106 require coal mine operators to maintain a list of persons who are certified and qualified to perform duties. This information collection is necessary to ensure that only persons who are properly trained and sufficiently experienced are permitted to perform these duties. Although MSHA does not specify a format for the recordkeeping, it normally consists of the names of the certified and qualified persons listed in two columns on a sheet of paper. One column is for certified persons and the other is for qualified persons.

These regulations recognize State certification and qualification programs. However, where State programs are not available, MSHA may certify and qualify miners to carry out certain functions prescribed in the Mine Act. Under this program, MSHA will qualify or certify individuals if these individuals meet the requirements for qualification or certification, fulfill any applicable retraining requirements, and remain employed at the same mine or by the same independent contractor.

Applications for MSHA qualification or certification are submitted to the MSHA Qualification and Certification Unit in Denver, Colorado. MSHA Form 5000–41, Safety & Health Activity Certification or Hoisting Engineer Qualification Request, provides the coal mining industry with a standardized reporting format that expedites the certification and qualification process while ensuring compliance with the regulations. MSHA uses the information collected through this form to determine if applicants satisfy the requirements to obtain the certification or qualification. Persons must meet certain minimum experience requirements depending on the type of certification or qualification sought.

## II. Desired Focus of Comments

MSHA is soliciting comments concerning the information collection related to Certification and Qualification to Examine, Test, Operate Hoists and Perform Other Duties. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- 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.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

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 provisions for Certification and Qualification to Examine, Test, Operate Hoists and Perform Other

Duties. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

*Type of Review:* Extension, without change, of a currently approved collection.

*Agency:* Mine Safety and Health Administration.

*OMB Number:* 1219–0127.

*Affected Public:* Business or other for-profit.

*Number of Annual Respondents:* 990.

*Frequency:* On occasion.

*Number of Annual Responses:* 3,980.

*Annual Burden Hours:* 334 hours.

*Annual Respondent or Recordkeeper Cost:* $3.00.

*MSHA Forms:* MSHA Form 5000–41, Safety and Health Activity Certification or Hoisting Engineers Qualification Request Form.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

**Song-ae Aromie Noe,**

*Certifying Officer, Mine Safety and Health Administration.*

[FR Doc. 2023–17625 Filed 8–15–23; 8:45 am]

**BILLING CODE 4510–43–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petition for Modification of Application of Existing Mandatory Safety Standard

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

**DATES:** All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before September 15, 2023.

**ADDRESSES:** You may submit comments identified by Docket No. MSHA–2023–0041 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2023–0041.

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov.*

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

*Attention:* S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:**

Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

#### I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

#### II. Petition for Modification

*Docket Number:* M–2023–011–C.

*Petitioner:* Peabody Twentymile Coal Mining, LLC, 29515 Routt County Road 27, Oak Creek, Colorado 80467.

*Mine:* Foidel Creek Mine, MSHA ID No. 05–03836, located in Routt County, Colorado.

*Regulation Affected:* 30 CFR 75.1002(a) (Installation of electrical equipment and conductors; permissibility).

*Modification Request:* The petitioner requests a modification of 30 CFR 75.500(d) to permit the use of Versaflo TR–800 and CleanSpace EX powered respirators, nonpermissible battery powered air-purifying respirators (PAPR) on the longwall face or within 150 feet of pillar workings.

The petitioner states that:

(a) The mine utilizes the continuous mining method.

(b) Petitioner uses the 3M Airstream PAPR under an existing decision and order to provide additional protection for its miners against exposure to respirable coal mine dust on the long wall faces.

(c) 3M discontinued the Airstream PAPR June 1, 2020, due to disruption in their component supply.

(d) Currently, there is no PAPRs that meets MSHA's permissibility requirements. The 3M Versaflo TR–800 PAPR is available, but it is not permissible, and 3M is currently not pursuing approval.

(e) The Versaflo TR–800 motor/blower and battery qualify as intrinsically safe in the U.S., Canada, and countries that accept the International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmosphere (IECEx). The Versaoflo TR–800 motor/blower is UL-certified with an intrinsically safe (IS) rating of Division 1: IS Class I, II, III; Division 1 (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6* Edition, 2013). It is also ATEX-certified with an intrinsically safe (IS) rating of ''ia.'' The Versaflo TR–800 is also rated and marked with Ex ia, I Ma, Ex ia IIB T4 Ga, Ex ia IIIC 135''C Da, $-20\ ^{\circ}C < Ta < +55$''C, under the current standard (IEC 60079).

(f) The CleanSpace EX PAPR is not currently approved as permissible by MSHA and CleanSpace is pursuing approval.

(g) The CleanSpace EX PAPR is certified by TestSafe Australia (TSA) according to the IEC 60079–0:2011 (General Requirements) and IEC 60079–11:2011 (Intrinsic Safety) standards. The certificate, issued to PAFtec Australia Pty Ltd (PAFtec), allows PAFtec to mark the device as ''Ex ib IIB T4 Gb'' and ''Ex ia I Ma.'' Therefore, the CleanSpace EX has been determined to be intrinsically safe under IECEx and other international standards.

(h) In 2017, the National Institute for Occupational Safety and Health (NIOSH) published ''An Evaluation of the Relative Safety of U.S. Mining Explosion-Protected Equipment Approval Requirements versus those of International Standards'' in which NIOSH determined that electrical and electronic equipment which meets two-fault intrinsic safety as defined in the

ANSI/UL 60079 standard would provide at least an equivalent level of safety as that provided by equipment approved to MSHA permissibility standards.[1]

(i) The UL certification, TSA certification and PAFtec listing material (drawings, certificate and text report) were found to support the conclusion that the Versaflo TR–800 and the CleanSpace EX meet the applicable ''two fault'' intrinsic safety requirements for mining equipment as found in the ANSI/UL standard.

(j) The Versaflo TR–800 carries an ingress protection (IP) rating of IP64. The CleanSpace EX carries an IP rating of IP66. Both ratings exceed the minimum rating of IP54 required by the ANSI/UL and IEC standards for intrinsically safe mining equipment.

The petitioner proposes the following alternative method:

(a) The PAPRs, including battery packs, all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defect is found, the PAPR shall be removed from service.

(b) The operator shall maintain a separate logbook for each of the PAPRs that shall be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CPR 75.512–1 and the examination results shall be recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the ''high filter load alarm'' on the Versaflo TR–800, and the ''blocked filter'' alarm on the CleanSpace EX PAPR. Examination entries shall be maintained for at least one year.

(c) All Versaflo TR–800 and CleanSpace EX PAPR to be used on the longwall face or within 150 feet of pillar workings shall be physically examined prior to initial use and each PAPR shall be assigned a unique identification number. Each PAPR shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition.

(d) The examinations for the Versaflo TR–800 shall include:

1. Check the equipment for any physical damage and the integrity of the case;
2. Remove the battery and inspect for corrosion;
3. Inspect the contact points to ensure a secure connection to the battery;
4. Reinsert the battery and power up and shut down to ensure proper connections; and
5. Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and.
6. For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(e) The CleanSpace EX does not have an accessible or removeable battery. The battery and motor assembly are both contained within the sealed power pack assembly and cannot be removed, reinserted, or fastened. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(f) The operator shall ensure that all Versaflo TR–800 and CleanSpace EX units are serviced according to the manufacturer's recommendations. Dates of service shall be recorded in the equipment's logbook and shall include a description of the work performed.

(g) The Versaflo TR–800 and CleanSpace EX PAPRs used on the longwall face or within 150 feet of pillar workings, or in areas where methane may enter the air current, shall not be put in service until MSHA has initially inspected the equipment and determined that it is in compliance with the proposed decision and order (PDO).

(h) Methane tests shall be made in accordance with 30 CFR 75.323(a) before taking or energizing the Versaflo TR–800 or the CleanSpace EX used on the longwall face or within 150 feet of pillar workings.

(i) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.

(j) A qualified person as defined in existing 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the Versaflo TR–800 or CleanSpace EX used on the longwall face or within 150 feet of pillar workings.

(k) Neither the Versaflo TR–800 nor the CleanSpace EX shall be used in methane concentrations detected at or above 1.0 percent methane. When 1.0 percent or more of methane is detected while the Versaflo TR–800 or CleanSpace EX is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(l) The Versaflo TR–800 PAPRs only use the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133. The CleanSpace EX PAPRs shall use the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133.

(m) The battery packs must be ''changed out'' in intake air outby the last open crosscut. Before each shift when the Versaflo TR–800 or CleanSpace EX is to be used, all batteries and power units for the equipment must be charged sufficiently so that they are not expected to be replaced on that shift.

(n) The following maintenance and use conditions shall apply to the Versaflo TR–800 or the CleanSpace EX containing lithium-type batteries:

1. The petitioner shall always correctly use and maintain the lithium-ion battery packs. Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit may be dissembled or modified by anyone other than permitted by the manufacturer of the equipment.
2. The 3M TR–830 Battery Pack must only be charged in an area free of combustible material, readily monitored and located on the surface of the mine. The 3M TR–830 Battery Pack is to be charged by either:
   i. 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N, or,
   ii. 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.
3. The CleanSpace EX Power Unit is to be charged only by the CleanSpace Battery Charger EX, Product Code PAF–0066.
4. The batteries shall be kept dry and shall not be exposed to water. This does not preclude incidental exposure of sealed battery packs.
5. The batteries shall not be used, charged, or stored in locations where the manufacturer's recommended temperature limits are exceeded. The batteries shall not be placed in direct sunlight or used or stored near a source of heat.
6. The battery shall not be used at the end of its life cycle (*e.g.* when there is a performance decrease of greater than 20 percent in battery operated equipment). The battery must be disposed of properly.

(o) Affected mine employees must be trained in the proper use and maintenance of the Versaflo TR–800 and the CleanSpace EX PAPRs in accordance with established manufacturer guidelines. This training shall alert the affected employees to recognize the hazards and limitations associated with the use of the

[1] William Calder, David P. Snyder, John F. Burr, (2017). *An Evaluation of the Relative Safety of U.S. Mining Explosion-Protected Equipment Approval Requirements versus those of International Standards,* Transactions of Society for Mining, Metallurgy, and Exploration, Inc, 342, 43–50.

equipment in areas where methane could be present and that neither the Versaflo TR–800 nor the CleanSpace EX is approved under 30 CFR part 18. The affected mine employees shall also be trained to de-energize the PAPRs when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, mine employees shall be trained to inspect the units before use to determine if there is any damage to the PAPRs that would negatively impact intrinsic safety as well as all stipulations in the PDO.

(p) Mine employees shall be trained regarding proper procedures for donning Self-Contained Self Rescuers (SCSRs) during a mine emergency while wearing the Versaflo TR–800 or CleanSpace EX. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502.

(q) Within 60 days after the PDO becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the MSHA District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in this Decision and Order. When training is conducted on the terms and conditions in the PDO, an MSHA Certificate of Training (Form 5000–23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the Versaflo TR–800 or CleanSpace EX.

(r) All personnel who will be involved with or affect by the use of the Versaflo TR–800 or CleanSpace EX shall receive training in accordance with 30 CFR 48.7 on the requirement of this Order within 60 days of the date this Order becomes final. Such training shall be completed before any Versaflo TR–800 or CleanSpace EX can be used in electronic equipment must be permissible and maintained in a permissible condition when such equipment is located within 150 feet of pillar workings or longwall faces. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the Versaflo TR–800 or CleanSpace EX in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the PDO in accordance with 30 CFR 48.5 and shall train experienced miners on its requirements of the PDO in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) The final PDO shall be posted in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

**Song-ae Aromie Noe,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 2023–17620 Filed 8–15–23; 8:45 am]

**BILLING CODE 4520–43–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petition for Modification of Application of Existing Mandatory Safety Standard

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

**DATES:** All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before September 15, 2023.

**ADDRESSES:** You may submit comments identified by Docket No. MSHA–2023–0039 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2023–0039.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

*Attention:* S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

#### I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

#### II. Petition for Modification

*Docket Number:* M–2023–009–C.

*Petitioner:* Peabody Twentymile Coal Mining, LLC, 29515 Routt County Road 27, Oak Creek, Colorado 80467.

*Mine:* Foidel Creek Mine, MSHA ID No. 05–03836, located in Routt County, Colorado.

*Regulation Affected:* 30 CFR 75.500(d) (Permissible electric equipment).

*Modification Request:* The petitioner requests a modification of 30 CFR 75.500(d) to permit the use of Versaflo TR–800 and CleanSpace EX powered respirators, nonpermissible battery powered air-purifying respirators (PAPR) in or inby the last crosscut.

The petitioner states that:

(a) The mine utilizes the continuous mining method.

(b) Petitioner uses the 3M Airstream PAPR under an existing decision and order to provide additional protection for its miners against exposure to respirable coal mine dust on the long wall faces.

(c) 3M discontinued the Airstream PAPR June 1, 2020, due to disruption in their component supply.

(d) Currently, there is no PAPRs that meets MSHA's permissibility requirements. The 3M Versaflo TR–800 PAPR is available, but it is not

permissible, and 3M is currently not pursuing approval.

(e) The Versaflo TR–800 motor/blower and battery qualify as intrinsically safe in the U.S., Canada, and countries that accept the International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmosphere (IECEx). The Versaflo TR–800 motor/blower is UL-certified with an intrinsically safe (IS) rating of Division 1: IS Class I, II, III; Division 1 (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6* Edition, 2013). It is also ATEX-certified with an intrinsically safe (IS) rating of ''ia.'' The Versaflo TR–800 is also rated and marked with Ex ia, I Ma, Ex ia IIB T4 Ga, Ex ia IIIC 135''C Da, –20 °C < Ta < +55''C, under the current standard (IEC 60079).

(f) The CleanSpace EX PAPR is not currently approved as permissible by MSHA and CleanSpace is pursuing approval.

(g) The CleanSpace EX PAPR is certified by TestSafe Australia (TSA) according to the lEC 60079–0:2011 (General Requirements) and IEC 60079–11:2011 (Intrinsic Safety) standards. The certificate, issued to PAFtec Australia Pty Ltd (PAFtec), allows PAFtec to mark the device as ''Ex ib IIB T4 Gb'' and ''Ex ia I Ma.'' Therefore, the CleanSpace EX has been determined to be intrinsically safe under IECEx and other international standards.

(h) In 2017, the National Institute for Occupational Safety and Health (NIOSH) published ''An Evaluation of the Relative Safety of U.S. Mining Explosion-Protected Equipment Approval Requirements versus those of International Standards'' in which NIOSH determined that electrical and electronic equipment which meets two-fault intrinsic safety as defined in the ANSI/UL 60079 standard would provide at least an equivalent level of safety as that provided by equipment approved to MSHA permissibility standards.[1]

(i) The UL-certification, TSA certification, and PAFtec listing material (drawings, certificate, and text report) support the conclusion that the Versaflo TR–800 and the CleanSpace EX meet the applicable ''two fault'' intrinsic safety requirements for mining equipment as found in the ANSI/UL standard.

(j) The Versaflo TR–800 carries an ingress protection (IP) rating of IP64. The CleanSpace EX carries an IP rating of IP66. Both ratings exceed the minimum rating of IP54 required by the ANSI/UL and IEC standards for intrinsically safe mining equipment.

The petitioner proposes the following alternative method:

(a) The PAPRs, including battery packs, all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defect is found, the PAPR shall be removed from service.

(b) The operator shall maintain a separate logbook for each of the PAPRs that shall be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CPR 75.512–1 and the examination results shall be recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the ''high filter load alarm'' on the Versaflo TR–800, and the ''blocked filter'' alarm on the CleanSpace EX PAPR. Examination entries shall be maintained for at least one year.

(c) All Versaflo TR–800 and CleanSpace EX PAPRs to be used in or inby the last crosscut, of any coal mine, shall be physically examined prior to initial use and each PAPR shall be assigned a unique identification number. Each PAPR shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition.

(d) The examinations for the Versaflo TR–800 shall include:

1. Check the equipment for any physical damage and the integrity of the case;

2. Remove the battery and inspect for corrosion;

3. Inspect the contact points to ensure a secure connection to the battery;

4. Reinsert the battery and power up and shut down to ensure proper connections; and

5. Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

6. For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(e) The CleanSpace EX does not have an accessible or removeable battery. The battery and motor assembly are both contained within the sealed power pack assembly and cannot be removed, reinserted, or fastened. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(f) The operator shall ensure that all Versaflo TR–800 and CleanSpace EX units are serviced according to the manufacturer's recommendations. Dates of service shall be recorded in the equipment's logbook and shall include a description of the work performed.

(g) The Versaflo TR–800 and CleanSpace EX PAPRs used in or inby the last crosscut, or in areas where methane may enter the air current, shall not be put in service until MSHA has initially inspected the equipment and determined that it is in compliance with the proposed decision and order (PDO).

(h) Methane tests shall be made in accordance with 30 CFR 75.323(a) before taking or energizing the Versaflo TR–800 or the CleanSpace EX in or inby the last crosscut.

(i) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.

(j) A qualified person as defined in existing 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the Versaflo TR–800 or CleanSpace EX in or inby the last crosscut.

(k) Neither the Versaflo TR–800 nor the CleanSpace EX shall be used in methane concentrations detected at or above 1.0 percent methane. When 1.0 percent or more of methane is detected while the Versaflo TR–800 or CleanSpace EX is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(l) The Versaflo TR–800 PAPRs only use the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133. The CleanSpace EX PAPRs shall only use the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133.

(m) The battery packs must be ''changed out'' in intake air outby the last open crosscut. Before each shift when the Versaflo TR–800 or CleanSpace EX is to be used, all batteries and power units for the equipment must be charged sufficiently

[1] William Calder, David P. Snyder, John F. Burr, (2017). *An Evaluation of the Relative Safety of U.S. Mining Explosion-Protected Equipment Approval Requirements versus those of International Standards,* Transactions of Society for Mining, Metallurgy, and Exploration, Inc, 342, 43–50.

so that they are not expected to be replaced on that shift.

(n) The following maintenance and use conditions shall apply to Versaflo TR–800 or the CleanSpace EX containing lithium-type batteries:

1. The petitioner shall always correctly use and maintain the lithium-ion battery packs. Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit may be dissembled or modified by anyone other than permitted by the manufacturer of the equipment.

2. The 3M TR–830 Battery Pack must only be charged in an area free of combustible material, readily monitored, and located on the surface of the mine. The 3M TR–830 Battery Pack is to be charged by either:

i. 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N, or,

ii. 3M 4- Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

3. The CleanSpace EX Power Unit is to be charged only by the CleanSpace Battery Charger EX, Product Code PAF–0066.

4. The batteries shall be kept dry and shall not be exposed to water or allowed. This does not preclude incidental exposure of sealed battery packs.

5. The batteries shall not be used, charged, or stored in locations where the manufacturer's recommended temperature limits are exceeded. The batteries shall not be placed in direct sunlight or used or stored near a source of heat.

6. The battery shall not be used at the end of its life cycle (*e.g.,* when there is a performance decrease of greater than 20 percent in battery operated equipment). The battery must be disposed of properly.

(o) Affected mine employees must be trained in the proper use and maintenance of the Versaflo TR–800 and the CleanSpace EX PAPRs in accordance with established manufacturer guidelines. This training shall alert the affected employees to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present and that neither the Versaflo TR–800 nor the CleanSpace EX is approved under 30 CFR part 18. The affected mine employees shall also be trained to de-energize the PAPRs when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, mine employees shall be trained to inspect the units before use to determine if there is any damage to the PAPRs that would negatively impact intrinsic safety as well as all stipulations in the PDO.

(p) Mine employees shall be trained regarding proper procedures for donning Self-Contained Self Rescuers (SCSRs) during a mine emergency while wearing the Versaflo TR–800 or CleanSpace EX. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502.

(q) Within 60 days after the PDO becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the MSHA District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the PDO. When training is conducted on the PDO, an MSHA Certificate of Training (Form 5000–23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the Versaflo TR–800 or CleanSpace EX.

(r) All personnel who will be involved with or affected by the use of the Versaflo TR–800 or CleanSpace EX shall receive training in accordance with 30 CFR 48.7 on the requirements of the PDO within 60 days of the date the PDO becomes final. Such training shall be completed before any Versaflo TR–800 or CleanSpace EX can be used in a continuous miner section where electric face equipment is taken in or or inby the last crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the Versaflo TR–800 or CleanSpace EX in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the PDO in accordance with 30 CFR 48.5 and shall train experienced miners on its requirements in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) The final PDO shall be posted in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, for a period of not less than 60 consecutive days.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

**Song-ae Aromie Noe,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 2023–17618 Filed 8–15–23; 8:45 am]

**BILLING CODE 4520–43–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2009–0025]**

### UL LLC: Application for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the application of UL LLC, for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

**DATES:** Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before August 31, 2023.

**ADDRESSES:** Comments may be submitted as follows:

*Electronically:* You may submit comments, including attachments, electronically at: *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2009–0025). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

*Extension of comment period:* Submit requests for an extension of the

comment period on or before August 31, 2023 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2300 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Notice of the Application for Expansion

OSHA is providing notice that UL LLC (UL), is applying for an expansion of current recognition as a NRTL. UL requests the addition of 42 test sites to its NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including UL, which details that NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

UL currently has 13 facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: UL LLC, 333 Pfingsten Road, Northbrook, Illinois 60062. A complete list of UL's scope of recognition is available at *https://www.osha.gov/nationally-recognized-testing-laboratory-program/ul.*

## II. General Background on the Application

UL submitted an application, dated January 20, 2021 (OSHA–2009–0025–0050), requesting the conversion of 42 existing Satellite Notification Acceptance Program (SNAP) sites to recognized sites under the NRTL Policy for Transitioning to Satellite Notification and Acceptance Program Termination (SNAP Transition Policy) published in the **Federal Register** on November 24, 2020 (85 FR 75042), as amended by a June 22, 2022 Memorandum from James S. Frederick, Deputy Assistant Secretary for Occupational Safety and Health, to Regional Administrators and Executive Staff, titled ''Second Revision to the Nationally Recognized Testing Laboratory (NRTL) Policy for Transitioning to Satellite Notification and Acceptance Program (SNAP) Termination.''

Table 1 below, lists the 42 sites that UL's application requested for inclusion in the NRTL's expanded scope of recognition:

TABLE 1—LIST OF TEST SITES TO BE INCLUDED IN UL'S NRTL SCOPE OF RECOGNITION

| UL site name | Address | Country |
|---|---|---|
| Auckland | 54 Tarndale Grove, 106 Bush Road Unit 1, Block 1, Albany, Auckland, New Zealand 0632. | New Zealand. |
| Bangalore | 3rd Floor, Block 1, No. 24, Kalyani Platina, EPIP Zone, Phase II, Bangalore, Karnataka 560066, India. | India. |
| Barcelona | C/Caravel-la la Nina 12, 3 Planta 08017, Barcelona, Spain 08017 | Spain. |
| Milan | Via Europa 5/7/9 & 28, Cabiate-CO, Milan, Italy 22060 | Italy. |
| Changzhou | No. 21 Longmen Road, National High-Tech, Industrial Development District, Wujin, Changzhou, Jiangsu, China 213614. | China. |
| Plano | 801 Klein Road, Suite 200, Plano, Texas 75074 | United States. |
| Dubai | Premises 222–224, 2nd Floor, DSP Laboratory Complex, Dubai Science Park, Al Barsha, Dubai, 345831 United Arab Emirates. | United Arab Emirates. |
| Edmonton | 1040 Parsons Road SW, Edmonton, Alberta, Canada T6X 0J4 | Canada. |
| Fremont | 47173 Benicia Street, Fremont, California 94538 | United States. |
| Holland | 3480 Windquest Drive, Holland, Michigan 49424 | United States. |
| Gurugram | A–12 Section 34, Infocity-1, Gurugram, Haryana India 122001 | India. |
| Istanbul | Gursel Mah. Yesiltepe Sok No. 34, ERG Is Merkezi 80260 Kat 3&6, Instanbul, Turkey 34400. | Turkey. |
| Singapore | 20 Kian Teck Lane, Singapore 627 854 | Singapore. |
| Basingstoke | Units 1–4, Horizons, Wade Road, Kingsland Business Park, Basingstoke, Hampshire, United Kingdom RG24 8AH. | United Kingdom. |
| Brea | 1075 West Lambert Road, Suite B, Brea, California 92821 | United States. |
| Subang Jaya | Suite 9.01, Level 9, Menara Summit, Persiaran Kewajipan, USJ 1, UEP, Subang Jaya, Selangor, Malaysia. | Malaysia. |
| Mexico City | Blas Pascal 205 Piso 3, Polanco I Seccion, Mexico City, Mexico 11510. | Mexico. |
| Mounds View | 2222 Woodale Drive, Mounds View, Minnesota 55112 | United States. |

TABLE 1—LIST OF TEST SITES TO BE INCLUDED IN UL'S NRTL SCOPE OF RECOGNITION—Continued

| UL site name | Address | Country |
|---|---|---|
| Montreal | 6505 Trans-Canada Highway, Suite 330, St. Laurent, Quebec, Canada, H4T1S3. | Canada. |
| Mumbai | Patina Block no 102, 1st Floor, C–59, G-Block, Mumbai, India 400 051. | India. |
| Munich | Hopfenstrasse 6, Munich, Germany 80335 | Germany. |
| Guangzhou | 1–3F, Building 2 (R&D Building A1), No. 25, South Huanshi Avenue, Nansha District, Guangzhou, Guangdong Sheng, China 511458. | China. |
| Guangzhou | Block B, Electronic Building, No. 8, Nanyun Er Road, Hangpu District, Guangzhou, China 510670. | China. |
| Warsaw | Rownolegla 4, Warsaw, Poland 02–235 | Poland. |
| Queretaro | Module K1 Unit 6 & 7, Kaizen Industrial Park, State Road 100, KM, 8+820, Colonia Galeras, Colon Municipality, Queretaro 76295 Mexico. | Mexico. |
| Rosenheim | Am Oberfeld 19, Rosenheim, Germany 83026 | Germany. |
| Saint Aubin | Espace Technologique, De Saint-Aubins, Baitmont Explorer, Route de L'Orme des Mersies, Saint Aubin, France 91190. | France. |
| Sao Paulo | Av. Engenheiro Luis, Carlos Berrini, 105, 23th Floor, Brooklin, Sao Paulo, Brazil 0451–010. | Brazil. |
| Shanghai | 29 F, Wheelock Square, No. 1717 West Nanjing Road, Shanghai, China 200040. | China. |
| Suzhou | No. 2, Chengwan Road, Suzhou Industrial Park, Suzhou, Jiangsu, China 215122. | China. |
| Taoyuan | No. 2 Wenming 1st Street, Guishan District, Taoyuan, Taiwan 333 | Taiwan. |
| Samutprakarn | 888 Moo 5, Srinakarin Road, Tambol Samrong Nua, Amphur Muang Samutprakarn, 10270. | Thailand. |
| Tokyo | 6F, Marunouchi Trust Tower, 1–8–3 Marunouchi, Chiyoda-ku, Tokyo, Japan 100–0005. | Japan. |
| Krefeld-Uerdingen | Rheinufestr. 7—9 Building R33, Krefeld-Uerdingen, Germany, 47829 | Germany. |
| Bayrakli—Izmir | Adlet Mah. Sehit Polis, Fethi Sekin Cad. Ventus Tower No: 6, Ic Kapi No: 241, Bayrakli-Izmir, Turkey 35530. | Turkey. |
| Beijing | 11/F, Tower W3, Oriental Plaza, No. 1, East Chang'an Avenue, Dongcheng District, Beijing, China 100738. | China. |
| Richmond | #130–137775, Commerce Parkway, Richmond, British Columbia, V6V2V4 Canada. | Canada. |
| Vancouver | 14301 SE 1st Street, Suite 140, Vancouver, Washington 98684 | United States. |
| Warrington | 220 Cygnet Court, Centre Park, Warrington, Chesire, WA1 1PP, United Kingdom. | United Kingdom. |
| Kwai Chung N.T. | 19F, Watson Centre, 16–22 Kung Yip Street, Kwai Chung N.T. Hong Kong. | Hong Kong. |
| Xiamen | 17/F, The Bank Centre, No. 189 Xxiahe Road, Xiamen, China 361004. | China. |
| Zhongshan | Block C, C101–102 &, C202–202, No.8, Jinsan Avenue East, Sanjiao Town, Zhongshan, China 528445. | China. |

OSHA has preliminarily determined that it is appropriate to review this application under the SNAP Transition Policy. UL's application was timely submitted under that policy, and OSHA preliminarily finds that the SNAP sites in UL's application met all other preconditions of eligibility for conversion to recognized sites under the policy (See SNAP Transition Policy, part III 1.a–g, 85 FR at 75047). OSHA also preliminarily decided that it was not necessary to conduct on-site reviews in connection with UL's expansion application, based on historical assessment records and supporting documentation submitted by UL. Moreover, OSHA staff performed assessments of several UL facilities included in the SNAP conversion application from June 2020 to November 2022, and, while assessors found some nonconformances with the requirements of 29 CFR 1910.7, UL addressed these issues sufficiently. OSHA staff has preliminarily determined that OSHA should grant the application and grant recognition to the 42 sites requested in the application.

## III. Preliminary Finding on the Application

UL submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file and pertinent documentation indicates that UL can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of the 42 additional test sites for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of UL's application.

OSHA seeks public comment on this preliminary determination.

## IV. Public Participation

OSHA welcomes public comment as to whether UL meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibit identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational

Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2009–0025 (for further information, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant UL's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

### IV. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on August 9, 2023.

**James S. Frederick,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2023–17534 Filed 8–15–23; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2006–0048]**

### NSF International: Application for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the application of NSF International, for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

**DATES:** Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before August 31, 2023.

**ADDRESSES:** Comments may be submitted as follows:

*Electronically:* You may submit comments, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2006–0048). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

*Extension of comment period:* Submit requests for an extension of the comment period on or before August 31, 2023 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2300 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Notice of the Application for Expansion

OSHA is providing notice that NSF International (NSF), is applying for an expansion of current recognition as a NRTL. NSF requests the addition of one test site to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including NSF, which details that NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

NSF currently has one facility (site) recognized by OSHA for product testing and certification, with the headquarters located at: NSF International, 789 North Dixboro Road, Ann Arbor, Michigan 48105. A complete list of NSF sites recognized by OSHA is available at *https://www.osha.gov/nationally-recognized-testing-laboratory-program/nsf.*

**II. General Background on the Application**

NSF submitted an application, dated July 21, 2020 (OSHA–2006–0048–0016), to expand recognition as a NRTL to include one additional test site located at: 251 Airport Industrial Drive, Ypsilanti, Michigan 48198 (NSF Ypsilanti). OSHA staff performed an on-site review of NSF's testing facilities at NSF Ypsilanti on May 3–4, 2023, in which assessors found some nonconformances with the requirements of 29 CFR 1910.7. NSF has addressed these issues sufficiently, and OSHA staff has preliminarily determined that OSHA should grant the application.

**III. Preliminary Finding on the Application**

NSF submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file and pertinent documentation preliminarily indicates that NSF can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include one additional test site for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of NSF's application.

OSHA seeks public comment on this preliminary determination.

**IV. Public Participation**

OSHA welcomes public comment as to whether NSF meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibit identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2006–0048 (for further information, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant NSF's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

**IV. Authority and Signature**

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on August 9, 2023.

**James S. Frederick,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2023–17528 Filed 8–15–23; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL SCIENCE FOUNDATION

### Membership of National Science Foundation's Senior Executive Service Performance Review Board

**AGENCY:** National Science Foundation.

**ACTION:** Notice.

**SUMMARY:** The National Science Foundation is announcing the members of the Senior Executive Service Performance Review Board. This action supersedes the **Federal Register** notice published on July 18, 2023.

**ADDRESSES:** Comments should be addressed to Branch Chief, Executive Services, Division of Human Resource Management, National Science Foundation, Room W15219, 2415 Eisenhower Avenue, Alexandria, VA 22314.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Munz at the above address or (703) 292–2478.

**SUPPLEMENTARY INFORMATION:** The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Karen Marrongelle, Chief Operating Officer, Chairperson
Wonzie Gardner, Jr., Chief Human Capital Officer and Office Head, Office of Information and Resource Management
Jason Bossie, Deputy Office Head, Office of Budget, Finance and Award Management
Simon Malcomber, Deputy Assistant Director, Directorate for Biological Sciences
Sean Jones, Assistant Director, Directorate for Mathematical and Physical Sciences
Erwin Gianchandani, Assistant Director, Directorate for Technology, Innovation and Partnerships
Evan Heit, Division Director, Division of Research on Learning in Formal and Informal Settings, Directorate for Education and Human Resources
Maren Williams, Division Director, Division of Administrative Services, Office of Information and Resource Management
William Malyszka, Division Director, Division of Human Resource Management and PRB Executive Secretary

This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

Dated: August 10, 2023.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2023–17508 Filed 8–15–23; 8:45 am]

**BILLING CODE 7555–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. CP2020–82; MC2023–219 and CP2023–223]**

### 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 18, 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).:* CP2020–82; *Filing Title:* USPS Notice of Amendment to Parcel Select & Parcel Return Service Contract 10, Filed Under Seal; *Filing Acceptance Date:* August 10, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 18, 2023.

2. *Docket No(s).:* MC2023–219 and CP2023–223; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 4 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 10, 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 18, 2023.

This Notice will be published in the **Federal Register**.

**Mallory Richards,**

*Attorney-Advisor.*

[FR Doc. 2023–17617 Filed 8–15–23; 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).

## POSTAL REGULATORY COMMISSION

**[Docket Nos. CP2022–94; CP2023–94; CP2023–106; MC2023–218 and CP2023–222]**

## 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 17, 2023.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



**I. Introduction**

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).:* CP2022–94; *Filing Title:* USPS Notice of Amendment to Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 19, Filed Under Seal; *Filing Acceptance Date:* August 9, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* August 17, 2023.

2. *Docket No(s).:* CP2023–94; *Filing Title:* USPS Notice of Amendment to Parcel Select Contract 56, Filed Under Seal; *Filing Acceptance Date:* August 9, 2023; *Filing Authority:* 39 CFR

[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).

3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* August 17, 2023.

3. *Docket No(s).:* CP2023–106; *Filing Title:* USPS Notice of Amendment to Priority Mail, First-Class Package Service & Parcel Select Contract 5, Filed Under Seal; *Filing Acceptance Date:* August 9, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 17, 2023.

4. *Docket No(s).:* MC2023–218 and CP2023–222; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 21 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 9, 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 17, 2023.

This Notice will be published in the **Federal Register**.

**Mallory Richards,**

*Attorney-Advisor.*

[FR Doc. 2023–17512 Filed 8–15–23; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL SERVICE

### Notice of Availability of Draft Plan for Flat-Shaped Mail

Section 206 of the Postal Service Reform Act of 2022 (PSRA), Public Law 117–108, 206, 136 stat. 1127 (2022), required the Postal Regulatory Commission (Commission), in consultation with the Inspector General of the United States Postal Service, to conduct a Flats Operations Study (Study). The Commission issued its Study on April 6, 2023. Section 206 of the PSRA also required the Postal Service to develop and implement a plan (Flats Plan) in response to the Commission's Study.

Pursuant to section 206 of the PSRA, the Postal Service is soliciting comments on its Draft Flats Plan during a 30-day public comment period. Comments should be received not later than September 15, 2023.

Interested parties may view the Draft Flats Plan at *about.usps.com/psra-flats-study.* Interested parties may mail or deliver written comments, containing the name and address of the commenter, to: Chief Counsel, Global Business & Service Development, Office of General Counsel, 475 L'Enfant Plaza SW, Washington, DC 20260–1135, or at *PCFederalRegister@usps.gov* with the subject line ''Flats Plan.'' Note that comments sent by mail may be subject to delay due to federal security screening. Faxed comments are not accepted. All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

**Sarah Sullivan,**

*Attorney, Ethics and Legal Compliance.*

[FR Doc. 2023–17567 Filed 8–15–23; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

**DATES:** Date of notice: August 16, 2023.

**FOR FURTHER INFORMATION CONTACT:** Christopher C. Meyerson, (202) 268–7820.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 4, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 24 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–210 and CP2023–214.

**Ruth B. Stevenson,**

*Chief Counsel, Ethics and Legal Compliance.*

[FR Doc. 2023–17522 Filed 8–15–23; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98116; File No. SR–NYSENAT–2023–15]**

### Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE National Schedule of Fees and Rebates To Adopt a Fee for Directed Orders Routed Directly by the Exchange to an Alternative Trading System

August 11, 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 National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 amend the NYSE National Schedule of Fees and Rebates (''Fee Schedule'') to adopt a fee for Directed Orders routed directly by the Exchange to an alternative trading system (''ATS''). The proposed 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 Exchange proposes to amend the Fee Schedule to adopt a fee for Directed Orders routed directly by the Exchange to an ATS. The Exchange proposes to implement the fee change effective August 1, 2023.

Background

The Exchange operates in a highly competitive market. The Securities and Exchange Commission (''Commission'') has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [5] Indeed, equity trading is currently dispersed across 16 exchanges,[6] numerous alternative trading systems,[7] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 18% market share.[8] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 1%.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. Accordingly, competitive forces constrain exchange transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

Pursuant to Commission approval, the Exchange adopted an order type known as Directed Orders.[10] Under Exchange rules, the ATS to which a Directed Order is routed is responsible for validating whether the order is eligible to be accepted, and if such ATS determines to reject the order, the order would be cancelled. Directed Orders that are the subject of this proposed rule change are those that are routed to OneChronos LLC (''OneChronos'').

The Exchange implemented the routing functionality to OneChronos on August 31, 2022,[11] and introduced the functionality at that time without charging a fee.[12] The Exchange now proposes to adopt a fee of $0.0015 per share for Directed Orders routed to OneChronos. To reflect the proposed fee, the Exchange proposes to amend current Section II. Routing Fees (All ETP Holders) to state ''$0.0015 per share for Directed Orders routed to OneChronos LLC'' for securities priced at or above $1.00.

Since its implementation, the Directed Order functionality has facilitated additional trading opportunities by offering ETP Holders the ability to designate orders submitted to the Exchange to be routed to OneChronos for execution. The functionality has also created efficiencies for ETP Holders that choose to use the functionality by enabling them to send orders that they wish to route to OneChronos through the Exchange by leveraging order entry protocols already configured for their interaction with the Exchange. Routing functionality offered by the Exchange is completely optional and Participants can readily select between various providers of routing services, including other exchanges and non-exchange venues. ETP Holders that choose not to utilize Directed Orders would continue to be able to trade on the Exchange as they currently do.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[13] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[14] 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.

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15]

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, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The routing of orders to OneChronos is provided by the Exchange on a voluntary basis and no rule or regulation requires that the Exchange

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[6] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, *available at http://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

[10] A Directed Order is a Limit Order with instructions to route on arrival at its limit price to a specified ATS with which the Exchange maintains an electronic linkage. *See* Rule 7.31(f)(4). *See also* Securities Exchange Act Release No. 95426 (August 4, 2022), 87 FR 48718 (August 10, 2022) (SR–NYSENAT–2022–06).

[11] *See https://www.nyse.com/publicdocs/nyse/notifications/trader-update/110000456275/OneChronos_August_2022_Trader_Update_Final.pdf.*

[12] *See* Securities Exchange Act Release No. 95742 (September 12, 2022), 87 FR 57008 (September 16, 2022) (SR–NYSENAT–2022–17).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] *See supra* note 4.

offer it. Nor does any rule or regulation require market participants to send orders to an ATS generally, let alone to OneChronos. The routing of orders to OneChronos operates similarly to the Primary Only Order already offered by the Exchange, which is an order that is routed directly to the primary listing market on arrival, without interacting with the interest on the Exchange Book.[16]

The Exchange believes its proposal equitably allocates its fees among market participants. The Exchange believes that the proposal represents an equitable allocation of fees because it would apply uniformly to all ETP Holders, in that all ETP Holders will have the ability to designate orders submitted to the Exchange to be routed to OneChronos, and each such ETP Holder would be charged the proposed fee when utilizing the functionality. Without having a view of ETP Holders' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed fee would result in any ETP Holder from reducing or discontinuing its use of the routing functionality. While the Exchange has no way of knowing whether this proposed rule change would serve as a disincentive to utilize the order type, the Exchange believes that a number of ETP Holders will continue to utilize the functionality because of the efficiencies created for ETP Holders that enables them to send orders that they wish to route to OneChronos through the Exchange by leveraging order entry protocols already configured for their interactions with the Exchange.

The Exchange reiterates that the routing functionality offered by the Exchange is completely optional and that the Exchange operates in a highly competitive market in which market participants can readily select between various providers of routing services with different product offerings and different pricing. The Exchange believes that the proposed flat fee structure for orders routed to away venues is a fair and equitable approach to pricing, as it will provide certainty with respect to execution fees.

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes it is not unfairly discriminatory as the proposal to charge a fee would be assessed on an equal basis to all ETP Holders that use the Directed Order functionality. Moreover, this proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that this proposal does not permit unfair discrimination because the changes described in this proposal would be applied to all similarly situated ETP Holders. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed rule change would not permit unfair discrimination among ETP Holders because the Directed Order functionality would remain available to all ETP Holders on an equal basis and each such participant would be charged the same fee for using the functionality.

Finally, the submission of orders to the Exchange is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with section 6(b)(8) of the Act,[17] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. 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.'' [18] The Exchange does not believe that the proposed fee change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. ETP Holders may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of ETP Holders or competing venues to maintain their competitive standing in the financial markets.

*Intramarket Competition.* The Exchange believes the proposed amendment to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Directed Order functionality is available to all ETP Holders and all ETP Holders that use the functionality to route their orders to OneChronos would be charged the proposed fee. The routing of orders to OneChronos is provided by the Exchange on a voluntary basis and no rule or regulation requires that the Exchange offer it. ETP Holders have the choice whether or not to use the Directed Order functionality and those that choose not to utilize it will not be impacted by the proposed rule change. The Exchange also does not believe the proposed rule change would impact intramarket competition as the proposed fee would apply to all ETP Holders equally that choose to utilize the Directed Order functionality, and therefore the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading is currently less than 1%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A) [19] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

[16] *See* Rule 7.31(f)(1).

[17] 15 U.S.C. 78f(b)(8).

[18] *See supra* note 4.

[19] 15 U.S.C. 78s(b)(3)(A).

investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSENAT–2023–15 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSENAT–2023–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSENAT–2023–15 and should be submitted on or before September 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2023–17607 Filed 8–15–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98112; File No. SR–CboeBZX–2023–028]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 3 to, and Order Instituting Proceedings To Determine Whether To Approve or Disapprove, a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

August 11, 2023.

On April 25, 2023, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the ARK 21Shares Bitcoin ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on May 15, 2023.[3] On June 15, 2023, pursuant to section 19(b)(2) of the Act,[4] 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 disapprove the proposed rule change.[5] On June 28, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. On June 30, 2023, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety. On July 11, 2023, the Exchange filed Amendment No. 3 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 3 amended and replaced the proposed rule change, as modified by Amendment No. 2, in its entirety. The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 3, from interested persons and to institute proceedings pursuant to section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 3.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to list and trade shares of the ARK 21Shares Bitcoin ETF (the ''Trust''),[7] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

This Amendment No. 3 to SR–CboeBZX–2023–028 amends and replaces in its entirety the proposal as originally submitted on April 25, 2023 and as amended by Amendment No. 1

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97461 (May 9, 2023), 88 FR 31045. Comments received on the proposed rule change can be found at: *https://www.sec.gov/comments/SR-Cboebzx-2023-028/srcboebzx2023028.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 97732, 88 FR 40877 (June 22, 2023). The Commission designated August 13, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] The Trust was formed as a Delaware statutory trust on June 22, 2021 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

on June 28, 2023 and Amendment No. 2 on June 30, 2023. The Exchange submits this Amendment No. 3 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),[8] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[9] [10] 21Shares US LLC is the sponsor of the Trust (the ''Sponsor''). The Shares will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[11] As further discussed below, the Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[12] Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the ''CFTC'') regulated futures market.[13] Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other

[8] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[9] All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

[10] The Exchange notes that two different proposals to list and trade shares of the Trust were disapproved by the Commission on March 31, 2022 and January 26, 2023. *See* Exchange Act Release Nos. 94571 (March 31, 2022), 87 FR 20014 (April 6, 2022) and 96751 (January 26, 2023), 88 FR 628 (January 31, 2023).

[11] *See* draft Registration Statement on Form S–1, dated June 28, 2021 submitted to the Commission by the Sponsor on behalf of the Trust. The descriptions of the Trust, the Shares, and the Index (as defined below) contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[12] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order'').

[13] *See* streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22) (the ''First Gold Approval Order''); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR–Amex–2005–072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR–NYSEArca–2009–40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR–NYSEArca–2009–28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the ''major world gold markets,'' that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR–NYSEArca–2010–84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR–NYSEArca–2010–71) (notice of proposed rule change included NYSE Arca's representation that ''the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,'' that ''COMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR–NYSEArca–2012–111) (notice of proposed rule change included NYSE Arca's representation that ''[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange ... and Tokyo Commodities Exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR–NYSEArca– 2012–18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR–NYSEArca–2012–28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR–NYSEArca–2012–66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR–NYSEArca–2013–61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR–NYSEArca–2013–137) (notice of proposed rule change included NYSE Arca's representation that ''COMEX is the largest gold futures and options exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR–NYSEArca–2016–84).

commodities and currencies. The Commission specifically noted in the Winklevoss Order that the First Gold Approval Order ''was based on an assumption that the currency market and the spot gold market were largely unregulated.'' [14]

As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in mind, the CME Bitcoin Futures market is the proper market to consider in determining whether there is a related regulated market of significant size.

Further to this point, the Exchange notes that the Commission has approved proposals related to the listing and trading of funds that would primarily hold CME Bitcoin Futures that are registered under the Securities Act of 1933.[15] In the Teucrium Approval, the Commission found the CME Bitcoin Futures market to be a regulated market of significant size as it relates to CME Bitcoin Futures, an odd tautological truth that is also inconsistent with prior disapproval orders for ETPs that would hold actual bitcoin instead of derivatives contracts (''Spot Bitcoin ETPs'') that use the exact same pricing methodology as the CME Bitcoin Futures. As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME Bitcoin Futures market represents a regulated market of significant size as it relates both to the CME Bitcoin Futures market and to the spot bitcoin market and that this proposal should be approved.

Finally, as discussed in greater detail below, the Trust provides investors interested in exposure to bitcoin with important protections that are not always available to investors that invest directly in bitcoin, including protection against insolvency, cyber attacks, and other risks. If U.S. investors had access to vehicles such as the Trust for their bitcoin investments, instead of directing their bitcoin investments into loosely regulated offshore vehicles (such as loosely regulated centralized exchanges that have since faced bankruptcy proceedings or other insolvencies), then countless investors would have protected their principal investments in bitcoin and thus benefited.

Background

Bitcoin is a digital asset based on the decentralized, open-source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or ''blockchain,'' on which all bitcoin transactions are recorded (the ''Bitcoin Network'' or ''Bitcoin''). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It's generally understood that the combination of these two features—a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network—gives bitcoin its value.[16] The first rule filing proposing to list an exchange-traded product to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.[17] At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately $10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.[18] Similarly, regulated U.S. bitcoin futures contracts did not exist. The CFTC had determined that bitcoin is a commodity,[19] but had not engaged in significant enforcement actions in the space. The New York Department of Financial Services (''NYDFS'') adopted its final BitLicense regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.[20] While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only $60 million in assets.[21] There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the Staff of the Commission noted in a letter to the Investment Company Institute and SIFMA that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.[22] Fast forward to today and the digital assets financial ecosystem, including bitcoin, has progressed significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities [23] and shares

[14] *See* Winklevoss Order at 37592.

[15] *See* Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the ''Teucrium Approval'') and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the ''Bitcoin Futures Approvals'').

[16] For additional information about bitcoin and the Bitcoin Network, *see https://bitcoin.org/en/getting-started; https://www.fidelity digitalassets.com/articles/addressing-bitcoin-criticisms;* and *https://www.vaneck.com/education/investment-ideas/investing-in-bitcoin-and-digital-assets/.*

[17] *See* Winklevoss Order.

[18] Digital assets that are securities under U.S. law are referred to throughout this proposal as ''digital asset securities.'' All other digital assets, including bitcoin, are referred to interchangeably as ''cryptocurrencies'' or ''virtual currencies.'' The term ''digital assets'' refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

[19] *See* ''In the Matter of Coinflip, Inc.'' (''Coinflip'') (CFTC Docket 15–29 (September 17, 2015)) (order instituting proceedings pursuant to sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated: ''section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. 1a(9). The definition of a 'commodity' is broad. *See, e.g.,* Board of Trade of City of Chicago v. SEC, 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.''

[20] A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. *See https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities.*

[21] Data as of March 31, 2016 according to publicly available filings. *See* Bitcoin Investment Trust Form S–1, dated May 27, 2016, available: *https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm.*

[22] *See* letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association (January 18, 2018), *available at https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm.*

[23] *See* Prospectus supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333–233363), *available at: https://www.sec.gov/*

Continued

in investment vehicles holding bitcoin futures.[24] Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services. For example, in February 2023, the Commission proposed to amend Rule 206(4)–2 under the Advisers Act of 1940 (the ''custody rule'') to expand the scope beyond client funds and securities to include all crypto assets, among other assets; [25] in May 2021, the Staff of the Commission released a statement permitting open-end mutual funds to invest in cash-settled bitcoin futures; in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3–3 under the Exchange Act (the ''Custody Statement''); [26] in September 2020, the Staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (''ATS'') for digital asset securities, subject to specified conditions; [27] in October 2019, the Staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,[28] and multiple transfer agents who provide services for digital asset securities registered with the Commission.[29]

Outside the Commission's purview, the regulatory landscape has changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, having at one point reached a market cap of over $1 trillion.[30] According to the CME Bitcoin Futures Report, from February 13, 2023 through March 27, 2023, CFTC regulated bitcoin futures represented between $750 million and $3.2 billion in notional trading volume on Chicago Mercantile Exchange (''CME'') (''Bitcoin Futures'') on a daily basis.[31] Open interest was over $1.4 billion for the entirety of the period and at one point was over $2 billion. The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.[32] As of February 14, 2023 the NYDFS has granted no fewer than thirty-four BitLicenses,[33] including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services, including the Trust's Custodian.[34] In addition, the Treasury's Office of Foreign Assets Control (''OFAC'') has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.[35]

In addition to the regulatory developments laid out above, more traditional financial market participants have become more active in cryptocurrency: large insurance companies, asset managers, university endowments, pension funds, and even historically bitcoin skeptical fund managers have allocated to bitcoin. As noted in the Financial Stability Oversight Council (''FSOC'') Report on Digital Asset Financial Stability Risks and Regulation, ''[i]ndustry surveys suggest that the scale of these investments grew quickly during the boom in crypto-asset markets through late 2021. In June 2022, PwC estimated that the number of crypto-specialist hedge funds was more than 300 globally, with $4.1 billion in assets under management. In addition, in a survey PwC found that 38 percent of surveyed traditional hedge funds were currently investing in 'digital assets,' compared to 21 percent the year prior.'' [36] The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the Staff of the Commission reviewed and which took effect automatically, and is now a reporting company.[37] Established companies like Tesla, Inc., MicroStrategy Incorporated, and Square, Inc., among others, announced substantial investments in bitcoin in amounts as large as $1.5 billion (Tesla) and $425 million (MicroStrategy). The foregoing examples demonstrate that bitcoin has gained mainstream usage and recognition.

Despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and U.S. regulated, U.S. exchange-traded vehicle remains limited. Instead current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and

*Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm.*

[24] *See* Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG Bitcoin Strategy Fund Registration, *available at: https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm.*

[25] *See* Investment Advisers Act Release No. 6240 88 FR 14672 (March 9, 2023) (Safeguarding Advisory Client Assets).

[26] *See* Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7–25–20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

[27] *See* letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf.*

[28] *See* letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf.*

[29] *See, e.g.,* Form TA–1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, *available at: https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml.*

[30] As of February 1, 2023, the total market cap of all bitcoin in circulation was approximately $450 billion.

[31] Data sourced from the CME Bitcoin Futures Report: 30 March, 2023, *available at: https://www.cmegroup.com/markets/cryptocurrencies/bitcoin/bitcoin.volume.htm.*

[32] The CFTC's annual report for Fiscal Year 2022 (which ended on September 30, 2022) noted that the CFTC completed the fiscal year with 18 enforcement filings related to digital assets. ''Digital asset actions included manipulation, a $1.7 billion fraudulent scheme, and a decentralized autonomous organization (DAO) failing to register as a SEF or FCM or to seek DCM designation.'' *See* CFTC FY 2022 Agency Financial Report, *available at: https://www.cftc.gov/media/7941/2022afr/download.* Additionally, the CFTC filed on March 27, 2023, a civil enforcement action against the owner/operators of the Binance centralized digital asset trading platform, which is one of the largest bitcoin derivative exchanges. *See* CFTC Release No. 8680–23 (March 27, 2023), *available at: https://www.cftc.gov/PressRoom/PressReleases/8680-23.*

[33] *See https://www.dfs.ny.gov/virtual_currency_businesses.*

[34] The ''Custodian'' is Coinbase Trust Company, LLC.

[35] *See* U.S. Department of the Treasury Enforcement Release: ''OFAC Enters Into $98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions'' (December 30, 2020) *available at: https://home.treasury.gov/system/files/126/20201230_bitgo.pdf. See also* U.S. Department of the Treasury Enforcement Release: ''Treasury Announces Two Enforcement Actions for over $24M and $29M Against Virtual Currency Exchange, Bittrex, Inc.'' (October 11, 2022) *available at: https://home.treasury.gov/news/press-releases/jy1006. See also* U.S. Department of Treasure Enforcement Release ''OFAC Settles with Virtual Currency Exchange Kraken for $362,158.70 Related to Apparent Violations of the Iranian Transactions and Sanctions Regulations'' (November 28, 2022) *available at: https://home.treasury.gov/system/files/126/20221128_kraken.pdf.*

[36] *See* the FSOC ''Report on Digital Asset Financial Stability Risks and Regulation 2022'' (October 3, 2022) (at footnote 26) at *https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf.*

[37] *See* Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020) *https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf.*

complexity associated with accessing spot bitcoin; (ii) over-the-counter bitcoin funds (''OTC Bitcoin Funds'') with high management fees and potentially volatile premiums and discounts; [38] (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks; [39] or (iv) purchasing Bitcoin Futures ETFs, as defined below, which represent a sub-optimal structure for long-term investors that will cost them significant amounts of money every year compared to Spot Bitcoin ETPs, as further discussed below. Meanwhile, investors in many other countries, including Canada and Brazil, are able to use more traditional exchange listed and traded products (including exchange-traded funds holding physical bitcoin) to gain exposure to bitcoin. Similarly, investors in Switzerland and across Europe have access to Exchange Traded Products (issued by 21Shares, among others) which trade on regulated exchanges and provide exposure to a broad array of spot crypto assets. U.S. investors, by contrast, are left with fewer and more risky means of getting bitcoin exposure, as described above.[40]

To this point, the lack of a Spot Bitcoin ETP exposes U.S. investor assets to significant risk because investors that would otherwise seek cryptoasset exposure through a Spot Bitcoin ETP are forced to find alternative exposure through generally riskier means. For instance, many U.S. investors that held their digital assets in accounts at FTX,[41] Celsius Network LLC,[42] BlockFi Inc.[43] and Voyager Digital Holdings, Inc.[44] have become unsecured creditors in the insolvencies of those entities. If a Spot Bitcoin ETP was available, it is likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in a transparent, regulated, and well-understood structure—a Spot Bitcoin ETP. To this point, approval of a Spot Bitcoin ETP would represent a major win for the protection of U.S. investors in the cryptoasset space. As further described below, the Trust, like all other series of Commodity-Based Trust Shares, is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding digital assets, including bitcoin, on centralized platforms.

Additionally, investors in other countries, specifically Canada, generally pay lower fees than U.S. retail investors that invest in OTC Bitcoin Funds due to the fee pressure that results from increased competition among available bitcoin investment options. Without an approved and regulated Spot Bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to get access to bitcoin exposure. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. In addition to the benefits to U.S. investors articulated throughout this proposal, approving this proposal (and others like it) would provide U.S. exchange-traded funds and mutual funds with a U.S.-listed and regulated product to provide such access rather than relying on either flawed products or products listed and primarily regulated in other countries.

Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of ETFs registered under the Investment Company Act of 1940, as amended (the ''1940 Act'') and the Bitcoin Futures Approvals that provide exposure to bitcoin primarily through CME Bitcoin Futures (''Bitcoin Futures ETFs''). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on bitcoin. The Bitcoin Futures Approvals, however, have created a logical inconsistency in the application of the standard the Commission applies when considering bitcoin ETP proposals.

As discussed further below, the standard applicable to bitcoin ETPs is whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size in the underlying asset. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.[45] Leaving aside the analysis of that standard until later in this proposal,[46] the Exchange believes

[38] The premium and discount for OTC Bitcoin Funds is known to move rapidly. For example, over the period of 12/21/20 to 1/21/21, the premium for the largest OTC Bitcoin Fund went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%. This means that investors are buying shares of a fund that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. Even operating within the normal premium and discount range, it's possible for an investor to buy shares of an OTC Bitcoin Fund only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of bitcoin. That is to say—the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy for such vehicles is often an OTC Bitcoin Fund, meaning that even investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility.

[39] A number of operating companies engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced investments as large as $5.3 billion in bitcoin. Without access to bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek. In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP. *See e.g.,* ''7 public companies with exposure to bitcoin'' (February 8, 2021) available at: *https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html;* and ''Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas'' (February 19, 2021) available at: *https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html.*

[40] The Exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowed the listing and trading of Spot Bitcoin ETPs.

[41] *See* FTX Trading Ltd., et al., Case No. 22–11068.

[42] *See* Celsius Network LLC, et al., Case No. 22–10964.

[43] *See* BlockFi Inc., Case No. 22–19361.

[44] *See* Voyager Digital Holdings, Inc., et al., Case No. 22–10943.

[45] *See* Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that ''when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.'' As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be ''regulated'' in order for a spot commodity ETP to be approved by the Commission, and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

[46] As further outlined below, both the Exchange and the Sponsor believe that the CME Bitcoin

Continued

that the following rationale the Commission applied to a Bitcoin Futures ETF should result in the Commission approving this and other Spot Bitcoin ETP proposals:

> The CME ''comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus, the CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.[47]

CME Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts . . . indirectly by trading outside of the CME bitcoin futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME Bitcoin Futures. This was further acknowledged in the ''Grayscale lawsuit'' [48] when Judge Rao stated '' . . . the Commission in the Teucrium order recognizes that the futures prices are influenced by the spot prices, and the Commission concludes in approving futures ETPs that any fraud on the spot market can be adequately addressed by the fact that the futures market is a regulated one . . .'' The Exchange agrees with the Commission on this point and notes that the pricing mechanism applicable to the Shares is similar to that of the CME Bitcoin Futures. As further discussed below, this view is also consistent with the Advisor's research.

Further to this point, a Bitcoin Futures ETF is potentially more susceptible to potential manipulation than a Spot Bitcoin ETP that offers only in-kind creation and redemption because settlement of CME Bitcoin Futures (and thus the value of the underlying holdings of a Bitcoin Futures ETF) occurs at a single price derived from spot bitcoin pricing, while shares of a Spot Bitcoin ETP would represent interest in bitcoin directly and authorized participants for a Spot Bitcoin ETP (as proposed herein) would be able to source bitcoin from any exchange and create or redeem with the applicable trust regardless of the price of the underlying index. It is not logically possible to conclude that the CME Bitcoin Futures market represents a significant market for a futures-based product, but also conclude that the CME Bitcoin Futures market does not represent a significant market for a spot-based product.

In addition to potentially being more susceptible to manipulation than a Spot Bitcoin ETP, the structure of Bitcoin Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Bitcoin ETP.[49] Specifically, the cost of rolling CME Bitcoin Futures contracts will cause the Bitcoin Futures ETFs to lag the performance of bitcoin itself and, at over a billion dollars in assets under management, would cost U.S. investors significant amounts of money on an annual basis compared to Spot Bitcoin ETPs. Such rolling costs would not be required for Spot Bitcoin ETPs that hold bitcoin. Further, Bitcoin Futures ETFs could potentially hit CME position limits, which would force a Bitcoin Futures ETF to invest in non-futures assets for bitcoin exposure and cause potential investor confusion and lack of certainty about what such Bitcoin Futures ETFs are actually holding to try to get exposure to bitcoin, not to mention completely changing the risk profile associated with such an ETF. While Bitcoin Futures ETFs represent a useful trading tool, they are clearly a sub-optimal structure for U.S. investors that are looking for long-term exposure to bitcoin that will, based on the calculations above, unnecessarily cost U.S. investors significant amounts of money every year compared to Spot Bitcoin ETPs and the Exchange believes that any proposal to list and trade a Spot Bitcoin ETP should be reviewed by the Commission with this important investor protection context in mind.

To the extent the Commission may view differential treatment of Bitcoin Futures ETFs and Spot Bitcoin ETPs as warranted based on the Commission's concerns about the custody of physical Bitcoin that a Spot Bitcoin ETP would hold (compared to cash-settled futures contracts),[50] the Sponsor believes this concern is mitigated to a significant degree by the custodial arrangements that the Trust has contracted with the Custodian to provide, as further outlined below. In the Custody Statement, the Commission stated that the fourth step that a broker-dealer could take to shield traditional securities customers and others from the risks and consequences of digital asset security fraud, theft, or loss is to establish, maintain, and enforce reasonably designed written policies, procedures, and controls for safekeeping and demonstrating the broker-dealer has exclusive possession or control over digital asset securities that are consistent with industry best practices to protect against the theft, loss, and unauthorized and accidental use of the private keys necessary to access and transfer the digital asset securities the broker-dealer holds in custody. While bitcoin is not a security and the Custodian is not a broker-dealer, the Sponsor believes that similar considerations apply to the Custodian's holding of the Trust's bitcoin. After diligent investigation, the Sponsor believes that the Custodian's policies, procedures, and controls for safekeeping, exclusively possessing, and controlling the Trust's bitcoin holdings are consistent with industry best practices to protect against the theft, loss, and unauthorized and accidental use of the private keys. As a trust company chartered by the NYDFS, the Sponsor notes that the Custodian is subject to extensive regulation and has among longest track records in the industry of providing custodial services for digital asset private keys. Under the circumstances, therefore, to the extent the Commission believes that its concerns about the risks of spot bitcoin custody justifies differential treatment of a Bitcoin Futures ETF versus a Spot Bitcoin ETP, the Sponsor believes that the fact that the Custodian employs the same types of policies, procedures, and

Futures market represents a regulated market of significant size and that this proposal and others like it should be approved on this basis.

[47] *See* Teucrium Approval at 21679.

[48] *Grayscale Investments, LLC* v. *Securities and Exchange Commission*, et al., Case No. 22–1142.

[49] *See e.g.,* ''Bitcoin ETF's Success Could Come at Fundholders' Expense,'' Wall Street Journal (October 24, 2021), available at: *https://www.wsj.com/articles/bitcoin-etfs-success-could-come-at-fundholders-expense-11635080580;* ''Physical Bitcoin ETF Prospects Accelerate,'' *ETF.com* (October 25, 2021), available at: *https://www.etf.com/sections/blog/physical-bitcoin-etf-prospects-shine?nopaging=1&__cf_chl_jschl_tk__=pmd_JsK.fjXz9eAQW9zol0qpzhXDrrlpIVdoCloLXbLjl44-1635476946-0-gqNtZGzNApCjcnBszQql.*

[50] See, *e.g.,* Division of Investment Management Staff, Staff Statement on Funds Registered Under the Investment Company Act Investing in the Bitcoin Futures Market, May 11, 2021 (''The Bitcoin futures market also has not presented the custody challenges associated with some cryptocurrency-based investing because the futures are cash-settled'').

safeguards in handling spot bitcoin that the Commission has stated that broker-dealers should implement with respect to digital asset securities would appear to weaken the justification for treating a Bitcoin Futures ETF compared to a Spot Bitcoin ETP differently due to spot bitcoin custody concerns.

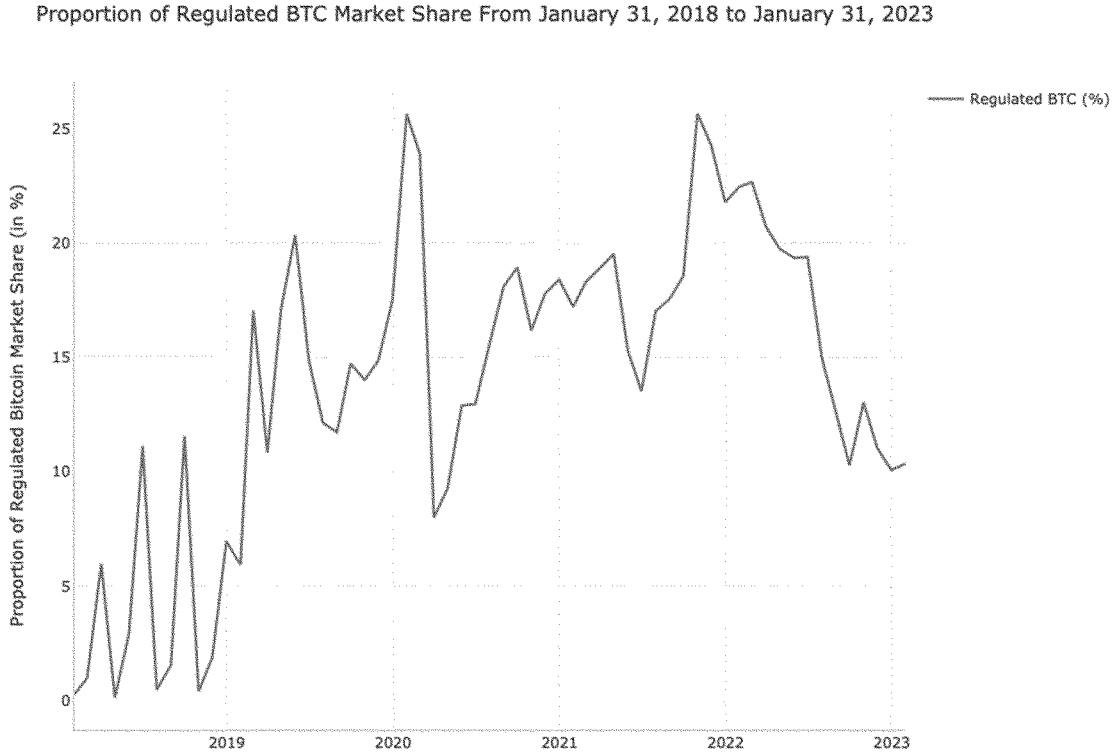
Based on the foregoing, the Exchange and Sponsor believe that any objective review of the proposals to list Spot Bitcoin ETPs compared to the Bitcoin Futures ETFs and the Bitcoin Futures Approvals would lead to the conclusion that Spot Bitcoin ETPs should be available to U.S. investors and, as such, this proposal and other comparable proposals to list and trade Spot Bitcoin ETPs should be approved by the Commission. Stated simply, U.S. investors will continue to lose significant amounts of money from holding Bitcoin Futures ETFs as compared to Spot Bitcoin ETPs, losses which could be prevented by the Commission approving Spot Bitcoin ETPs. Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Bitcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a Bitcoin Futures ETF. Both the Exchange and Sponsor believe that the CME Bitcoin Futures market is a regulated market of significant size and that such manipulation concerns are mitigated, as described extensively below. After allowing and approving the listing and trading of Bitcoin Futures ETFs that hold primarily CME Bitcoin Futures, however, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the CME Bitcoin Futures market is a regulated market of significant size.

Given the current landscape, approving this proposal (and others like it) and allowing Spot Bitcoin ETPs to be listed and traded alongside Bitcoin Futures ETFs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for bitcoin exposure, and offer flexibility in the means of gaining exposure to bitcoin through transparent, regulated, U.S. exchange-listed vehicles.

Bitcoin Futures [51]

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.[52] The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has trended consistently up since launch.

According to the Sponsor, the increase in the volume on CME, over the past few years, is reflected in a higher proportion of the bitcoin market share. This is illustrated by plotting the proportion of monthly volume traded in bitcoin on the CME [53] (categorized as regulated in the chart and used as the numerator) in relation to the total bitcoin market, which is comprised of the sum of the volume of bitcoin futures on the CME and the spot volume on cryptocurrency exchanges [54] (categorized as unregulated and used as the denominator) from January 1, 2018 to January 31, 2023.




[51] Unless otherwise noted, all data and analysis presented in this section and referenced elsewhere in the filing has been provided by the Sponsor.

[52] According to CME, the CME CF Bitcoin Reference Rate aggregates the trade flow of major bitcoin spot exchanges during a specific calculation window into a once-a-day reference rate of the U.S. dollar price of bitcoin. Calculation rules are geared toward maximum transparency and real-time replicability in underlying spot markets, including Bitstamp, Coinbase, Gemini, itBit, and Kraken. For additional information, refer to *https://www.cmegroup.com/trading/cryptocurrency-indices/cf-bitcoin-reference-rate.html?redirect=/trading/cf-bitcoin-reference-rate.html.*

[53] Data on Bitcoin futures is available at *https://www.cmegroup.com/markets/cryptocurrencies/bitcoin/bitcoin.volume.html.*

[54] Data on Bitcoin volume traded on cryptocurrency exchanges is available at *https://www.cryptocompare.com.*

The proportion of volume traded on CME has increased from less than 1% at inception, to more than 10% over three and a half years. Furthermore, the CME market, as well as other crypto-linked markets, and the spot market are highly correlated. In markets that are globally and efficiently integrated, one would expect that changes in prices of an asset across all markets to be highly correlated. The rationale behind this is that quick and efficient arbitrageurs would capture potentially profitable opportunities, consequently converging prices to the average intrinsic value very rapidly.

Bitcoin markets exhibit a high degree of correlation. Using daily Bitcoin prices from centralized exchanges, ETP providers, and the CME from January 20, 2021 to February 1, 2023,[55] the Sponsor calculates the Pearson correlation of returns [56] across these markets and find a high degree of correlation.

Correlations are between 57% and 99%, with the latter found mainly across centralized exchanges due to their higher level of interconnectedness. The lower correlations pertain mainly to the ETPs, which are relatively newer products and are mainly offered by a few competing market makers who are required to trade in large blocks, thus making it economically infeasible to capture small mispricings. As additional investors and arbitrageurs enter the market and capture the mispricing opportunities between these markets, it is likely that there will be much higher levels of correlations across all markets.

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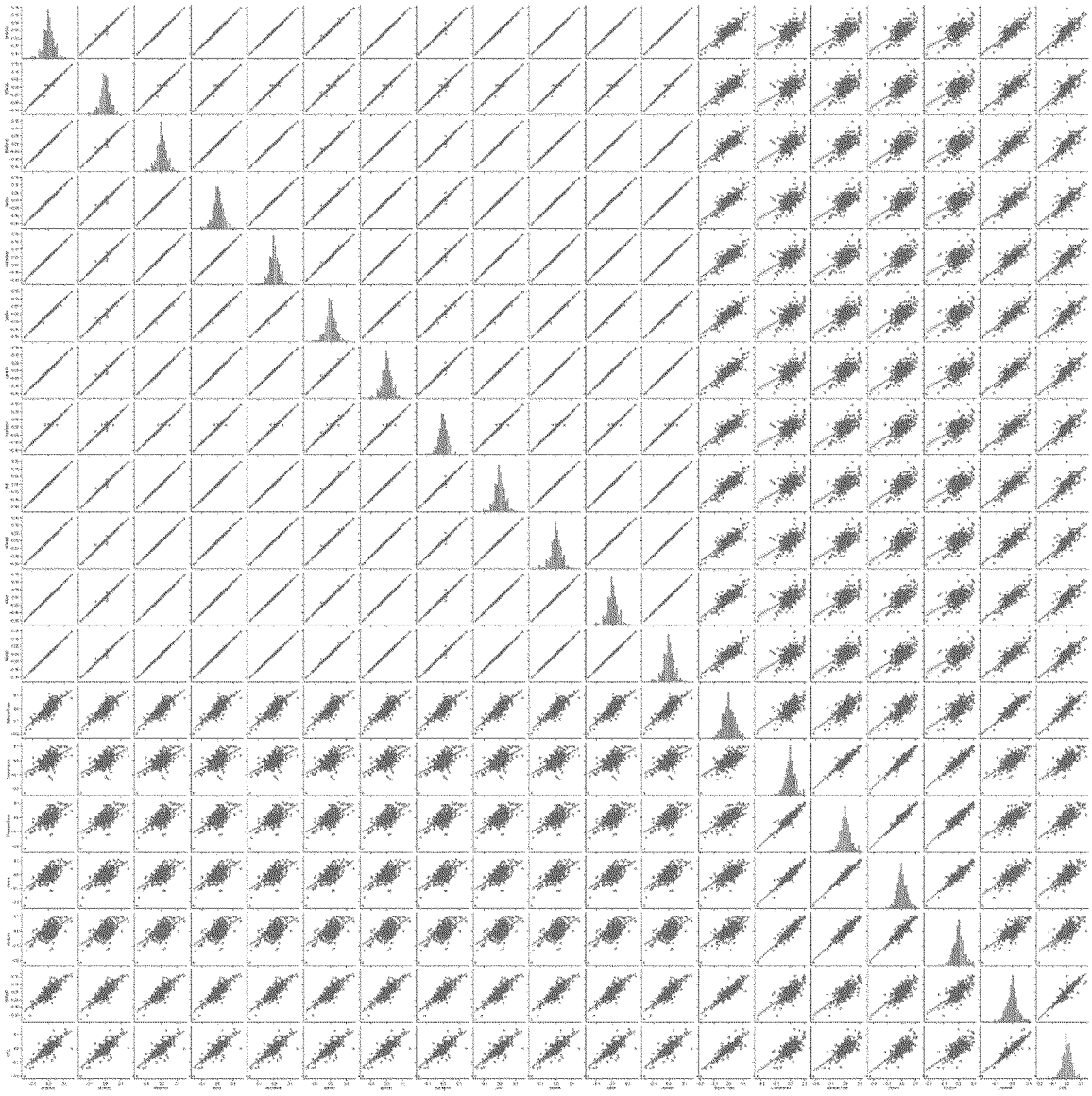
Pairwise Correlation of Bitcoin Daily Returns across Centralized Exchanges, ETPs, and the CME

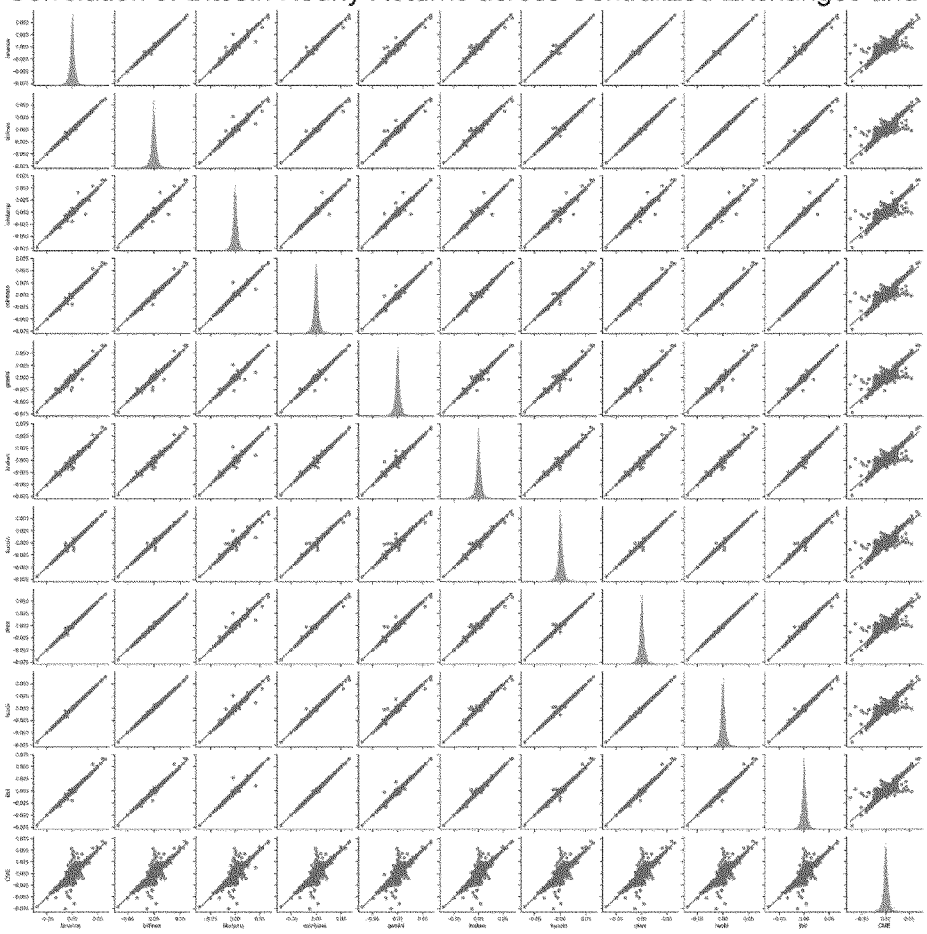


[55] The calculation of daily correlations used the period January 20, 2021 to February 1, 2023 as this is the common period across all the exchanges and data sources being analyzed.

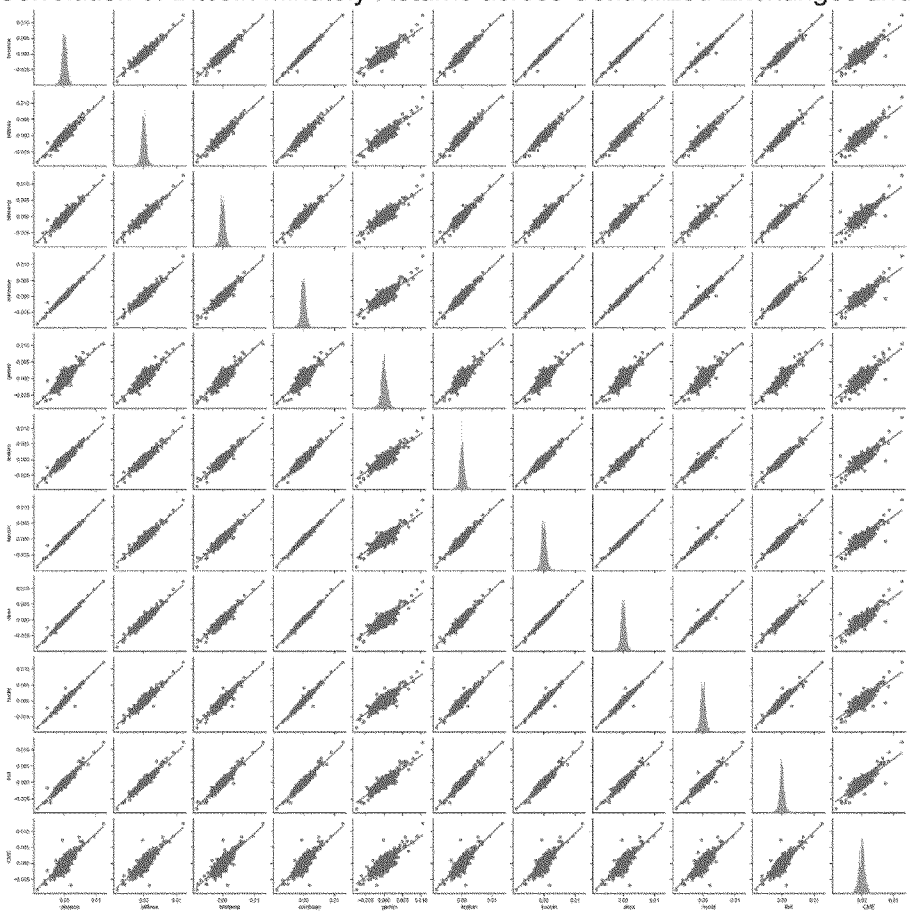
[56] The Pearson correlation is a measure of linear association between two variables and indicates the magnitude as well as direction of this relationship. The value can range between −1 (suggesting a strong negative association) and 1 (suggesting a strong positive association).

Pair-wise correlations of Bitcoin returns are also calculated on hourly and minute-by-minute sampling frequencies in order to estimate the intra-day associations across the different Bitcoin markets. The results show correlations no less than 92% among centralized exchanges and between the Bitcoin CME futures and centralized exchanges on an hourly basis, and no less than 78% on a minutely basis. This suggests that Bitcoin prices on centralized exchanges and the CME markets move very similarly and in a very efficient manner to quickly reflect changes in market conditions, not only on a daily basis, but also at much higher intra-day frequencies.

Pairwise Correlation of Bitcoin Hourly Returns across Centralized Exchanges and the CME



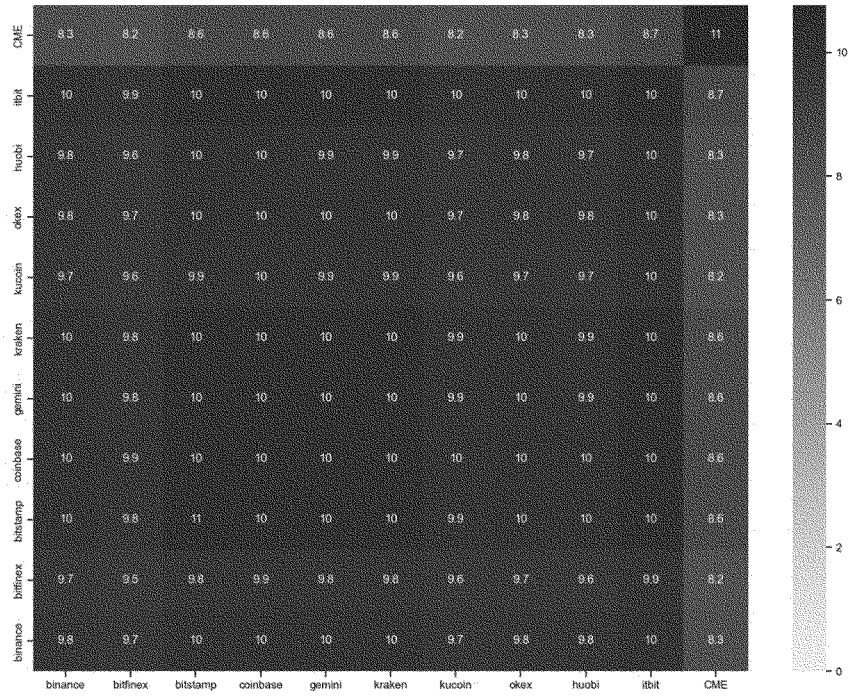
Pairwise Correlation of Bitcoin Minutely Returns across Centralized Exchanges and the CME



According to the Sponsor's research, this relationship holds true during periods of extreme price volatility. This implies that no single Bitcoin market can deviate significantly from the consensus, such that the market is sufficiently large and has an inherent unique resistance to manipulation. Hence, the Sponsor introduces a statistical co-moment called co-kurtosis, which measures to what extent two random variables change together.[57] If two returns series exhibit a high degree of co-kurtosis, this means that they tend to undergo extreme positive and negative changes simultaneously. A co-kurtosis value larger than +3 or less than −3 is considered statistically significant. The following table shows that the level of co-kurtosis is positive and very high between all market combinations of hourly returns, which suggests that Bitcoin markets tend to move very similarly especially for extreme price deviations.

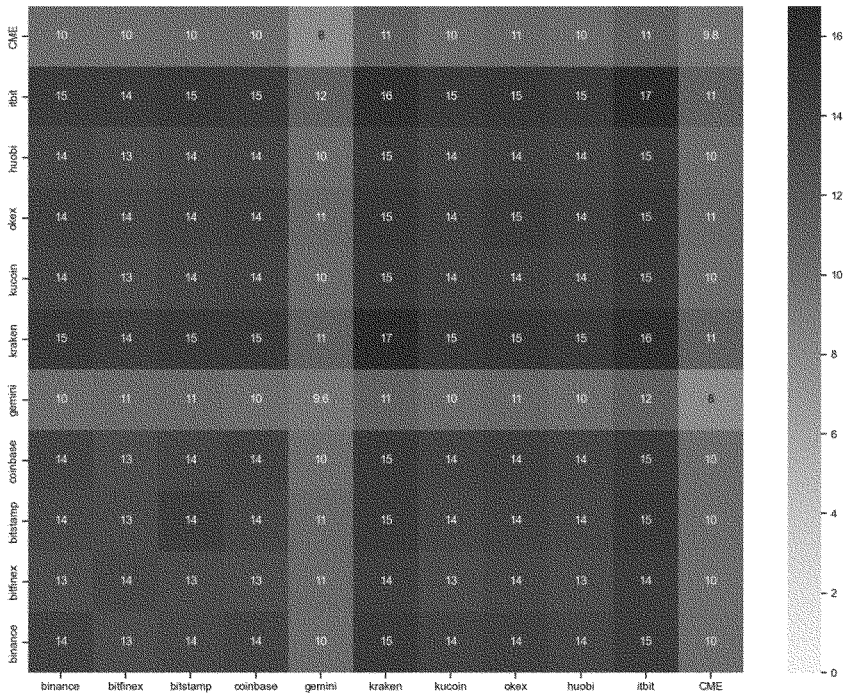
**Co-Kurtosis of Bitcoin Hourly Returns Across Centralized Exchanges, ETPs, and the CME**

[57] Co-skewness and Co-kurtosis are higher order cross-moments used in finance to examine how assets move together. Co-skewness measures the extent to which two variables undergo extreme deviations at the same time, whereby a positive (negative) value means that both values exhibit positive (negative) values simultaneously. While this measure is useful for estimating co-movements in one direction or the other, it does not allow us to test whether two variables comove similarly in either direction. For that, we apply the co-kurtosis, which measures the extent to which two variables undergo both extreme positive and negative deviations at the same time.




As a robustness check, the co-kurtosis metric is also calculated using minute-by-minute returns, and the conclusion remains the same, suggesting that all Bitcoin markets move in tandem especially during extreme market movements.

**Co-Kurtosis of Bitcoin Minutely Returns Across Centralized Exchanges, ETPs, and the CME**

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These results present evidence of a robust global Bitcoin market that quickly reacts in a unanimous manner to extreme price movements across both the spot markets, futures and ETP markets.

The Sponsor further believes that academic research corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates

that bitcoin futures lead the bitcoin spot market in price formation.[58]

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,[59] including Commodity-Based Trust Shares,[60] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [61] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [62] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[63] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[64]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[65]

(a) Manipulation of the ETP

According to the Sponsor's research presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index [66]) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. Further, the Trust only allows for in-kind creation and redemption, which, as further described below, reduces the potential for manipulation of the Shares through manipulation of the Index or any of its individual constituents, again emphasizing that a potential manipulator of the Shares would have to manipulate the entirety of the bitcoin spot market, which is led by the Bitcoin Futures market. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would

[58] *See* Hu, Y., Hou, Y. and Oxley, L. (2019). ''What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective'' (available at: *https://www.ncbi.nlm./nih.gov/pmc/articles/PMC7481826/*). This academic research paper concludes that ''There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective.'' *See also* Matthew Hougan, Hong Kim, and Satyajeet Pal (2021). ''Price Discovery in the Modern Bitcoin Market: Examining Lead-Lag Relationships Between the Bitcoin Spot and Bitcoin Futures Market'' (available at *https://static.bitwiseinvestments.com/Bitwise-Bitcoin-ETP-White-Paper-1.pdf*). This academic research paper also concluded that ''the CME bitcoin futures market is the dominant source of price discovery when compared with the bitcoin spot market, and that prices on the CME bitcoin futures market lead prices on bitcoin spot markets. . .''

[59] *See* Exchange Rule 14.11(f).

[60] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[61] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[62] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the Intermarket Surveillance Group (''ISG'') constitutes such a surveillance sharing agreement. See Wilshire Phoenix Disapproval.

[63] For a list of the current members and affiliate members of ISG, see *www.isgportal.com*.

[64] *See* Wilshire Phoenix Disapproval.

[65] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[66] As further described below, the ''Index'' for the Fund is the S&P Bitcoin Index. The current exchange composition of the Index is Binance, Bitfinex, Bitflyer, Bittrex, Bitstamp, Coinbase Pro, Gemini, HitBTC, Huobi, Kraken, KuCoin, and Poloniex.

assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

The Exchange is proposing to take additional steps to those described above to supplement its ability to obtain information that would be helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares. On June 21, 2023, the Exchange reached an agreement on terms with Coinbase, Inc. (''Coinbase''), an operator of a United States-based spot trading platform for Bitcoin that represents a substantial portion of US-based and USD denominated Bitcoin trading,[67] to enter into a surveillance-sharing agreement (''Spot BTC SSA'') and executed an associated term sheet. Based on this agreement on terms, the Exchange and Coinbase will finalize and execute a definitive agreement that the parties expect to be executed prior to allowing trading of the Commodity-Based Trust Shares.

The Spot BTC SSA is expected to be a bilateral surveillance-sharing agreement between the Exchange and Coinbase that is intended to supplement the Exchange's market surveillance program. The Spot BTC SSA is expected to have the hallmarks of a surveillance-sharing agreement between two members of the ISG, which would give the Exchange supplemental access to data regarding spot Bitcoin trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares.[68] This means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares. In addition, the Exchange can request further information from Coinbase related to spot bitcoin trading activity on the Coinbase exchange platform, if the Exchange determines that such information would be necessary to detect and investigate potential manipulation in the trading of the Commodity-Based Trust Shares.[69]

According to the Sponsor, a significant portion of the considerations around crypto pricing have historically stemmed from a lack of consistent pricing across markets. However, according to the Sponsor's research, cross-exchange spreads in Bitcoin have been declining consistently over the past several years. Based on the daily Bitcoin price series from several popular centralized exchanges[70] the Sponsor has calculated the largest cross-exchange percentage spread (labelled as %C-Spread) by deducting the highest or maximum price (P) at time t from the lowest or minimum, and dividing by the lowest across all exchanges (i). Formally, this is expressed as:

$$\%C - Spread_t = \frac{max(P_{i,t}) - min(P_{i,t})}{min(P_{i,t})}$$

The results show a clear and sharp decline in the %C-Spread, indicating that the Bitcoin market has become more efficient as cross-exchange prices have converged over time.

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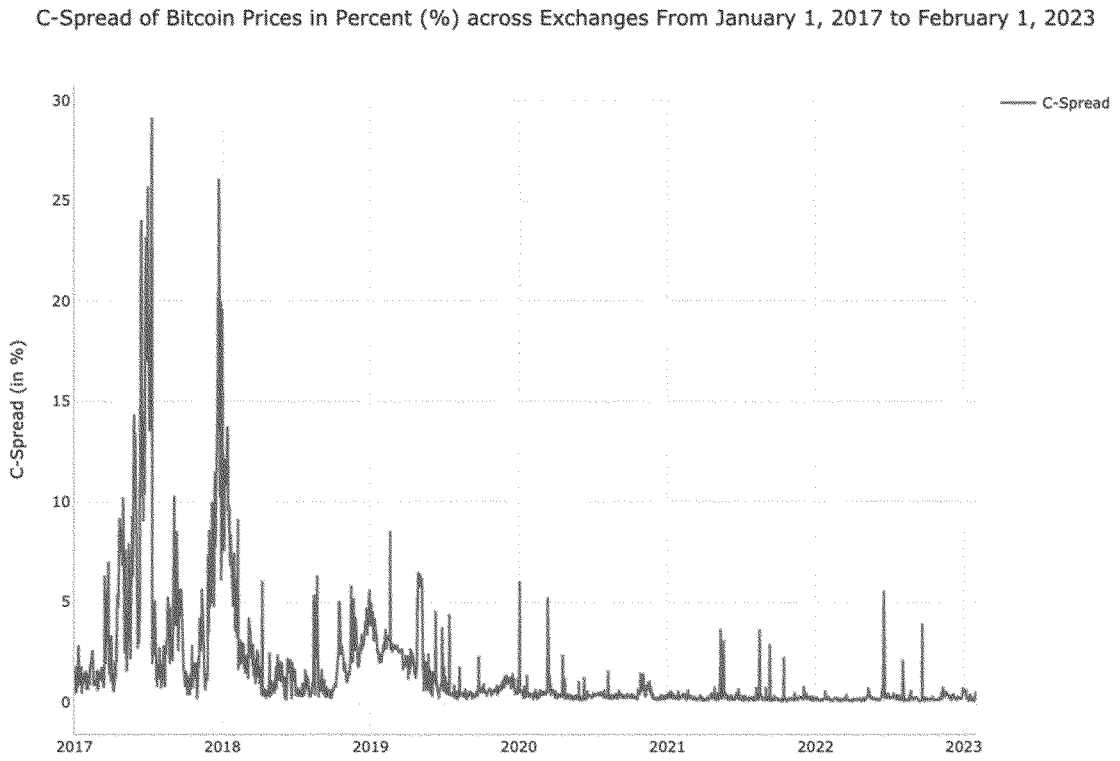
[67] According to a Kaiko Research report dated June 26, 2023, Coinbase represented roughly 50% of exchange trading volume in USD–BTC trading on a daily basis during May 2023.

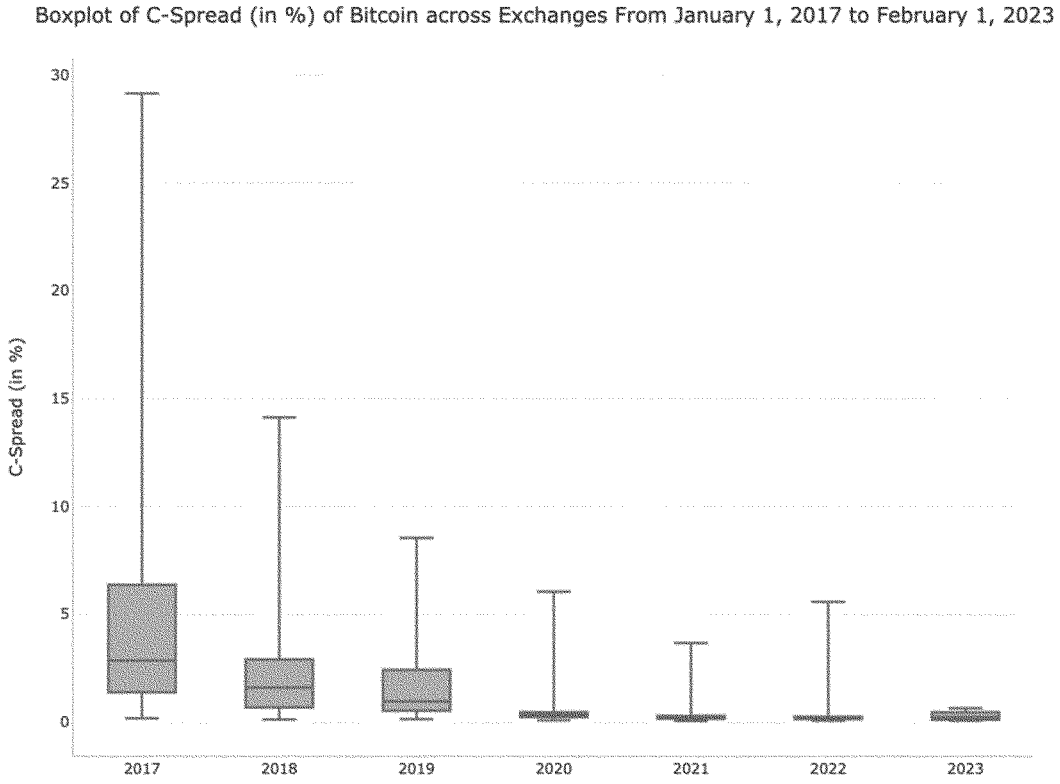
[68] For additional information regarding ISG and the hallmarks of surveillance-sharing between ISG members, see *https://isgportal.org/overview*.

[69] The Exchange also notes that it already has in place ISG-like surveillance sharing agreement with Cboe Digital Exchange, LLC and Cboe Clear Digital, LLC.

[70] The exchanges include Binance, Bitfinex, Bithumb, Bitstamp, Cexio, Coinbase, Coinone, Gateio, Gemini, HuobiPro, itBit, Kraken, Kucoin, and OKEX.

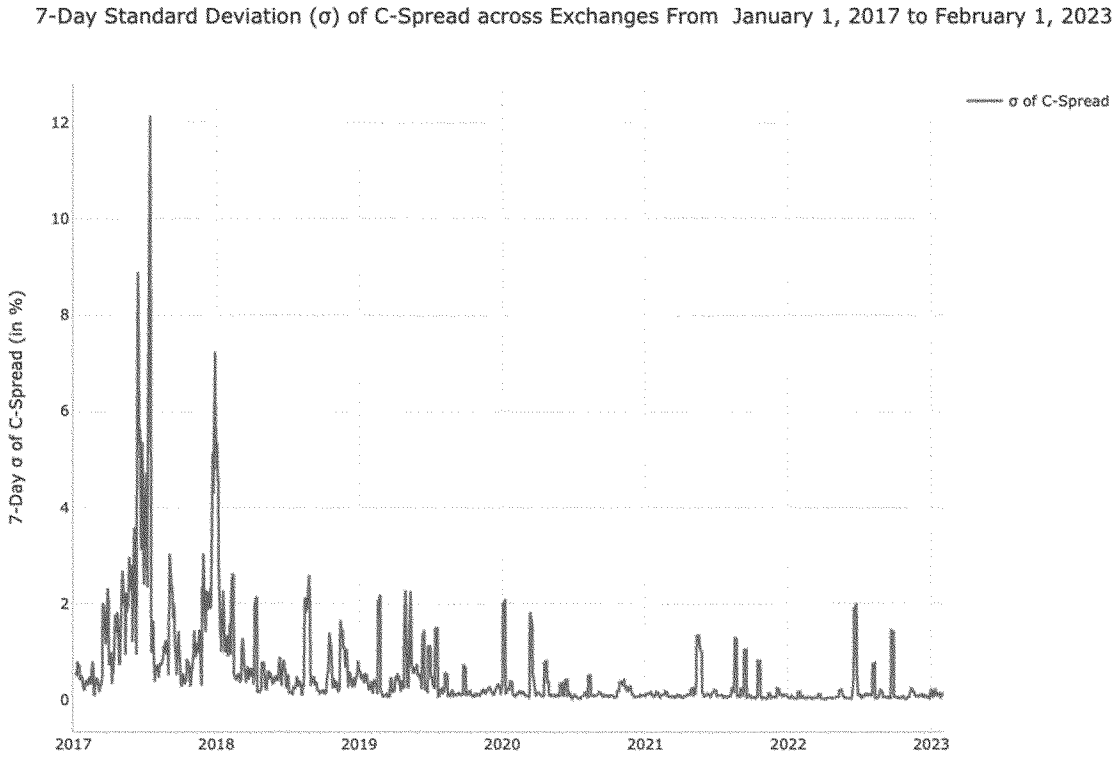



In addition, the magnitude of outlier % C-spreads has also declined over time. This boxplot shows that, not only did the median value of the %C-Spread decline over time, but also the extreme outlier values. For instance, the maximum %C-Spread for 2017, 2018, 2019, 2020, 2021, 2022, and 2023 (up until February 01, 2023) are 29.14%, 14.12%, 8.54%, 6.04%, 3.65%, 5.56%, and 0.63%, respectively. The market has experienced a 38% year-on-year decline in the annual median %C-Spread indicating a greater degree of Bitcoin price convergence across exchanges and a more efficient market.

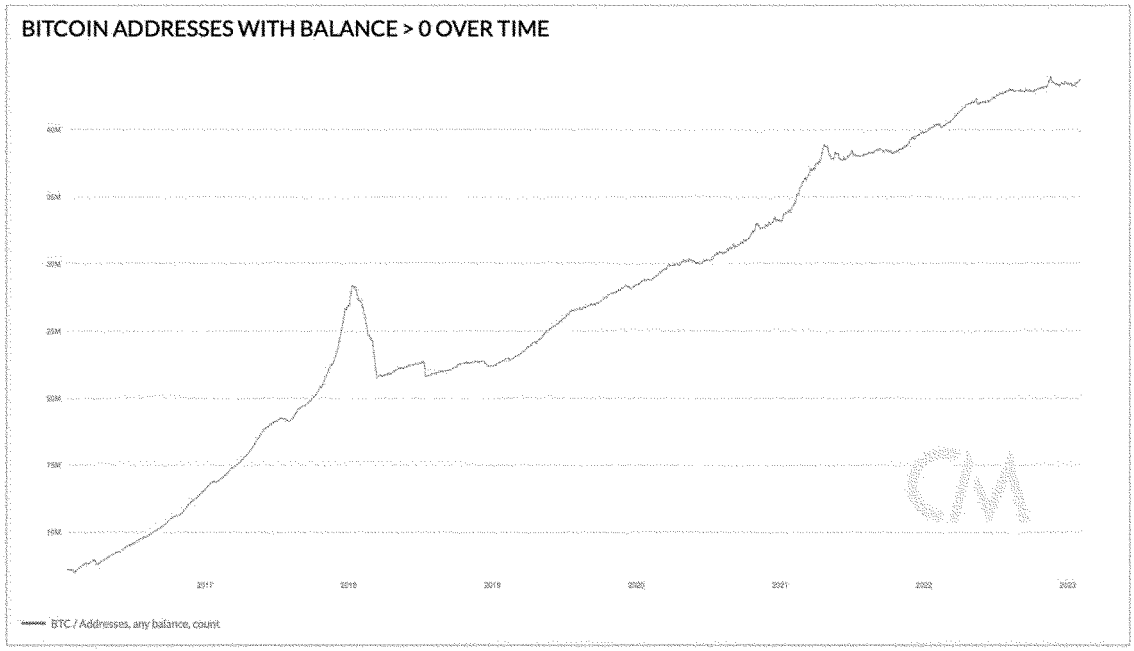


The dispersion (σ) of Bitcoin Prices has also declined over the same period. This chart shows the 7-day rolling standard deviation of the %C-Spread from January 1, 2017 to February 1, 2023. The Sponsor's research finds that the dispersion in Bitcoin prices across all exchanges has decreased over time, indicating that prices on all the considered exchanges converge towards the intrinsic average much more efficiently. This suggests that the market has become better at quickly reaching a consensus price for Bitcoin.

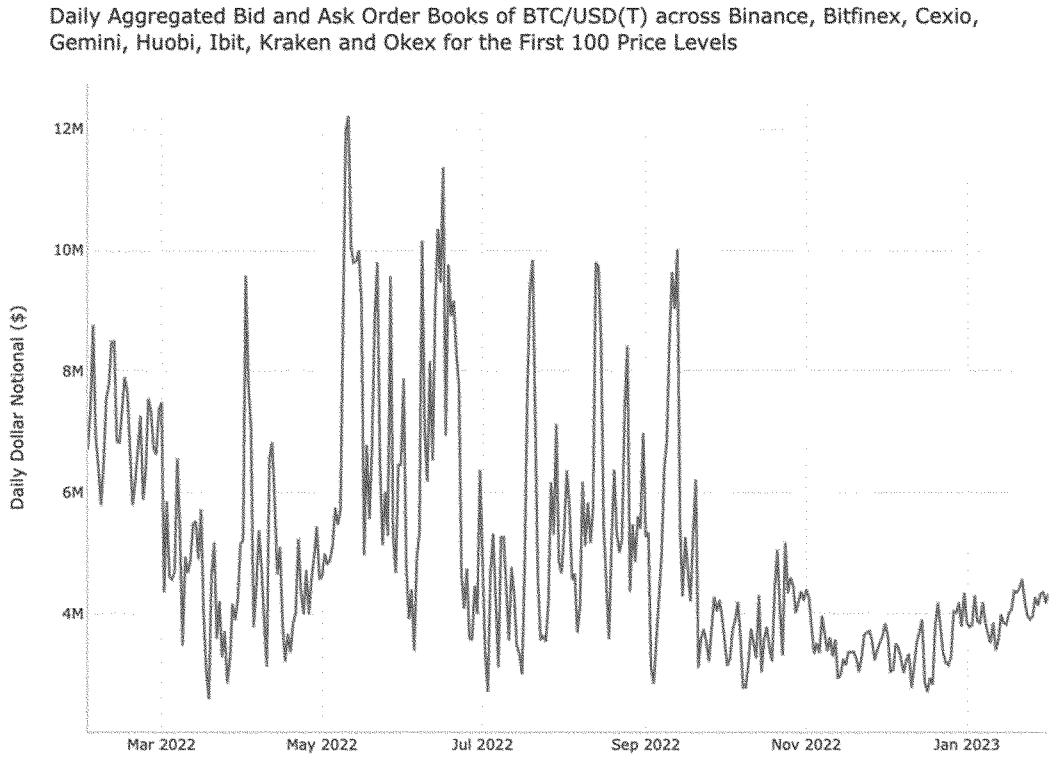
As the pricing of the crypto market becomes increasingly efficient, pricing methodologies become more accurate and less susceptible to manipulation. The clustering of prices across a variety of sources within the primary market points towards robust price discovery mechanisms and efficient arbitrage.




One factor that has contributed to the overall efficiency of, and improved price discovery within the Bitcoin market is the increase in the number of participants, and subsequently, the total dollar amount allocated to this market. This can be illustrated by the following chart, which shows the number of wallet addresses holding Bitcoin from January 2016 to February 2023.




The large number of participants in the Bitcoin market has manifested itself in high liquidity in the market. This is exhibited in the following chart, which shows the daily aggregated dollar notional of the bid and ask order books within the first 100 price levels across several of the largest centralized crypto exchanges from February 2022 to January 2023. Specifically, the dollar notional that is allocated closest to the mid price has hovered between $2.6 million and $12 million over that period.



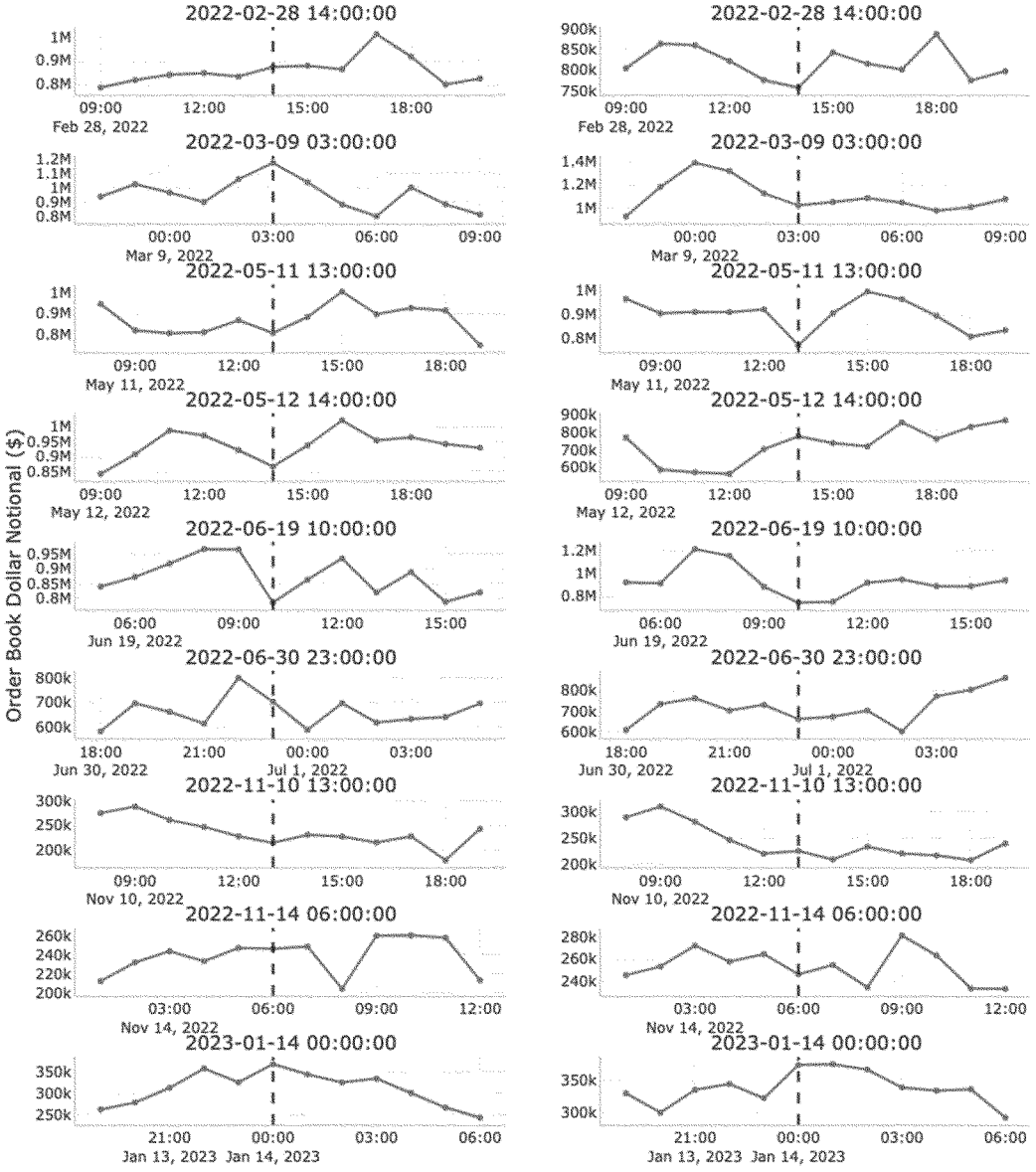

An increased notional order book suggests that there is a higher degree of consensus among investors regarding the price of Bitcoin. Moreover, this market characteristic hampers any attempt of price manipulation by any single large entity.

As a robustness check, the Sponsor investigates whether the dollar notional in the order book changes significantly prior to and post an extreme price event. Specifically, for events constituting large increases in the price of Bitcoin, if the ask (or sell) side of the order book experiences a significant shrinkage in

the dollar notional right before the event, then this may be an indication of market manipulation whereby the ask-side of the order book becomes sufficiently thin for a large order to move the price upward. Similarly, for events constituting large decreases in the price of Bitcoin, if the bid (or buy) side of the order book experiences a significant shrinkage in the dollar notional prior to such events, then this may be an indication of market manipulation whereby the thinner bid-side of the order book may potentially lead to significant downward price movements.

Using the top and bottom 0.1% of hourly price changes from February 1, 2022 to February 1, 2023 as events of extreme upward and downward market movements, respectively, the Sponsor plotted the bid (left charts) and ask (right charts) dollar notional of the Bitcoin order book within a six-hour window around these events in the chart below, which shows the results for extreme upward price movements. The extreme price events (indicated by the dashed green lines) perfectly coincide with the decrease in dollar notional of the ask-side of the order book. This is indicative of an efficient market, whereby large market movements are quickly and dynamically absorbed by a thick orderbook. Moreover, the dollar notional on the ask side after the event is replenished back to its pre-event level, which implies that market participants' reactions are quick to restore the market back to its equilibrium level.

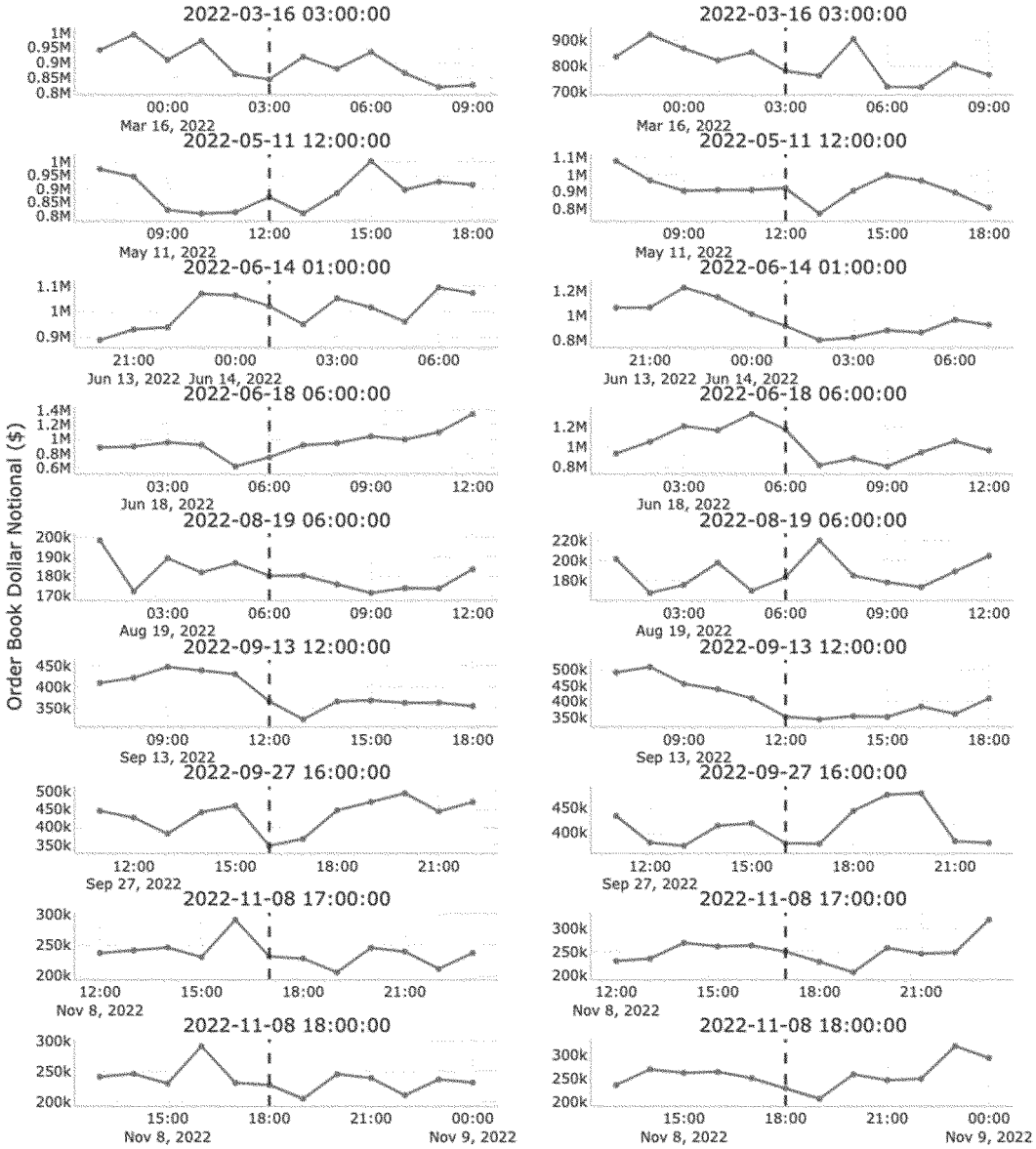
Median Hourly Order Book Dollar Notional of Bid (Left Charts) and Ask (Right Charts) on Binance, Six Hours Pre and Post Extreme Price Deviations in the Top 0.1%




The same results and conclusions are found for extreme downward price movements. The charts below show that such price events perfectly coincide with shrinkages on the bid side of the order book (left charts), indicating an

efficient and dynamic Bitcoin market. Moreover, the bid-side of the order book after the event is also restored back to its pre-event level, which suggests that the market is symmetrically efficient in moving back to equilibrium.

Median Hourly Order Book Dollar Notional of Bid (Left Charts) and Ask (Right Charts) on Binance, Six Hours Pre and Post Extreme Price Deviations in the Bottom 0.1%

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Finally, offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the Index which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the Index significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.[71] When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they're redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also

[71] While the Index will not be particularly important for the creation and redemption process, it will be used for calculating fees.

discourages and disincentivizes manipulation of the Index because there is little financial incentive to do so.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

ARK 21Shares Bitcoin ETF

Delaware Trust Company is the trustee (''Trustee''). The Bank of New York Mellon will be the administrator (''Administrator'') and transfer agent (''Transfer Agent''). Foreside Global Services, LLC will be the marketing agent (''Marketing Agent'') in connection with the creation and redemption of ''Baskets'' of Shares. ARK Investment Management LLC (''ARK'') will provide assistance in the marketing of the Shares. Coinbase Custody Trust Company, LLC, a third-party regulated custodian (the ''Custodian''), will be responsible for custody of the Trust's bitcoin.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the bitcoin held by the Trust. The Trust's assets will consist of bitcoin held by the Custodian on behalf of the Trust. The Trust generally does not intend to hold cash or cash equivalents. However, there may be situations where the Trust will unexpectedly hold cash on a temporary basis.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[72] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

When the Trust sells or redeems its Shares, it will do so in ''in-kind'' transactions in blocks of 5,000 Shares (a ''Creation Basket'') at the Trust's NAV. Authorized participants will deliver, or facilitate the delivery of, bitcoin to the Trust's account with the Custodian in exchange for Shares when they purchase Shares, and the Trust, through the Custodian, will deliver bitcoin to such authorized participants when they redeem Shares with the Trust. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

As noted above, the Trust is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding digital assets, including bitcoin, on centralized platforms. Specifically, the Trust is designed to protect investors as follows:

(i) Assets of the Trust Protected From Insolvency

The Trust's bitcoin will be held by its Custodian,[73] which is a New York chartered trust company overseen by the NYDFS and a qualified custodian under Rule 206–4 of the Investment Adviser Act. The Custodian will custody the Trust's bitcoin pursuant to a custody agreement, which requires the Custodian to maintain the Trust's bitcoin in segregated accounts that clearly identify the Trust as owner of the accounts and assets held on those accounts; the segregation will be both from the proprietary property of the Custodian and the assets of any other customer. Such an arrangement is generally deemed to be ''bankruptcy remote,'' that is, in the event of an insolvency of the Custodian, assets held in such segregated accounts would not become property of the Custodian's estate and would not be available to satisfy claims of creditors of the Custodian. In addition, according to the Registration Statement, the Custodian carries fidelity insurance, which covers assets held by the Custodian in custody from risks such as theft of funds. These arrangements provide significant protections to investors and could have mitigated the type of losses incurred by investors in the numerous crypto-related insolvencies, including Celsius, Voyager, BlockFi and FTX.

(ii) Trust's Transfer Agent Will Instruct Disposition of Trust's Bitcoin

According to the Registration Statement, except with respect to sale of bitcoin from time to time to cover expenses of the Trust, the only time bitcoin will move into or out from the Trust will be with respect to creations or redemptions of Shares of the Trust. Authorized Participants will deliver bitcoin to the Trust's account with the Custodian or Subcustodian, as applicable, in exchange for Shares of the Trust, and the Trust, through the Custodian, will deliver bitcoin to Authorized Participants when those Authorized Participants redeem Shares of the Trust. The creation and redemption procedures are administered by the Transfer Agent, the Bank of New York Mellon, an independent third party. In other words, according to the Registration Statement, with very limited exceptions, the Sponsor will not give instructions with respect to the transfer or disposition of the Trust's bitcoin. Bitcoin owned by the Trust will at all times be held by, and in the control of, the Custodian (or Subcustodian, as applicable), and transfer of such bitcoin to or from the Custodian (or Subcustodian) will occur only in connection with creation and redemptions of Shares. This will provide safeguards against the movement of bitcoin owned by the Trust by or to the Sponsor or affiliates of the Sponsor.

(iii) Trust's Assets Are Subject to Regular Audit

According to the Registration Statement, audit trails exist for all movement of bitcoin within Custodian-controlled bitcoin wallets and are audited annually for accuracy and completeness by an independent external audit firm. In addition, the Trust will be audited by an independent registered public accounting firm on a regular basis.

[72] 15 U.S.C. 80a–1.

[73] According to the Registration Statement, the Trust's cash will be held at The Bank of New York Mellon pursuant to a cash custody agreement.

(iv) Trust is Subject to the Exchange's Obligations of Companies Listed on the Exchange and Applicable Corporate Governance Requirements

The Trust will be subject to the obligations of companies listed on the Exchange set forth in BZX Rule 14.6, which require the listed companies to make public disclosure of material events and any notifications of deficiency by the Exchange, file and distribute period financial reports, engage independent public accountants registered with the Exchange, among other things. Such disclosures serve a key investor protection role. In addition, the Trust will be subject to the corporate governance requirements for companies listed on the Exchange set forth in BZX Rule 14.10.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is to seek to track the performance of bitcoin, as measured by the performance of the S&P Bitcoin Index (the ''Index''), adjusted for the Trust's expenses and other liabilities. In seeking to achieve its investment objective, the Trust will hold bitcoin and will value the Shares daily based on the Index. The Trust will process all creations and redemptions in-kind in transactions with authorized participants. The Trust is not actively managed.

The Index

As described in the Registration Statement, the Fund will use the Index to calculate the Trust's NAV. The Index is a U.S. dollar-denominated composite reference rate for the price of bitcoin. There is no component other than bitcoin in the Index. The underlying exchanges are sourced by Lukka Inc. (the ''Data Provider'') [74] based on a combination of qualitative and quantitative metrics to analyze a comprehensive data set and evaluate factors including legal/regulation, KYC/transaction risk, data provision, security, team/exchange, asset quality/diversity, market quality and negative events. The Index price is currently sourced from the following set of exchanges: Binance, Bitfinex, Bitflyer, Bittrex, Bitstamp, Coinbase Pro, Gemini, HitBTC, Huobi, Kraken, KuCoin, and Poloniex. As the digital ecosystem continues to evolve, the Data Provider can add additional or remove exchanges based on the processes established by Lukka's Pricing Integrity Oversight Board.[75]

The Index methodology is intended to determine the fair market value (''FMV'') for bitcoin by determining the principal market for bitcoin as of 4pm ET daily. The Index methodology uses a ranking approach that considers several exchange characteristics including oversight and intra-day trading volume. Specifically, to rank the credibility and quality of each exchange, the Data Provider dynamically assigns a Base Exchange Score (''BES'') score to the key characteristics for each exchange.

The BES reflects the fundamentals of an exchange and determines which exchange should be designated as the principal market at a given point of time. This score is determined by computing a weighted average of the values assigned to four different exchange characteristics. The exchange characteristics are as follows: (i) oversight; (ii) microstructure efficiency; (iii) data transparency and (iv) data integrity.

Oversight

This score reflects the rules in place to protect and to give access to the investor. The score assigned for exchange oversight will depend on parameters such as jurisdiction, regulation, ''Know Your Customer and Anti-Money Laundering Compliance'' (KYC/AML), among other proprietary factors.

Microstructure Efficiency

The effective bid ask spread is used as a proxy for efficiency. For example, for each exchange and currency pair, the Data Provider takes an estimate of the ''effective spread'' relative to the price.

Data Transparency

Transparency is the term used for a quality score that is determined by the level of detail of the data offered by an exchange. The most transparent exchanges offer order-level data, followed by order book, trade-level, and then candles.

Data Integrity

Data integrity reconstructs orders to ensure the transaction amounts that make up an order equal the overall order amount matching on both a minute and daily basis. This data would help expose nefarious actions such as wash trading or other potential manipulation of data.

The methodology then applies a five-step weighting process for identifying a principal exchange and the last price on that exchange. Following this weighting process, an executed exchange price is assigned for bitcoin as of 4pm ET. The Index price is determined according to the following procedure:

- *Step 1:* Assign each exchange a Base Exchange Score (''BES'') reflecting static exchange characteristics such as oversight, microstructure and technology, as discussed below.
- *Step 2:* Adjust the BES based on the relative monthly volume each exchange services. This new score is the Volume Adjusted Score (''VAS'').
- *Step 3:* Decay the VAS based on the time passed since the last trade on the exchange. Here, the Data Provider is assessing the level of activity in the market by considering the frequency (volume) of trades. The decay factor reflects the time since the last trade on the exchange. This is the final Decayed Volume Adjusted Score (''DVAS''), which tracks the freshness of the data by tracking most recent trades.
- *Step 4:* Rank the exchanges by the DVAS score and designate the highest-ranking exchange as the principal market for that point in time. The principal market is the exchange with the highest DVAS.
- *Step 5:* After selecting a primary exchange, an executed exchange price is used for bitcoin representing FMV at 4pm ET. The Data Provider takes the last traded prices at that moment in time on that trading venue for the relevant pair (Bitcoin/USD) when determining the Index price.

As discussed in the Registration Statement, the fact that there are multiple bitcoin spot markets that may contribute prices to the Index price makes manipulation more difficult in a well-arbitraged and fractured market, as a malicious actor would need to manipulate multiple spot markets simultaneously to impact the Index price, or dramatically skew the historical distribution of volume between the various exchanges.

The Data Provider has designed a series of automated algorithms designed to supplement the core Lukka Prime Methodology in enhancing the ability to detect potentially anomalous price activity which could be detrimental to the goal of obtaining a Fair Market

[74] Lukka is an independent third-party digital asset data company engaged by the Sponsor to provide fair market value (FMV) bitcoin prices. This price, commercially available from Lukka, will form the basis for determining the value of the Trust's Bitcoin Holdings. Lukka is not affiliated with the Trust or the Sponsor other than through a commercial relationship. All of Lukka's products are also SOC 1 and 2 Type 2 certified.

[75] The purpose of Lukka's Pricing Integrity Oversight Board is to ensure (i) the integrity and validity of the Lukka pricing and valuation products and (ii) the Lukka pricing and valuation products remain fit for purpose in the rapidly evolving market and corresponding regulatory environments.

Value price that is representative of the market at a point in time.[76]

In addition to the automated algorithms, the Data Provider has dedicated resources and has established committees to ensure all prices are representative of the market. Any price challenges will result in an independent analysis of the price. This includes assessing whether the price from the selected exchange is biased according to analyses designed to recognize patterns consistent with manipulative activity, such as a quick reversion to previous traded levels following a sharp price change or any significant deviations from the volume weighted average price on a particular exchange or pricing on any other exchange included in the Lukka Prime eligibility universe. Policies and procedures for any adjustments to prices or changes to core parameters (*e.g.,* exchange selection) are described in the Lukka Price Integrity Manual.[77]

Upon detection or external referral of suspect manipulative activities, the case is raised to the Price Integrity Oversight Board. These checks occur on an on-going, intraday basis and any investigations are typically resolved promptly, in clear cases within minutes and in more complex cases same business day. The evidence uncovered shall be turned over to the Data Provider's Price Integrity Oversight Board for final decision and action. The Price Integrity Oversight Board may choose to pick an alternative primary market and may exclude such market from future inclusion in the Index methodology or choose to stand by the original published price upon fully evaluating all available evidence. It may also initiate an investigation of prior prices from such markets and shall evaluate evidence presented on a case-by-case basis.

After the Lukka Prime price is generated, the S&P DJI (''The Index Provider'') performs independent quality checks as a second layer of validation to those employed by the Data Provider, including checks against assets with large price movements, assets with missing prices, assets with zero prices, assets with unchanged prices, assets that have ceased pricing and assets where the price does not match the Lukka Prime primary exchange. The Index Provider may submit a price challenge to Lukka if any of the checks listed above are found to be material. Lukka will perform an independent review of the price challenge to ensure the price is representative of the fair value of a particular cryptocurrency. If there is a change, the process will follow that described in the Recalculation Policy found on The Index Provider Digital Assets Indices Policies & Practices and Index Mathematics Methodology.

In addition, The Index Provider currently provides the below additional quality assurance mechanisms with respect to crypto price validation. These checks are based on current market conditions, internal system processes and other assessments. The Index Provider reserves the right within its sole discretion to supplement, modify and/or remove individual checks and/or the parameters used within the checks, at any time without notice.

Crypto Price and Exchange Validation

- Check for any assets with no price received from Lukka;
- Check for any assets with a zero price received from Lukka;
- Check for any assets with a large change from the previous day. (Outliers ± 40%);
- Check for any assets with a stale price, aggregating the number of days the price remains stale;
- Confirm the Lukka price matches the Lukka Prime primary exchange price;
- Confirm the Lukka price is consistent with other Lukka Prime exchange prices;
- Check the volume of the Lukka Prime exchanges and challenge the Lukka primary exchange if the exchange is not within the top percentile of the trading volume for that asset;
- Aggregation of Lukka Prime primary exchange changes.

Availability of Information

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The Trust will provide an Intraday Indicative Value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price[78] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the Index, including key elements of how the Index is calculated, will be publicly available at *https://www.spglobal.com/spdji/en/indices/digital-assets/sp-bitcoin-index//*.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Index. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year.

[76] Upon request, Lukka can provide additional information and detail to the Commission regarding the algorithms and data quality checks that are put in place, with confidential treatment requested.

[77] Upon request, Lukka can provide the Commission the Lukka Pricing Integrity Manual, with confidential treatment requested.

[78] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

The Bitcoin Custodian

The Custodian carefully considers the design of the physical, operational and cryptographic systems for secure storage of the Trust's private keys in an effort to lower the risk of loss or theft. The Custodian utilizes a variety of security measures to ensure that private keys necessary to transfer digital assets remain uncompromised and that the Trust maintains exclusive ownership of its assets. The operational procedures of the Custodian are reviewed by third-party advisors with specific expertise in physical security. The devices that store the keys will never be connected to the internet or any other public or private distributed network—this is colloquially known as ''cold storage.'' Only specific individuals are authorized to participate in the custody process, and no individual acting alone will be able to access or use any of the private keys. In addition, no combination of the executive officers of the Sponsor or the investment professionals managing the Trust, acting alone or together, will be able to access or use any of the private keys that hold the Trust's bitcoin.

Net Asset Value

NAV means the total assets of the Trust including, but not limited to, all bitcoin and cash less total liabilities of the Trust, each determined on the basis of generally accepted accounting principles. The Administrator determines the NAV of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. EST. The NAV of the Trust is the aggregate value of the Trust's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Trust's NAV, the Administrator values the bitcoin held by the Trust based on the price set by the Index as of 4:00 p.m. EST. The Administrator also determines the NAV per Share.

Creation and Redemption of Shares

According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more baskets. Purchase orders must be placed by 4:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date. The total deposit of bitcoin required is an amount of bitcoin that is in the same proportion to the total assets of the Trust, net of accrued expenses and other liabilities, on the date the order to purchase is properly received, as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. Each night, the Sponsor will publish the amount of bitcoin that will be required in exchange for each creation order. The Administrator determines the required deposit for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by 5,000. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and that these values and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds a specified commodity [79] deposited with the trust; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted

[79] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that Bitcoin is a commodity as defined in section 1a(9) of the Commodity Exchange Act. *See* Coinflip.

because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and Bitcoin Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[80]

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours[81] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[82] in general and section 6(b)(5) of the Act[83] in particular in that it is 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 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.

The Commission has approved numerous series of Trust Issued Receipts,[84] including Commodity-Based Trust Shares,[85] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;[86] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

[80] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[81] Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[82] 15 U.S.C. 78f.

[83] 15 U.S.C. 78f(b)(5).

[84] See Exchange Rule 14.11(f).

[85] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[86] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such activity does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. The reason is that wash trading aims to manipulate the volume rather than the price of an asset to give the impression of heightened market activity in hopes of attracting investors to that asset. Moreover, wash trades are executed within an exchange rather than cross exchange since the entity executing the wash trades would aim to trade against itself, and as such, this can only happen within an exchange. Should the wash trades of that entity result in a deviation of the price on that exchange relative to others, arbitrageurs would then be able to capitalize on this mispricing, and bring the manipulated price back to equilibrium, resulting in a loss to the entity executing the wash trades. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [87] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[88] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[89]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[90]

(a) Manipulation of the ETP

According to the Sponsor's research presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index [91]) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. Further, the Trust only allows for in-kind creation and redemption, which, as further described below, reduces the potential for manipulation of the Shares through manipulation of the Index or any of its individual constituents, again emphasizing that a potential manipulator of the Shares would have to manipulate the entirety of the bitcoin spot market, which is led by the Bitcoin Futures market. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present. According to the Sponsor, a significant portion of the considerations around crypto pricing have historically stemmed from a lack of consistent pricing across markets. However, according to the Sponsor's research, cross-exchange spreads in Bitcoin have been declining consistently over the past several years. Based on the daily Bitcoin price series from several popular centralized exchanges [92] the Sponsor has calculated the largest cross-exchange percentage spread (labelled as %C-Spread) by deducting the highest or maximum price

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$$\%C - Spread_t = \frac{max(P_{i,t}) - min(P_{i,t})}{min(P_{i,t})}$$

(P) at time t from the lowest or minimum, and dividing by the lowest across all exchanges (i). Formally, this is expressed as:

The results show a clear and sharp decline in the %C-Spread, indicating that the Bitcoin market has become more efficient as cross-exchange prices have converged over time.

[87] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in ISG constitutes such a surveillance sharing agreement. See Wilshire Phoenix Disapproval.

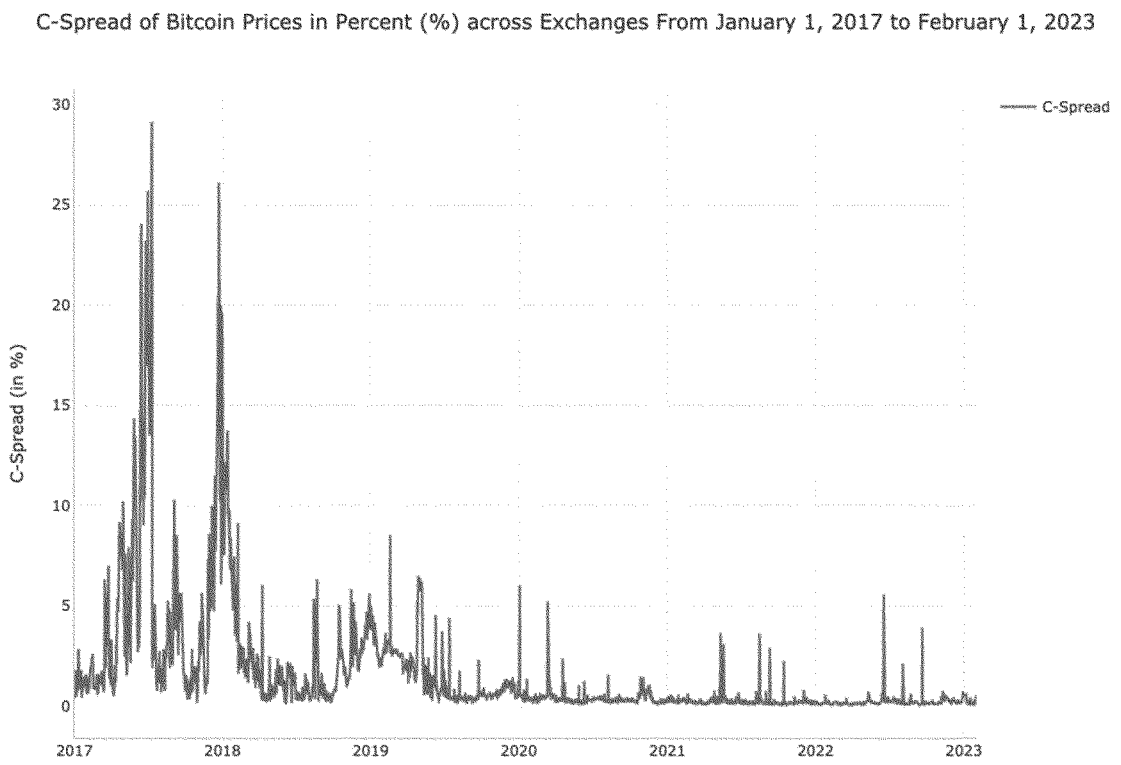
[88] For a list of the current members and affiliate members of ISG, see *www.isgportal.com.*

[89] *See* Wilshire Phoenix Disapproval.

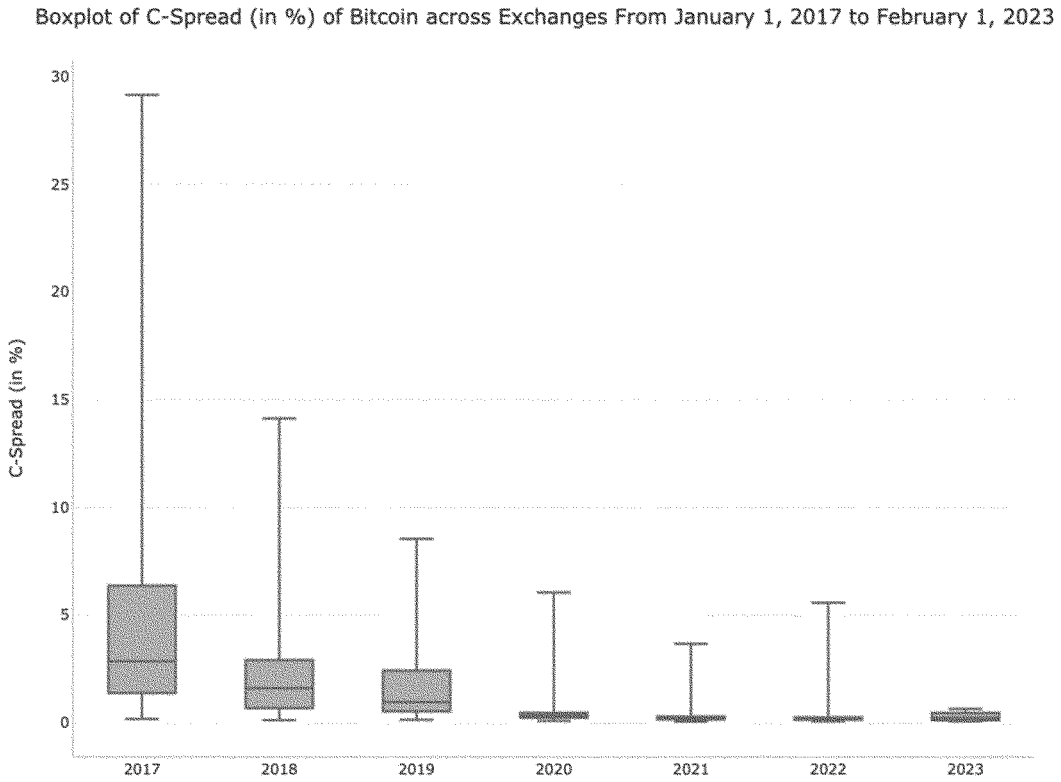
[90] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[91] As further described below, the ''Index'' for the Fund is the S&P Bitcoin Index. The current exchange composition of the Index is Binance, Bitfinex, Bitflyer, Bittrex, Bitstamp, Coinbase Pro, Gemini, HitBTC, Huobi, Kraken, KuCoin, and Poloniex.

[92] The exchanges include Binance, Bitfinex, Bithumb, Bitstamp, Cexio, Coinbase, Coinone, Gateio, Gemini, HuobiPro, itBit, Kraken, Kucoin, and OKEX.

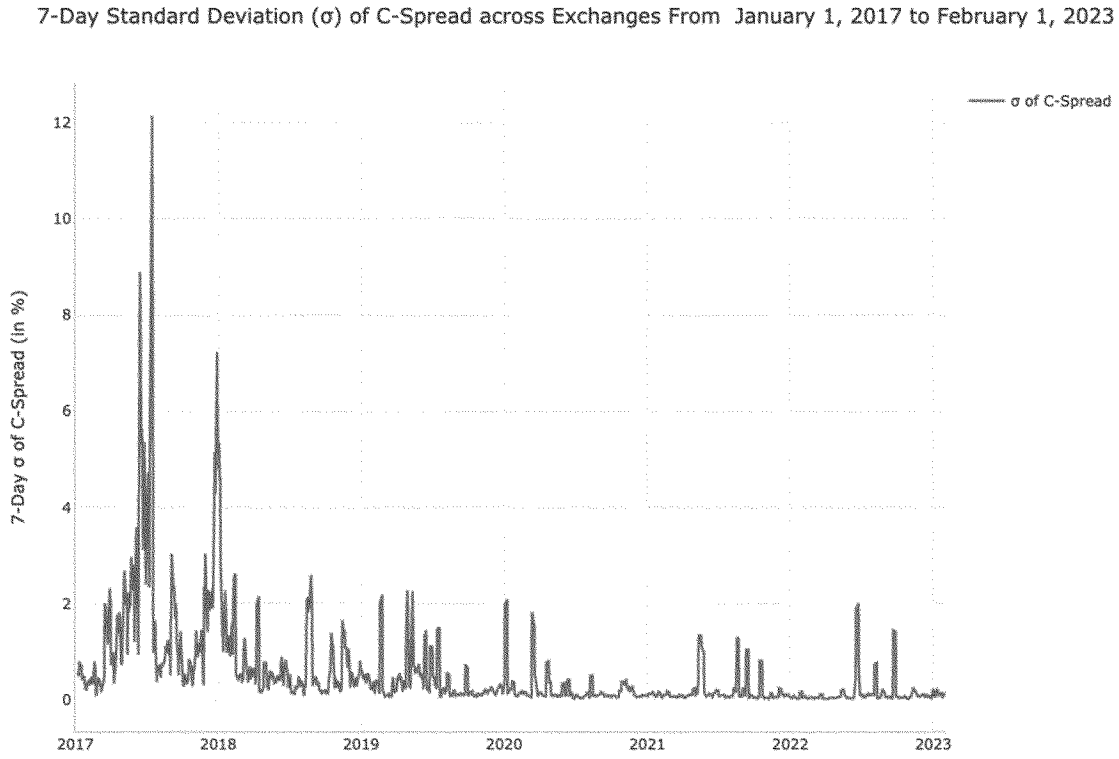



In addition, the magnitude of outlier % C-spreads has also declined over time. This boxplot shows that, not only did the median value of the %C-Spread decline over time, but also the extreme outlier values. For instance, the maximum %C-Spread for 2017, 2018, 2019, 2020, 2021, 2022 and 2023 are 29.14%, 14.12%, 8.54%, 6.04%, 3.65%, 5.56% and 0.63%, respectively. The market has experienced a 22.68% year-on-year decline in the annual median %C-Spread indicating a greater degree of Bitcoin price convergence across exchanges and a more efficient market.

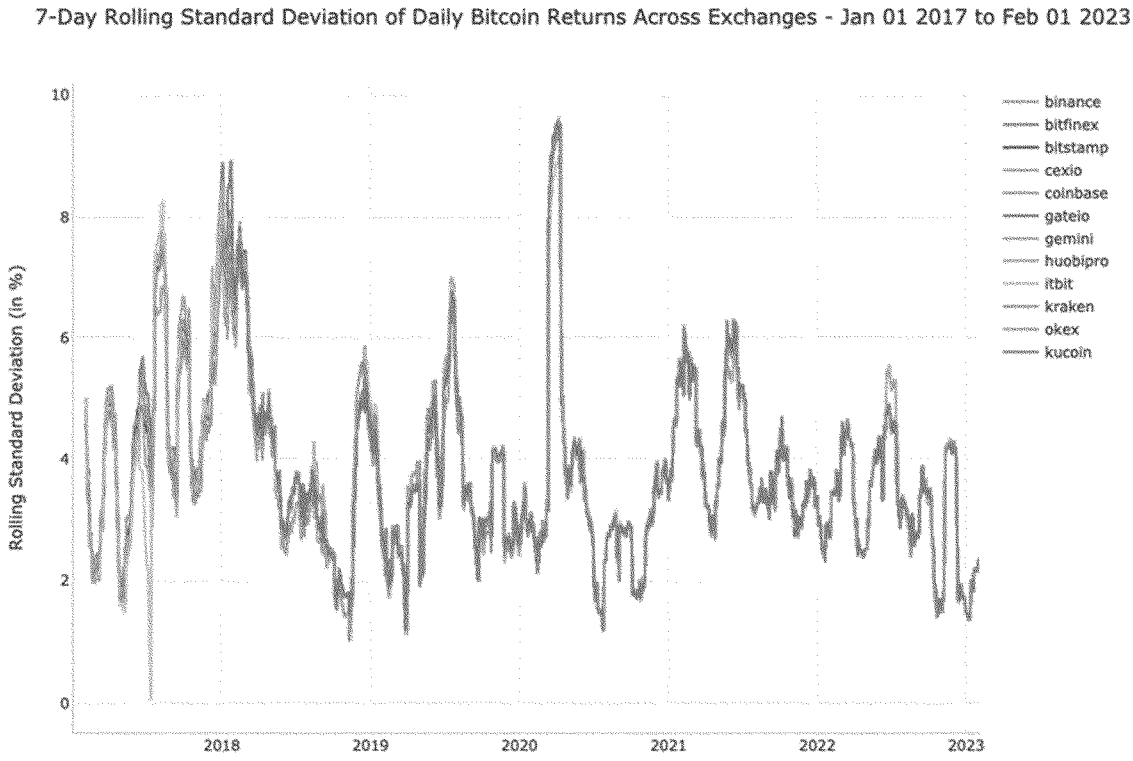


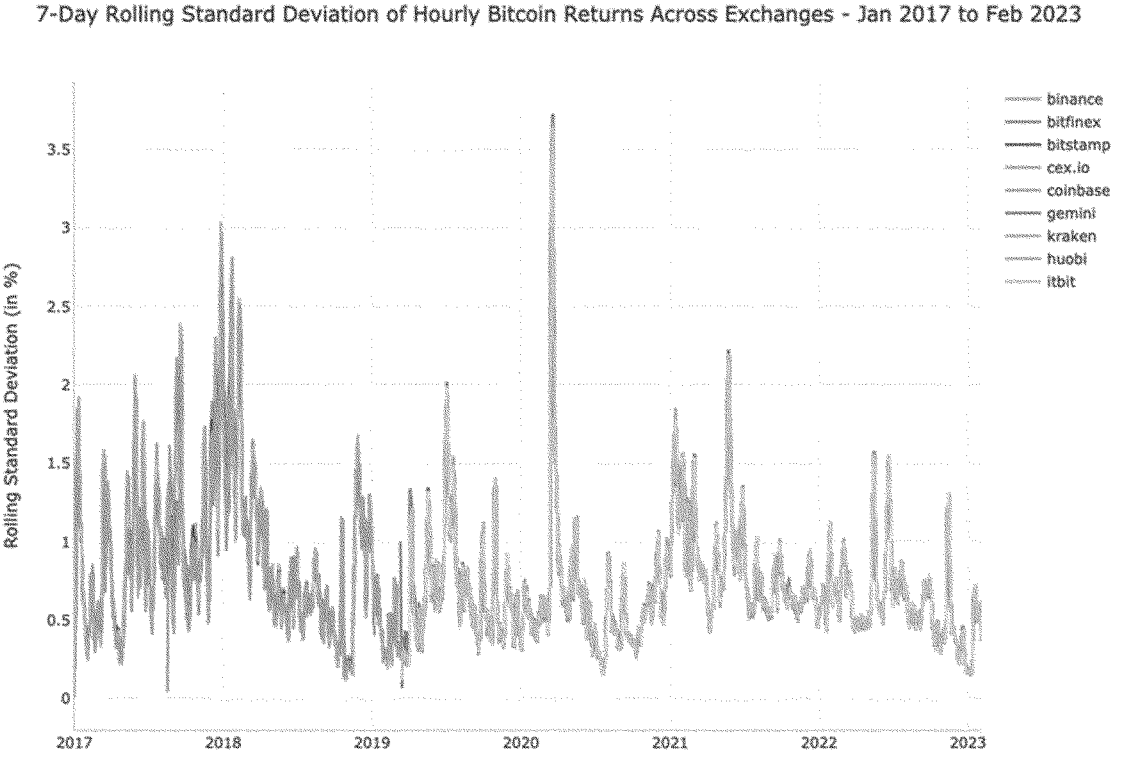
The dispersion (σ) of Bitcoin Prices has also declined over the same period. This chart shows the 7-day rolling standard deviation of the %C-Spread from January 1, 2017 to February 1, 2023. The Sponsor's research finds that the dispersion in Bitcoin prices across all exchanges has decreased over time, indicating that prices on all the considered exchanges converge towards the intrinsic average much more efficiently. This suggests that the market has become better at quickly reaching a consensus price for Bitcoin.

As the pricing of the crypto market becomes increasingly efficient, pricing methodologies become more accurate and less susceptible to manipulation. The clustering of prices across a variety of sources within the primary market points towards robust price discovery mechanisms and efficient arbitrage.

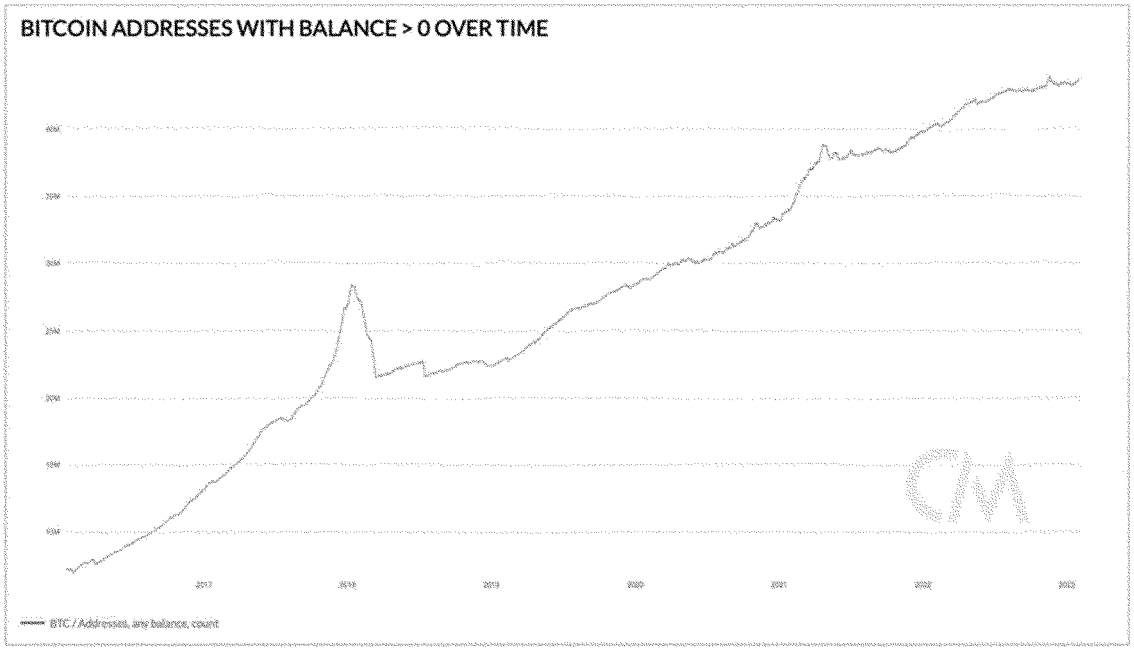



It is very important to note that the cross-exchange spreads, and therefore the process of price discovery in the Bitcoin market has improved significantly over time despite the market experiencing rather uniform albeit sinusoidal volatility. This can be shown in the graphs below where we can clearly observe a slightly decreasing yet consistent level of volatility in the Bitcoin market based on daily and hourly returns across the considered exchanges. Again, this further supports the argument that the Bitcoin market has exhibited significant improvements in terms of price discovery over time, irrespective and despite of the volatility of the asset itself, which can be attributed to efficient arbitrage operations.

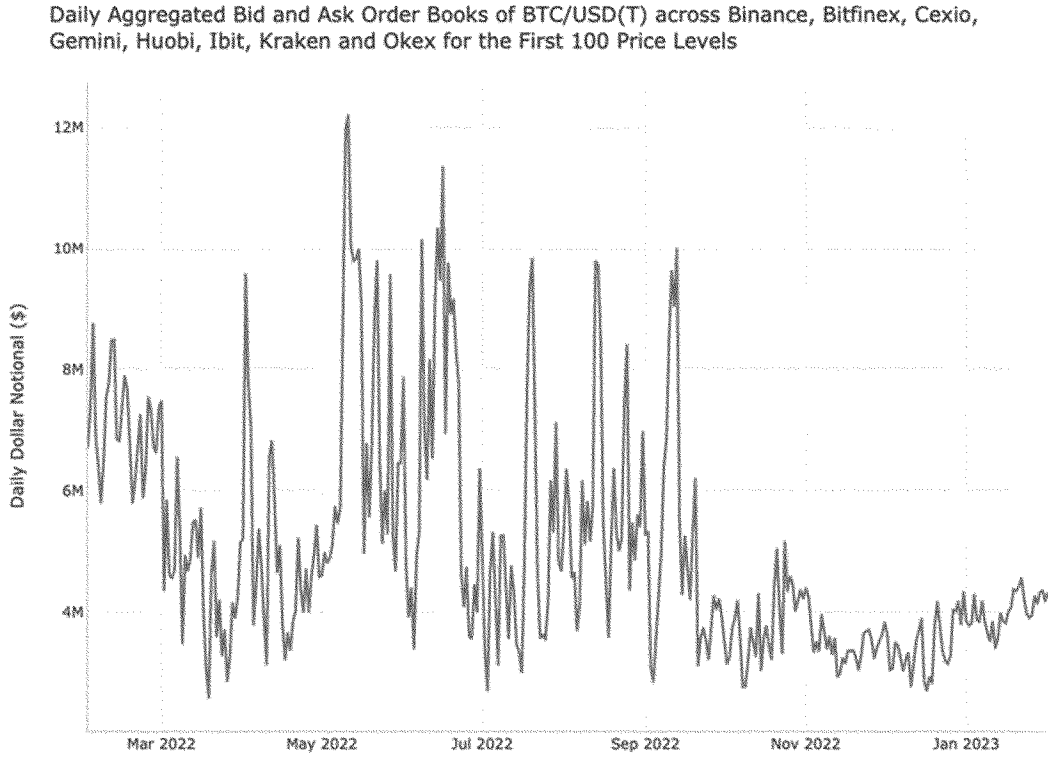



One factor that has contributed to the overall efficiency of, and improved price discovery within the Bitcoin market is the increase in the number of participants, and subsequently, the total dollar amount allocated to this market. This can be illustrated by the following chart, which shows the number of wallet addresses holding Bitcoin from January 2016 to February 2023.




The large number of participants in the Bitcoin market has manifested itself in high liquidity in the market. This is exhibited in the following chart, which shows the daily aggregated dollar notional of the bid and ask order books within the first 100 price levels across several of the largest centralized crypto exchanges from February 2022 to January 2023. Specifically, the dollar notional that is allocated closest to the mid price has hovered between $2.6 million and $12 million over that period.




An increased notional order book suggests that there is a higher degree of consensus among investors regarding the price of Bitcoin. Moreover, this market characteristic hampers any attempt of price manipulation by any single large entity.

As a robustness check, the Sponsor investigates whether the dollar notional in the order book changes significantly prior to and post an extreme price event. Specifically, for events constituting large increases in the price of Bitcoin, if the ask (or sell) side of the order book experiences a significant shrinkage in

the dollar notional right before the event, then this may be an indication of market manipulation whereby the ask-side of the order book becomes sufficiently thin for a large order to move the price upward. Similarly, for events constituting large decreases in the price of Bitcoin, if the bid (or buy) side of the order book experiences a significant shrinkage in the dollar notional prior to such events, then this may be an indication of market manipulation whereby the thinner bid-side of the order book may potentially lead to significant downward price movements.

Using the top and bottom 0.1% of hourly price changes from February 2022 to February 2023 as events of extreme upward and downward market movements, respectively, the Sponsor plotted the bid (left charts) and ask (right charts) dollar notional of the Bitcoin order book within a six-hour window around these events in the chart below, which shows the results for extreme upward price movements. The extreme price events (indicated by the dashed green lines) perfectly coincide with the decrease in dollar notional of the ask-side of the order book. This is indicative of an efficient market, whereby large market movements are quickly and dynamically absorbed by a thick orderbook. Moreover, the dollar notional on the ask side after the event is replenished back to its pre-event level, which implies that market participants' reactions are quick to restore the market back to its equilibrium level.

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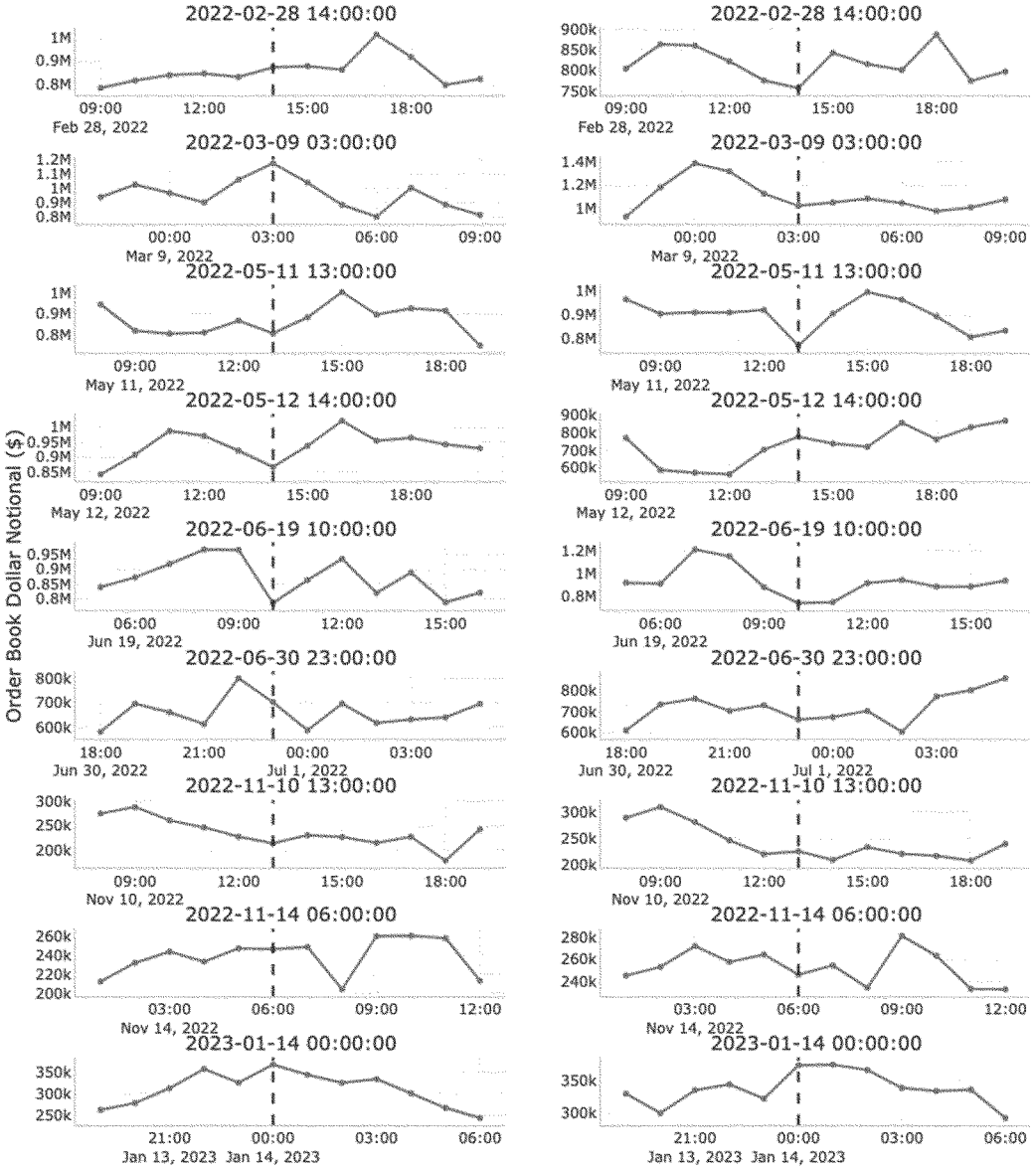
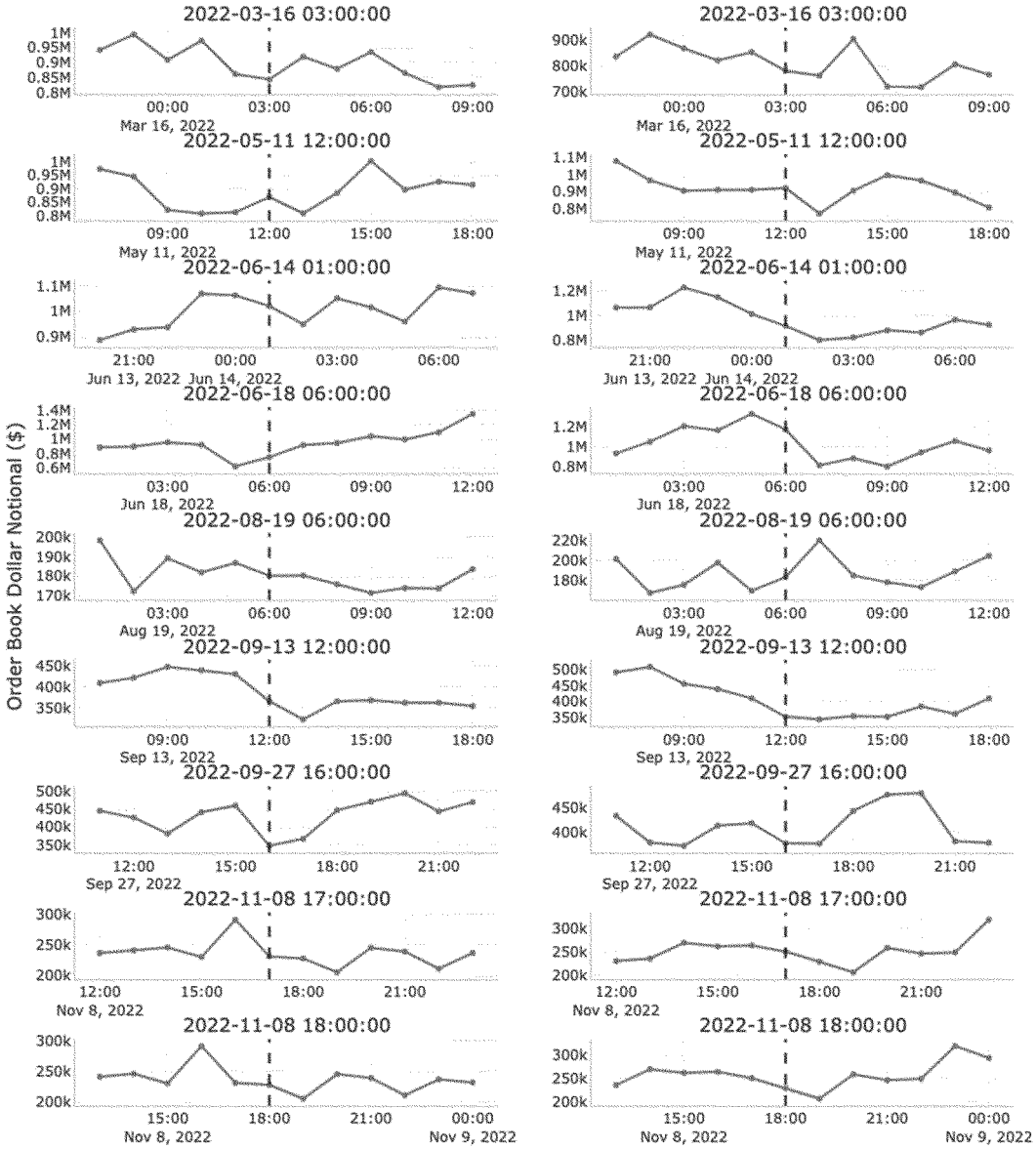
Median Hourly Order Book Dollar Notional of Bid (Left Charts) and Ask (Right Charts) on Binance, Six Hours Pre and Post Extreme Price Deviations in the Top 0.1%




The same results and conclusions are found for extreme downward price movements. The charts below show that such price events perfectly coincide with shrinkages on the bid side of the order book (left charts), indicating an

efficient and dynamic Bitcoin market. Moreover, the bid-side of the order book after the event is also restored back to its pre-event level, which suggests that the market is symmetrically efficient in moving back to equilibrium.

Median Hourly Order Book Dollar Notional of Bid (Left Charts) and Ask (Right Charts) on Binance, Six Hours Pre and Post Extreme Price Deviations in the Bottom 0.1%

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The Exchange is proposing to take additional steps to those described above to supplement its ability to obtain information that would be helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares. On June 21, 2023, the Exchange reached an agreement on terms with Coinbase, Inc. (''Coinbase''), an operator of a United States-based spot trading platform for Bitcoin that represents a substantial portion of US-based and USD denominated Bitcoin trading,[93] to enter into a surveillance-sharing agreement (''Spot BTC SSA'') and executed an associated term sheet. Based on this agreement on terms, the Exchange and Coinbase will finalize and execute a definitive agreement that the parties expect to be executed prior to allowing trading of the Commodity-Based Trust Shares.

The Spot BTC SSA is expected to be a bilateral surveillance-sharing agreement between the Exchange and Coinbase that is intended to supplement the Exchange's market surveillance program. The Spot BTC SSA is expected to have the hallmarks of a surveillance-sharing agreement between two members of the ISG, which would give the Exchange supplemental access to data regarding spot Bitcoin trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the

[93] According to a Kaiko Research report dated June 26, 2023, Coinbase represented roughly 50% of exchange trading volume in USD–BTC trading on a daily basis during May 2023.

Commodity-Based Trust Shares.[94] This means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares. In addition, the Exchange can request further information from Coinbase related to spot bitcoin trading activity on the Coinbase exchange platform, if the Exchange determines that such information would be necessary to detect and investigate potential manipulation in the trading of the Commodity-Based Trust Shares.[95]

Finally, offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the Index which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the Index significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.[96] When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they're redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Index because there is little financial incentive to do so.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars and more than a billion dollars of exposure through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, also believes that such concerns are now outweighed by these investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares. In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will

[94] For additional information regarding ISG and the hallmarks of surveillance-sharing between ISG members, see *https://isgportal.org/overview*.

[95] The Exchange also notes that it already has in place ISG-like surveillance sharing agreement with Cboe Digital Exchange, LLC and Cboe Clear Digital, LLC.

[96] While the Index will not be particularly important for the creation and redemption process, it will be used for calculating fees.

also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the Index, including key elements of how the Index is calculated, will be publicly available at *https://www.spglobal.com/spdji/en/indices/digital-assets/sp-bitcoin-index/.*

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Index. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year.

In sum, the Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. The investor protection issues for U.S. investors has grown significantly over the last several years, through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. As discussed throughout, this growth investor protection concerns need to be re-evaluated and rebalanced with the prevention of fraudulent and manipulative acts and practices concerns that previous disapproval orders have relied upon. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establish the CME Bitcoin Futures market as a regulated market of significant size, it is logically inconsistent to find that the CME Bitcoin Futures market is a significant market as it relates to the CME Bitcoin Futures market, but not a significant market as it relates to the bitcoin spot market for the numerous reasons laid out above.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act.

*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 purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2023–028, as Modified by Amendment No. 3, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to section 19(b)(2)(B) of the Act[97] to determine whether the proposed rule change, as modified by Amendment No. 3, should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, 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 comments on the proposed rule change, as modified by Amendment No. 3.

Pursuant to section 19(b)(2)(B) of the Act,[98] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [99]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 3, in addition to any other comments they may wish to submit about the proposed rule change, as modified by Amendment No. 3. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. What are commenters' views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters' views generally with respect to the liquidity and transparency of the bitcoin markets, the bitcoin markets' susceptibility to manipulation, and thus the suitability of bitcoin as an underlying asset for an exchange-traded product?

2. Based on data and analysis provided and the academic research cited by the Exchange,[100] do commenters agree with the Exchange that the CME, on which CME Bitcoin Futures trade, represents a regulated market of significant size related to spot bitcoin?[101] What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on the CME to manipulate the Shares? Do commenters agree with the Exchange's assertion that trading in the Shares would not be the predominant force on prices in the CME Bitcoin Futures market or spot market, due to ''the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market''? [102]

3. The Exchange states that bitcoin is resistant to price manipulation and that other means to prevent fraudulent and manipulative acts and practices ''exist to justify dispensing with the requisite surveillance sharing agreement'' with a regulated market of significant size related to spot bitcoin.[103] In support of its assertion, the Exchange provides data

[97] 15 U.S.C. 78s(b)(2)(B).

[98] *Id.*

[99] 15 U.S.C. 78f(b)(5).

[100] *See supra* Item II.A.

[101] *See id.*

[102] *See id.*

[103] *See id.*

and analysis [104] to indicate that the spot bitcoin market is ''increasingly efficient,'' with ''high liquidity'' and a ''higher degree of consensus among investors regarding the price of [b]itcoin,'' making it ''less susceptible to manipulation.'' [105] Do commenters believe the Exchange has shown that the bitcoin market is resistant to price manipulation?

4. The Exchange also states that it will execute a surveillance-sharing agreement with Coinbase that is intended to supplement the Exchange's market surveillance program. According to the Exchange, the agreement is ''expected to have the hallmarks of a surveillance-sharing agreement between two members of the ISG, which would give the Exchange supplemental access to data regarding spot [b]itcoin trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares.'' [106] Based on the description of the surveillance-sharing agreement as provided by the Exchange herein, what are commenters' views of such an agreement if finalized and executed? Do commenters agree with the Exchange's assertion that such an agreement with Coinbase would be ''helpful in detecting, investigating, and deterring fraud and manipulation in the Commodity-Based Trust Shares''? [107]

## IV. Procedure: 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 proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with section 6(b)(5) or any other provision of the Act, and the rules and regulations 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.[108]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 3, should be approved or disapproved by September 6, 2023. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 20, 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–CboeBZX–2023–028 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2023–028. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–028 and should be submitted on or before September 6, 2023. Rebuttal comments should be submitted by September 20, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[109]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2023–17603 Filed 8–15–23; 8:45 am]

**BILLING CODE 8011–01–P**

[104] *See id.*

[105] *See id.*

[106] *See id.* The Exchange states that ''[t]his means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares.'' *Id.*

[107] *See id.*

[108] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 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 Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[109] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98101; File No. SR–OCC–2022–012]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Concerning Collateral Haircuts and Standards for Clearing Banks and Letters of Credit

August 10, 2023.

### I. Introduction

On December 19, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the Proposed Rule Change SR–OCC–2022–012 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to amend OCC's rules, policies, and procedures regarding (i) the valuation of Government securities and government-sponsored enterprise (''GSE'') debt securities deposited as margin or Clearing Fund collateral; (ii) minimum standards for OCC's Clearing Bank relationships; and (iii) letters of credit as margin collateral.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on December 23, 2022.[4] The Commission received comments regarding the Proposed Rule Change.[5] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, 87 FR at 79015.

[4] Securities Exchange Act Release No. 96533 (Dec. 19, 2022), 87 FR 79015 (Dec. 23, 2022) (File No. SR–OCC–2022–012) (''Notice of Filing'').

[5] Comments on the proposed rule change are available at *https://www.sec.gov/comments/sr-occ-2022-012/srocc2022012.htm.*

Commission designated a longer period within which to take action on the Proposed Rule Change on February 3, 2023, extending the period to March 23, 2023.[6] The Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change on March 21, 2023.[7] The Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change on June 20, 2023.[8] For the reasons discussed below, the Commission is approving the Proposed Rule Change.

## II. Background[9]

OCC is a central counterparty (''CCP''), which means it interposes itself as the buyer to every seller and seller to every buyer for financial transactions. As the CCP for the listed options markets in the U.S.,[10] as well as for certain futures, OCC is exposed to certain risks arising from its relationships with its members as well as the banks that support OCC's clearance and settlement services. Such risks include credit risk because OCC is obligated to perform on the contracts it clears even where one of its members defaults. OCC manages credit risk by collecting collateral from members (*i.e.,* margin and Clearing Fund resources) sufficient to cover OCC's credit exposure to Clearing Members under a wide range of stress scenarios. In doing so, OCC requires its Clearing Members to deposit collateral as margin to support obligations on short options, futures contracts, and other obligations arising within the members' accounts at OCC. OCC also requires its members to deposit collateral serving as Clearing Fund assets to protect OCC, should the margin of a defaulting member be insufficient to address the potential losses from the defaulting member's positions. OCC imposes a haircut to collateral to address the risk that such collateral may be worth less in the future than at the time it was pledged to OCC. With regard to risks posed by the banks that support OCC's clearance and settlement services, OCC maintains standards for third-party relationships, such as those with banks through which OCC conducts settlement (''Clearing Banks''), and banks that issue letters of credit that Clearing Members may deposit as margin collateral.

As described in more detail below, OCC proposed to revise its rules, including certain policies,[11] to make the following three changes related to the management of collateral haircuts and banking relationships:

(1) Replace the current processes for applying haircuts to Government and GSE debt securities provided as collateral[12] with a new process for applying fixed collateral haircuts that it would set and adjust from time to time, based on a process defined in OCC's CRM Policy;

(2) Codify internal standards for Clearing Banks and letter-of-credit issuers in OCC's Rules to provide transparency on minimum standards for banking relationships that are critical to OCC's clearance and settlement services; and

(3) Authorize OCC to set more restrictive concentration limits for letters of credit than those limits currently codified in its Rules.

Based on its impact analysis, OCC does not expect changes in collateral haircut valuation processes to have a significant impact on Clearing Members.[13] OCC stated that the fixed haircut schedule under the proposed procedures-based approach initially would be the same as currently codified in the Rules.[14] Regarding the additional minimum standards for Clearing Banks and letter-of-credit issuers, OCC indicated that the institutions currently approved as such already meet these proposed standards.[15]

### *A. Collateral Haircuts for Government Securities and GSE Debt Securities*

OCC proposed to eliminate the CiM treatment of Government securities and GSE debt securities, as well as to remove the fixed collateral haircuts schedule from its rules in favor of adopting rules that describe OCC's process for setting and adjusting fixed haircuts from time to time. OCC asserted that such a ''procedure-based approach'' would allow for more frequent valuation, thus reflecting current market conditions, including periods of stress.[16] Under the current structure, OCC accepts Government securities from Clearing Members as contributions to the Clearing Fund.[17] Additionally, OCC accepts both Government securities and GSE debt securities as margin collateral.[18] Rule 604(b) specifies haircuts for Government securities[19] and GSE debt securities[20] that are contributed as margin collateral, while Rule 1002(a)(ii)[21] specifies haircuts for Government securities that are contributed to the Clearing Fund.

#### (i) Removal of CiM Treatment

OCC proposed to remove its authority to value Government securities and GSE debt securities using the STANS margin methodology, which currently is used to calculate haircuts applicable to margin collateral.[22] As currently written, Interpretation and Policy (''I&P'') .06 to Rule 601 and Rule 604(f) grant OCC the authority to determine the collateral value of any Government securities or GSE debt securities pledged by Clearing Members as margin collateral either by: (1) the CiM method of including them in Monte Carlo simulations as part of OCC's STANS margin methodology; or

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[6] Securities Exchange Act Release No. 96797 (Feb. 3, 2023), 88 FR 8505 (Feb. 9, 2023) (File No. SR–OCC–2022–012) (''Extension'').

[7] Securities Exchange Act Release No. 97178 (Mar. 21, 2023), 88 FR 18205 (Mar. 27, 2023) (File No. SR–OCC–2022–012).

[8] Securities Exchange Act Release No. 97765 (June 20, 2023), 88 FR 41441 (June 26, 2023) (File No. SR–OCC–2022–012).

[9] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

[10] OCC describes itself as ''the sole clearing agency for standardized equity options listed on a national securities exchange registered with the Commission ('listed options').'' *See* Notice of Filing *supra* note 4, 87 FR at 79015.

[11] These policies include the Collateral Risk Management Policy (''CRM Policy''), Margin Policy, and System for Theoretical Analysis and Numerical Simulation (''STANS'') Methodology Description. *Id.*

[12] Generally, OCC defines, by rule, specific haircuts for Government and GSE debt securities. For margin collateral specifically, OCC currently also has authority to value such securities using Monte Carlo simulations as part of its STANS margin methodology (known as ''Collateral in Margin'' or ''CiM'').

[13] *See* Notice of Filing *supra* note 4, 87 FR at 79015. OCC provided its analysis in a confidential Exhibit 3 to File No. SR–OCC–2022–012.

[14] *See* Notice of Filing *supra* note 4, 87 FR at 79015.

[15] *Id.*

[16] *See* Notice of Filing *supra* note 4, 87 FR at 79016–18.

[17] *See* OCC Rule 1002(a).

[18] *See* OCC Rule 604(b)(1), (2).

[19] ''Government securities shall be valued for margin purposes at 99.5% of the current market value for maturities of up to one year; 98% of the current market value for maturities in excess of one year through five years; 96.5% of the current market value for maturities in excess of five years through ten years; and 95% of the current market value for maturities in excess of ten years.'' *See* OCC Rule 604(b)(1).

[20] ''GSE debt securities shall be valued for margin purposes at (1) 99% of the current market value for maturities of up to one year; (2) 97% of the current market value for maturities in excess of one year through five years; (3) 95% of the current market value for maturities in excess of five years through ten years; and (4) 93% of the current market value for maturities in excess of ten years.'' *See* OCC Rule 604(b)(2).

[21] ''For purposes of valuing Government securities for calculating contributions to the Clearing Fund, Government securities shall be valued at (1) 99.5% of the current market value for maturities less than one year; (2) 98% of the current market value for maturities between one and five years; (3) 96.5% of the current market value for maturities between five and ten years; and (4) 95% of the current market value for maturities in excess of ten years.'' *See* OCC Rule 1002(a)(ii).

[22] *See* Notice of Filing *supra* note 4, 87 FR at 79016.

(2) applying the fixed haircuts that are specified in OCC Rule 604(b). OCC stated, however, that regulatory examination findings and OCC's model validation analyses have identified certain weaknesses, including that OCC may not adequately consider relevant stressed market conditions for Government securities and GSE debt securities deposited as margin and Clearing Fund collateral.[23] OCC proposed to resolve such shortcomings by deleting I&P .06 to Rule 601 and Rule 604(f), and instead subjecting all Government securities and GSE debt securities pledged as margin collateral to a fixed haircut schedule set in accordance with a revised CRM Policy, discussed in more detail below.

OCC asserted that the resulting approach would be less procyclical.[24] Under the proposed change, OCC would value all such deposits using a fixed haircut schedule.[25] OCC stated that this change would prevent spikes in margin requirements during periods of heightened volatility that can occur under the current CiM approach.[26] As stated in the Notice of Filing, while the proposed fixed haircut approach may be more conservative in periods of low market volatility, it would prevent spikes in margin requirements during periods of heightened volatility that may take place under the existing CiM approach.[27] The proposed changes would result in an average impact of less than one percent of the value of Government securities and GSE debt securities.[28] OCC stated that it intends to provide parallel reporting to its Clearing Members for a period of at least four consecutive weeks prior to implementing the change.[29]

(ii) Removal of the Fixed Haircut Schedule From OCC's Rules

OCC proposed to eliminate the fixed haircut schedules in its rules for Government securities and GSE debt securities used as margin collateral and Government securities deposited in the Clearing Fund, and instead to adopt new subsections that would grant OCC the authority to specify a schedule of haircuts from time to time based on changing market conditions. Specifically, OCC's proposal would delete the fixed collateral haircut schedule stated in Rule 604(b)(1)–(2) for Government securities and GSE debt securities used as margin collateral, and in Rule 1002(a)(ii) for Government securities deposited in the Clearing Fund.[30] OCC proposed to adopt a new section (e) under Rule 604 and amend language in Rule 1002(a)(ii), to authorize OCC to determine the current value of these types of securities, and generally apply a schedule of haircuts that is specified from time to time upon prior notice to Clearing Members. OCC proposed to describe the new process for valuing such securities in its CRM Policy, as described in greater detail in Section II.A.iii. below. Additionally, the proposed changes to the CRM Policy would require OCC to communicate changes in haircut rates to Clearing Members at least one full day in advance, and to maintain the haircut schedule on OCC's public website.

As noted above, OCC would publish a haircut schedule from time to time on its website, and such schedule would be determined based on the proposed methodology in the CRM Policy. The proposed changes to Rule 604 would also authorize OCC to apply haircuts to Government securities and GSE debt securities that are more conservative than those defined in such haircut schedule, or, in unusual or unforeseen circumstances, to assign partial or no value to such securities. The proposed change would authorize OCC to take such action for its protection or the protection of Clearing Members or the general public with prior notice to Clearing Members.

OCC also proposed changes to the CRM Policy that would provide additional detail regarding the authority to apply more conservative haircuts or reduce the value attributed to Government securities and GSE debt securities.[31] Consistent with the proposed addition to Rule 604, the CRM Policy would require OCC to communicate such actions to Clearing Members prior to implementation. Additionally, OCC proposed to add language to the CRM Policy to enumerate the factors that OCC would consider when determining if such action would be appropriate for its protection or the protection of Clearing Members or the general public, including (i) volatility and liquidity, (ii) elevated sovereign credit risk,[32] and (iii) any other factors OCC determines are relevant.[33]

(iii) A Procedures-Based Approach To Setting Collateral Haircuts

As described above, OCC proposed to establish a new process for applying fixed collateral haircuts for Government securities and GSE debt securities that OCC would set and adjust from time to time. OCC proposed to define its new process, which it refers to as a ''procedures-based approach,'' in the CRM Policy. The proposed procedures-based approach would replace the processes that OCC proposed removing from its rules (*i.e.,* dynamic haircuts calculated by OCC's margin methodology and fixed haircuts defined by rule).

The proposed procedures-based approach would rely on a financial model to set and assess the adequacy of collateral haircuts. In particular, the proposed amendments to the CRM Policy would provide that OCC's Pricing and Margins team within its Financial Risk Management (''FRM'') department

[23] *Id.*

[24] *Id.* The Commission has stated that procyclicality typically refers to changes in risk-management practices that are positively correlated with market, business, or credit cycle fluctuations that may cause or exacerbate financial stability. Standards for Covered Clearing Agencies, Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70816 n. 318 (Oct. 13, 2016). The Commission stated further that, while changes in collateral values tend to be procyclical, collateral arrangements can increase procyclicality if haircut levels fall during periods of low market stress and increase during periods of high market stress. *Id.*

[25] Additionally, OCC would shift its categorization of Government security and GSE debt security deposits currently valued using STANS from margin balances to collateral balances to align its reporting with the proposed haircut methodology. Specifically, the value of CiM-eligible Government securities and GSE debt securities would no longer be included in margin calculations, and thus would no longer be included on OCC's margin reports. Following implementation of the proposed changes, the value of the previously CiM-eligible Government securities and GSE debt securities would be found in OCC's collateral reports. *See* Notice of Filing *supra* note 4, 87 FR at 79016 n.10.

[26] *See* Notice of Filing *supra* note 4, 87 FR at 79016.

[27] *Id.*

[28] *Id.* As noted below, OCC is proposing to replace the fixed haircut schedule in its rules that applies to Government securities deposited in the Clearing Fund. The change would result in a negligible impact to Clearing Fund collateral haircuts. *Id.* OCC provided supporting data as a confidential Exhibit 3 to File No. SR–OCC–2022–012.

[29] *See* Notice of Filing *supra* note 4, 87 FR at 79016. *See* note 25 *supra* regarding reporting changes that would be implemented in connection with the proposed change. Further, OCC's rules require it to provide reporting related to margin and Clearing Fund collateral each day. *See* OCC Rule 605 and OCC Rule 1007.

[30] OCC does not accept GSE debt securities as Clearing Fund collateral.

[31] The CRM Policy currently authorizes OCC to take additional mitigating actions in the form of reducing the value of such securities and review and approval of such actions by OCC's Management Committee and/or its delegates.

[32] OCC explained that while it already has authority under I&P .15 to Rule 604 to make disapprovals of collateral based on similar factors, the proposal is intended to enumerate sovereign credit risk as a factor in the CRM Policy for haircuts on Government securities. *See* Notice of Filing *supra* note 4, 87 FR at 79017, n.16.

[33] OCC also proposed to include ''any other factors the Corporation determines are relevant'' for consistency with I&P .15 to OCC Rule 604 and because such a catch-all is designed to capture unforeseen circumstances that might not previously have been considered possible. *Id.*

would monitor the adequacy of the haircuts using a Historical Value-at-Risk approach (''H-VaR'') with multiple look-back periods (*e.g.,* 2-year, 5-year, and 10-year), updated at least monthly.[34] Each look-back period would comprise a synthetic time series of the greatest daily negative return observed for each combination of security type and maturity bucket (*e.g.,* Government securities maturing in more than 10 years). The longest look-back period under the proposed H-VaR approach would include defined periods of market stress.[35] The CRM Policy would further require OCC to maintain haircuts at a level at least equal to a 99 percent confidence interval of the look-back period that provides for the most conservative haircuts. Changes to the haircut rate would be communicated to Clearing Members at least one full day in advance and the schedule would be maintained on OCC's public website.

(iv) Increased Frequency of Valuations

OCC's proposed addition of Rule 604(e) and amendments to Rule 1002(a)(ii) would resolve an inconsistency between its Rules, which require monthly reviews of collateral haircuts in relation to the Clearing Fund, and its CRM Policy, which requires daily review of all collateral haircuts, including both margin and Clearing Fund collateral. Specifically, under the proposal, OCC would determine the current market value for Government securities and GSE debt securities at such intervals as it may from time to time prescribe, at least daily, based on the quoted bid price supplied by a price source designated by OCC.[36] The proposed change also would explicitly remove from the Rules the Risk Committee's authority for prescribing the interval at which haircuts are set. Rather, the Pricing and Margins business unit would continue to hold this authority, consistent with the current CRM Policy.

Under the current CRM Policy, the Pricing and Margins business unit monitors haircuts daily for ''breaches'' (*i.e.,* an erosion in value exceeding the relevant haircut) and adequacy, with any issues being promptly reported to appropriate decision-makers at OCC.[37] Changes to OCC's Rules and the CRM Policy, including the minimum valuation interval, would remain subject to Risk Committee approval and the Risk Committee would retain oversight over OCC's risk management determinations.

(v) Conforming Changes to OCC's Policies

Based on the proposed changes to its Rules and policies, OCC also proposed conforming changes to its CRM Policy, Margin Policy, and STANS Methodology Description by:

- Establishing the CRM Policy as the relevant OCC policy governing OCC's process for valuing Government securities and GSE debt securities;
- Deleting descriptions that indicate that Government securities and GSE debt securities pledged as margin collateral may be valued using Monte Carlo simulations as part of OCC's STANS margin methodology;[38]
- Conforming capitalization of terms in the CRM Policy with OCC's By-Laws;
- Deleting certain portions of the STANS Methodology Description that exist to support the valuation of Government securities and GSE debt securities using Monte Carlo simulations;
- Removing Treasuries (*i.e.,* Government securities) from OCC's model for generating yield curve distributions to form theoretical price distributions for U.S. Government securities and for modeling Treasury rates within STANS joint distribution of risk factors;[39]
- Revising the STANS Methodology Description to reflect the fact that the Liquidation Cost Add-on charge would no longer be assessed to Government security collateral deposits,[40] while incorporating stressed market periods in the H-VaR approach for setting and adjusting the haircuts for collateral in the form of Government securities and GSE debt securities used in margin accounts and Government securities in the Clearing Fund, which is comparable to the approach for incorporating stressed markets into the Liquidation Cost Add-on.

*B. Minimum Standards for Clearing Banks and Letter-of-Credit Issuers*

OCC's proposal would update and codify existing internal minimum standards that OCC uses to establish relationships with Clearing Banks and letter-of-credit issuers. The core of these proposed minimum standards would be the same for both Clearing Banks and letter-of-credit issuers, including requirements for, at a minimum, $500 million in Tier 1 Capital;[41] maintaining certain Tier 1 Capital Ratios; and providing that non-U.S. entities must be domiciled in a country that has a sovereign rating considered to be ''low credit risk.'' OCC would reserve the right to set other such standards from time to time. OCC stated that these proposed changes would provide transparency on minimum standards for banking relationships that are critical to its clearance and settlement services. Details of proposed amendments to Rule 203 for Clearing Banks and the Interpretations and Policies for Rule 604 relating to letter-of-credit issuers are described below.

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[34] Upon implementation of the proposed changes, OCC anticipates that the collateral haircuts initially would be identical to those outlined in Rules 604(b) and 1002(a). *See* Notice of Filing *supra* note 4, 87 FR at 79017.

[35] The delineation of look-back periods, periods of stressed market volatility included in the longest-term look-back period, and the type and maturity buckets would be defined in procedures maintained by OCC's Pricing and Margins business unit.

[36] Additionally, both the current and proposed language in the CRM Policy provide leeway for more frequent valuation, when warranted, and help to ensure that the designation of minimum valuation intervals would not be a limiting factor. *See* Notice of Filing *supra* note 4, 87 FR at 79017.

[37] OCC believed that Pricing and Margins, as the business unit responsible for such monitoring, is well positioned to make the determination about more frequent valuation intervals consistent with the directive of the CRM Policy approved by the Risk Committee. *See* Notice of Filing *supra* note 4, 87 FR at 79018.

[38] The Margin Policy currently states that Government securities may be valued using the CiM approach. OCC did not propose to change the description of CiM generally, but rather would maintain it other than the removal of references suggesting that it applies to Government securities and GSE debt securities pledged as margin. *See* Notice of Filing *supra* note 4, 87 FR at 79018.

[39] As described above, OCC would value such securities as described in the CRM Policy rather than pursuant to STANS.

[40] The Liquidation Cost charge is a margin add-on charge that is designed to estimate the cost to liquidate a portfolio based on the mid-points of the bid-ask spreads for the financial instruments within the portfolio, and would scale up such liquidation costs for large or concentrated positions that would likely be more expensive to close out. *See* Securities Exchange Act Release No. 86119 (June 17, 2019), 84 FR 29267, 29268 (June 21, 2019) (File No. SR–OCC–2019–004). The Liquidation Cost charge considers the cost of liquidating an underlying security, such as a Government security, during a period of market stress. *Id.* As described above, OCC now proposes to include defined periods of market stress in its collateral haircuts methodology under the CRM Policy. OCC indicated that the Liquidation Cost charge for such collateral is currently, and is expected to remain, immaterial, based on its analysis of the average daily Liquidation Cost charge across all accounts. *See* Notice of Filing *supra* note 4, 87 FR at 79018.

[41] Tier 1 Capital is the required regulatory capital that is permanently held by banks to absorb unexpected losses. *See generally,* Bank for International Settlements, Financial Stability Institute, ''Definition of capital in Basel III—Executive Summary'' (June 27, 2019), *available at https://www.bis.org/fsi/fsisummaries/defcap_b3.htm#:~:text=Regulatory%20capital%20under%20Basel%20III,the%20components%20of%20regulatory%20capital;* and The Federal Deposit Insurance Corporation (FDIC), ''Risk Management Manual of Examination Policies,'' Section 2.1 (Capital), *available at https://www.fdic.gov/regulations/safety/manual/section2-1.pdf.* Tier 1 Capital includes common equity Tier 1 Capital, such as certain bank-issued common stock instruments, and additional Tier 1 Capital. *See* 12 CFR 217.20.

(i) Clearing Banks

OCC indicated that Clearing Banks play a critical role in its clearance and settlement of options.[42] As currently written, Rule 203 requires that every Clearing Member establish and maintain a bank account at a Clearing Bank for each account maintained by it with OCC. However, the sole eligibility requirement for a Clearing Bank expressly delineated in current Rules is that the Clearing Bank be a bank or trust company that has entered into an agreement with OCC in respect of settlement of confirmed trades on behalf of Clearing Members.[43] OCC's By-Laws and Rules are silent on the internal governance process for approving Clearing Bank relationships. Rather, the details as to the financial and operational capability requirements and the governance process for approving Clearing Banks are housed in OCC's internal procedures, which are not publicly available.[44] OCC proposed to amend Rules 101 and 203 to clarify the term ''Clearing Bank'' and codify minimum capital and operational requirements and the governance process for approving its Clearing Banks.[45] OCC believed that expressly listing these requirements in its By-Laws and Rules will provide Clearing Members and other market participants greater clarity and transparency concerning OCC's Clearing Bank relationships.[46] Specifically, Rule 101 would amend the definition of ''Clearing Bank'' to reflect that such Clearing Bank relationships are approved by the Risk Committee, while leaving the rest of the definition intact. The proposed changes to Rule 203 would codify the following practices for Clearing Banks:

- Provide in Rule 203(b) that the Risk Committee may approve a bank or trust company as a Clearing Bank if it meets the minimum requirements;
- Require under Rule 203(b)(1) that any Clearing Bank, whether domiciled in the U.S. or outside the U.S., maintain at least $500 million (U.S.) in Tier 1 Capital, rather than the existing $100 million Tier 1 Capital requirement for letter-of-credit issuers currently required under I&P .01 to OCC Rule 604;
- Require under Rules 203(b)(2) and (4) that Clearing Banks maintain (i) common equity Tier 1 Capital (CET1)[47] of 4.5%, (ii) minimum Tier 1 Capital of 6%, (iii) total risk-based capital of 8%, and (iv) a Liquidity Coverage Ratio of at least 100%, unless the Clearing Bank is not required to compute the Liquidity Coverage Ratio;
- Provide under Rule 203(b)(3) that non-U.S. Clearing Banks must be domiciled in a country that has a sovereign rating considered to be ''low credit risk'' (*i.e.,* A- by Standard & Poor's, A3 by Moody's, A- by Fitch, or equivalent);
- Require under Rule 203(b)(5) that a Clearing Bank must execute an agreement with OCC, including that the Clearing Bank: (A) maintain the ability to utilize the Society for Worldwide Interbank Financial Telecommunication (''SWIFT''), (B) maintain access to the Federal Reserve Bank's Fedwire Funds Service, and (C) provide its quarterly and annual financial statements to OCC and promptly notify OCC of material changes to its operations, financial condition, and ownership;
- Allow under Rule 203(b)(5)(A) the use of such other messaging protocol, apart from SWIFT, as approved by the Risk Committee;[48] and
- Add catchall language in Rule 203(b)(6) to provide that an institution must meet such other standards as OCC may determine from time to time.

Language that forms the basis of Rule 203(b)(1)–(3) was taken, in part, from the previously codified standards for letter-of-credit issuers found in I&P .01 to Rule 604. OCC proposed to delete this rule text relating to letter-of-credit issuers and move the essential concepts to Rule 203(b)(1)–(3) concerning Clearing Banks. In doing so, OCC also proposed to adjust certain thresholds related to Tier 1 Capital requirements and sovereign credit ratings. Most notably, the proposed change would increase the Tier 1 Capital minimum requirement from $100 million for U.S. institutions and $200 million for non-U.S. institutions to $500 million for all institutions serving as Clearing Banks or letter-of-credit issuers. Additionally, the proposed change would lower the sovereign credit risk threshold for institutions domiciled outside of the U.S. from countries rated as AAA to countries that have a rating considered to be low credit risk (A- by Standard & Poor's, A3 by Moody's, A- by Fitch, or equivalent). OCC then proposed to incorporate by reference minimum requirements for Clearing Banks in I&P .01 to Rule 604, which applies to letter-of-credit issuers, thus aligning standards for Clearing Banks and letter-of-credit issuers and erasing some distinctions between U.S. and non-U.S. institutions.

OCC explained that the proposed changes in Rule 203(b) are meant to serve as the articulation of minimum standards for establishing relationships with Clearing Banks, and that OCC is not obligated to enter into any Clearing Bank relationship merely because a bank or trust company meets these enumerated standards.[49] In proposing these changes, OCC believed that the Risk Committee is the appropriate governing body to approve such relationships because of the nature of the risks presented by OCC's Clearing Bank relationships, including the risk that OCC would need to borrow from or satisfy a loss using Clearing Fund assets in order to meet its liquidity needs as a result of the failure of a Clearing Bank to achieve daily settlement.[50] Further, in reviewing its existing Clearing Banks, OCC found that a $500 million (U.S.) Tier 1 Capital standard was more representative of these institutions.[51] In expanding the definition of ''low credit risk'' under the proposed Rule 203(b)(3), OCC stated that these ratings better reflect current understanding of countries considered to be ''low credit risk,'' and that, for example, it would permit OCC to establish relationships with institutions from France with which OCC previously had relationships before France's sovereign credit rating fell below AAA.[52]

(ii) Letter-of-Credit Issuers

OCC proposed to revise Rule 604 regarding the acceptability of letters of credit as margin collateral. Under the proposal, OCC would align the minimum requirements for letter-of-credit issuers with some of those for OCC's other banking relationships, including the above-proposed standards

[42] *See* Notice of Filing *supra* note 4, 87 FR at 79018.

[43] *See* OCC Rule 101.C(1).

[44] These internal procedures include, for example, a Tier 1 Capital requirement of $100 million for U.S. banks and $200 million for non-U.S. banks, and in effect align with standards for Clearing Banks codified in I&P .01 to OCC Rule 604 with respect to banks or trust companies that OCC may approve to issue letters of credit as margin collateral.

[45] *See* Notice of Filing *supra* note 4, 87 FR at 79018.

[46] *Id.*

[47] *See* Rule 203(c). ''For purposes of this Rule, 'Tier 1 Capital,' 'Common Equity Tier 1 Capital (CET1),' 'total risk-based capital,' and 'Liquidity Coverage Ratio' will mean those amounts or ratios reported by a bank or trust company to its regulatory authority.''

[48] OCC stated that the Risk Committee may elect to temporarily accommodate a Clearing Bank that does not meet these requirements if it is actively implementing such capabilities. *See* Notice of Filing *supra* note 4, 87 FR at 79019.

[49] *See* Notice of Filing *supra* note 4, 87 FR at 79019.

[50] *See* Notice of Filing *supra* note 4, 87 FR at 79018.

[51] *Id.*

[52] *See* Notice of Filing *supra* note 4, 87 FR at 79018–9.

for Clearing Banks.[53] I&P .01 to OCC Rule 604 currently sets forth minimum standards for the types of U.S. and non-U.S. institutions that OCC may approve as an issuer of letters of credit, including minimum Tier 1 Capital requirements, and, for non-U.S. institutions, the ultimate sovereign credit rating for the country where the principal executive office is located, credit ratings for the institution's commercial paper or other short-term obligations, and standards that apply if there is no credit rating on the institution's commercial paper or other short-term obligations. OCC proposed to amend I&P .01 to Rule 604 in the following ways:

- Combine and restate, without substantive change, the description of which institutions OCC may approve as letter-of-credit issuers;
- Replace specific capital and sovereign credit rating requirements with reference to proposed Rule 203(b)(1)–(3) prescribing minimum standards for Clearing Banks; [54]
- Remove external credit rating standards for a non-U.S. institution's commercial paper, other short-term obligations or long-term obligations; [55] and
- Add catchall language to provide that an institution must meet such other standards as OCC may determine from time to time.

Additionally, OCC proposed conforming changes to better align I&P .03 and .09 to Rule 604, requiring that all letters of credit must be payable at an issuer's domestic branch.[56] Currently, I&P .03 requires any letter of credit issued by a non-U.S. institution be payable at a Federal or State branch or agency thereof, while I&P .09 provides that a letter of credit may be issued by a Non-U.S. branch of a U.S. institution, as long as it otherwise conforms with Rule 604 and the Interpretations and Policies thereunder and is payable at a U.S. office of such institution. OCC's proposal would eliminate the text of I&P .09 in its entirety, and instead amend the text of I&P .03 to require letters of credit used as margin collateral to be payable at an issuer's ''domestic branch,'' [57] or at the issuer's Federal or State branch or agency.[58] The amended I&P .03 would apply to U.S. and Non-U.S. institutions alike.

*C. Letter-of-Credit Concentration Limits*

Lastly, the proposal would allow OCC to set more restrictive concentration limits for accepting letters of credit, while retaining the currently codified concentration limits as thresholds.[59] As currently written, I&P .02 to Rule 604 provides that ''[n]o more than 50% of a Clearing Member's margin on deposit at any given time may include letters of credit in the aggregate, and no more than 20% may include letters of credit issued by any one institution.'' In addition, I&P .04 to Rule 604 limits the total amount of letters of credit issued for the account of any one Clearing Member by a U.S. or non-U.S. institution to a maximum of 15% of such institution's Tier 1 Capital. OCC proposed to retain these provisions, while simultaneously deleting the current text of I&P .09 to Rule 604, as described above, and replacing it with language that grants OCC the authority to specify, from time to time, more restrictive limits for the amount of letters of credit a Clearing Member may deposit in the aggregate or from any one institution.[60] Such determinations would be made based on market conditions, the financial condition of approved issuers, and any other factors OCC determines are relevant. Any such restrictive limit would apply to all Clearing Members.

Under the proposal, the CRM Policy would explicitly state that the responsibility of setting and adjusting more conservative concentration limits for letters of credit would lie with the Credit and Liquidity Risk Working Group (''CLRWG''), which is a cross-functional group that comprises representatives from relevant OCC business units including Pricing and Margins, Collateral Services, and Credit Risk Management. Similar to determinations surrounding collateral haircuts, the CRM Policy would provide that OCC will maintain the concentration limits on its website and will provide prior notice of any changes to the limits. OCC would retain the current requirements under the CRM Policy and the Model Risk Management Policy regarding the CLRWG's, at a minimum, annual review of the CRM Policy, including concentration limits, and the requirement that any changes to the CRM Policy resulting from the review be presented the Management Committee and, if approved, then the Risk Committee.

OCC stated that the anticipated impact of more restrictive concentration limits is low, considering that the use of letters of credit as margin collateral is currently low.[61] OCC explained that while utilization of letters of credit is low, it plans to continue to support letters of credit based on their acceptability as collateral under Commodity Futures Trading Commission regulations.[62]

The final proposed change would amend I&P .08 to Rule 604, which currently provides that OCC will not accept a letter of credit issued pursuant to Rule 604(c) for the account of a Clearing Member in which the issuing institution, a parent, or an affiliate has an equity interest in the amount of 20 percent or more of such Clearing Member's total capital. The Proposed Rule Change would eliminate the reference to 20 percent, thus resulting in a total prohibition on accepting letters of credit for the account of a Clearing Member in which the issuing institution, a parent, or an affiliate has any equity interest in such Clearing Member's total capital.

## III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[63] After carefully considering the Proposed Rule Change and the comment letters received, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission

[53] *See* Notice of Filing *supra* note 4, 87 FR at 79015.

[54] OCC stated that in eliminating I&P .01(b)(3) concerning credit ratings, OCC would remove the subjective process for determining a ''AAA'' equivalent country based on consultation with entities experienced in international banking and finance matters satisfactory to the Risk Committee, in favor of the more objective standards. *See* Notice of Filing *supra* note 4, 87 FR at 79019.

[55] OCC stated that it has had to terminate several letter-of-credit issuer relationships pursuant to these external credit rating standards even though the institutions otherwise met OCC's requirements and were not reporting elevated internal credit risk metrics. By deleting I&P .01(b)(4), OCC would make its Rules consistent with industry best practice, and instead would rely on its Watch Level and Internal Credit Rating surveillance processes under its Third-Party Risk Management Framework to determine creditworthiness of institutions. *Id.* Proposed I&P .01(c) to OCC's Rule 604 would provide OCC authority sufficient to determine additional standards for issuers of letters of credit.

[56] *See* Notice of Filing *supra* note 4, 87 FR at 79020.

[57] As that term is defined in the Federal Deposit Insurance Act. *See* 12 U.S.C. 1813(o).

[58] As those terms are defined in I&P .01 by reference to the International Banking Act of 1978.

[59] *See* Notice of Filing *supra* note 4, 87 FR at 79015.

[60] *Id.* at 79020.

[61] *Id.*

[62] *Id.*

[63] 15 U.S.C. 78s(b)(2)(C).

finds that the proposal is consistent with Section 17A(b)(3)(F) and (I) of the Exchange Act,[64] and Rule 17Ad–22(e)(5),[65] Rule 17Ad–22(e)(9),[66] Rule 17Ad–22(e)(22),[67] and Rule 17Ad–22(e)(23)[68] thereunder, as described in detail below.

*A. Consistency With Section 17A(b)(3)(F) of the Exchange Act*

Section 17A(b)(3)(F)[69] of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions; and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

Based on its review of the record, and for the reasons described below, the Commission believes that the proposed changes to OCC's rules and procedures regarding collateral haircuts and concentration limits for letters of credit are consistent with promoting the prompt and accurate clearance and settlement of securities and derivatives transactions. As stated above, OCC is exposed to credit risk stemming from its relationships with Clearing Members during the course of fulfilling its core clearing services. One of the ways OCC manages this credit risk is by collecting high-quality collateral for margin accounts and the Clearing Fund, while recognizing that this collateral may decrease in value at a future date. The Commission continues to believe that a clearing agency generally should reduce the need for procyclical adjustments by establishing stable and conservative haircuts that are calibrated to include periods of stressed market conditions, to the extent practicable and prudent.[70] Procyclical adjustments (*i.e.,* lower haircuts during periods of low stress followed by increased haircuts during times of high market stress) could exacerbate market stress and contribute to driving down asset prices further, resulting in additional collateral requirements.[71] The imposition of more conservative haircuts during normal market conditions, therefore, would reduce the amount by which haircuts must be adjusted during times of market stress. Based on the data provided by OCC, the proposed replacement of OCC's current process for setting collateral haircuts with the proposed H-VaR approach would yield more conservative haircuts during times of low market stress, which, in turn, would help reduce spikes in collateral haircuts during heightened market volatility. As noted above, reducing such spikes would reduce the potential for driving down asset prices that could result in the imposition of additional collateral requirements on market participants already faced with increased market stress.

The proposed approach also would attempt to address the weaknesses identified in the CiM model in response to regulatory and internal examinations by, for example, incorporating periods of market stress into the look-back period for the model under the proposed H-VaR approach. Further, the proposed changes would add flexibility for OCC to more frequently value collateral haircuts during time of deteriorating market or other conditions while preserving notice requirements to ensure that Clearing Members are aware of risk management changes. Similarly, the proposed changes related to letters of credit (*e.g.,* limits not linked to a specific domicile in order to impose the same requirements on both U.S. and non-U.S. issuers, concentration limits, and a prohibition on affiliated issuers) would support OCC's ability to manage risks posed by the collateral it accepts from participants.

Based on its review of the record, and for the reasons described below, the Commission believes that OCC's proposed changes to rules and procedures regarding minimum standards for Clearing Banks and letter-of-credit issuers are consistent with assuring the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The quality of acceptable custodians is crucial to safeguarding these types of securities and funds, and one of the key ways to measure this quality is by establishing minimum qualifying standards. OCC's proposed Rule amendments would set more stringent Tier 1 Capital requirements for both Clearing Banks and letter-of-credit issuers, while amending the sovereign credit ratings to reflect current understanding, and requiring Clearing Banks to maintain the ability to use SWIFT, a generally accepted and secure communication method, as a primary messaging protocol. Although the proposal would remove from OCC's Rules the external credit rating standards for a non-U.S. institution's commercial paper and related obligations, the ability of these institutions to meet their financial and other obligations to OCC would still be considered under the Third-Party-Risk Management Framework (''TPRMF''), along with other risk factors.[72] Additionally, the proposed changes to the minimum standards for Clearing Banks and letter-of-credit issuers, when viewed as a whole, serve to strengthen OCC's process for accepting letters of credit, which comprise a fraction of margin,[73] come with many related restrictions, and pose minimal risk to OCC. Moreover, the proposal would provide clarity by aligning minimum standards for Clearing Banks and letter-of-credit issuers, and would make clear that these rule changes are meant to serve as the articulation of minimum standards for establishing relationships, and OCC would not be obligated to enter into any such relationship merely because an institution meets these enumerated standards. The Commission believes that aligning and codifying such standards in OCC's rules facilitate OCC's maintenance of banking and letter-of-credit issuer relationships that support its ability to safeguard securities and funds for which it is responsible or that are in its custody or control.

The Commission received comments stating that the proposal to calculate collateral haircuts using the H-VaR model, rather than the current CiM methodology, would ignore long-tail

[64] 15 U.S.C. 78q–1(b)(3)(F) and 15 U.S.C. 78q–1(b)(3)(I).

[65] 17 CFR 240.17Ad–22(e)(5).

[66] 17 CFR 240.17Ad–22(e)(9).

[67] 17 CFR 240.17Ad–22(e)(22).

[68] 17 CFR 240.17Ad–22(e)(23).

[69] 15 U.S.C. 78q–1(b)(3)(F).

[70] *See* Standards for Covered Clearing Agencies *supra* note 24, 81 FR at 70816–17.

[71] *See* Committee on Payment and Settlement Systems, *Principles for Financial Market Infrastructures,* section 3.5.6 (Apr. 2012); *available at https://www.bis.org/publ/cpss101a.pdf.*

[72] The TPRMF is an OCC rule that requires OCC to evaluate financial institutions such as Clearing Banks and other liquidity providers when they on-board or off-board with OCC, and to continuously monitor such institutions for so long as they maintain a relationship with OCC. It requires OCC to evaluate such financial institutions across a variety of factors, several of which assess the ability of the institution to meet its financial and other obligations to OCC, such as the financial, operational, legal, and regulatory risks faced by the institution. *See* Securities Exchange Act Release No. 90797 (Dec. 23, 2020), 85 FR 86592 (Dec. 30, 2020) (File No. SR–OCC–2020–014) (approving adoption of OCC's TPRMF). The TPRMF also provides for Watch List processes and internal escalation procedures in instances of an institution's deteriorating financial or operational ability to timely meet its future obligations to OCC, including assessing the institution's operational difficulties, late financial reports, and risk management issues. OCC, ''Third-Party Risk Management Framework'' (Dec. 22, 2022), *available at https://www.theocc.com/getmedia/68a1ea2d-ddae-4a93-a309-100bf70a0f28/Third-Party-Risk-Management-Framework.pdf.*

[73] As of Dec. 31, 2022, OCC reported that bank letters of credit accounted for only $130 million out of $152.7 billion of margin at OCC. *See* OCC 2022 Financials, at 10, *available at https://www.theocc.com/company-information/documents-and-archives/annual-reports.*

risks [74] and historical periods of significant market stress.[75] Commenters also stated that fixed collateral haircuts do not accurately reflect the potential fluctuations in asset values, including during times of market stress.[76] The Commission has reviewed the proposed H-VaR methodology, including confidential policies, procedures, and related materials.[77] The H-VaR model would reflect asset value fluctuations during times of market stress because it specifically includes such periods in the defined lookback periods. With regard to long-tail risk, the proposed rules would require OCC to maintain haircuts at a level at least equal to a 99 percent confidence interval of the look-back period that provides for most conservative haircuts.[78] Further, the Commission notes that regulatory and internal examinations showed that the CiM method has previously resulted in inaccuracies in sizing haircuts, and concludes that the use of the H-VaR model in place of the CiM method would improve accuracy of collateral haircuts. Additionally, fixed collateral haircuts are not a fundamentally new approach for OCC. For example, OCC's Rule 1002 currently applies fixed haircuts to Government securities in the Clearing Fund, and such haircuts are currently subject to review and recalculation based, in part, on market fluctuations.[79] Based on its review of the record and having considered the comments described above, the Commission believes that the proposed H-VaR methodology and the continued use of fixed collateral haircuts is consistent with the Exchange Act and the relevant rules thereunder.[80]

The Commission also received comments stating that lowering or eliminating sovereign credit rating requirements for non-U.S. Clearing Banks and letter-of-credit issuers increases the risk taken on by OCC.[81] The Commission has considered the materials submitted by OCC with regard to the Proposed Rule Change.[82] OCC's rules do not currently prescribe acceptable sovereign credit rating for the domicile of any non-U.S. Clearing Bank. OCC is not proposing to weaken minimum standards, but rather to codify the current requirement to allow only those Clearing Banks domiciled in the U.S. or in locations with sovereign rating considered to be low credit risk. The Commission believes the proposed standards (*i.e.,* A− by Standard & Poor's, A3 by Moody's, A− by Fitch, or equivalent, which would include institutions domiciled in countries such as France) represents a reasonable choice by OCC to identify sovereigns with low credit risk.[83] The Commission recognizes that the proposal would change the acceptable ratings for letter-of-credit issuers; however, the proposed standard would still require that such banks be domiciled in the United States or in locations with sovereign ratings considered to be low credit risk, as noted above. Moreover, the removal of external credit rating standards for a non-U.S. institution's commercial paper and related obligations from OCC's Rules does not mean that creditworthiness will not be considered at all. Rather, the proposal calls for an evaluation of credit risk as part of a broader review of factors, such as financial, operational, legal, and regulatory risks, with regard to Clearing Banks and liquidity providers, such as letters of credit issuers under the TPRMF.[84] The sovereign credit rating requirements are part of a broader set of minimum standards for Clearing Banks and letter-of-credit issuers, including the Tier 1 Capital that OCC proposes to increase, thus providing further safeguards that mitigate or eliminate the additional risk to OCC. Based on its review of the record and having considered the comments described above, the Commission believes that the proposed sovereign credit rating requirements are consistent with the Exchange Act and the relevant rules thereunder.

The Commission received further comments stating that the proposed changes would reduce or remove external audit, supervision, and credit ratings, contrary to recommendations made in a 2015 paper from the Bank of International Settlements (''BIS'').[85] These comments are not relevant to the proposal being considered here. The Proposed Rule Change is unrelated to and does not address external audit or supervision and, contrary to commenters' assertions, it would not remove the consideration of credit ratings. Where the proposal addresses credit ratings, it does so in the limited context of sovereign credit ratings

[74] The commenters did not elaborate on what was meant by ''long tail risk.'' *See, e.g.,* Letter from Jean Garcia-Gomez (Feb. 12, 2023), *available at https://www.sec.gov/comments/sr-occ-2022-012/srocc2022012-325181.htm.* Given the related comments and context, the Commission believes this to refer to the risk of loss due to an event that has an extremely low probability of occurring (*i.e.,* an event that is far out in the tail of a distribution of possible events).

[75] *See, e.g., id.* Commenters raised additional concerns regarding sovereign credit ratings, and OCC's redaction of certain exhibits to the filing. *See, e.g., id.* Regarding OCC's redaction of certain exhibits, the Commission notes that OCC asserted that Exhibits 3A–3C and 5B–5D to the filing, which contain internal policies and procedures, internal statistical calculations and descriptions, and confidential regulatory findings, were entitled to confidential treatment because they contained commercial and financial information that is not customarily released to the public and is treated as the private information of OCC. Under Section 23(a)(3) of the Exchange Act, the Commission is not required to make public statements filed with the Commission in connection with a proposed rule change of a self-regulatory organization if the Commission could withhold the statements from the public in accordance with the Freedom of Information Act (''FOIA''), 5 U.S.C. 552. 15 U.S.C. 78w(a)(3). The Commission has reviewed the documents for which OCC requests confidential treatment and concludes that they could be withheld from the public under the FOIA. FOIA Exemption 4 protects confidential commercial or financial information. 5 U.S.C. 552(b)(4). Under Exemption 4, information is confidential if it ''is both customarily and actually treated as private by its owner and provided to government under an assurance of privacy.'' *Food Marketing Institute* v. *Argus Leader Media,* 139 S. Ct. 2356, 2366 (2019). In its requests for confidential treatment, OCC stated that it has not disclosed the confidential exhibits to the public, and the information is the type that would not customarily be disclosed to the public. In addition, by requesting confidential treatment, OCC had an assurance of privacy because the Commission generally protects information that can be withheld under Exemption 4. Thus, the Commission has determined to accord confidential treatment to the confidential exhibits.

[76] Comments on the Proposed Rule Change are available at *https://www.sec.gov/comments/sr-occ-2022-012/srocc2022012.htm. See, e.g.,* Letter from Jean Garcia-Gomez (Feb. 12, 2023), *available at https://www.sec.gov/comments/sr-occ-2022-012/srocc2022012-325181.htm.*

[77] *See* Notice of Filing *supra* note 4, 87 FR at 79016–79018. OCC provided its policies, procedures, and related documents in confidential Exhibits 3A–3C, and 5B–5D to File No. SR–OCC–2022–012. Such documents included changes to both high-level policies and detailed technical documentation, as well as an analysis of the impact that changes in the haircut methodology would have on the value of collateral posted by members.

[78] *See* Notice of Filing *supra* note 4, 87 FR at 79017.

[79] *Id.*

[80] Commenters also raised a concern that the proposed rule change would ''cut margin requirements.'' *See, e.g.,* letter from Daniel Lambden (Feb. 25, 2023), *available at https://www.sec.gov/comments/sr-occ-2022-012/srocc2022012-326082.htm.* Such comments are not relevant to the filing because OCC did not propose changes to how it calculates margin requirements.

[81] *See* note 75, *supra.*

[82] *See* Notice of Filing *supra* note 4, 87 FR at 79018–79020. OCC provided its policies, procedures, and related documents in confidential Exhibits 3A–3C, and 5B–5D to File No. SR–OCC–2022–012. Such documents include changes to policy governing OCC's management of risk presented by letters of credit.

[83] OCC acknowledged that the sovereign credit rating requirement historically applied to letter-of-credit issuers is different than what is currently applied to its Clearing Banks, and that OCC would change the sovereign credit rating requirement for letter-of-credit issuers to conform to that for the Clearing Banks. *See* Notice of Filing *supra* note 4, 87 FR at 79018–79019.

[84] *See* note 72, *supra.*

[85] Isabella Arndorfer, Bank of International Settlements, and Andrea Minto, Utrecht University, Occasional Paper No. 11, ''The 'four lines of defence model' for financial institutions,'' Financial Stability Institute ((Dec. 23, 2015), *available at https://www.bis.org/fsi/fsipapers11.pdf.* (''BIS paper'').

considered to be of low credit risk, transferring the rules regarding consideration of creditworthiness of Clearing Banks and liquidity providers from the OCC rulebook to the TPRMF, and as part of a broader set of minimum requirements for Clearing Banks and letter-of-credit issuers. The BIS paper discusses, among other things, how interactions among internal lines of defense and external controls can enhance governance at financial institutions.[86] These issues are not relevant to the Proposed Rule Change. Further, unlike the commenters suggest, the BIS paper does not discuss credit ratings at all. Additionally, even though the proposal would adjust the required sovereign credit rating, and transfer the rules regarding consideration of creditworthiness of Clearing Banks and liquidity providers from the OCC rulebook to the TPRMF, it would still only allow for countries with low credit risk and institutions that are able to meet obligations to OCC, and these requirements are part of a larger set of minimum standards, such as more stringent Tier 1 Capital requirements and the requirement for Clearing Banks to maintain the ability to use SWIFT, that serve to enhance OCC's banking and letter-of-credit relationships. As such, after having considered the comments relating to the BIS paper, the Commission continues to believe that the proposal is consistent with the Exchange Act and the relevant rules thereunder.

Therefore, the Commission finds that, taken together, the proposed changes described above are consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.[87]

*B. Consistency With Section 17A(b)(3)(I) of the Exchange Act*

Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[88]

In response to the Notice of Filing,[89] the Commission received a comment [90] opposing the proposal stating that the ''increase to the current Tier 1 Capital requirement will have a negative effect by eliminating [Lakeside Bank] as a member Clearing Bank'' and that such elimination ''will reduce competition.'' [91] The commenter, Lakeside, states further that large Clearing Banks ''tend to not provide service for small and mid-sized Clearing Brokers,'' which appears to suggest that the proposed change could reduce direct access to clearing for OCC's current membership.[92] Finally, the commenter states that the ''proposed Tier 1 Capital rule change to $500 million is arbitrary and capricious and not explained other than the OCC's belief the new requirement reduces the risk of a Clearing Banks failure to achieve their daily settlement obligations.'' [93]

In a subsequent comment letter, OCC responded to the concerns raised by Lakeside.[94] OCC stated that its proposal would not impose a burden on competition [95] because Clearing Members of various sizes ''currently have established relationships with OCC-approved Clearing Banks that meet the proposed standards.'' [96] Further, OCC stated that ''Lakeside Bank does not currently provide settlement banking services as a Clearing Bank for any OCC Clearing Member.'' [97] Moreover, OCC stated that its ''current rules do not obligate OCC to enter into a Clearing Bank relationship with a bank simply because the bank meets its present standards.'' [98] OCC stated that obligating it to enter into Clearing Bank relationships simply because an institution meets the minimum standards and without further due diligence ''would not be consistent with sound third-party risk management practices.'' [99] On the contrary, ''OCC believes that strengthening OCC standards for entering into Clearing Bank arrangements is necessary and appropriate to ensure the overall safety and soundness of the markets OCC serves.'' [100] OCC stated further that it ''determined the proposed Tier 1 Capital requirement to align with the Tier 1 Capital held by the Clearing Banks that have demonstrated records of performance, including the resources to devote to and meet OCC's operational expectations for providing such critical services.'' [101]

Based on the information provided, the Commission believes that the proposal would not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. All of OCC's current members maintain relationships with Clearing Banks that meet the proposed standards. The Commission did not receive comments raising concerns from current or prospective OCC participants. With regard to monitoring, managing, and limiting the credit and liquidity risk arising from commercial settlement banks, the Commission has provided guidance that a clearing agency generally should consider establishing and monitoring adherence to strict criteria for its settlement banks that take account of, among other things, their capitalization.[102] The Commission believes, therefore, that strengthening capital requirements for settlement banks, such as OCC's Clearing Banks, can serve an important risk management purpose. The Commission acknowledges the concerns raised by Lakeside with regard to competition among settlement banks and access to central clearing at OCC.[103] As noted above, the proposal does not limit access to current OCC members, and, even if the proposed changes were not approved, OCC's current rules would not necessarily obligate OCC to

[86] *Id.*

[87] 15 U.S.C. 78q–1(b)(3)(F).

[88] 15 U.S.C. 78q–1(b)(3)(I).

[89] *See* Notice of Filing *supra* note 4, 87 FR at 79015.

[90] Letter from Lakeside Bank dated January 26, 2023 (''Lakeside Ltr''), *available at https://www.sec.gov/comments/sr-occ-2022-012/srocc2022012.htm. See also* Letter from Lakeside Bank dated March 15, 2023 (''Lakeside Ltr 2''), *available at https://www.sec.gov/comments/sr-occ-2022-012/srocc2022012-328270.htm.* Lakeside Ltr 2 did not present novel comments.

[91] Lakeside Ltr at 1.

[92] *Id.* The Commission also received a comment stating that the proposed increase to capital requirements would impact smaller members. Letter from Kevin Lau (Feb. 14, 2023), *available at https://www.sec.gov/comments/sr-occ-2022-012/srocc2022012-325669.htm.*

[93] Lakeside Ltr at 2.

[94] Letter from Megan Cohen, Managing Director, OCC, to Vanessa Countryman, Secretary, Commission, dated February 2, 2023 (''OCC Ltr''), *available at https://www.sec.gov/comments/sr-occ-2022-012/srocc2022012.htm.*

[95] The Exchange Act requires that the rules of the clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78q–1(b)(3)(I).

[96] OCC Ltr at 3.

[97] *Id.* at 1.

[98] *Id.* at 2.

[99] *Id.* at 2.

[100] *Id.* at 3. As OCC additionally explained, ''If a Clearing Bank is unable to timely make incoming payments on behalf of one or more Clearing Members, OCC may face liquidity challenges requiring it to draw on resources that could impose unexpected costs or other adverse consequences for its Clearing Members and, ultimately, market participants.'' *Id.*

[101] *Id.*

[102] *See* Standards for Covered Clearing Agencies *supra* note 24, 81 FR at 70826.

[103] Lakeside also raised concerns regarding potential future rule changes at the Chicago Mercantile Exchange (''CME'') and the Depository Trust and Clearing Corporation (''DTCC''). *See* Lakeside Ltr at 2. Such concerns are not ripe for consideration here because (1) CME is not currently registered as a clearing agency with the Commission, and (2) there are no proposed changes related to this matter pending with the Commission from the Depository Trust Company, Fixed Income Clearing Corporation, or National Securities Clearing Corporation (*i.e.,* the three registered clearing agencies whose parent is DTCC).

maintain a Clearing Bank relationship with Lakeside or a similar institution.

Therefore, the Commission finds that the proposed changes described above are consistent with the requirements of Section 17A(b)(3)(I) of the Exchange Act.[104]

*C. Consistency With Rule 17Ad–22(e)(5) Under the Exchange Act*

Rule 17Ad–22(e)(5)[105] under the Exchange Act requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its or its participants' credit exposures; and require a review of the sufficiency of its collateral haircuts and concentration limits to be performed not less than annually. In adopting Rule 17Ad–22(e)(5), the Commission provided guidance that ''to reduce the need for procyclical adjustments, a covered clearing agency generally should consider establishing stable and conservative haircuts that are calibrated to include periods of stressed market conditions, to the extent practical and prudent.'' [106]

Based on the information and data provided by OCC, the Commission believes that OCC's proposed H–VaR approach would help reduce spikes during heightened market volatility by yielding more conservative haircuts during normal market conditions. The proposed approach also would attempt to address the weaknesses identified in the CiM model in response to regulatory and internal examinations by, for example, incorporating periods of market stress into the look-back period for the model. Additionally, OCC's proposal to amend its internal CRM Policy to list specific factors, such as volatility and liquidity, and elevated sovereign credit risk when determining the value of GSE debt securities and Government securities used as margin or Clearing Fund collateral, would provide guideposts to set and enforce appropriately conservative haircuts. OCC's proposed changes also would grant it new authority to set and adjust more restrictive concentration limits for accepting letters of credit, as well as expressly list the factors for making such determinations, and establish a prohibition on accepting letters of credit for the account of a Clearing Member where the issuing institution, a parent, or an affiliate has any equity interest in such Clearing Member's total capital. Thus, the Commission believes that OCC's proposed changes to letter-of-credit concentration limits, when reviewed in combination with the proposed minimum standards for Clearing Banks and letter-of-credit issuers, would be appropriately conservative and may help eliminate wrong-way risk found in some Clearing Members' relationships with such issuers.[107] Finally, the Commission believes that reviews at regular intervals of collateral haircuts and concentration limits proposed in the CRM Policy and Rules would be consistent with the requirement for, at a minimum, an annual review.

Accordingly, the Commission finds that the proposed changes are consistent with Rule 17Ad–22(e)(5)[108] under the Exchange Act.

*D. Consistency With Rule 17Ad–22(e)(9) Under the Exchange Act*

Rule 17Ad–22(e)(9)[109] under the Exchange Act requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, among other things, minimize and manage credit and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used by the covered clearing agency. The Commission believes that including OCC's minimum standards for Clearing Banks in its rules would support OCC's ability to monitor its relationships with Clearing Banks and manage the financial and operational risks inherent in such relationships. The Commission also believes that the requirements for Clearing Banks, taken as a whole, as well as the mandatory approval of any new Clearing Bank by the Risk Committee prior to onboarding, would help reduce credit and liquidity risk arising from conducting its money settlements in commercial bank money. Accordingly, the Commission finds that the proposed changes are consistent with Rule 17Ad–22(e)(9)[110] under the Exchange Act.

*E. Consistency With Rule 17Ad–22(e)(22) Under the Exchange Act*

Rule 17Ad–22(e)(22)[111] under the Exchange Act requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, and settlement. As described above, OCC proposed codifying its requirement that its Clearing Banks maintain the ability to utilize SWIFT, whenever possible. The proposed change would codify the process that OCC proposed in 2017.[112] Previously, the Commission did not to object to the process, in part, based on the belief that the proposal to expand the usage of SWIFT as a standard for OCC's Clearing Banks is consistent with Rule 17Ad–22(e)(22).[113] The Commission believes that codifying the requirement would further support OCC's existing process and use of SWIFT to facilitate efficient payment, clearing, and settlement. Accordingly, the Commission finds that the proposed changes are consistent with Rule 17Ad–22(e)(22)[114] under the Exchange Act.

*F. Consistency With Rule 17Ad–22(e)(23) Under the Exchange Act*

Rule 17Ad–22(e)(23)(i) and (ii)[115] under the Exchange Act requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, among other things, publicly disclose all relevant rules and material procedures; and provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency. Based on its review of the record, and for the reasons described below, the Commission finds that the proposed changes, taken together, are consistent with the requirements of Rule 17Ad–22(e)(23)(i) and (ii).[116]

By adopting rules that require OCC to provide prior notice through public

[104] 15 U.S.C. 78q–1(b)(3)(I).

[105] 17 CFR 240.17Ad–22(e)(5).

[106] *See* Standards for Covered Clearing Agencies *supra* note 24, 81 FR at 70816–17.

[107] Wrong-way risk can be either general or specific. General wrong-way risk arises at a central counterparty (''CCP'') when the potential losses of either a participant's portfolio or a participant's collateral is correlated with the default probability of that participant. Specific wrong-way risk arises at a CCP when an exposure to a participant is highly likely to increase when the creditworthiness of that participant is deteriorating. *See* Standards for Covered Clearing Agencies *supra* note 24, 81 FR at 70816, n.317.

[108] 17 CFR 240.17Ad–22(e)(5).

[109] 17 CFR 240.17Ad–22(e)(9).

[110] *Id.*

[111] 17 CFR 240.17Ad–22(e)(22).

[112] *See* Securities Exchange Act Release No. 82055 (Nov. 13, 2017), 82 FR 54448 (Nov. 17, 2017) (File No. SR–OCC–2017–805).

[113] *See* Securities Exchange Act Release No. 82221 (Dec. 5, 2017), 82 FR 58230, 58232 (Dec. 11, 2017) (File No. SR–OCC–2017–805).

[114] 17 CFR 240.17Ad–22(e)(22).

[115] 17 CFR 240.17Ad–22(e)(23)(i) and (ii).

[116] *Id.*

disclosures on its website relating to information on collateral haircuts for Government securities and GSE debt securities, and concentration limits for letters of credit, the Commission believes that OCC's rules would support the communication of information that Clearing Members may use to identify and evaluate the haircuts and concentration limits resulting from OCC's valuation processes. Additionally, the Commission believes that codifying minimum standards for Clearing Banks and letter-of-credit issuers in OCC's public rules would provide increased clarity and transparency to Clearing Members and market participants, while preserving OCC's flexibility and authority in disapproving specific relationships based on individual facts and circumstances. As such, the Commission believes that the proposed rule and policy revisions are consistent with publicly disclosing all relevant rules and material procedures; and providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs incurred with participation in the covered clearing agency.

The Commission finds, therefore, that OCC's proposals, described above, are consistent with the requirements of Rule 17Ad–22(e)(23)(i) and (ii) under the Exchange Act.[117]

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act[118] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Exchange Act,[119] that the Proposed Rule Change (SR–OCC–2022–012), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[120]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–17529 Filed 8–15–23; 8:45 am]

**BILLING CODE 8011–01–P**

[117] *Id.*

[118] In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[119] 15 U.S.C. 78s(b)(2).

[120] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98115; File No. SR–NYSEARCA–2023–50]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges To Adopt a Fee for Directed Orders Routed Directly by the Exchange to an Alternative Trading System

August 11, 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, II, and III 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 amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'') to adopt a fee for Directed Orders routed by the Exchange to an alternative trading system (''ATS''). 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 Exchange proposes to amend the Fee Schedule to adopt a fee for Directed Orders routed by the Exchange to an ATS. The Exchange proposes to implement the fee change effective August 1, 2023.

Background

The Exchange operates in a highly competitive market. The Securities and Exchange Commission (''Commission'') has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [5] Indeed, equity trading is currently dispersed across 16 exchanges,[6] numerous alternative trading systems,[7] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 17% market share.[8] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[6] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

specifically, the Exchange currently has less than 10% market share of executed volume of cash equities trading.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. Accordingly, competitive forces constrain exchange transaction fees because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

Pursuant to Commission approval, the Exchange adopted a new order type known as Directed Orders.[10] Under Exchange rules, the ATS to which a Directed Order is routed is responsible for validating whether the order is eligible to be accepted, and if such ATS determines to reject the order, the order would be cancelled. Directed Orders that are the subject of this proposed rule change are those that are routed to OneChronos LLC (''OneChronos'').

The Exchange implemented the routing functionality to OneChronos on September 7, 2022,[11] and introduced the functionality at that time without charging a fee.[12] The Exchange now proposes to adopt a fee of $0.0015 per share for Directed Orders routed to OneChronos. To reflect the proposed fee, the Exchange proposes to amend the bullet under Section VI of the Fee Schedule titled ''Other Standard Rates—Routing (Per Share Price $1.00 or Above)'' to state ''$0.0015 per share for Directed Orders routed to OneChronos LLC.''

Since its implementation, the Directed Order functionality has facilitated additional trading opportunities by offering ETP Holders the ability to designate orders submitted to the Exchange to be routed to OneChronos for execution. The functionality has also created efficiencies for ETP Holders that choose to use the functionality by enabling them to send orders that they wish to route to OneChronos through the Exchange by leveraging order entry protocols already configured for their interaction with the Exchange. Routing functionality offered by the Exchange is completely optional and ETP Holders can readily select between various providers of routing services, including other exchanges and non-exchange venues. ETP Holders that choose not to utilize Directed Orders would continue to be able to trade on the Exchange as they currently do.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[13] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[14] 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.

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15]

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, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The routing of orders to OneChronos is provided by the Exchange on a voluntary basis and no rule or regulation requires that the Exchange offer it. Nor does any rule or regulation require market participants to send orders to an ATS generally, let alone to OneChronos. The routing of orders to OneChronos operates similarly to the Primary Only Order already offered by the Exchange, which is an order that is routed directly to the primary listing market on arrival, without interacting with interest on the NYSE Arca Book.[16]

The Exchange believes its proposal equitably allocates its fees among market participants. The Exchange believes that the proposal represents an equitable allocation of fees because it would apply uniformly to all ETP Holders, in that all ETP Holders will have the ability to designate orders submitted to the Exchange to be routed to OneChronos, and each such ETP Holder would be charged the proposed fee when utilizing the functionality. Without having a view of ETP Holders' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed fee would result in any ETP Holder from reducing or discontinuing its use of the routing functionality. While the Exchange has no way of knowing whether this proposed rule change would serve as a disincentive to utilize the order type, the Exchange believes that a number of ETP Holders will continue to utilize the functionality because of the efficiencies created for ETP Holders that enables them to send orders that they wish to route to OneChronos through the Exchange by leveraging order entry protocols already configured for their interactions with the Exchange.

The Exchange reiterates that the routing functionality offered by the Exchange is completely optional and that the Exchange operates in a highly competitive market in which market participants can readily select between various providers of routing services with different product offerings and different pricing. The Exchange believes that the proposed flat fee structure for orders routed to away venues is a fair and equitable approach to pricing, as it will provide certainty with respect to execution fees.

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes it is not unfairly discriminatory as the proposal to charge a fee would be assessed on an equal basis to all ETP Holders that use the Directed Order functionality. Moreover, this proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange

[9] *See id.*

[10] A Directed Order is a Limit Order with instructions to route on arrival at its limit price to a specified ATS with which the Exchange maintains an electronic linkage. *See* Rule 7.31–E(f)(4). *See also* Securities Exchange Act Release No. 95428 (August 4, 2022), 87 FR 48738 (August 10, 2022) (SR–NYSEARCA–2022–25).

[11] *See https://www.nyse.com/publicdocs/nyse/notifications/trader-update/110000456275/OneChronos_August_2022_Trader_Update_Final.pdf.*

[12] *See* Securities Exchange Act Release No. 95820 (September 19, 2022), 87 FR 58166 (September 23, 2022) (SR–NYSEARCA–2022–63).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] *See supra* note 4.

[16] *See* Rule 7.31–E(f)(1).

believes that this proposal does not permit unfair discrimination because the changes described in this proposal would be applied to all similarly situated ETP Holders. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed rule change would not permit unfair discrimination among ETP Holders because the Directed Order functionality would remain available to all ETP Holders on an equal basis and each such participant would be charged the same fee for using the functionality.

Finally, the submission of orders to the Exchange is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with section 6(b)(8) of the Act,[17] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. 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.'' [18] The Exchange does not believe that the proposed fee change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. ETP Holders may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of ETP Holders or competing venues to maintain their competitive standing in the financial markets.

*Intramarket Competition.* The Exchange believes the proposed amendment to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Directed Order functionality is available to all ETP Holders and all ETP Holders that use the functionality to route their orders to OneChronos would be charged the proposed fee. The routing of orders to OneChronos is provided by the Exchange on a voluntary basis and no rule or regulation requires that the Exchange offer it. ETP Holders have the choice whether or not to use the Directed Order functionality and those that choose not to utilize it will not be impacted by the proposed rule change. The Exchange also does not believe the proposed rule change would impact intramarket competition as the proposed fee would apply equally to all ETP Holders that choose to utilize the Directed Order functionality, and therefore the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) is currently less than 10%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A) [19] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2023–50 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–2023–50. 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–2023–50 and should be submitted on or before September 6, 2023.

[17] 15 U.S.C. 78f(b)(8).

[18] *See supra* note 4.

[19] 15 U.S.C. 78s(b)(3)(A).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2023–17606 Filed 8–15–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98111; File No. SR–NYSE–2023–30]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Adopt a Fee for Directed Orders Routed Directly by the Exchange to an Alternative Trading System

August 11, 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 August 9, 2023, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 amend its Price List to adopt a fee for Directed Orders routed directly by the Exchange to an alternative trading system (''ATS''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the NYSE Price List to adopt a fee for Directed Orders routed directly by the Exchange to an ATS. The Exchange proposes to implement the fee change effective August 9, 2023.[4]

Background

The Exchange operates in a highly competitive market. The Securities and Exchange Commission (''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.'' [5]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [6] Indeed, cash equity trading is currently dispersed across 16 exchanges,[7] numerous alternative trading systems,[8] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 17% market share.[9] Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is currently has less than 10%.[10]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. Accordingly, competitive forces constrain exchange transaction fees because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

Pursuant to Commission approval, the Exchange adopted a new order type known as Directed Orders.[11] Under Exchange rules, the ATS to which a Directed Order is routed is responsible for validating whether the order is eligible to be accepted, and if such ATS determines to reject the order, the order would be cancelled. Directed Orders that are the subject of this proposed rule change are those that are routed to OneChronos LLC (''OneChronos'').

The Exchange implemented the routing functionality to OneChronos on September 9, 2022,[12] and introduced the functionality at that time without charging a fee.[13] The Exchange now proposes to adopt a fee of $0.0015 per share for Directed Orders routed to OneChronos. To reflect the proposed fee, the Exchange proposes to amend the current table under the section titled

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on July 31, 2023 (SR–NYSE–2023–28). SR–NYSE–2023–28 was subsequently withdrawn and replaced by this filing.

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[6] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[7] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[8] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[9] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[10] *See id.*

[11] A Directed Order is a Limit Order with instructions to route on arrival at its limit price to a specified ATS with which the Exchange maintains an electronic linkage. *See* Rule 7.31(f)(1). *See also* Securities Exchange Act Release No. 95423 (August 4, 2022), 87 FR 48741 (August 10, 2022) (SR–NYSE–2022–20).

[12] *See https://www.nyse.com/publicdocs/nyse/notifications/trader-update/110000456275/OneChronos_August_2022_Trader_Update_Final.pdf.*

[13] *See* Securities Exchange Act Release No. 95798 (September 15, 2022), 87 FR 57741 (September 21, 2022) (SR–NYSE–2022–43).

Transaction Fees. Specifically, under ''Routing Fee—per share'', the Exchange proposes to amend the current rule text to state ''$0.0015 for a Directed Order, as defined in Rule 7.31(f)(1), routed to OneChronos LLC'' for securities priced at or above $1.00. Additionally, the Exchange proposes to adopt similar rule text under the section titled Transaction Fees and Credits For Tape B and C Securities. Specifically, the Exchange proposes to amend the first bullet under ''Routing Fees''. As proposed, the first bullet would state:

• For securities at or above $1.00, $0.0015 per share for a Directed Order, as defined in Rule 7.31(f)(1), routed to OneChronos LLC; $0.0005 per share in a NYSE American Auction; $0.0010 per share execution in an Away Market Auction at venues other than NYSE American; $0.0035 per share for all other executions, or $0.0030 if the member organization has adding ADV in Tapes A, B, and C combined that is at least 0.20% of Tapes A, B and C CADV combined.

Since its implementation, the Directed Order functionality has facilitated additional trading opportunities by offering member organizations the ability to designate orders submitted to the Exchange to be routed to OneChronos for execution. The functionality has also created efficiencies for member organizations that choose to use the functionality by enabling them to send orders that they wish to route to OneChronos through the Exchange by leveraging order entry protocols already configured for their interaction with the Exchange. Routing functionality offered by the Exchange is completely optional and member organizations can readily select between various providers of routing services, including other exchanges and non-exchange venues. Member organizations that choose not to utilize Directed Orders would continue to be able to trade on the Exchange as they currently do.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[15] 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.

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16]

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, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The routing of orders to OneChronos is provided by the Exchange on a voluntary basis and no rule or regulation requires that the Exchange offer it. Nor does any rule or regulation require market participants to send orders to an ATS generally, let alone to OneChronos. The routing of orders to OneChronos operates similarly to the Primary Only Order offered by the Exchange's affiliates NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc. (''NYSE Chicago'') and NYSE National, Inc. (''NYSE National'') (''collectively, the ''Affiliated Exchanges''). On the Affiliated Exchanges, a Primary Only Order is an order that is routed directly to the primary listing market on arrival, without being assigned a working time or interacting with interest on the order book of the exchange to which it was submitted.[17]

The Exchange believes its proposal equitably allocates its fees among market participants. The Exchange believes that the proposal represents an equitable allocation of fees because it would apply uniformly to all member organizations, in that all member organizations will have the ability to designate orders submitted to the Exchange to be routed to OneChronos, and each such member organization would be charged the proposed fee when utilizing the functionality. Without having a view of member organizations' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed fee would result in any member organization from reducing or discontinuing its use of the routing functionality. While the Exchange has no way of knowing whether this proposed rule change would serve as a disincentive to utilize the order type, the Exchange believes that a number of member organizations will continue to utilize the functionality because of the efficiencies created for member organizations that enables them to send orders that they wish to route to OneChronos through the Exchange by leveraging order entry protocols already configured for their interactions with the Exchange.

The Exchange reiterates that the routing functionality offered by the Exchange is completely optional and that the Exchange operates in a highly competitive market in which market participants can readily select between various providers of routing services with different product offerings and different pricing. The Exchange believes that the proposed flat fee structure for orders routed to away venues is a fair and equitable approach to pricing, as it will provide certainty with respect to execution fees.

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes it is not unfairly discriminatory as the proposal to charge a fee would be assessed on an equal basis to all member organizations that use the Directed Order functionality. Moreover, this proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that this proposal does not permit unfair discrimination because the changes described in this proposal would be applied to all similarly situated member organizations. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed rule change would not permit unfair discrimination among member organizations because the Directed Order functionality would remain available to all member organizations on an equal basis and each such participant would be charged the same fee for using the functionality.

Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and (5).

[16] *See supra* note 5.

[17] *See* NYSE American Rule 7.31E(f)(1); NYSE Arca Rule 7.31–E(f)(1); NYSE Chicago Rule 7.31(f)(1); NYSE National Rule 7.31(f)(1).

whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[18] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. 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.'' [19] The Exchange does not believe that the proposed fee change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Member organizations may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of member organizations or competing venues to maintain their competitive standing in the financial markets.

*Intramarket Competition.* The Exchange believes the proposed amendment to its Price List would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Directed Order functionality is available to all member organizations and all member organizations that use the functionality to route their orders to OneChronos would be charged the proposed fee. The routing of orders to OneChronos is provided by the Exchange on a voluntary basis and no rule or regulation requires that the Exchange offer it. Member organizations have the choice whether or not to use the Directed Order functionality and those that choose not to utilize it will not be impacted by the proposed rule change. The Exchange also does not believe the proposed rule change would impact intramarket competition as the proposed fee would apply to all member organizations equally that choose to utilize the Directed Order functionality, and therefore the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading is currently less than 10%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) [20] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2023–30 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2023–30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2023–30 and should be submitted on or before September 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2023–17609 Filed 8–15–23; 8:45 am]

**BILLING CODE 8011–01–P**

[18] 15 U.S.C. 78f(b)(8).

[19] *See supra* note 5.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98113; File No. SR–NYSEARCA–2023–54]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 6.62P–O

August 11, 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 August 3, 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 Rule 6.62P–O (Orders and Modifiers) regarding the handling of certain Market Orders subject to Trading Collars and conforming changes to Rule 6.64P–O (Auction Process). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to modify Rule 6.62P–O (Orders and Modifiers) regarding the handling of certain Market Orders subject to Trading Collars and conforming changes to Rule 6.64P–O (Auction Process).

The Exchange employs Trading Collar functionality that is designed to provide OTP Holders and OTP Firms (collectively, ''OTPs'') price protection for Market Orders and Limit Orders traded on the Exchange.[4] In particular, the Trading Collar applies a static ceiling price (for a buy order) or floor price (for a sell order) at which such order may be traded or routed that is determined at the time of entry (or after a series opens or reopens) and which is applicable until the order is traded or cancelled.[5] As described below, the Exchange proposes to modify the application of Trading Collars to Market Orders.

Currently, Rule 6.62P–O(a)(4)(D) describes how the Trading Collar is applied and provides that if an order to buy (sell) would trade or route above (below) the Trading Collar or would have its working price repriced to a Trading Collar that is below (above) its limit price, the order will be added to the Consolidated Book at the Trading Collar for 500 milliseconds and if not traded within that period, will be cancelled (each a ''collared'' order).[6] Further, once the 500-millisecond timer begins for a collared order (the ''collar timer''), such order will be cancelled at the end of the timer even if it repriced or was routed to an Away Market during that period, in which case any portion of the collared order that is returned unexecuted is cancelled.

As proposed, Market Orders that are collared would no longer be held for the duration of the collar time (*i.e.,* for 500 milliseconds). Instead, as proposed, if a Market Order to buy (sell) would trade or route above (below) the Trading Collar, such Market Orders would be cancelled.[7] Thus, a collared Market Order that can trade within the Trading Collar will trade on the Exchange or route. Collared Market Orders will no longer be held and displayed on the Consolidated Book for the duration of the collar timer.

The Exchange is not proposing to modify the handling of Limit Orders and such collared orders would continue to be subject to the above-described handling, per Rule 6.62P–O(a)(4)(D)(i).[8] The current rule treats collared Market Orders and collared Limit Orders the same whereas the Exchange proposes to alter only the handling of collared Market Orders. Unlike Market Orders, Limit Orders include a specific price at which an OTP is willing to trade (*i.e.,* the limit price). Market Orders do not include a price and tend to be utilized to access liquidity. As such, the Exchange believes that the proposal to cancel back those Market Orders that have been collared would benefit OTPs because it would enable the order sender to reevaluate, on a timelier basis how best to handle this trading interest.

The Exchange notes that it proposes to make this change in response to OTPs' preference to have Market Orders for which they are agent immediately cancel back for handling—rather than have such collared Market Orders first post at aggressive prices for 500 milliseconds.

Conforming Changes

Consistent with the proposed change to the handling of collared Market Orders—*i.e.,* that such orders will not be held and displayed on the Consolidated Book for the duration of the collar timer, the Exchange proposes the following conforming changes.

- First, the Exchange proposes to modify Rule 6.62P–O(a)(1)(A)(ii), which provides, in relevant part, that ''[a] Market Order to sell will be cancelled if it was assigned a Trading Collar, routed, and when it returns unexecuted, it has no resting portion to join and there is no NBB, regardless of the price of the NBO.'' The Exchange proposes to modify this provision to instead provide that ''[a] Market Order to sell that was assigned a Trading Collar, routed, and returned unexecuted, will be cancelled if there is no NBB, regardless of the price of the NBO.[9]
- Next, the Exchange proposes to modify Rule 6.62P–O(a)(1)(B), which

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Rules 6.62P–O(a)(1) (defining Market Order), (a)(2) (defining Limit Order).

[5] *See* Rule 6.62P–O(a)(4)(A)–(C) (describing Trading Collar functionality, including how such Collars are assigned and calculated).

[6] *See* Rule 6.76P–O(a)(3) (providing that the ''working price'' of an order or quote means the price at which it is eligible to trade at any given time, which may be different from the limit price or display price of the order or quote). The ''display price'' means the price at which an order or quote ranked Priority 2—Display Orders or Market Order is displayed, which may be different from the limit price or working price of the order. *See* Rule 6.76P–O(a)(1).

[7] *See* proposed Rule 6.62P–O(a)(4)(D)(i). The Exchange notes that, consistent with current order handling, once an order has been cancelled, the Exchange will likewise cancel any unexecuted portion of the cancelled order that returns to the Exchange after having been routed away.

[8] *See* proposed Rule 6.62P–O(a)(4)(D)(i).

[9] *See* proposed Rule 6.62P–O(a)(1)(A)(ii). *See also* Rule 6.62P–O(a)(1)(A)(i)–(iv) (setting forth pricing validations that a Market Order that arrives during continuous trading or that was routed, returns unexecuted, and has no resting quantity to join must pass to prevent being rejected or cancelled, as applicable).

provides, in relevant part, that ''[a]fter trading or routing, or both, the Market Order will be displayed at the Trading Collar, subject to paragraph (a)(1)(C),'' which provision provides that a Market Order will be cancelled before being displayed if there are no remaining contra-side Market Maker quotes on the Exchange or contra-side ABBO.[10] Proposed Rule 6.62P–O(a)(1)(B) would provide that ''[a]fter trading or routing, or both, the Market Order will be cancelled.''

- In addition, the Exchange also proposes to delete as inapplicable Rule 6.62P–O(a)(1)(C).[11] Consistent with this deletion, the Exchange proposes to modify Rule 6.64P–O(f)(3)(A)(vi), which cross references the to-be-deleted provision, and to provide that ''[u]nexecuted Market Orders will be cancelled.'' [12]
- Finally, the Exchange also proposes to delete as inapplicable Rule 6.62P–O(a)(1)(D).[13]

The Exchange believes that the proposed functionality would provide greater determinism for Market Orders that have been collared, which would provide OTPs that send Market Orders as agent greater control over, and more certainty regarding, the Exchange's handling of such orders.

Implementation

The Exchange will announce by Trader Update the implementation date of the proposed rule change, which implementation will be no later than 90 days after the effectiveness of this rule change.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[14] in general, and furthers the objectives of section 6(b)(5),[15] in particular, because it is 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 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.

The Exchange believes the proposed change to modify the handling of collared Market Orders, which is being made in response to OTPs' preference to have Market Orders for which they are agent immediately cancel back for handling—rather than have such collared Market Orders first post at aggressive prices for 500 milliseconds, would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed handling would refine existing functionality in a manner that would enable OTPs to have more certainty regarding, and more control over, the handling of their Market Orders.[16]

The proposed conforming changes would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, would protect investors and the public interest because such changes would add clarity, transparency, and internal consistency to Exchange rules.

*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 is proposing a market enhancement that would provide OTPs with greater control over, and more certainty regarding, collared Market Orders that such OTPs have submitted as agent. The proposal would apply to all similarly-situated OTPs and would not impose a competitive burden on any participant. The Exchange does not believe that the proposed change to the existing Trading Collar functionality would impose a burden on competing options exchanges. Rather, the availability of the modified Trading Collar functionality may foster more competition. Specifically, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. When an exchange offers enhanced functionality that distinguishes it from the competition and participants find it useful, it has been the Exchange's experience that competing exchanges will move to adopt similar functionality. Thus, the Exchange believes that this type of competition amongst exchanges is beneficial to the marketplace as it can result in enhanced processes, functionality, and technologies.

*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 Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act [19] and subparagraph (f)(6) of Rule 19b–4 thereunder.[20]

A proposed rule change filed under Rule 19b–4(f)(6) [21] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[22] 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 proposal may take effect immediately. The

[10] *See* Rule 6.62P–O(a)(1)(C).

[11] *See* Rule 6.62P–O(a)(1)(C) (providing that a Market Order will be cancelled before being displayed if there are no remaining contra-side Market Maker quotes on the Exchange or contra-side ABBO).

[12] *Compare* proposed Rule 6.64P–O(f)(3)(A)(vi) *with* Rule 6.64P–O(f)(3)(A)(vi) (providing that Market Orders received during a pre-open state will be subject to the validation specified in Rule 6.62P–O(a)(1)(C).

[13] *See* Rule 6.62P–O(a)(1)(D) (providing that after being displayed at its Trading Collar, a Market Order will be cancelled if there ceases to be a contra-side NBBO). The Exchange proposes the non-substantive change to re-number current paragraph (a)(1)(E) of the Rule to new paragraph (a)(1)(C) to account for the aforementioned deletions.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] As discussed *supra,* the proposal would alter the handling of collared Market Orders (but not collared Limit Orders) because Market Orders (unlike Limit Orders) do not include a price and tend to be utilized to access liquidity. Thus, the proposal to cancel back collared Market Orders would benefit OTPs because it would enable the order sender to reevaluate, on a timelier basis how best to handle this trading interest.

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will enable the Exchange to provide, without delay, more refined handling of collared Market Orders. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[23]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)[24] 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–2023–54 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–2023–54. 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–2023–54 and should be submitted on or before September 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2023–17604 Filed 8–15–23; 8:45 am]

**BILLING CODE 8011–01–P**

[23] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78s(b)(2)(B).

[25] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98110; File No. SR–NYSEAMER–2023–37]**

## Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Equities Price List To Adopt a Fee for Directed Orders Routed Directly by the Exchange to an Alternative Trading System

August 11, 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 American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Equities Price List (''Price List'') to adopt a fee for Directed Orders routed directly by the Exchange to an alternative trading system (''ATS''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Price List to adopt a fee for Directed Orders routed directly by the Exchange to an ATS. The Exchange proposes to implement the fee change effective August 1, 2023.

Background

The Exchange operates in a highly competitive market. The Securities and Exchange Commission (''Commission'') has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [5] Indeed, equity trading is currently dispersed across 16 exchanges,[6] numerous alternative trading systems,[7] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 17% market share.[8] Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange currently has less than 1% market share of executed volume of cash equities trading.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. Accordingly, competitive forces constrain exchange transaction fees because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

Pursuant to Commission approval, the Exchange has adopted an order type known as Directed Orders.[10] Under Exchange rules, the ATS to which a Directed Order is routed is responsible for validating whether the order is eligible to be accepted, and if such ATS determines to reject the order, the order would be cancelled. Directed Orders that are the subject of this proposed rule change are those that are routed to OneChronos LLC (''OneChronos'').

The Exchange implemented the routing functionality to OneChronos on September 2, 2022,[11] and introduced the functionality at that time without charging a fee.[12] The Exchange now proposes to adopt a fee of $0.0015 per share for Directed Orders routed to OneChronos. To reflect the proposed fee, the Exchange proposes to amend current Section III. Fees for Routing for all ETP Holders, to state ''$0.0015 per share for Directed Orders routed to OneChronos LLC'' for securities priced at or above $1.00.

Since its implementation, the Directed Order functionality has facilitated additional trading opportunities by offering ETP Holders the ability to designate orders submitted to the Exchange to be routed to OneChronos for execution. The functionality has also created efficiencies for ETP Holders that choose to use the functionality by enabling them to send orders that they wish to route to OneChronos through the Exchange by leveraging order entry protocols already configured for their interaction with the Exchange. Routing functionality offered by the Exchange is completely optional and ETP Holders can readily select between various providers of routing services, including other exchanges and non-exchange venues. ETP Holders that choose not to utilize Directed Orders would continue to be able to trade on the Exchange as they currently do.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[13] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[14] 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.

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15]

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, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The routing of orders to OneChronos is provided by the Exchange on a voluntary basis and no rule or regulation requires that the Exchange offer it. Nor does any rule or regulation require market participants to send orders to an ATS generally, let alone to OneChronos. The routing of orders to OneChronos operates similarly to the Primary Only Order already offered by the Exchange, which is an order that is routed directly to the primary listing market on arrival, without interacting with the interest on the Exchange Book.[16]

The Exchange believes its proposal equitably allocates its fees among market participants. The Exchange believes that the proposal represents an equitable allocation of fees because it would apply uniformly to all ETP Holders, in that all ETP Holders will have the ability to designate orders submitted to the Exchange to be routed to OneChronos, and each such ETP Holder would be charged the proposed fee when utilizing the functionality. Without having a view of ETP Holders' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed fee would result in any ETP Holder from reducing or discontinuing its use of the routing functionality. While the Exchange has no way of knowing

[5] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[6] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

[10] A Directed Order is a Limit Order with instructions to route on arrival at its limit price to a specified ATS with which the Exchange maintains an electronic linkage. *See* Rule 7.31E(f)(4). *See also* Securities Exchange Act Release No. 95424 (August 4, 2022), 87 FR 48716 (August 10, 2022) (SR–NYSEAMER–2022–19).

[11] *See https://www.nyse.com/publicdocs/nyse/notifications/trader-update/110000456275/OneChronos_August_2022_Trader_Update_Final.pdf.*

[12] *See* Securities Exchange Act Release No. 95813 (September 16, 2022), 87 FR 57948 (September 22, 2022) (SR–NYSEAMER–2022–40).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] *See supra* note 4.

[16] *See* Rule 7.31E(f)(1).

whether this proposed rule change would serve as a disincentive to utilize the order type, the Exchange believes that a number of ETP Holders will continue to utilize the functionality because of the efficiencies created for ETP Holders that enables them to send orders that they wish to route to OneChronos through the Exchange by leveraging order entry protocols already configured for their interactions with the Exchange.

The Exchange reiterates that the routing functionality offered by the Exchange is completely optional and that the Exchange operates in a highly competitive market in which market participants can readily select between various providers of routing services with different product offerings and different pricing. The Exchange believes that the proposed flat fee structure for orders routed to away venues is a fair and equitable approach to pricing, as it will provide certainty with respect to execution fees.

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes it is not unfairly discriminatory as the proposal to charge a fee would be assessed on an equal basis to all ETP Holders that use the Directed Order functionality. Moreover, this proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that this proposal does not permit unfair discrimination because the changes described in this proposal would be applied to all similarly situated ETP Holders. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed rule change would not permit unfair discrimination among ETP Holders because the Directed Order functionality would remain available to all ETP Holders on an equal basis and each such participant would be charged the same fee for using the functionality.

Finally, the submission of orders to the Exchange is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with section 6(b)(8) of the Act,[17] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. 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.'' [18] The Exchange does not believe that the proposed fee change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. ETP Holders may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of ETP Holders or competing venues to maintain their competitive standing in the financial markets.

*Intramarket Competition.* The Exchange believes the proposed amendment to its Price List would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Directed Order functionality is available to all ETP Holders and all ETP Holders that use the functionality to route their orders to OneChronos would be charged the proposed fee. The routing of orders to OneChronos is provided by the Exchange on a voluntary basis and no rule or regulation requires that the Exchange offer it. ETP Holders have the choice whether or not to use the Directed Order functionality and those that choose not to utilize it will not be impacted by the proposed rule change. The Exchange also does not believe the proposed rule change would impact intramarket competition as the proposed fee would apply to all ETP Holders equally that choose to utilize the Directed Order functionality, and therefore the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading is currently less than 1%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A) [19] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2023–37 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2023–37. This file number should be included on the subject line if email is used. To help the

[17] 15 U.S.C. 78f(b)(8).

[18] *See supra* note 4.

[19] 15 U.S.C. 78s(b)(3)(A).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2023–37 and should be submitted on or before September 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2023–17608 Filed 8–15–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No.34–98106; File No. SR–CBOE–2023–038]**

## Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Relating to the Options Regulatory Fee

August 10, 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 (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule relating to the Options Regulatory Fee. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to increase the Options Regulatory Fee (''ORF'') from $0.0017 per contract to $0.0030 per contract, effective August 1, 2023.

The ORF is assessed by Cboe Options to each Trading Permit Holder (''TPH'') for options transactions cleared by the TPH that are cleared by the Options Clearing Corporation (''OCC'') in the customer range, regardless of the exchange on which the transaction occurs.[3] In other words, the Exchange imposes the ORF on all customer-range transactions cleared by a TPH, even if the transactions do not take place on the Exchange. The ORF is collected by OCC on behalf of the Exchange from the Clearing Trading Permit Holder (''CTPH'') or non-CTPH that ultimately clears the transaction. With respect to linkage transactions, Cboe Options reimburses its routing broker providing Routing Services pursuant to Cboe Options Rule 5.36 for options regulatory fees it incurs in connection with the Routing Services it provides.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of TPH customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses for work allocated in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as human resources, legal, compliance, information technology, facilities and accounting. These indirect expenses are estimated to be approximately 30% of Cboe Options' total regulatory costs for 2023. Thus, direct expenses are estimated to be approximately 70% of total regulatory costs for 2023. In addition, it is Cboe Options' practice that revenue generated from ORF not exceed more than 75% of total annual regulatory costs. These expectations are estimated, preliminary and may change. There can be no assurance that our final costs for 2023 will not differ materially from these expectations and prior practice; however, the Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs.

The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs in a given year, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange also notifies TPHs of adjustments to the ORF via an Exchange Notice, including for the

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes ORF also applies to customer-range transactions executed during Global Trading Hours.

change being proposed herein.[4] Based on the Exchange's most recent semi-annual review, the Exchange is proposing to increase the amount of ORF that will be collected by the Exchange from $0.0017 per contract side to $0.0030 per contract side. The proposed increase is based on the Exchange's estimated projections for its regulatory costs, which have increased, coupled with a projected decrease in the Exchange's other non-ORF regulatory fees.[5] Particularly, based on the Exchange's estimated projections for its regulatory costs, the revenue being generated by ORF using the current rate, would result in projected revenue that is insufficient to cover a material portion of its regulatory costs (*i.e.,* less than 75% of total annual regulatory costs). Further, when combined with the Exchange's projected other non-ORF regulatory fees and fines, the revenue being generated by ORF using the current rate results is projected to result in combined revenue that is less than 100% of the Exchange's estimated regulatory costs for the year.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

2. *Statutory Basis*

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because it would help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, would help offset, but not exceed, the Exchange's total regulatory costs. As discussed, the Exchange has designed the ORF to generate revenues that would be less than or equal to 75% of the Exchange's regulatory costs, which is consistent with the practice across the options industry and the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business side. The Exchange determined to increase ORF after its semi-annual review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines. The Exchange notes that although recent options volumes have increased, it has not increased its ORF rate in four years. In fact, since 2019, the Exchange has reduced its ORF rates twice.[9] Accordingly, when taking into account recent options volume, coupled with the anticipated regulatory fees and anticipated reductions in other regulatory fees, the Exchange believes it's reasonable to increase the ORF. Particularly, the proposed change is reasonable as it would offset the anticipated increased regulatory costs, while still not exceeding 75% of the Exchange's total regulatory costs. Moreover, the proposed amount is still lower than the amount of ORF assessed on other exchanges[10] and significantly lower than the Exchange has assessed previously.[11]

As noted above, the Exchange will also continue to monitor on at least a semi-annual basis the amount of revenue collected from the ORF, even as amended, to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. If the Exchange determines regulatory revenues would exceed its regulatory costs in a given year, the Exchange will reduce the ORF by submitting a fee change filing to the Commission.[12]

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all TPHs on all their transactions that clear in the customer range at the OCC. The Exchange believes the ORF ensures fairness by assessing higher fees to those TPHs that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (*e.g.,* staff and travel expenses), as well as investigations into customer complaints and the terminations of Registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* TPH proprietary transactions) of its regulatory program.[13] Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to its TPHs' activities, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity regardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG'')[14] the Exchange shares

[4] *See* Exchange Notice, C2023071301 ''Cboe Options Exchanges Regulatory Fee Update Effective August 1, 2023.''

[5] The Exchange notes that in connection with proposed ORF rate changes, it provides the Commission confidential details regarding the Exchange's projected regulatory revenue, including projected revenue from ORF, along with a breakout of its projected regulatory expenses, including both direct and indirect allocations.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exchange Act Release No. 89469 (August 4, 2020), 85 FR 48306 (August 10, 2020) (SR–CBOE–2020–069) and Securities Exchange Act Release No. 92597 (August 6, 2021), 86 FR 44454 (August 12, 2021) (SR–CBOE–2021–044).

[10] *See e.g.*, NYSE Arca Options Fees and Charges, Options Regulatory Fee (''ORF'') and NYSE American Options Fees Schedule, Section VII(A), which provide that ORF is assessed at a rate of $0.0055 per contract for each respective exchange. *See also* Nasdaq PHLX, Options 7 Pricing Schedule, Section 6(D), which provides for an ORF rate of $0.0034 per contract.

[11] *See e.g.*, Securities Exchange Act Release No. 71007 (December 6, 2013), 78 FR 75653 (December 12, 2013) (SR–CBOE–2013–117) (filing to increase ORF to $0.0095 per contract). *See also* Securities Exchange Act Release No. 76993 (January 28, 2016), 81 FR 5800 (February 3, 2016) (SR–CBOE–2016–004) (filing to increase ORF to $0.0081 per contract).

[12] Consistent with Rule 2.2 (Regulatory Revenue), the Exchange notes that should excess ORF revenue be collected prior to any reduction in an ORF rate, such excess revenue will not be used for nonregulatory purposes.

[13] If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on TPH proprietary transactions if the Exchange deems it advisable.

[14] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the

Continued

information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to its TPHs' customer trading activity.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [15] of the Act and subparagraph (f)(2) of Rule 19b–4 [16] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [17] 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.sec19b-4/rules/sro.shtml*); or
- Send an email to *rule-comments@sec19b–4.* Please include file number SR–CBOE–2023–038 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CBOE–2023–038. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec19b-4/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–2023–038 and should be submitted on or before September 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–17530 Filed 8–15–23; 8:45 am]

**BILLING CODE 8011–01–P**

SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(2).

[17] 15 U.S.C. 78s(b)(2)(B).

[18] 17 CFR 200.30–3(a)(12).

# SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98114; File No. SR–NYSECHX–2023–15]**

## Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of NYSE Chicago, Inc. To Adopt a Fee for Directed Orders Routed Directly by the Exchange to an Alternative Trading System

August 11, 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, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 amend the Fee Schedule of NYSE Chicago, Inc. (the ''Fee Schedule'') to adopt a fee for Directed Orders routed directly by the Exchange to an alternative trading system (''ATS''). 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt a fee for Directed Orders routed directly by the Exchange to an ATS. The Exchange proposes to implement the fee change effective August 1, 2023.

Background

The Exchange operates in a highly competitive market. The Securities and Exchange Commission (''Commission'') has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [5] Indeed, equity trading is currently dispersed across 16 exchanges,[6] numerous alternative trading systems,[7] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 17% market share.[8] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 1%.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. Accordingly, competitive forces constrain exchange transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

Pursuant to Commission approval, the Exchange adopted an order type known as Directed Orders.[10] Under Exchange rules, the ATS to which a Directed Order is routed is responsible for validating whether the order is eligible to be accepted, and if such ATS determines to reject the order, the order would be cancelled. Directed Orders that are the subject of this proposed rule change are those that are routed to OneChronos LLC (''OneChronos'').

The Exchange implemented the routing functionality to OneChronos on November 21, 2022,[11] and introduced the functionality at that time without charging a fee.[12] The Exchange now proposes to adopt a fee of $0.0015 per share for Directed Orders routed to OneChronos. To reflect the proposed fee, the Exchange proposes to amend footnote 1 under current Section E. titled Transaction and Order Processing Fees. As proposed, the first sentence under footnote 1 would state ''$0.0015 per share for Directed Orders routed to OneChronos LLC.''

Since its implementation, the Directed Order functionality has facilitated additional trading opportunities by offering Participants [13] the ability to designate orders submitted to the Exchange to be routed to OneChronos for execution. The functionality has also created efficiencies for Participants that choose to use the functionality by enabling them to send orders that they wish to route to OneChronos through the Exchange by leveraging order entry protocols already configured for their interaction with the Exchange. Routing functionality offered by the Exchange is completely optional and Participants can readily select between various providers of routing services, including other exchanges and non-exchange venues. Participants that choose not to utilize Directed Orders would continue to be able to trade on the Exchange as they currently do.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[14] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[15] 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.

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[6] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share.*

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

[10] A Directed Order is a Limit Order with instructions to route on arrival at its limit price to a specified ATS with which the Exchange maintains an electronic linkage. *See* Rule 7.31(f)(4). *See also* Securities Exchange Act Release No. 95425 (August 4, 2022), 87 FR 48735 (August 10, 2022) (SR–NYSECHX–2022–06).

[11] *See https://www.nyse.com/publicdocs/nyse/notifications/trader-update/110000486743/ALO_MPL_One_Chronos_Chicago.pdf.*

[12] *See* Securities Exchange Act Release No. 96433 (December 1, 2022), 87 FR 75113 (December 7, 2022) (SR–NYSECHX–2022–27).

[13] A ''Participant'' is, except as otherwise described in the Rules of the Exchange, ''any Participant Firm that holds a valid Trading Permit and any person associated with a Participant Firm who is registered with the Exchange under Articles 16 and 17 as a Market Maker Authorized Trader or Institutional Broker Representative, respectively.'' *See* Article 1, Rule 1(s).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and (5).

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.'' [16]

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, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The routing of orders to OneChronos is provided by the Exchange on a voluntary basis and no rule or regulation requires that the Exchange offer it. Nor does any rule or regulation require market participants to send orders to an ATS generally, let alone to OneChronos. The routing of orders to OneChronos operates similarly to the Primary Only Order already offered by the Exchange, which is an order that is routed directly to the primary listing market on arrival, without interacting with the interest on the Exchange Book.[17]

The Exchange believes its proposal equitably allocates its fees among market participants. The Exchange believes that the proposal represents an equitable allocation of fees because it would apply uniformly to all Participants, in that all Participants will have the ability to designate orders submitted to the Exchange to be routed to OneChronos, and each such Participant would be charged the proposed fee when utilizing the functionality. Without having a view of Participants' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed fee would result in any Participant from reducing or discontinuing its use of the routing functionality. While the Exchange has no way of knowing whether this proposed rule change would serve as a disincentive to utilize the order type, the Exchange believes that a number of Participants will continue to utilize the functionality because of the efficiencies created for Participants that enables them to send orders that they wish to route to OneChronos through the Exchange by leveraging order entry protocols already configured for their interactions with the Exchange.

The Exchange reiterates that the routing functionality offered by the Exchange is completely optional and that the Exchange operates in a highly competitive market in which market participants can readily select between various providers of routing services with different product offerings and different pricing. The Exchange believes that the proposed flat fee structure for orders routed to away venues is a fair and equitable approach to pricing, as it will provide certainty with respect to execution fees.

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes it is not unfairly discriminatory as the proposal to charge a fee would be assessed on an equal basis to all Participants that use the Directed Order functionality. Moreover, this proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that this proposal does not permit unfair discrimination because the changes described in this proposal would be applied to all similarly situated Participants. Accordingly, no Participant already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed rule change would not permit unfair discrimination among Participants because the Directed Order functionality would remain available to all Participants on an equal basis and each such Participant would be charged the same fee for using the functionality.

Finally, the submission of orders to the Exchange is optional for Participants in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with section 6(b)(8) of the Act,[18] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. 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.'' [19] The Exchange does not believe that the proposed fee change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Participants may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Participants or competing venues to maintain their competitive standing in the financial markets.

*Intramarket Competition.* The Exchange believes the proposed amendment to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Directed Order functionality is available to all Participants and all Participants that use the functionality to route their orders to OneChronos would be charged the proposed fee. The routing of orders to OneChronos is provided by the Exchange on a voluntary basis and no rule or regulation requires that the Exchange offer it. Participants have the choice whether or not to use the Directed Order functionality and those that choose not to utilize it will not be impacted by the proposed rule change. The Exchange also does not believe the proposed rule change would impact intramarket competition as the proposed fee would apply to all Participants equally that choose to utilize the Directed Order functionality, and therefore the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading is currently less than 1%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange

[16] *See supra* note 4.

[17] *See* Rule 7.31(f)(1).

[18] 15 U.S.C. 78f(b)(8).

[19] *See supra* note 4.

does not believe its proposed fee change can impose any burden on intermarket competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)[20] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSECHX–2023–15 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSECHX–2023–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSECHX–2023–15 and should be submitted on or before September 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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**BILLING CODE 8011–01–P**

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98109; File No. SR–CboeBZX–2023–061]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule Related to the Options Regulatory Fee

August 10, 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 8, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend its Fee Schedule related to the Options Regulatory Fee. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Options Fee Schedule, to harmonize the language and processes relating to the Options Regulatory Fee (''ORF'').[3] By way of background, the ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Member customer options business, including performing routine surveillances, investigations, examinations, financial monitoring, as well as policy, rulemaking, interpretive and enforcement activities. The revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, covers a material portion, but not all, of the Exchange's regulatory costs.

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange monitors its regulatory costs and revenues at a

[3] The Exchange initially filed the proposed rule change on August 1, 2023 (SR–CboeBZX–2023–057). On August 8, 2023, the Exchange withdrew that filing and submitted this proposal.

minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies Members of adjustments to the ORF via an exchange notice. The Exchange provides Members with such notice at least 30 calendar days prior to the effective date of the change.

The Options Regulatory Fee section of the fees schedule sets forth the details and description of how and when the ORF is assessed. For example, the fee schedule explicitly specifies that the Exchange may only increase or decrease the ORF semi-annually, and any such fee change will be effective on the first business day of February or August. The fee schedule further states that the Exchange will notify participants of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change.

The Exchange proposes to update the fee schedule language relating to the timing of ORF changes. Particularly, the Exchange proposes to eliminate the strict requirement that the ORF may only be modified on the first business day of February or August, and also the explicit requirement that it must provide at least 30 calendar days prior to the effective date.

The Exchange first proposes to eliminate the requirement that ORF may only be modified on the first business day of February or August to afford the Exchange increased flexibility in amending the ORF. As noted above, the ORF is based in part on options transactions volume, and as such the amount of ORF collected is variable. If options transactions reported to OCC in a given month increase, the ORF collected from Members may increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from Members may decrease as well. Accordingly, the Exchange monitors the amount of ORF collected to ensure that it does not exceed the Exchange's total regulatory costs. If the Exchange determines the amount of ORF collected exceeds costs over an extended period, the proposed rule change allows the Exchange to adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the ''Commission'') in a month other than just February or August. Although the Exchange proposes to eliminate the explicit language in the fee schedule that provides the Exchange will adjust the ORF only semi-annually, and only on the first business day of February or August, it would continue to monitor its regulatory costs and revenues at a minimum on a semi-annual basis and submit a proposed rule change for each modification of the ORF as needed.

The Exchange also proposes to eliminate the explicit language in the fee schedule that it will notify participants of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change. Although the Exchange proposes to eliminate this language from the fee schedule, it notes that it will endeavor to notify Members of any planned change to the ORF by Exchange Notice at least 30 calendar days prior to the effective date of such change. The Exchange believes this proposed change also provides the Exchange additional flexibility. For example, the Exchange often provides fee change notices on the first business day of the month. It may be the case that such date is less than 30 days from the effective date of proposed change (*e.g.,* if the Exchange wished to amend the ORF, effective, August 1, 2023, the Exchange would not have met the 30-day notice requirement if it had announced on the first business day of July, as it has been historic practice, since the first business day falls on July 3, 2023). As such, the proposed rule changes provides added flexibility while still committing to provide notice on the timing of any changes to the ORF and ensuring that Members are prepared to configure their systems to properly account for the ORF.

The Exchange notes that the proposed changes result in ORF processes and fee schedule language that aligns with those of its affiliated exchanges, Cboe Exchange, Inc. (''Cboe Options'') and Cboe C2 Exchange, Inc. (''C2 Options).[4] Particularly, although typically the practice, neither Cboe Options nor C2 Options are limited to only adjusting ORF to only the first business day of August or February. Moreover, other options exchanges recently amended their fees to allow for flexibility to adjust ORF during months other than February or August.[5] The Exchange notes that neither Cboe Options nor C2 Options explicitly provide in their fees schedules that it will provide notice at least 30 calendar days in advance of any ORF change. They have both represented in various ORF fee filings that they endeavor to notify Members of any planned change to the ORF by Exchange Notice at least 30 calendar days prior to the effective date of such change, just as the Exchange represents here.[6] The Exchange believes the proposed change provides uniformity across is affiliated options exchanges and reduces potential confusion. It also provides the Exchange added flexibility as to when modifications to the ORF may occur.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[10] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed changes to the Fees Schedule with respect to how ORF is assessed and collected are appropriate as it provides the Exchange more flexibility in its assessment of ORF based on its periodic monitoring of ORF rates. The Exchange also represents that it will continue to monitor its regulatory costs and revenues at a minimum on a semi-

[4] *See* Cboe Options Fees Schedule and Cboe C2 Options Fees Schedule. The Exchange intends to submit an identical proposal for its affiliate, Cboe EDGX Exchange, Inc. (''EDGX Options'').

[5] *See e.g.,* Securities Exchange Act Release No. 96066 (October 13, 2022), 87 FR 63565 (October 19, 2022) (SR–NYSEAMER–2022–45).

[6] *See e.g.,* Securities Exchange Act Release No. 92597 (August 6, 2021), 86 FR 44451 (August 12, 2021 (SR–CBOE–2021–044). *See also* Securities Exchange Act Release No. 92596 (August 6, 2021), 86 FR 44461 (August 12, 2021 (SR–C2–2021–012).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

[10] 15 U.S.C. 78f(b)(4).

annual basis, just as it, and its affiliated options exchanges (including Cboe Options and C2 Options) do today. The Exchange believes that the proposed elimination of language specifying that the Exchange may only increase or decrease the ORF on the first business day February or August is reasonable because it is designed to afford the Exchange increased flexibility in making necessary adjustments to the ORF, as the Exchange is required to monitor the amount collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed total regulatory costs.

The Exchange also represents that it will endeavor to provide notice of any changes at least 30 days in advance of the effective date of such change, thereby providing Members with adequate time to make any necessary adjustments to accommodate any proposed changes. Taking out the strict requirements from the fee schedule, however, will provide the Exchange flexibility in modifying ORF and being able to adjust ORF even if it doesn't meet the strict 30-day deadline in event extenuating circumstances prevent the Exchange from meeting this deadline or in the event such notice is a day or two less than 30 days due to when the first business days of the month fall. For example, as noted above, the Exchange often provides fee change notices on the first business day of the month. It may be the case that such date is less than 30 days from the effective date of proposed change (*e.g.,* if the Exchange wished to amend the ORF, effective, August 1, 2023, the Exchange would not have met the 30-day notice requirement if it had announced on the first business day of July, as it has been historic practice, since the first business day falls on July 3, 2023).

The Exchange believes the proposed rule changes are reasonable, equitable and not unfairly discriminatory because they conform to the process and fee schedule language used by two of its affiliated options exchanges, thereby providing consistency across the Cboe family options exchanges and reducing potential confusion. The proposed changes also apply uniformly to all Members subject to ORF. As noted above, other options exchanges are also not confined to making ORF changes on the first business day of February or August.[11]

[11] *See e.g.,* Securities Exchange Act Release No. 96066 (October 13, 2022), 87 FR 63565 (October 19, 2022) (SR–NYSEAMER–2022–45).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the proposed change will apply to all Members subject to ORF uniformly. Further, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it merely amends the fees schedule and timing relating to the modification of the ORF and conforms to the timing and fee schedule language of the Exchange's affiliated options exchanges, Cboe Options and C2 Options. Further, ORF is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs and the proposed rule change does not seek to change that.

*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 after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)[13] thereunder.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 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, along with a brief description and text of 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.

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] 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 originally filed this proposal under Rule 19b–4(f)(2) on August 1, 2023.[16] Because the proposed rule change does not raise any novel legal or regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[17]

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–CboeBZX–2023–061 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.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *See supra,* note 3.

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to file number SR–CboeBZX–2023–061. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–061 and should be submitted on or before September 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–17533 Filed 8–15–23; 8:45 am]

**BILLING CODE 8011–01–P**

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98107; File No. SR–OCC–2023–005]**

## Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1, by the Options Clearing Corporation Concerning Amendment of Its Recovery and Orderly Wind-Down Plan

August 10, 2023.

### I. Introduction

On June 7, 2023, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2023–005 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder. The proposed rule change would amend OCC's Recovery and Orderly Wind-Down Plan (''RWD Plan'') by: (i) removing certain supporting information; (ii) incorporating references to certain documents and materials; (iii) implementing updates and amendments to all six chapters of the proposed Plan; and (iv) updating and revising the hypothetical stress scenarios set forth in Appendix A of the proposed RWD Plan. The proposed rule change was published for public comment in the **Federal Register** on June 27, 2023.[3] The Commission has received comments regarding the proposed rule change.[4]

On July 28, 2023, OCC amended SR–OCC–2023–005 to correct an error in the narrative summary of proposed rule changes (''Partial Amendment No. 1''). Specifically, the narrative, as filed on June 7, 2023, stated that OCC proposed to remove a section of the RWD Plan describing OCC's Risk Management Framework. However, the relevant text was already removed from the RWD Plan as part of a recent filing.[5] The amendment did not change the purpose or basis of the proposed rule change. The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons, and, for the reasons discussed below, is approving the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter, the ''proposed rule change''), on an accelerated basis.

### II. Background

OCC is a central counterparty (''CCP''), which means it interposes itself as the buyer to every seller and seller to every buyer for financial transactions. As the CCP for the listed options markets in the U.S., as well as for certain futures, OCC is exposed to certain risks arising from its relationships with its members as well as general business risk. OCC maintains various tools for managing such risks.[6] OCC also maintains tools to manage the risk of liquidity shortfalls and credit losses that exceed its routine risk management tools.[7] OCC describes such tools and the governance related to them in its RWD Plan.[8]

Over the years, OCC has made substantive and non-substantive

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 97785 (June 21, 2023), 88 FR 41695 (June 27, 2023) (File No. SR–OCC–2023–005) (''Notice of Filing'').

[4] Comments on the Proposed Rule Change are available at *https://www.sec.gov/comments/sr-occ-2023-005/srocc2023005.htm.* The commenters raised a concern regarding the confidentiality of certain exhibits. *Id.* OCC asserted that the exhibits to the filing were entitled to confidential treatment because they contained commercial and financial information that is not customarily released to the public and is treated as the private information of OCC. Under Section 23(a)(3) of the Exchange Act, the Commission is not required to make public statements filed with the Commission in connection with a proposed rule change of a self-regulatory organization if the Commission could withhold the statements from the public in accordance with the Freedom of Information Act (''FOIA''), 5 U.S.C. 552. 15 U.S.C. 78w(a)(3). The Commission has reviewed the documents for which OCC requests confidential treatment and concludes that they could be withheld from the public under the FOIA. FOIA Exemption 4 protects confidential commercial or financial information. 5 U.S.C. 552(b)(4). Under Exemption 4, information is confidential if it ''is both customarily and actually treated as private by its owner and provided to government under an assurance of privacy.'' *Food Marketing Institute* v. *Argus Leader Media,* 139 S. Ct. 2356, 2366 (2019). In its requests for confidential treatment, OCC stated that it has not disclosed the confidential exhibits to the public, and the information is the type that would not customarily be disclosed to the public. In addition, by requesting confidential treatment, OCC had an assurance of privacy because the Commission generally protects information that can be withheld under Exemption 4. Thus, the Commission has determined to accord confidential treatment to the confidential exhibits.

[5] Securities Exchange Act Release No. 96566 (Dec. 22, 2022), 87 FR 80207 (Dec. 29, 2022) (File No. SR–OCC–2022–010).

[6] *See e.g.,* Securities Exchange Act Release No. 96566 (Dec. 22, 2022), 87 FR 80207 (Dec. 29, 2022) (File No. SR–OCC–2022–010); Securities Exchange Act Release No. 87718 (Dec. 11, 2019), 84 FR 68992 (Dec. 17, 2019) (File No. SR–OCC–2019–010); and Securities Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500 (Jan. 30, 2020) (File No. SR–OCC–2019–007).

[7] *See* Securities Exchange Act Release No. 82351 (Dec. 19, 2017), 82 FR 61107 (Dec. 26, 2017) (File No. SR–OCC–2017–020). Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

[8] *See* Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091 (Aug. 29, 2018) (File No. SR–OCC–2017–021) (Order approving the adoption of OCC's RWD Plan).

changes to the RWD Plan.[9] With regard to the substance of the RWD Plan, OCC proposes to change the trigger events defined in the RWD Plan. With regard to recovery, the changes would focus the trigger events on OCC's ability to meet future obligations (as opposed to a focus on current resources). With regard to wind-down, the changes would clarify the Board's role in starting the wind-down process and provide flexibility to avoid triggering a wind-down where recovery is still a viable option.

OCC also proposes to make a series of non-substantive changes, including changes to improving the accuracy and consistency of information in the RWD Plan by moving dynamic, contextual information (*e.g.,* annual volume data) out of the RWD Plan to a supporting document that could more easily be maintained as such information changes from time to time. Similarly, OCC proposes to strike language found in other OCC sources from the RWD Plan to avoid potential future inconsistencies across OCC's internal documentation. Further, OCC would update information and references in the RWD Plan that are currently out of date. Lastly, OCC proposes to streamline the hypothetical stress scenarios describing how OCC would employ its recovery and wind-down tools without affecting the substance covered in the scenarios.[10]

*A. Trigger Events*

*Recovery Triggers.* In its RWD Plan, OCC has identified events that would indicate OCC is facing an extreme stress event that potentially threatens OCC's viability, the occurrence of which would signal that OCC has entered into recovery (the ''Recovery Trigger Events'').[11] The RWD Plan currently defines a set of three such Recovery Trigger Events arising out of (i) credit losses, (ii) liquidity shortfalls, and (iii) operational losses and disruption. OCC proposes to revise the credit and liquidity triggers and to separate the third trigger out into two separate triggers based on operational disruptions and general business losses.

The credit loss-Recovery Trigger change is merely a rephrasing of the current trigger clarify that it would be based on a 100 percent depletion of the pre-funded Clearing Fund resources. OCC proposes to change the liquidity shortfall Recovery Trigger to better align with OCC's Liquidity Risk Management Framework. The current trigger focuses on the inability to complete settlement within the time required. In contrast, the proposed trigger would focus on the potential inability to address foreseeable shortfalls.

For events not triggered by a member default, OCC proposes to replace the current trigger focused on loss and disruption into two separate triggers, one of which would be based on loss and the other on disruption. With regard to loss, OCC proposes to replace references to operational loss with references to broader general business losses. With regard to disruption, the trigger would continue to focus on the disruption of critical services. Both the general business loss and operational disruption triggers would focus on OCC having no reasonable expectation of timely return to business as usual (*i.e.,* meeting minimum capital requirements or resumption of critical services).

*Wind-Down Triggers.* Similar to the Recovery Trigger Events, OCC has identified events that could jeopardize the viability of OCC's ability to recover, the occurrence of which would signal the need for OCC to initiate its Wind-Down Plan (Wind-Down Trigger Events). The RWD Plan currently defines four Wind-Down Trigger Events that relate to (i) an inability to comply with regulatory financial resource requirements; (ii) a loss of confidence by members; (iii) the sustained disruption of critical services; and (iv) modification or recission of an emergency filed pursuant to Section 806(e)(2) of the Payment, Clearing, and Settlement Supervision Act.[12] To reduce the chance of initiating a wind-down where a successful recovery would still be possible, OCC proposes to replace the four Wind-Down Trigger Events with a single, flexible trigger that grants discretion to OCC's Board of Directors. The proposed trigger would rest on the Board's determination that OCC's recovery efforts have not been or are unlikely to be successful in returning OCC to viability as a going concern. The revised approach would allow more flexible consideration of the facts and circumstances of a given event.

*B. Changes for Consistency and Accuracy*

As noted above, OCC is also proposing a set of non-substantive changes to the RWD Plan. Such changes (described further below) include the (i) relocation of context and background information from the Plan into a supplemental document; (ii) removal of duplicative information maintained elsewhere in OCC's documentation; (iii) updating of information in the plan that is out of date or inconsistent with current practices; and (iv) streamlining of hypothetical stress scenarios describing how OCC would employ its recovery and wind-down tools. OCC also proposes grammatical and technical edits throughout the entirety of the RWD Plan, such as modifying the use and location of certain defined terms for improved readability, using initial capitalization for term ''Clearing Member'' consistently throughout the document, deleting unnecessary words, and modifying tense for clarity.

1. RWD Plan Supporting Information

OCC's RWD Plan currently includes information related to OCC's operations, management structure, personnel, support functions, banking relationships, vendors, and key agreements. This supporting information provides background and context for parties that are reviewing the RWD Plan or using it as part of an actual recovery or wind-down event. OCC is proposing to move supporting information from the RWD Plan to a separate document (the ''RWD Plan Supporting Information''). Placing such information in the RWD Plan Supporting Information would allow OCC to maintain the accuracy of such information without revising OCC's rules.[13]

The proposed rule change would move portions from the current RWD, such as significant portions of the existing ''Business Overview'' and ''Management Structure'' sections into the RWD Plan Supporting Information document.[14] OCC would also move

[9] *See e.g.,* Securities Exchange Act Release No. 90712 (Dec. 17, 2020), 85 FR 84050 (Dec. 23, 2020) (File No. SR–OCC–2020–013) (Order approving updates to OCCs RWD Plan to reflect changes to OCC's capital structure resulting from the disapproval of OCC's previously approved ''Capital Plan'' and the subsequent approval of OCC's ''Capital Management Policy'' and implementing changes identified during OCC's annual review of the RWD Plan).

[10] OCC also proposes conforming changes throughout the plan as required by the changes described here (*e.g.,* renumbering sections, fixing grammar).

[11] Once in recovery, OCC would likely look to apply its recovery tools, which include the ability of OCC to (i) levy assessments against non-defaulting members; (ii) receive voluntary payments from its non-defaulting members; (iii) allow non-defaulting members and customers to voluntarily extinguish certain positions; (iv) tear-up a defaulter's open positions; and (v) charge members a fee to replenish OCC's capital in response to certain non-default losses.

[12] *See* 12 U.S.C. 5465(e)(2).

[13] OCC intends to review and update the RWD Plan Supporting Information twice a year, or more frequently as needed. *See* Notice of Filing, 88 FR at 41696.

[14] OCC proposes to move the details of OCC's business overview to Section 2.1 (''Business Overview'') of the RWD Plan Supporting Information, details of OCC's management structure and executives to Sections 2.2 (''Management

Continued

background information about OCC's 12 support functions from the RWD Plan to the RWD Plan Supporting Information.[15] The proposed rule change would also move information and data subject to regular change from the RWD Plan's description of OCC's clearing services to a similar section of the RWD Plan Supporting Information. Lastly, OCC proposes to move information about OCC's current settlement banks, custodian banks, letter-of-credit banks, vendors needed to support recovery and wind-down, and key agreements to be maintained, currently listed in several of the RWD Plan Appendices, to the RWD Plan Supporting Information document.[16]

2. Removal of Duplicative Information

OCC proposes to remove information from the RWD Plan to the extent OCC already maintains such information elsewhere. The purpose of removing duplicative information is to reduce the complexity of maintaining information that could lead to inconsistencies across multiple documents. For example, OCC proposes to replace financial information currently set forth in the RWD Plan with a link to the section of OCC's website that displays OCC's Annual Reports, which include OCC's audited financial statements, and a link to OCC's fee schedule, which depicts the Target Capital Requirement.[17]

3. Updating of Inaccurate or Outdated Information

OCC also proposes to update text in the RWD Plan that was either inaccurate in its original form, or is no longer consistent with OCC's current practices. For example, in Chapter 1 of the Plan, OCC proposes to change the language related to expense assumptions during a resolution process, to convey the intended meaning of the assumption more accurately.[18] OCC proposes to update outdated descriptions of its services and facilities in Chapter 2 of the RWD Plan.[19] In Chapter 3 of the Plan, OCC proposes to update the descriptions of its pricing and valuation services by adding detail on the processes and eliminating specific data that become outdated quickly because it is subject to frequent changes (*e.g.,* trading data from 2019, such as the average daily gross volume of options contracts cleared, the average daily gross value of premium exchanged, etc.). OCC also proposes removing a reference to letter of credit banks from Section 3.5 because letter of credit banks comprise less than 0.1 percent of margin pledged to OCC. Further, OCC proposes conforming changes describing critical support functions the document that would reflect OCC's internal employee reporting structure and to provide a more granular view into the departments that make up each support function. In Chapter 5 of the Plan, OCC proposes to update timing, cost, and employee assumptions to reflect the results an of internal review. OCC also proposes replacing a discussion of heightened capital requirements with discussion of increased financial reporting for members consistent with OCC's Rule 306 and 307.

Similar to the updates regarding current practice, OCC proposes to change how it describes its existing enhanced risk management tools (*e.g.,* margin and Clearing Fund collateral) in the RWD Plan.[20] For example, OCC proposes to clarify the inclusion of executive compensation as a component of its ''skin in the game'' consistent with current OCC Rule 1006(e)(i).[21] OCC also proposes to expand the list of enhanced risk management tools described Section 4 of the Plan to include its existing assessment powers for managing a member default pursuant to OCC's Rule 1006, as well as several tools related to the management of risks other than a member's default: (i) insurance coverage, (ii) a working line of credit, (iii) authority to increase fees, and (iv) authority to extend settlement time pursuant to OCC rule 505.[22] The changes are intended to reflect a more complete list of tools that OCC may use to respond to extreme stress scenarios.[23]

4. Hypothetical Scenarios

Consistent with the revised risk management tool descriptions, OCC proposes to revise the hypothetical scenarios described in Chapter 7 of the RWD Plan. The hypothetical scenarios describe how OCC would deploy its risk management and recovery tools to respond to potential events such as a member default or settlement bank disruption. OCC is proposing updates to the hypothetical scenarios to reflect current data and operational procedures as well as to resolve grammatical issues. For example, OCC proposes to incorporate recent data regarding peak liquidity demands; the cash component of the Clearing Fund; and the two largest Clearing Fund contributions made by Clearing Members. OCC also proposes to remove references to energy futures and options and eliminate a related note indicating that the products reflected in this scenario may not be reflective of products cleared by OCC. Similarly, OCC would update references to settlement time for consistency with OCC's Rule 101.[24]

OCC is also proposing to revise the hypothetical scenarios in which OCC would clarify current roles and responsibilities to ensure that the descriptions set forth in this scenario align with OCC's current practices and procedures. For example, the revised Plan would reflect the Head of Default Management's role in recommending an extension of settlement timing to OCC's Office of the CEO. Similarly, OCC

Structure''), and details of its staffing to Section 2.3 (''People'').

[15] In the RWD Plan Supporting Information, Chapter 3, OCC would provide additional context on the Business Operations, Corporate Risk Management and Security Services Departments.

[16] Specifically, OCC proposes to move information from current Appendices E, F, G, H, and J to the new RWD Plan Supporting Information document. Current Appendix E of the RWD Plan is a list of OCC's current settlement banks; current Appendix F is a list of OCC's current custodian banks; current Appendix G is a list of OCC's current letter-of-credit banks; and current Appendix H is a list of OCC's current vendors needed to support recovery and wind-down. OCC also intends to provide additional information about its Tier 1 vendors (*i.e.,* vendors that involve or materially support critical processes) in the RWD Plan Supporting Information. The information in these RWD Plan Appendices would be moved to Chapter 4 (''Interconnectedness'') of the RWD Plan Supporting Information. Current Appendix J of the RWD Plan includes information on OCC's key agreements to be maintained with third-party products and services. This would be moved to Chapter 5 (''Key Agreements to be Maintained'') of the RWD Plan Supporting Information. This new Chapter 5 itself does not list the agreements with the third-party products and services, but provides a link to OCC's internal SharePoint website.

[17] Current Appendix D of the RWD Plan would be removed altogether. OCC proposes to add the link to OCC's annual reports and audited financial statements to current section 2.6 (''Financial Summary'').

[18] The language would change from ''stay at historical normal levels during the wind-down period'' to ''generally follow the annual budget with timing and staffing considerations.''

[19] OCC also proposes adding links to the RWD Plan that would point a reader to up-to-date information more generally, which is consistent with the changes to remove duplicative information.

[20] OCC is not proposing to remove or significantly change four of the five current enhanced risk management tools, but merely to align descriptions in the Plan with OCC's current thinking.

[21] OCC already has authority to use such executive compensation, and is now updating the Plan for consistency with its current rules. The proposed revisions would add detail to the description already provided in the Plan.

[22] The proposed changes include both addition of such tools to the list of enhanced risk management tools as well as the addition of more detailed description of tools and how they operate.

[23] OCC also proposes to conform the RWD discussion of minimum clearing fund cash to other sections discussing risk management tools by removing a paragraph discussing the expected impact and incentives related to the tool.

[24] *See* Securities Exchange Act Release No. 94950 (May 19, 2022), 87 FR 31916 (May 25, 2022) (File No. SR–OCC–2022–004).

proposes various changes to expand the description of roles and responsibilities related to its stock loan program under a scenario in which the Depository Trust Company is inaccessible (*e.g.,* describing the roles of the Collateral Services and Members Services teams with regard to notifications and escalations).

Lastly, OCC proposes combining the fact patterns presented of two of its hypothetical scenarios. Specifically, OCC would combine scenarios focused on cyberattack and member default to describe how OCC would respond to such a combined set of stresses. The combination of scenarios would require certain changes in assumptions and data, but would not affect OCC's available risk management and recovery tools.

## III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[25] After carefully considering the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act,[26] and Rule 17Ad–22(e)(3)(ii) [27] thereunder as described in detail below.

### *A. Consistency With Section 17A(b)(3)(F) of the Exchange Act*

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that a clearing agency's rules are designed to promote the prompt and accurate clearance and settlement of securities transactions.[28]

As a central counterparty, it is important for OCC to have a plan in place to address extreme stresses or crises with the aim of maintaining OCC's viability and ability to provide critical services. In the event that OCC's recovery efforts are not successful, the RWD Plan would seek to increase the possibility that a resolution of OCC's operations could be conducted in an orderly manner. The Commission continues to believe that OCC specifying the steps that it would take in either a recovery or orderly wind-down would enhance OCC's ability to address circumstances specific to an extreme stress event.[29] The Commission also continues to believe that, by increasing the likelihood that recovery would be orderly, efficient, and successful, the RWD Plan enhances OCC's ability to maintain the continuity of its critical services (including clearance and settlement services) during, through, and following periods of extreme stress giving rise to the need for recovery, thereby promoting the prompt and accurate clearance and settlement of securities transactions.[30]

As above, OCC proposes to make changes to the trigger events defined in the RWD Plan. With regard to recovery, the changes primarily shift focus to OCC's ability to meet future obligations in recovery. These changes continue to provide a roadmap for actions OCC may employ to monitor and manage its risks, and, as needed, to stabilize its financial condition in the event those risks materialize with a focus on its ability to continue providing critical services. Maintaining OCC's ability to continue providing clearance and settlement services would reduce the likelihood of disruption to the markets it service and is consistent with promoting the prompt and accurate clearance and settlement of securities transactions.

With regard to wind-down, OCC proposes clarifying the role of the Board in making a wind-down determination and consolidating its current Wind-Down Trigger Events into a trigger based on a scenario's specific facts and circumstances. The propose changed would provide more flexibility and could potentially cover a wider variety of scenarios, including actual insolvency events, that could affect OCC. The clarification of the Board's role is consistent with prior Commission statements regarding the importance of governance in the design of recovery and wind-down plans.[31] The changes would therefore increase the likelihood that OCC could continue providing critical services, thus promoting the prompt and accurate clearance and settlement of securities transactions.

Given the importance of a clearing agency's recovery and wind-down plan, such plans should be carefully and maintained to ensure that both the clearing agency and the relevant regulators have up-to-date information when such a plan is implemented. As described above, OCC proposes a number of changes designed to update the current plan and provide for the future maintenance of relevant information. Specifically, the proposal includes the (i) relocation of context and background information from the Plan into a supplemental document; (ii) removal of duplicative information maintained elsewhere in OCC's documentation; (iii) updating of information in the plan that is out of date or inconsistent with current practices; and (iv) streamlining of hypothetical stress scenarios describing how OCC would employ its recovery and wind-down tools.

The Commission believes, therefore, that the proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.[32]

### *B. Consistency With Rule 17Ad–22(e)(3)(ii) Under the Exchange Act*

Rule 17Ad–22(e)(3)(ii) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[33]

The Commission stressed the importance of the context of the recovery plan and clearing agency as a whole when assessing the utility of a particular approach to establishing trigger criteria.[34] As described above, OCC proposes changes that would focus its Recovery Trigger Events on OCC's ability to meet its future obligations in recovery. OCC also proposes separating out operational disruptions from general business losses, which would provide more granularity in describing its trigger events. With regard to wind-down, OCC proposes to replace four triggers with one flexible trigger. Such a change, while reducing granularity, may cover a

[25] 15 U.S.C. 78s(b)(2)(C).

[26] 15 U.S.C. 78q–1(b)(3)(F).

[27] 17 CFR 240.17Ad–22(e)(3)(ii).

[28] 15 U.S.C. 78q–1(b)(3)(F).

[29] *See* Securities Exchange Act Release No. 90712 (Dec. 17, 2020), 85 FR 84050, 84051 (Dec. 23, 2020) (File No. SR–OCC–2020–013).

[30] *See id.* at 84052.

[31] *See e.g.,* Standards for Covered Clearing Agencies, Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70809 (Oct. 13, 2016) (File No. S7–03014) (''Covered Clearing Agency Standards Adopting Release'').

[32] 15 U.S.C. 78q–1(b)(3)(F).

[33] 17 CFR 240.17Ad–22(e)(3)(ii).

[34] *Id.*

wider range of potential scenarios.[35] Further, the revised Wind-Down Event Trigger would specify the Board's role in determining whether to trigger an orderly wind-down.

In adopting Rule 17Ad–22(e)(3)(ii), the Commission provided guidance, stating that a covered clearing agency generally should consider, among other things, whether it has provided relevant resolution authorities with the information needed for purposes of recovery and resolution planning.[36] As described above, OCC proposes non-substantive updates focused primarily on keeping information accurate and up-to-date. To achieve this focus, OCC proposes (i) relocating of context and background information from the Plan into a supplemental document; (ii) removing of duplicative information maintained elsewhere in OCC's documentation; (iii) updating of information in the plan that is out of date or inconsistent with current practices; and (iv) streamlining of hypothetical stress scenarios describing how OCC would employ its recovery and wind-down tools., OCC proposes the removal of background and supporting information from the RWD Plan into a new and separate Supporting Information document. The Commission believes that, in moving such information to a separate document, resolution authorities will still be able to use the RWD Plan to identify the support functions that are necessary to maintain critical services and operations, yet also cross-reference to additional detail in the RWD Plan Supporting Information as needed. OCC also proposes the removing duplicative information and providing links to other sources of information, such as the OCC's website, which would allow OCC to update any supporting information in only one place, thus reducing the risk of providing redundant information. OCC is also proposing to update outdated information and to streamline its hypothetical stress scenarios to reflect current OCC operations more accurately. The Commission believes that the proposed non-substantive updates will make the information provided in the RWD Plan more accurate and useful; provide a more accurate and usable playbook for OCC or source of information for a resolution authority; eliminate the risk that the RWD Plan may not contain current information; support OCC's ability to use risk management and recovery tools effectively to bring about a recovery by clarifying which tools may be most effective for different situations or needs; and eliminate redundancy across OCC's by-laws and rules. As such, the non-substantive changes would provide a more up-to-date set of information for the relevant authorities to carry out any needed recovery and resolution planning more expeditiously.

The Commission believes, therefore, that the proposal is consistent with the requirements of Rule 17Ad–22(e)(3)(ii) under the Exchange Act.[37]

## IV. Solicitation of Comments on Partial Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–OCC–2023–005 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–OCC–2023–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (*http://www.sec.gov/rules/sro.shtml*). Comments are also 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. Operating conditions may limit access to the Commission's Public Reference Room. 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–OCC–2023–005 and should be submitted on or before September 6, 2023.

## V. Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[38] to approve the proposed rule change prior to the 30th day after the date of publication of notice of the filing of Partial Amendment No. 1 in the **Federal Register**. As discussed above, Partial Amendment No. 1 modified the original proposed rule change to correct an error in the narrative summary of proposed rule changes. Partial Amendment No. 1 does not change the purpose of or basis for the proposed changes.

For similar reasons as discussed above, the Commission finds that Partial Amendment No. 1 is consistent with the requirement that OCC's rules be designed to promote the prompt and accurate clearance and settlement of securities transactions under Section 17A(b)(3)(F) of the Exchange Act.[39] Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act, to approve the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.[40]

## VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act[41] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Exchange Act,[42] that the proposed rule change (SR–OCC–2023–005), as modified by Partial

[35] The Commission approved a similar single wind-down trigger event for the National Securities Clearing Corporation (''NSCC''). *See* Securities Exchange Act Release No. 83974 (Aug. 28, 2018), 83 FR 44988 (Sept. 4, 2018). NSCC Rule 42 authorizes NSCC's Board to authorize initiation of NSCC's wind-down plan if it determines that application of NSCC's recovery tools either (i) has not restored or likely will not restore NSCC to viability or (ii) that implementing the wind-down plan is in the best interests of NSCC, its shareholders and creditors, members, and the U.S. financial markets.

[36] *See* Covered Clearing Agency Standards Adopting Release, 81 FR at 70810.

[37] 17 CFR 240.17Ad–22(e)(3)(ii).

[38] 15 U.S.C. 78s(b)(2).

[39] 15 U.S.C. 78q–1(b)(3)(F).

[40] 15 U.S.C. 78s(b)(2).

[41] In approving this proposed rule change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[42] 15 U.S.C. 78s(b)(2).

Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–17531 Filed 8–15–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98108; File No. SR–CboeEDGX–2023–054]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule Related to the Options Regulatory Fee

August 10, 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 8, 2023, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend its Fee Schedule related to the Options Regulatory Fee. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Options Fee Schedule, to harmonize the language and processes relating to the Options Regulatory Fee (''ORF'').[3] By way of background, the ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Member customer options business, including performing routine surveillances, investigations, examinations, financial monitoring, as well as policy, rulemaking, interpretive and enforcement activities. The revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, covers a material portion, but not all, of the Exchange's regulatory costs.

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies Members of adjustments to the ORF via an exchange notice. The Exchange provides Members with such notice at least 30 calendar days prior to the effective date of the change.

The Options Regulatory Fee section of the fees schedule sets forth the details and description of how and when the ORF is assessed. For example, the fee schedule explicitly specifies that the Exchange may only increase or decrease the ORF semi-annually, and any such fee change will be effective on the first business day of February or August. The fee schedule further states that the Exchange will notify participants of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change, except in the case of the September 30th ORF rate change.

The Exchange proposes to update the fee schedule language relating to the timing of ORF changes.[4] Particularly, the Exchange proposes to eliminate the strict requirement that the ORF may only be modified on the first business day of February or August, and also the explicit requirement that it must provide at least 30 calendar days prior to the effective date.

The Exchange first proposes to eliminate the requirement that ORF may only be modified on the first business day of February or August to afford the Exchange increased flexibility in amending the ORF. As noted above, the ORF is based in part on options transactions volume, and as such the amount of ORF collected is variable. If options transactions reported to OCC in a given month increase, the ORF collected from Members may increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from Members may decrease as well. Accordingly, the Exchange monitors the amount of ORF collected to ensure that it does not exceed the Exchange's total regulatory costs. If the Exchange determines the amount of ORF collected exceeds costs over an extended period, the proposed rule change allows the Exchange to adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the ''Commission'') in a month other than just February or August. Although the Exchange proposes to eliminate the explicit language in the fee schedule that provides the Exchange will adjust the ORF only semi-annually, and only on the first business day of February or August, it would continue to monitor its regulatory costs and revenues at a minimum on a semi-annual basis and submit a proposed rule change for each modification of the ORF as needed.

The Exchange also proposes to eliminate the explicit language in the fee schedule that it will notify participants of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change. Although the Exchange proposes to eliminate this language from the fee schedule, it notes that it will endeavor to notify Members of any planned change to the ORF by Exchange Notice at least 30 calendar days prior to the effective date of such change. The Exchange believes this proposed change

[43] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed rule change on August 1, 2023 (SR–CboeEDGX–2023–053). On August 8, 2023, the Exchange withdrew that filing and submitted this proposal.

[4] It also proposes to eliminate the reference to the September 30 ORF rate, as that reference pertains to a change made back in 2019 and is therefore now obsolete.

also provides the Exchange additional flexibility. For example, the Exchange often provides fee change notices on the first business day of the month. It may be the case that such date is less than 30 days from the effective date of proposed change (*e.g.,* if the Exchange wished to amend the ORF, effective, August 1, 2023, the Exchange would not have met the 30-day notice requirement if it had announced on the first business day of July, as it has been historic practice, since the first business day falls on July 3, 2023). As such, the proposed rule changes provides added flexibility while still committing to provide notice on the timing of any changes to the ORF and ensuring that Members are prepared to configure their systems to properly account for the ORF.

The Exchange notes that the proposed changes result in ORF processes and fee schedule language that aligns with those of its affiliated exchanges, Cboe Exchange, Inc. (''Cboe Options'') and Cboe C2 Exchange, Inc. (''C2 Options).[5] Particularly, although typically the practice, neither Cboe Options nor C2 Options are limited to only adjusting ORF to only the first business day of August or February. Moreover, other options exchanges recently amended their fees to allow for flexibility to adjust ORF during months other than February or August.[6] The Exchange notes that neither Cboe Options nor C2 Options explicitly provide in their fees schedules that it will provide notice at least 30 calendar days in advance of any ORF change. They have both represented in various ORF fee filings that they endeavor to notify Members of any planned change to the ORF by Exchange Notice at least 30 calendar days prior to the effective date of such change, just as the Exchange represents here.[7] The Exchange believes the proposed change provides uniformity across is affiliated options exchanges and reduces potential confusion. It also provides the Exchange added flexibility as to when modifications to the ORF may occur.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed changes to the Fees Schedule with respect to how ORF is assessed and collected are appropriate as it provides the Exchange more flexibility in its assessment of ORF based on its periodic monitoring of ORF rates. The Exchange also represents that it will continue to monitor its regulatory costs and revenues at a minimum on a semi-annual basis, just as it, and its affiliated options exchanges (including Cboe Options and C2 Options) do today. The Exchange believes that the proposed elimination of language specifying that the Exchange may only increase or decrease the ORF on the first business day February or August is reasonable because it is designed to afford the Exchange increased flexibility in making necessary adjustments to the ORF, as the Exchange is required to monitor the amount collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed total regulatory costs.

The Exchange also represents that it will endeavor to provide notice of any changes at least 30 days in advance of the effective date of such change, thereby providing Members with adequate time to make any necessary adjustments to accommodate any proposed changes. Taking out the strict requirements from the fee schedule, however, will provide the Exchange flexibility in modifying ORF and being able to adjust ORF even if it doesn't meet the strict 30-day deadline in event extenuating circumstances prevent the Exchange from meeting this deadline or in the event such notice is a day or two less than 30 days due to when the first business days of the month fall. For example, as noted above, the Exchange often provides fee change notices on the first business day of the month. It may be the case that such date is less than 30 days from the effective date of proposed change (*e.g.,* if the Exchange wished to amend the ORF, effective, August 1, 2023, the Exchange would not have met the 30-day notice requirement if it had announced on the first business day of July, as it has been historic practice, since the first business day falls on July 3, 2023).

The Exchange believes the proposed rule changes are reasonable, equitable and not unfairly discriminatory because they conform to the process and fee schedule language used by two of its affiliated options exchanges, thereby providing consistency across the Cboe family options exchanges and reducing potential confusion. The proposed changes also apply uniformly to all Members subject to ORF. As noted above, other options exchanges are also not confined to making ORF changes on the first business day of February or August.[12]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the proposed change will apply to all Members subject to ORF uniformly. Further, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it merely amends the fees schedule and timing relating to the modification of the ORF and conforms to the timing and fee schedule language of the Exchange's

[5] *See* Cboe Options Fees Schedule and Cboe C2 Options Fees Schedule. The Exchange intends to submit an identical proposal for its affiliate, Cboe BZX Exchange, Inc. (''BZX Options'').

[6] *See e.g.,* Securities Exchange Act Release No. 96066 (October 13, 2022), 87 FR 63565 (October 19, 2022) (SR–NYSEAMER–2022–45).

[7] *See e.g.,* Securities Exchange Act Release No. 92597 (August 6, 2021), 86 FR 44451 (August 12, 2021 (SR–CBOE–2021–044). *See also* Securities Exchange Act Release No. 92596 (August 6, 2021), 86 FR 44461 (August 12, 2021 (SR–C2–2021–012).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78f(b)(4).

[12] *See e.g.,* Securities Exchange Act Release No. 96066 (October 13, 2022), 87 FR 63565 (October 19, 2022) (SR–NYSEAMER–2022–45).

affiliated options exchanges, Cboe Options and C2 Options. Further, ORF is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs and the proposed rule change does not seek to change that.

*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 after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) [14] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] 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 originally filed this proposal under Rule 19b–4(f)(2) on August 1, 2023.[17] Because the proposed rule change does not raise any novel legal or regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[18]

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–CboeEDGX–2023–054 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeEDGX–2023–054. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGX–2023–054 and should be submitted on or before September 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–17532 Filed 8–15–23; 8:45 am]

**BILLING CODE 8011–01–P**

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 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, along with a brief description and text of 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.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See supra,* note 3.

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

## SELECTIVE SERVICE SYSTEM

### Forms Submitted to the Office of Management and Budget for Extension of Clearance

**AGENCY:** Selective Service System.

**ACTION:** Notice.

The following form has been submitted to the Office of Management and Budget (OMB) for reinstatement with changes of an expired previously approved form in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

**SSS Form—404**

*Title:* Potential Board Member Information.

*Purpose:* Is used to identify individuals willing to serve as members of local, appeal or review boards in the Selective Service System.

*Respondents:* Potential Board Members.

*Burden:* A burden of 15 minutes or less on the individual respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed reinstatement of clearance of the form should be sent within 30 days of the publication of this notice to the Selective Service System, Reports

Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

**Thomas T. Devine,**

*Deputy Associate Director for Operations.*

[FR Doc. 2023–17535 Filed 8–15–23; 8:45 am]

**BILLING CODE 8015–01–P**

## DEPARTMENT OF STATE

**[Public Notice: 12152]**

### Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Making Her Mark: A History of Women Artists in Europe, 1400–1800'' Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Making Her Mark: A History of Women Artists in Europe, 1400–1800'' at the Baltimore Museum of Art, Baltimore, Maryland, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street, NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

**Nicole L. Elkon,**

*Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2023–17513 Filed 8–15–23; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice: 12125]**

### Determination Pursuant to the Migration and Refugee Assistance Act of 1962

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962 (the Act) (22 U.S.C. 2601(b)(2)), Presidential Determination Number 99–6 of November 30, 1998, and Department of State Delegation 513, I hereby designate stateless persons in Botswana, Cameroon, Central African Republic, Chad, Comoros, Italy, the Gambia, Nigeria, Mauritius, Mozambique, Panama, Pakistan, Seychelles, South Africa, and Türkiye as qualifying for assistance under section 2(b)(2) of the Act, and determine that such assistance will contribute to the foreign policy interests of the United States. This determination shall be transmitted to the President and published in the **Federal Register**.

**Richard Verma,**

*Deputy Secretary of State for Management and Resources, Department of State.*

[FR Doc. 2023–17596 Filed 8–15–23; 8:45 am]

**BILLING CODE 4710–33–P**

## DEPARTMENT OF STATE

**[Public Notice: 12150]**

### Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Max Beckmann: The Formative Years, 1915–25'' Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Max Beckmann: The Formative Years, 1915–25'' at the Neue Galerie New York, in New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street, NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

**Nicole L. Elkon,**

*Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2023–17515 Filed 8–15–23; 8:45 am]

**BILLING CODE 4710–05–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. EP 670 (Sub–No. 2)]**

### Notice of Rail Energy Transportation Advisory Committee Vacancies

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of vacancies on federal advisory committee and solicitation of nominations.

**SUMMARY:** The Surface Transportation Board (Board) hereby gives notice of six vacancies on its Rail Energy Transportation Advisory Committee (RETAC) for one representative from Class I railroads; two representatives from Class II or Class III railroads; one representative from biofuel feedstock growers or providers and biofuel refiners, processors, and distributors; one representative from private car owners, car lessors, or car manufacturers; and one at large representative. The Board is soliciting nominations from the public for candidates to fill these vacancies.

**DATES:** Nominations for candidates for membership on RETAC are due September 15, 2023.

**ADDRESSES:** Nominations may be submitted either via the Board's e-filing format or in paper format. Any person

using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's website, at *http://www.stb.gov.* Any person submitting a filing in paper format should send the original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 670 (Sub–No. 2), 395 E Street SW, Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Kristen Nunnally at 202–245–0312. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

**SUPPLEMENTARY INFORMATION:** The Board exercises broad authority over transportation by rail carriers, including rates and services (49 U.S.C. 10701–10747, 11101–11124), construction, acquisition, operation, and abandonment of railroad lines (49 U.S.C. 10901–10907), and consolidation, merger, or common control arrangements between railroads (49 U.S.C. 10902, 11323–11327).

The Board established RETAC in 2007 as a federal advisory committee consisting of a balanced cross-section of energy and rail industry stakeholders to provide independent, candid policy advice to the Board and to foster open, effective communication among the affected interests on issues such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, railroads, and users of energy resources. RETAC operates under the Federal Advisory Committee Act (5 U.S.C. app. 2, 1–16).

RETAC's membership is balanced and representative of interested and affected parties, consisting of not less than: five representatives from the Class I railroads; three representatives from Class II and III railroads; three representatives from coal producers; five representatives from electric utilities (including at least one rural electric cooperative and one state- or municipally-owned utility); four representatives from biofuel feedstock growers or providers and biofuel refiners, processors, and distributors; two representatives from private car owners, car lessors, or car manufacturers; one representative from the petroleum shipping industry; two representatives from renewable energy sources; and one representative from a labor organization. The Committee may also include up to two at large members with relevant experience but not necessarily affiliated with one of the aforementioned industries or sectors.

Members are selected by the Chair of the Board with the concurrence of a majority of the Board. The Chair may invite representatives from the U.S. Departments of Agriculture, Energy, and Transportation and the Federal Energy Regulatory Commission to serve on RETAC in advisory capacities as *ex officio* (non-voting) members. The members of the Board serve as *ex officio* members of the Committee.

RETAC meets at least twice per year. Meetings are typically held at the Board's headquarters in Washington, DC, but may be held virtually or in other locations. Members of RETAC serve without compensation and without reimbursement of travel expenses. Further information about RETAC is available on the RETAC page of the Board's website at *https://www.stb.gov/resources/stakeholder-committees/retac/.*

The Board is soliciting nominations from the public for candidates to fill six vacancies: one representative from Class I railroads; two representatives from Class II or Class III railroads; one representative from biofuel feedstock growers or providers and biofuel refiners, processors, and distributors; one representative from private car owners, car lessors, or car manufacturers; and one at large representative. All the vacancies are for three-year terms ending September 30, 2026. According to revised guidance issued by the Office of Management and Budget, it is permissible for federally registered lobbyists to serve on advisory committees, such as RETAC, as long as they do so in a representative capacity, rather than an individual capacity. *See Revised Guidance on Appointment of Lobbyists to Fed. Advisory Comms., Bds., & Comm'ns,* 79 FR 47,482 (Aug. 13, 2014). Members of RETAC are appointed to serve in a representative capacity.

Nominations for candidates to fill the vacancies should be submitted in letter form and should include: (1) the name, position, and business contact information of the candidate to include email address and phone number; (2) the interest the candidate will represent; (3) a summary of the candidate's experience and qualifications for the position; (4) a representation that the candidate is willing to serve as a member of RETAC; and, (5) a statement that the candidate agrees to serve in a representative capacity. Candidates may nominate themselves. The Chair is committed to having a committee reflecting diverse communities and viewpoints and strongly encourages the nomination of candidates from diverse backgrounds. Nominations for candidates for membership on RETAC should be filed with the Board by September 15, 2023. Please note that submissions will be posted publicly on the Board's website under Docket No. EP 670 (Sub–No. 2).

*Authority:* 49 U.S.C. 1321; 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: August 11, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2023–17588 Filed 8–15–23; 8:45 am]

**BILLING CODE 4915–01–P**

## SUSQUEHANNA RIVER BASIN COMMISSION

### Commission Meeting

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice.

**SUMMARY:** The Susquehanna River Basin Commission will conduct its regular business meeting on September 14, 2023, in Harrisburg, Pennsylvania. Details concerning the matters to be addressed at the business meeting are in this notice's Supplementary Information section. Also, the Commission published a document in the **Federal Register** on July 12, 2023, concerning its public hearing on August 10, 2023, in Harrisburg, Pennsylvania.

**DATES:** The meeting will be held on Thursday, September 14, 2023, at 9 a.m.

**ADDRESSES:** This public meeting will be in-person and digital from the Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, PA 17110.

**FOR FURTHER INFORMATION CONTACT:** Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: 717–238–0423; fax: 717–238–2436; email: *joyler@srbc.gov.* See also Commission website at *www.srbc.gov.*

**SUPPLEMENTARY INFORMATION:** The business meeting will include actions or presentations on the following items: (1) adoption of the Commission's Fiscal Year 2025 Budget; (2) adoption of member jurisdictions allocation for Fiscal Year 2025; (4) approval of contracts, grants, and agreements; (3) adoption of a resolution regarding climate change; (4) adoption of a resolution regarding Artesian Water Maryland, Inc. withdrawal; (5) adoption of a compliance settlement agreement; and (6) actions on 22 regulatory program projects.

This agenda is complete at issuance, but other items may be added and some stricken without further notice. Listing

an item on the agenda does not necessarily mean that the Commission will take final action at this meeting. When the Commission does take final action, notice of these actions will be published in the **Federal Register** after the meeting. Any actions specific to projects will also be provided directly to project sponsors in writing.

The meeting will be in-person at the Susquehanna River Basin Commission. The public is invited to attend the Commission's business meeting. You can access the Business Meeting remotely via Zoom: *https://us02web.zoom.us/j/82472805136?pwd=VlpHaElpeWF2U0RhWVFQRHhTbU40UT09.* Meeting ID 824 7280 5136; Passcode: SRBC4423! or via telephone 309–205–3325 or 312–626–6799; Meeting ID 824 7280 5136.

Except for the actions on the 22 regulatory program projects subject to the August 10 public hearing and comment process that closed on August 21, written comments about any other items on the agenda at the business meeting may be mailed to the Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pennsylvania 17110–1788, or submitted electronically through *www.srbc.net/about/meetings-events/business-meeting.html.* Such comments are due to the Commission on or before September 8, 2023. Comments will not be accepted at the business meeting noticed herein.

*Authority:* Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: August 11, 2023.

**Jason E. Oyler,**

*General Counsel and Secretary to the Commission.*

[FR Doc. 2023–17590 Filed 8–15–23; 8:45 am]

**BILLING CODE 7040–01–P**

## SUSQUEHANNA RIVER BASIN COMMISSION

### Projects Approved for Consumptive Uses of Water

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice.

**SUMMARY:** This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

**DATES:** July 1–31, 2023.

**ADDRESSES:** Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

**FOR FURTHER INFORMATION CONTACT:** Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.gov.* Regular mail inquiries may be sent to the above address.

**SUPPLEMENTARY INFORMATION:** This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above.

*Water Source Approval—Issued Under 18 CFR* § 806.22(f):

1. Pennsylvania General Energy Company, L.L.C.; Pad ID: COP Tract 726 Pad E; ABR–202307001; Plunketts Creek Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 17, 2023.

2. Coterra Energy Inc.; Pad ID: StarzecE P1; ABR–201306009.R2; Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 23, 2023.

3. Coterra Energy Inc.; Pad ID: VandermarkR P1; ABR–201107029.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 23, 2023.

4. Repsol Oil & Gas USA, LLC; Pad ID: Lynn 719; ABR–201207012.R2; Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 23, 2023.

5. Seneca Resources Company, LLC; Pad ID: DCNR 100 PAD B; ABR–201107035.R2; Cogan House and McIntyre Townships, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 23, 2023.

6. Seneca Resources Company, LLC; Pad ID: DCNR Tract 007 Pad D; ABR–201807001.R1; Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 23, 2023.

7. SWN Production Company, LLC; Pad ID: Heckman Camp (Pad F); ABR–201307001.R2; Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: July 23, 2023.

8. SWN Production Company, LLC; Pad ID: King N (Pad NW1); ABR–201307004.R2; Franklin Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: July 23, 2023.

9. SWN Production Company, LLC; Pad ID: TNT LTD PART WEST; ABR–201307002.R2; New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: July 23, 2023.

10. SWN Production Company, LLC; Pad ID: Whipple (Pad 14); ABR–201307003.R2; Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: July 23, 2023.

11. Alliance Petroleum Corporation; Pad ID: Sterling Run Club 4; ABR–201706003.R1; Burnside Township, Centre County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: July 27, 2023.

12. Alliance Petroleum Corporation; Pad ID: Sterling Run Club 5; ABR–201706004.R1; Burnside Township, Centre County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: July 27, 2023.

13. Blackhill Energy LLC; Pad ID: NICHOLS 2H Pad; ABR–201107020.R2; Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: July 27, 2023.

14. Chesapeake Appalachia, L.L.C.; Pad ID: Brown Homestead; ABR–201207005.R2; Wyalusing Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 27, 2023.

15. Chesapeake Appalachia, L.L.C.; Pad ID: CDJ; ABR–201207018.R2; Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 27, 2023.

16. Chesapeake Appalachia, L.L.C.; Pad ID: Cherrymills; ABR–201207019.R2; Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 27, 2023.

17. EQT ARO LLC; Pad ID: MAC Pad B; ABR–201805002.R1; Cascade Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 27, 2023.

18. Repsol Oil & Gas USA, LLC; Pad ID: ALDERSON (05 269); ABR–201807002.R1; Pike Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 27, 2023.

19. Repsol Oil & Gas USA, LLC; Pad ID: BROADLEAF HOLDINGS (01 115); ABR–201807003.R1; Columbia, Springfield, and Troy Townships, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 27, 2023.

20. Repsol Oil & Gas USA, LLC; Pad ID: MOUNTAIN RUN HUNTING CLUB (02 153); ABR–201107050.R2; Union Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 27, 2023.

21. Seneca Resources Company, LLC; Pad ID: DCNR 595 Pad G; ABR–201107033.R2; Blossburg Borough and Blossburg Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 27, 2023.

22. Seneca Resources Company, LLC; Pad ID: Rich Valley Pad E; ABR–201107032.R2; Shippen Township, Cameron County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 27, 2023.

23. Seneca Resources Company, LLC; Pad ID: Taft 851 ALT; ABR–202307002; Middlebury Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 27, 2023.

24. Blackhill Energy LLC; Pad ID: CRANE Pad; ABR–201107023.R2; Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: July 28, 2023.

25. Blackhill Energy LLC; Pad ID: HOLCOMBE 1H Pad; ABR–201107022.R2; Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: July 28, 2023.

*Authority:* Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts § 806 and 808.

Dated: August 11, 2023.

**Jason E. Oyler,**

*General Counsel and Secretary to the Commission.*

[FR Doc. 2023–17591 Filed 8–15–23; 8:45 am]

**BILLING CODE 7040–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No.: FAA–2019–0573; Summary Notice No. –2023–29]**

### Petition for Exemption; Summary of Petition Received; Amazon Prime Air

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

**ACTION:** Notice.

**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 nor 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 September 5, 2023.

**ADDRESSES:** Send comments identified by docket number FAA–2019–0573 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, 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 20590–0001, 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 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on August 11, 2023.

**Brandon L. Roberts,**

*Executive Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2019–0573.

*Petitioner:* Amazon Prime Air.

*Sections of 14 CFR Affected:* §§ 91.7(a), 91.113, 135.25(a)(1), 135.25(a)(2), 135.205(a), and 135.243(b)(1).

*Description of Relief Sought:* Amazon.com Services LLC, dba Amazon Prime Air, seeks revisions to Exemption Nos. 18601B and 18602B to provide 14 CFR part 135 package deliveries, with the use of its MK27–2 aircraft, and using its detect and avoid system to de-conflict with other aircraft during beyond visual line of site operations, without visual observers.

[FR Doc. 2023–17599 Filed 8–15–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Extended Application Period; Solicitation of Application for the Award of One Tanker Security Program Operating Agreement

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** On July 25, 2023, the Maritime Administration (MARAD) published a notice in the **Federal Register** providing how to apply to MARAD's Tanker Security Program (TSP). By this follow-on notice, MARAD is extending the application period for eligible candidates for one TSP Operating Agreement and is republishing the same information soliciting applications. The FY21 NDAA authorized the Secretary of Transportation to establish a fleet of active, commercially viable, militarily useful, privately owned product tank vessels of the United States. The fleet will meet national defense and other security requirements and maintain a United States presence in international commercial shipping. The FY22 NDAA made minor adjustments related to the participation of long-term charters in the TSP. This request for applications provides, among other things, application criteria and a deadline for submitting applications for the enrollment of one vessel in the TSP.

**DATES:** Applications for enrollment must be received no later than August 21, 2023. Applications should be submitted to the address listed in the **ADDRESSES** section below.

**ADDRESSES:** Applications may be submitted electronically to *sealiftsupport@dot.gov* or in hard copy to the Tanker Security Program, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Application forms are available upon request or may be downloaded from MARAD's website.

**FOR FURTHER INFORMATION CONTACT:** David Hatcher, Director, Office of Sealift Support, Maritime Administration, Telephone (202) 366–0688. For legal questions, call Joseph Click, Office of Chief Counsel, Division of Maritime Programs, Maritime Administration, (202) 366–5882.

**SUPPLEMENTARY INFORMATION:** Section 53402(a) of title 46, United States Code, requires that the Secretary of Transportation (Secretary), in consultation with the Secretary of Defense (SecDef), establish a fleet of active, commercially viable, militarily useful, privately-owned product tank vessels to meet national defense and other security requirements. The TSP will provide a stipend to tanker operators of U.S.-flagged vessels that meet certain qualifications.

Congress appropriated $60,000,000 for the TSP in the Consolidated Appropriations Act of 2022, Public Law 117–269, to remain available until expended. Authorized payments to participating operators are limited to $6 million per ship, per fiscal year and are subject to annual appropriations. Participating operators will be required to make their commercial transportation resources available upon request of the SecDef during times of war or national emergency.

**Application Criteria**

Section 53403(b)(2)(A) of title 46, United States Code directs the Secretary in consultation with the SecDef to consider applicant vessel qualifications as they relate to 46 CFR 294.9 and give priority to applications based on the following criteria:

(1) Vessel capabilities, as established by SecDef;

(2) Applicant's record of vessel ownership and operation of tanker vessels; and

(3) Applicant's citizenship, with preference for Section 50501 Citizens.

**Vessel Requirements**

Acceptable vessels for a TSP Operating Agreement must meet the requirements of 46 U.S.C. 53402(b) and 46 CFR 294.9. The Commander, USTRANSCOM, has provided vessel suitability standards for eligible TSP vessels for use during the application selection process. The following suitability standards, consistent with the requirements of 46 U.S.C. 53402(b)(5), will apply to vessel applications:

- Medium Range (MR) tankers between 30,000–60,000 deadweight tons, with fuel cargo capacity of 230,000 barrels or greater.
- Deck space and size to accept installation of Consolidation (CONSOL) stations, two on each side for a total of four stations.
- Ability to accommodate up to an additional 12 crew for CONSOL, security, and communication crew augmentation.
- Communication facilities capable of integrating secure communications equipment.
- Does not engage in commerce or acquire any supplies or services if any proclamation, Executive order, or statute administered by Office of Foreign Assets Control (OFAC), or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States, except as authorized by the OFAC in the Department of the Treasury.
- Operate in the Indo-Pacific region.
- Maximum draft of no more than 44 feet. Preference will be given to vessels that can transport the most fuel at the shallowest draft.
- Sustained service speed of at least 14 knots, with higher speeds preferred.
- Carry only clean refined products.
- Capable of carrying more than two separated grades of refined petroleum products with double valve protection between tanks. Additionally, the vessel must meet the standards of 46 U.S.C. 53401(4).

**National Security Requirements**

The applicant chosen to receive a TSP Operating Agreement will be required to enter into an Emergency Preparedness Agreement (EPA) under 46 U.S.C. 53407, or such other agreement as may be approved by the Secretaries. The current EPA approved by the Secretary and SecDef is the Voluntary Tanker Agreement (VTA), publicly available for review at 87 FR 67119 (November 7, 2022).

**Documentation**

A vessel chosen to receive the TSP Operating Agreement must be documented as a U.S.-flag vessel under 46 U.S.C. chapter 121 to operate under the Operating Agreement. An applicant proposing a vessel registered under the laws of a foreign country at the time of application must demonstrate the vessel owner's intent to have the vessel documented under United States law and must demonstrate that the vessel is U.S. registered by the time the applicant enters into a TSP Operating Agreement for the vessel. Proof of U.S. Coast Guard vessel documentation and inspection and all relevant charter and management agreements for a chosen vessel must be approved by MARAD before the vessel will be eligible to operate under a TSP Operating Agreement and receive TSP payments.

**Vessel Operation**

A vessel selected for award of a TSP Operating Agreement must be operated in foreign commerce, in mixed foreign commerce and domestic trade of the United States permitted under a registry endorsement issued under 46 U.S.C. 12111, or between U.S. ports and those points identified in 46 U.S.C. 55101(b), or in foreign-to-foreign commerce, and must not otherwise operate in the coastwise trade of the United States. Further, in accordance with the FY22 NDAA, no vessel may operate under a TSP Operating Agreement while it is also operating under charter to the United States Government for a period that, together with options, exceeds 180 continuous days.

**Protection of Confidential Commercial or Financial Information**

If the application includes information that the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Commercial or Financial Information (CCFI)''; (2) mark each affected page ''CCFI''; and (3) highlight or otherwise denote the CCFI portions. MARAD will protect such information from disclosure to the extent allowed under applicable law. In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

**Award of Operating Agreements**

MARAD will make every effort to expedite the review of applications and an award of a TSP Operating Agreement. MARAD, however, does not guarantee the award of an TSP Operating Agreement in response to applications submitted under this Notice. In the event that no awards are made, or an application is not selected for an award, the applicant will be provided with a written reason why the application was denied, consistent with the requirements of 46 U.S.C. 53403.

(Authority: 46 U.S.C. chapter 534, 49 CFR 1.92 and 1.93, 46 CFR 294)

By order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2023–17566 Filed 8–15–23; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket No.: DOT–OST–2022–0124]**

### Waiver of Buy America Requirements for De Minimis Costs and Small Grants

**ACTION:** Notice.

**SUMMARY:** The Department of Transportation (DOT) seeks to maximize the use of American-made products and materials in all federally funded projects as part of the Biden-Harris Administration's implementation of the Build America, Buy America Act (BABA), which was included in the historic Bipartisan Infrastructure Law (BIL). In this notice, DOT is taking action to finalize a limited waiver of Buy America requirements for de minimis costs and small grants. Based on public comments from stakeholders, this final waiver is narrower than what DOT had first proposed on November 4, 2022. The waiver will allow DOT and its assistance recipients to focus their domestic sourcing efforts on products that provide the greatest manufacturing opportunities for American workers and firms and reduce delays in the delivery of important transportation infrastructure projects that provide jobs and promote economic growth.

**DATES:** The waiver is applicable to awards that are obligated on or after August 16, 2023.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Darren Timothy, DOT Office of the Assistant Secretary for Transportation Policy, at *darren.timothy@dot.gov* or at 202–366–4051. For legal questions, please contact Jennifer Kirby-McLemore, DOT Office of the General Counsel, 405–446–6883, or via email at *jennifer.mclemore@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

In January 2021, President Biden issued Executive Order (E.O.) 14005, titled Ensuring the Future is Made in All of America by All of America's Workers. The E.O. states that the United States Government ''should, consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States.'' DOT is committed to ensuring strong and effective Buy America implementation consistent with E.O. 14005.

On November 15, 2021, President Biden signed the BIL, enacted as the Infrastructure Investment and Jobs Act, Public Law 117–58. The BIL includes BABA, Public Law 117–58, div. G 70901–27, which greatly strengthens Made in America standards by expanding the coverage and application of Buy America preferences in Federal financial assistance programs for infrastructure. BABA requires that ''the head of each [covered] Federal agency shall ensure that none of the funds made available for a Federal financial assistance program for infrastructure . . . may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.'' BIL 70914(a). However, Federal agencies may waive the application of Buy America in certain circumstances, including where the agency finds that applying the Buy America requirement ''would be inconsistent with the public interest.'' BIL 70914(b)(1).

Transportation infrastructure projects use a variety of iron and steel items, manufactured goods, and construction materials. Typical iron and steel items subject to Buy America preferences include structural and reinforcing steel incorporated into pavements, bridges, and buildings (such as maintenance facilities); steel rail; and other equipment. Manufactured products may include airfield lighting and navigational aids; ties and ballast; traffic control systems; fare collection and other electronic systems; and mooring bollards, fenders, and gate operating systems. Construction materials include non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall, as well as materials [1] that are explicitly exempted from being considered construction materials under BABA. The statute also required the Office of Management and Budget (OMB) to issue guidance to assist in applying BABA's requirements. BIL 70915. On April 18, 2022, OMB issued memorandum M–22–11, ''Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure'' (''Implementation Guidance''). Section VII(b) of the Implementation Guidance, *Waiver Principles and Criteria,* states that ''Federal agencies may wish to consider issuing a limited number of general applicability public interest waivers in the interest of efficiency and to ease burdens for recipients.'' Implementation Guidance at p. 10. The Implementation Guidance goes on to provide examples of certain types of public interest waivers an agency may consider issuing that would support that goal, including infrastructure project purchases below a *de minimis* threshold; purchases made under small Federal grant awards; and miscellaneous minor components within iron and steel products. As the Implementation Guidance notes, such waivers could help ''ensure that recipients and Federal agencies make efficient use of limited resources, especially if the cost of processing the individualized waiver(s) would risk exceeding the value of the items waived.'' Implementation Guidance at p. 11.

BABA also provides that the preferences under section 70914 apply only to the extent that a domestic content procurement preference as described in Section 70914 does not already apply to iron, steel, manufactured products, and construction materials. BIL 70917(a)–(b). Federal financial assistance programs administered by DOT's Operating Administrations (OAs) are subject to a variety of mode-specific statutes that apply particular Buy America [2] requirements to iron, steel, and manufactured products, including 49 U.S.C. 50101 (FAA); 23 U.S.C. 313 (FHWA and NHTSA); 49 U.S.C. 22905(a) (FRA); 49 U.S.C. 5323(j) (FTA); and 46 U.S.C. 54101(d)(2) (MARAD). Recent annual appropriations acts have also required DOT to apply the Buy American Act (41 U.S.C. chapter 83) to funds appropriated under those acts,[3] where a mode-specific statute is not in place. These statutes also allow for waivers of the Buy America requirements to be issued when DOT determines those waivers to be in the public interest.

Certain DOT OAs do not currently apply Buy America preferences to *de minimis* purchases or project costs under their existing statutory requirements. For example, by statute, the Federal Transit Administration (FTA) exempts purchases of $150,000 or less from the FTA-specific Buy America

[1] See BIL section 701917(c). Exempted materials include cement and cementitious materials, aggregates such as stone, sand, or gravel, and aggregate binding agents or additives.

[2] In this notice, references to ''Buy America'' include all domestic preference laws that apply to DOT financial assistance programs, including those called ''Buy American''.

[3] For example, Section 409 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2022 states that ''no funds appropriated pursuant to this Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 8301–8305, popularly known as the ''Buy American Act'').''

requirement. 49 U.S.C. 5323(j)(13); appendix A(c) to 49 CFR 661.7. By statute, the Federal Railroad Administration (FRA) applies its FRA-specific Buy America requirements only to projects for which costs exceed $100,000. 49 U.S.C. 22905(a)(11). The Federal Highway Administration's (FHWA) does not apply its Buy America requirements where the cost of steel and iron materials is less than 0.1 percent of the total contract cost or less than or equal to $2,500, whichever is greater. 23 CFR 635.410(b)(4). However, other DOT OAs, including the Federal Aviation Administration (FAA) and the Maritime Administration (MARAD), do not have similar exceptions by statute or regulation.

In DOT's experience, the development and substantiation of individual Buy America waivers requires recipients to determine the availability or nonavailability of domestically sourced items. Such efforts can help ensure that potential domestic suppliers are not overlooked and, where waivers may be appropriate, help send signals to industry about market opportunities. However, when the item cost is relatively low, suppliers may be less incentivized to track and document the country of origin of that item in a manner sufficient to meet the requirements of the Buy America statutes applied to Federal assistance. This can lead to increased administrative burdens even as the potential impact of applying domestic preferences in those cases may be lower. Focusing on higher value items can also allow Federal agencies and their assistance recipients to focus their domestic sourcing efforts on products that provide the greatest manufacturing opportunities for American workers and firms and reduce delays in the delivery of important transportation infrastructure projects that provide jobs and promote economic growth.

On May 19, 2022, DOT issued a temporary waiver of the construction materials requirement for 180 days: from May 14 until November 10, 2022. 87 FR 31931. In the waiver notice, DOT stated its expectation that States, industry, and other participants establish procedures to document compliance.

**Issuance of the Proposed Waiver and Discussion of Comments Received**

On November 4, 2022, DOT published a notice on its website describing certain DOT actions. First, DOT announced that it would not modify or extend the temporary waiver for construction materials. As a result, DOT awards obligated on or after November 10, 2022, from financial assistance programs for infrastructure projects, are required to use construction materials produced in the United States on those projects in accordance with BABA.

In accordance with Section 70914(b)(1) of BABA, the notice also sought comment on whether DOT should use its authority to waive BABA's domestic preferences for iron and steel, manufactured products, and construction materials used in infrastructure projects funded under DOT-administered financial assistance programs under a single financial assistance award for which:

- The total value of the non-compliant products is no more than the lesser of $1,000,000 or 5% of total allowable costs under the Federal financial assistance award;
- The size of the Federal financial assistance award is below $500,000; or
- The non-domestically produced miscellaneous minor components comprise no more than 5 percent of the total material cost of an otherwise domestically produced iron or steel product.

The basis for the proposal was that applying Buy America preferences to iron, steel, manufactured products, and construction materials below these thresholds would be inconsistent with the public interest. The notice requested comment on whether such a waiver would be warranted. DOT also specifically sought comment on the proposed percentage and dollar thresholds for applying the waiver, including whether those thresholds should be higher or lower than the levels in the proposal.

To maximize notice to affected stakeholders, the Department also announced the proposal on several email distribution lists related to the operating administrations' existing Buy America requirements and published the notice in the **Federal Register**. 87 FR 68576.

DOT received 92 comments in response to the publication from a wide array of stakeholders, including manufacturers and suppliers, labor organizations, State transportation agencies, public transit agencies, airport operators, and construction firms, as well as associations representing each of those groups.[4] The majority of commenters supported DOT's proposal to issue a waiver for de minimis costs, small grants, and minor components. Comments opposing the waiver came from certain manufacturers and labor organizations; their key concerns relevant to the proposal are discussed in more detail below.

Some commenters, including manufacturers and labor organizations, raised concerns about applying the proposed waiver to existing (pre-BABA) DOT Buy America requirements, most notably iron and steel. They argued that this would weaken longstanding requirements and would be inconsistent with Administration policy to maximize domestic content. As was described in the notice and Implementation Guidance, the purpose of establishing these thresholds is to allow DOT and its stakeholders to focus their domestic sourcing efforts on high-value items that provide the greatest manufacturing opportunities for American workers and firms and reduce delays in the delivery of important transportation infrastructure projects that provide jobs and promote economic growth. That consideration applies comparably to products covered by DOT's existing Buy America laws and materials newly covered by BABA's requirements.

Those same commenters also raised specific concerns about applying the waiver in situations that are already covered by existing agency regulations. They specifically noted the existing de minimis waiver for iron and steel established in FHWA's implementing regulation, 23 CFR 635.410(b)(4), and FTA's statutory small purchases waiver, 49 U.S.C. 5323(j)(13); Appendix A(c) to 49 CFR 661.7.

While DOT does not believe that the proposed waiver would create an actual conflict with the FHWA regulatory waiver, DOT does recognize the potential for confusion that could be created by having two separate de minimis waivers for the same products under the same financial assistance program. As a result, iron and steel products used on FHWA-assisted projects are not included in the scope of the final waiver.

DOT notes that the Buy America law applicable to FRA-assisted projects applies only to projects with costs that exceed $100,000. *See* 49 U.S.C. 22905(a)(11). That statutory exclusion for projects with costs below that threshold is comparable to the small grants waiver that DOT had proposed, but the statutory threshold is at a lower value than what DOT proposed and is now finalizing. Therefore, like the FHWA exception described above for the de minimis portion of this waiver, DOT is including an FRA exception to the small grants portion of this waiver. For projects that are subject to 49 U.S.C. 22905(a), the small grants portion of the final waiver applies only to the

[4] See the U.S. Government electronic docket site at *www.regulations.gov,* Docket: DOT–OST–2022–0124.

construction materials requirement under section 70914 of BABA; it does not apply to steel, iron, or manufactured goods under 49 U.S.C. 22905(a).

FTA's statutory small purchase waiver, however, is different. That waiver applies based on the cost of individual purchases that occur under financial assistance awards, including labor and options.[5] Depending on the size and type of contracts and subcontracts involved, a single financial assistance award may support multiple purchases under the threshold, or none. In contrast, the proposed waiver, and the final waiver apply based on the size of the financial assistance award, not purchases under that award. Accordingly, the Department is not removing FTA-assisted projects from the scope of the final waiver.

DOT notes that the same considerations may also apply where the Department has issued targeted waivers for certain products with conditions that limit the scope of such waivers and are intended to increase the use of domestic content. Where such conditions are in place, DOT agrees that it would be inappropriate to apply the more general waiver being considered here. Two recent examples of such waivers include FHWA's Buy America waiver for electric vehicle chargers (88 FR 10619) and FTA's partial Buy America waiver for vans and minivans (87 FR 64534). Therefore, the final waiver does not apply to products within the scope of those two waivers. If DOT proposes additional product-specific waivers in the future, it will consider and address any interaction with this waiver in those proposals.

Another concern raised by commenters opposed to the proposed waiver was that it could be imposed indefinitely, without additional review. They compared it to FHWA's longstanding general waiver for manufactured products. As initially proposed and finalized here, and consistent with the requirements of BABA section 70914(d), DOT will review this waiver every five years after the date on which the waiver is issued. DOT also notes that FHWA has recently initiated its review of the manufactured products waiver, as required by BABA, including by providing an opportunity for public comment, and will make a determination on whether to continue or modify the waiver based on the comments received. (88 FR 16517; 88 FR 24651).

[5] See FTA Guidance Letter on Buy America Small Purchase Waivers at *https://www.transit.dot.gov/regulations-and-guidance/buy-america/fta-guidance-letter-buy-america-small-purchase-waivers.*

Commenters opposed to the waiver also raised concerns about applying the de minimis cost percentage threshold to the overall cost of the project, noting that doing so could potentially allow entire classes of materials used on DOT-assisted projects to be subject to the waiver. To address this concern, in the final waiver, DOT is narrowing its scope by applying the 5% threshold only to the total *applicable* project costs, where applicable costs are defined as the cost of materials (including the cost of any manufactured products) used in the project that are subject to a domestic preference requirement (including materials that are within the scope of an existing waiver). DOT acknowledges that establishing a specific project is compliant with the terms of the waiver will, therefore, require tracking of the materials cost in a project separate from other project costs. Though this may create a new administrative requirement for recipients or contractors who do not currently track those costs separately: (1) DOT believes that, on balance, the benefits of the waiver significantly outweigh that administrative burden and (2) recipients that conclude the administrative burden of the waiver outweighs its benefit may forgo use of the waiver and comply with the relevant Buy America requirements.

A commenter questioned whether ''total allowable costs,'' as used in the proposal, referred to the entire project's anticipated costs or just the Federal share of the entire project's anticipated costs. Because the final waiver applies based on cost of materials in the project, it no longer uses the term ''total allowable costs.'' The final waiver applies to the actual cost of the materials, not the anticipated cost of those materials.

Multiple commenters requested clarification on whether the proposed de minimis cost would apply to each non-compliant product (by line-item) or to the total cost of all non-compliant products, with some suggesting that the criteria be applied on an individual line-item basis. The final waiver applies based on the total cost of all non-compliant products. Changing that to apply the threshold to individual purchases could result in the waiver allowing a much higher amount of non-domestic content on a project than is intended by this narrowly tailored waiver. As a result, no changes have been made to the related language in the proposal.

One commenter also noted that, in similar de minimis waivers applied to BABA or the agency's own domestic preference requirements, other agencies have included a separate limitation of 1% of total costs per item and suggested that DOT do likewise. However, we note that other agencies have issued waivers with the same overall 5% de minimis threshold but without including the separate 1% per item cap. Because the per-item cap was proposed to prevent the waiver from being too broad, DOT notes that the change in the cost basis for the waiver from project costs to materials costs will also serve to limit the waiver's scope. Accordingly, DOT is not including an additional per-item cap in the final waiver but will continue to monitor the application of the waiver and may make adjustments in the future if warranted.

Commenters also requested clarification on applying the $500,000 small grants threshold if there are multiple Federal financial assistance awards for a project. In the final waiver, DOT is clarifying that the small grants threshold applies to the total amount of Federal financial assistance provided for a project, not just the total amount of a single award. This clarification narrows the scope of the waiver, relative to applying the small grants threshold only to the total amount of assistance under a single award and will help deter recipients of DOT financial assistance from artificially limiting the size of individual awards to fit under the threshold. If a recipient receives multiple awards for a single project, the recipient is responsible for aggregating the value of those awards and tracking whether the waiver would apply. Likewise, if a project is completed in phases using multiple awards, the value of those awards must be aggregated to determine whether the waiver would apply.

A significant number of commenters also requested clarification on the nature of the term ''Federal financial assistance award.'' Several commenters specifically sought clarification on whether the waiver would apply to subawards as well as initial awards made by a DOT agency. Many such comments came from stakeholders and funding recipients under FHWA's Recreational Trails Program (RTP). Under that program, funds are apportioned to States, who then solicit and select projects to receive RTP funds as subawards. Under several FTA funding programs, including the formula grants program for the enhanced mobility of seniors and individuals with disabilities (49 U.S.C. 5310) and formula grants program for rural areas (49 U.S.C. 5311), awards are made to statutorily defined entities such as States, which then make subawards to statutorily defined subrecipients for eligible projects. Subawards are also

common under FAA's Airport Improvement Program. As the small grants waiver is intended to be applied on a project basis, DOT is clarifying in the final waiver that it may be applied to both financial assistance awards and subawards, as those terms are defined in 2 CFR 200.1 and used in 2 CFR part 200, where the subaward is made by a pass-through entity for a specific project. It is not applicable to a subaward from an award that exceeds the $500,000 threshold if the scope of the subaward is not a separately identifiable, independent project.

DOT sought comment on the proposed dollar threshold for applying the waiver to small grants and provided information on the number and total dollar value of grants issued by DOT agencies below threshold levels of $500,000 and $250,000. Multiple commenters urged DOT to significantly increase the dollar threshold for all projects to as high as $5,000,000. Other commenters suggested raising the threshold to alternative values ranging between $750,000 and $2,000,000, while still others were satisfied with the proposed value of $500,000. Some commenters suggested the threshold value be raised but did not provide a suggested value. One commenter suggested temporarily setting both the dollar and percentage thresholds at higher levels, which would decrease over the next two years. Some commenters opposed the waiver altogether, with one commenter noting that DOT's proposed threshold was higher than the $250,000 threshold referenced in the Implementation Guidance. Therefore, on balance, DOT believes it is appropriate to finalize the waiver using the $500,000 threshold for small grants that was presented in the proposed waiver. DOT does not find that expanding the waiver to permit the use of more foreign material would be in the public interest.

Commenters also asked that the waiver be applied retroactively to any projects that are currently in the pipeline. DOT believes that concerns about projects currently under development have been adequately addressed by the waiver issued by the Department on January 30, 2023, for certain contracts and solicitations. Thus, this waiver will apply only to awards obligated or subawards made on or after the effective date.

The proposed waiver also would have applied where ''the non-domestically produced miscellaneous minor components comprise no more than 5 percent of the total material cost of an otherwise domestically produced iron or steel product.'' Many commenters indicated that the phrase ''miscellaneous small components'' was unclear and sought clarification of its meaning. States also expressed conflicting views on the minor components portion of the proposal. One commenter noted that iron and steel products used on DOT-assisted projects are unlikely to have components, which would make such a waiver less useful; another raised concerns that the cost criterion is not reasonably verifiable by project sponsors. Another commented that the minor components element could address the use of commercially available off-the-shelf (COTS) products that comprise a small amount of material incidental to a project; however, this application of the waiver would appear to be covered by the de minimis threshold for overall materials costs as well. Based on these comments, there does not appear to be strong support for this portion of the proposed waiver at this time. As a result, DOT has narrowed the final waiver to exclude a provision related specifically to minor components. DOT will continue to monitor this issue as it implements the domestic preference requirements of BABA and other Buy America statutes and may consider revisiting the application of those requirements to minor components of iron and steel products at a later time if it deems that doing so would be in the public interest.

**Finding on the Waiver**

Based on all the information available to the Agency, DOT finds that it is in the public interest to issue a waiver of BABA's domestic preferences for iron and steel, manufactured products, and construction materials used in projects funded under DOT-administered financial assistance programs for iron, steel, manufactured products, and construction materials under a single financial assistance award for which:

- The total value of the non-compliant products is no more than the lesser of $1,000,000 or 5% of total applicable costs for the project; or
- The total amount of Federal financial assistance applied to the project, through awards or subawards, is below $500,000.

The waiver is applicable only to awards that are obligated or subawards that are made on or after the effective date of the waiver. The waiver is applicable to subawards only if the subawards are made by a pass-through entity for a specific project.

In applying the waiver, the ''total value of the non-compliant products'' does not include the value of those products subject to a separate Buy America waiver. ''Total applicable project costs'' are defined as the cost of materials (including the cost of any manufactured products) used in the project that are subject to a domestic preference requirement, including materials that are within the scope of an existing waiver.

Because many DOT-administered financial assistance programs are also subject to program-specific domestic preference requirements, the waiver also applies to those requirements. Specifically, the waiver is also an exercise of DOT's authority to issue public interest waivers under 23 U.S.C. 313(b)(1), 49 U.S.C. 5323(j), 46 U.S.C. 54101(d)(2)(B)(i)(I), 49 U.S.C. 22905(a)(2), 49 U.S.C. 50101(b)(1), and 41 U.S.C. 8301(a)(2), as applied to DOT financial assistance. However, the de minimis cost portion of the waiver (*i.e.,* the first bullet in the finding above) does not apply to iron and steel subject to the requirements of 23 U.S.C. 313 on financial assistance administered by FHWA.[6] [7] The small grants portion of the waiver (*i.e.,* the second bullet in the finding above) does not apply to iron, steel, and manufactured goods subject to the requirements of 49 U.S.C. 22905(a).

The waiver does not apply to products that are the subject of two separate product-specific Buy America waivers from the Department:

1. For awards administered by FHWA that are subject to 23 U.S.C. 313, the waiver does not apply to electric vehicle chargers, as defined in the notice at 88 FR 10619.

2. For awards that are subject to 49 U.S.C. 5323(j), the waiver does not apply to mass-produced, unmodified non-ADA accessible vans and minivans with seating capacity for at least six adults not including the driver, as those terms are used in the notice at 87 FR 64534.

DOT believes that waiving the domestic preference requirements for lower-cost items purchased for infrastructure projects under BABA and the DOT-administered Buy America statutes referenced above will support the goals of E.O. 14005 to maximize domestic content in Federal financial assistance awards. Doing so will allow the Department and its assistance recipients to make efficient use of its limited resources to focus their efforts

[6] The existing de minimis standard for iron and steel under 23 CFR 635.410(b)(4) will continue to apply to those projects.

[7] While 23 U.S.C. 313 also applies to financial assistance administered by NHTSA, FHWA's existing de minimis waiver for iron and steel applies only to FHWA's assistance programs. Thus, this waiver fully applies to NHTSA-administered projects.

on higher-value products with more significant opportunities to develop a domestic supply base and create well-paid jobs for American workers.

Section 70914(d) of BABA requires that any general applicability waivers issued under section 70914(b) must ''be reviewed every 5 years after the date on which the waiver is issued,'' and prescribes a process for that review that includes an opportunity for public notice and comment and publication in the **Federal Register** of a determination on whether to continue or discontinue the waiver at that time. Accordingly, this general applicability waiver will be subject to such a review within five years of its issue date. However, DOT reserves the right to modify or shorten the duration of this waiver if it obtains information before the end of the five-year period indicating the waiver is no longer in the public interest.

The Implementation Guidance also provides that, before granting a waiver in the public interest, to the extent permitted by law, agencies shall assess whether a significant portion of any cost advantage of a foreign-sourced product is ''the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products.'' Implementation Guidance at p. 12. E.O. 14005 at Section 5 includes a similar requirement for ''steel, iron, or manufactured goods.'' However, because the public interest waiver that DOT is finalizing in this notice is not based on consideration of the cost advantage of any foreign-sourced steel, iron, or manufactured product content, there is not a specific cost advantage for DOT to consider.

Section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572) also requires an additional five-day comment period after FHWA publishes a waiver finding notice. Comments received during that period will be reviewed, but the finding will continue to remain valid. Those comments may influence DOT/FHWA's decision to terminate or modify a finding.

Issued in Washington, DC on: August 10, 2023.

**Carlos Monje Jr.,**

*Under Secretary of Transportation for Policy.*

[FR Doc. 2023–17602 Filed 8–15–23; 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.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for applicable 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)

On August 11, 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. KUZMICHEV, Alexey Viktorovich (a.k.a. KUZMICHEV, Alexei; a.k.a. KUZMICHYOV, Aleksey Viktorovich (Cyrillic: КУЗЬМИЧЁВ, Алексей Викторович)), France; DOB 15 Oct 1962; POB Kirov, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 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 financial services sector of the Russian Federation economy.

2. KHAN, German Borisovich (Cyrillic: ХАН, Герман Борисович), Moscow, Russia; DOB 24 Oct 1961; POB Kyiv, Ukraine; nationality Russia; alt. nationality Israel; Gender Male (individual) [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, and pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the construction sector of the Russian Federation economy.

3. AVEN, Petr Olegovich (Cyrillic: АВЕН, Пётр Олегович) (a.k.a. AVEN, Peter Olegovich; a.k.a. AVEN, Pjotr; a.k.a. AVEN, Pyotr; a.k.a. AVENS, Pjotrs), Surrey, United Kingdom; Moscow, Russia; Latvia; DOB 16 Mar 1955; POB Moscow, Russia; nationality Russia; alt. nationality Latvia; alt. nationality Luxembourg; Gender Male; Tax ID No. 770400328495 (Russia) (individual) [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.

4. FRIDMAN, Mikhail Maratovich (Cyrillic: ФРИДМАН, Михаил Маратович), London, United Kingdom; Moscow, Russia; DOB 21 Apr 1964; POB Lviv, Ukraine; nationality Russia; alt. nationality Israel; Gender Male; Tax ID No. 1601172932 (Russia) (individual) [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, and pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, the Russian Association of Employers the Russian Union of Industrialists and Entrepreneurs, a person whose property and interests in property are blocked pursuant to E.O. 14024.

**Entity**

1. RUSSIAN ASSOCIATION OF EMPLOYERS THE RUSSIAN UNION OF INDUSTRIALISTS AND ENTREPRENEURS (a.k.a. "RSPP"), Nab. Kotelnicheskaya D.17, Moscow 109240, Russia; Organization Established Date 06 Mar 2006; Tax ID No. 7710619969 (Russia); Government Gazette Number 94430936 (Russia); Registration Number 1067746348427 (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 11, 2023.

**Andrea M. Gacki,**

*Director, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2023–17578 Filed 8–15–23; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF VETERANS AFFAIRS

### System Error Message and High Call Volume Impacting Submissions of Claims

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of exception to date of receipt rule.

**SUMMARY:** In response to notification that some Veterans and survivors received error messages in recent days when submitting their claim for disability compensation or dependency and indemnity compensation (DIC), or intent to file such claim, through *www.va.gov,* the Veteran Benefits Administration (VBA) is instituting temporary provisions to consider any compensation or DIC claim or intent to file filed before 11:59 p.m. ET on Monday August 14, 2023, as received by VA on August 8, 2023. This preserves, for claims subject to the PACT Act (further discussed below), the potential of retroactive compensation benefits back to the date of PACT Act enactment, August 10, 2022. Claims, or intents to file, for compensation or dependency and indemnity compensation, received on August 9, 2023 through 11:59 p.m. ET on Monday August 14, 2023 will be deemed to have been received on August 8, 2023, the date of the initial problem on *www.va.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jessica Pierce, Assistant Director, Policy Staff, Compensation Service, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** On August 10, 2022, the President signed Public Law 117–168, Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, or the PACT Act, into law, establishing substantial legislative changes for the Department of Veterans Affairs. This historic, multifaceted law includes provisions such as specific examination requirements when there is toxic exposure risk activity, expanding conceded locations associated with radiation exposure, expanding presumptive conditions associated with herbicide exposure, amending the statute involving Persian Gulf War Veterans, and establishing presumptive conditions associated with toxic exposures.

On August 8, 2023, the Department of Veterans Affairs (VA) became aware that some Veterans and survivors who utilized the *www.va.gov* website to submit compensation or DIC claims or an intent to file (ITF) such a claim received an error message. Despite these messages, every such Veteran or survivor who received an error message can consider their intent to file complete. VA is working to contact these individuals to confirm directly to them that their intent to file will be honored and their effective date protected. As of the evening of August 9, 2023, VA had resolved nearly all technical issues with the website.

While VA took steps to resolve this issue, an emergency banner on the VA website reassured Veterans and survivors that their ITFs will be honored. Also, VA has changed the intent to file error message to confirm that, despite the error message, the ITF has been saved.

Additionally, in recent days, VA has experienced an extremely high call volume on 1–800–MyVA411. Wait times for these calls, which are normally 10–30 seconds, reached 10–15 minutes at times throughout the day. VA took immediate steps to minimize these wait times for Veterans, their families, caregivers, and survivors. Some claimants may have been unable to submit their ITF through the call center due to the call volume and wait times.

38 CFR 3.114 provides that if a claim is reviewed at the request of a claimant received within one year of a change in law, benefits may be authorized from the effective date of the law. If the claimant's request is more than one year after the effective date of the law, benefits may be authorized for a period of one year prior to the date of receipt of such request. As such, claims or ITFs for PACT Act-related claims must have been submitted on or before August 10, 2023, to preserve the earliest potential effective date of August 10, 2022, the date the PACT Act was enacted. However, even for claims received more than a year following August 10, 2022, benefits may be authorized up to one year prior to the date of the filing if warranted by the facts found.

38 CFR 3.155(b) allows claimants to submit an ITF for a VA claim; if VA receives a complete application form within one year of receipt of the ITF for a claim, VA will consider the complete claim filed as of the date the ITF for the claim was received. An ITF can be submitted in one of three ways: (1) saved electronic application, (2) written intent on prescribed ITF form, or (3) oral intent communicated to designated VA personnel and recorded in writing (this includes contacting a VA call center agent). A VA regulation, 38 CFR 3.1(r), allows the Under Secretary for Benefits to establish by notice published in the **Federal Register** exceptions to VA's rule on the date of receipt of claims, information, or evidence. Ordinarily, ''date of receipt'' means the date on which a claim, information, or evidence was received in a VA office. This regulation states that exceptions may be established when a natural or man-made interference with the normal channels through which VBA ordinarily receives correspondence has resulted in one or more VBA regional offices experiencing extended delays in the receipt of claims, information, or evidence to an extent that, if not addressed, the delay would adversely affect such claimants, through no fault of their own.

Although the system issue on VA's website and long call wait times primarily have stemmed from the number of claimants attempting to file claims or ITFs for PACT Act-related issues to preserve consideration of an effective date back to August 10, 2022, all claim and ITF submissions may have been affected. As such, VA has established the following exception to the standard rule on date of receipt.

#### Exceptions to Date of Receipt Rule for Claimants Affected by System Errors and High Call Volume

VA hereby gives notice that, claims, or intents to file, for compensation or DIC, received on August 9, 2023 through 11:59PM ET on Monday August 14, 2023 will be deemed to have been received on August 8, 2023, the date of the initial problem on *www.va.gov.* This preserves consideration of the earliest possible effective date for PACT Act-related benefits for these claims, dating back to August 10, 2022, the date the PACT Act was enacted. However, this exception to the date of receipt requirement applies to all claims and ITFs submitted for compensation or DIC during this period. The Under Secretary for Benefits has approved this exception under 38 CFR 3.1(r).

Starting on August 9, 2023, VA initiated an outreach campaign to notify Veterans and survivors about this filing extension, including notifying Veterans Service Organizations, Congress, and the media, as well as updating *va.gov* and VA social media.

*Signing Authority*

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on August 11, 2023, and

authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Michael P. Shores,**

*Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

[FR Doc. 2023–17582 Filed 8–15–23; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0261]**

## Agency Information Collection Activity Under OMB Review: Application for Refund of Educational Contributions

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

**DATES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link *www.reginfo.gov/public/do/PRAMain,* select ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–0261.''

**FOR FURTHER INFORMATION CONTACT:** Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *Maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0261'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Authority:* Public Law 94–502.

*Title:* Application for Refund of Educational Contributions, VAF 22–5281.

*OMB Control Number:* 2900–0261.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* The VA uses the information collection to properly identify and refund remaining chapter 32 contributions to any inactive chapter 32 participant.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 36000 on June 1, 2023, page 36000.

*Affected Public:* Individuals and Households.

*Estimated Annual Burden:* 603 hours.

*Estimated Average Burden Time per Respondent:* 10 minutes.

*Frequency of Response:* Once.

*Estimated Number of Respondents:* 3,620.

By direction of the Secretary.

**Dorothy Glasgow,**

*VA PRA Clearance Officer (Alt), Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2023–17555 Filed 8–15–23; 8:45 am]

**BILLING CODE 8320–01–P**


# FEDERAL REGISTER

Vol. 88 Wednesday,
No. 157 August 16, 2023

Part II

## Department of Energy

10 CFR Part 900
Coordination of Federal Authorizations for Electric Transmission Facilities; Proposed Rule

**DEPARTMENT OF ENERGY**

**10 CFR Part 900**

**[DOE–HQ–2023–0050]**

**RIN 1901–AB62**

## Coordination of Federal Authorizations for Electric Transmission Facilities

**AGENCY:** Grid Deployment Office, U.S. Department of Energy.

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** The Department of Energy (DOE) is proposing to amend its regulations for the timely coordination of Federal authorizations for proposed interstate electric transmission facilities pursuant to the Federal Power Act (FPA). Specifically, DOE is proposing to establish an integrated and comprehensive Coordinated Interagency Transmission Authorizations and Permits Program (CITAP Program); make participation by application in the Integrated Interagency Preapplication (IIP) Process a pre-condition for a decision under the CITAP Program; require project proponents to develop resource reports and public engagement plans for communities that would be affected by a proposed qualifying project through an iterative and collaborative process with Federal agencies while providing that Federal entities would remain responsible for completion of environmental reviews, for government-to-government consultation with Indian Tribes (and government-to-sovereign consultation in the context of Native Hawaiian relations), and for any findings and determinations; require project proponents to conduct robust engagement with all Tribes and communities of interest that would be affected by a proposed qualifying project; ensure that DOE may carry out its statutory obligation to prepare a single Environmental Impact Statement (EIS) sufficient for the purposes of all Federal authorizations necessary to site a qualifying project; and align and harmonize the IIP Process and implementation of the FPA with Title 41 of the Fixing America's Surface Transportation (FAST) Act.

**DATES:** DOE will accept comments, data, and information regarding this proposed rule on or before October 2, 2023. Please refer to section V (Public Participation—Submission of Comments) of the **SUPPLEMENTARY INFORMATION** section of this proposed rule for additional information.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov,* under docket number DOE–HQ–2023–0050. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number DOE–HQ–2023–0050 and/or Regulation Identification Number (RIN) 1901–AB62, by any of the following methods:

- *Email: CITAP@hq.doe.gov.* Include docket number DOE–HQ–2023–0050 and/or RIN 1901–AB62 in the subject line of the email.
- *Mail:* Address written comments to U.S. Department of Energy, Grid Deployment Office, 4H–065, 1000 Independence Avenue SW, Washington, DC 20585.
- *Hand Delivery/Courier:* U.S. Department of Energy, Grid Deployment Office, 4H–065, 1000 Independence Avenue SW, Washington, DC 20585.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation—Submission of Comments'' (section V) of the **SUPPLEMENTARY INFORMATION** section of this proposed rule.

*Docket:* The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov,* under docket number DOE–HQ–2023–0050. All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

**FOR FURTHER INFORMATION CONTACT:** Liza Reed, U.S. Department of Energy, Grid Deployment Office, 4H–065, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–2006. Email: *CITAP@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**



## I. Executive Summary

In this notice of proposed rulemaking (NOPR), DOE is proposing regulatory amendments to 10 CFR part 900 in response to the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58, also known as the ''Bipartisan Infrastructure Law'') and the Inflation Reduction Act (IRA) (Pub. L. 117–169). The IIJA and IRA made significant investments in clean energy manufacturing and generation, and the electrification of homes, businesses, and vehicles. The full benefits of those investments will not be realized, however, unless the United States can quickly, sustainably, and equitably expand our electric transmission infrastructure. Transmission solutions are needed to accommodate the generation and load changes enabled by the financial incentives included in both laws.[1]

Given the capacity constraints and congestion on the nation's electric transmission grid, it is imperative that the Federal Government provide a clear, efficient, and well-coordinated process to allow project proponents [2] to obtain expedient approval to fill this vital need. For these reasons, DOE is proposing to amend part 900 to establish a Coordinated Interagency Transmission Authorizations and Permits Program (CITAP Program) that will reduce the time required for transmission project developers to receive decisions on Federal authorizations [3] for transmission projects.

[1] DOE, National Transmission Needs Study (Feb. 2023), available at: *https://www.energy.gov/sites/default/files/2023-02/022423-DRAFTNeedsStudyforPublicComment.pdf.*

[2] Throughout the preamble discussion, DOE uses terminology defined in the proposed regulatory text. Unless the meaning of the term is made clear from the context of the discussion, the first occurrence of the term is accompanied by a footnote that provides the proposed definition of the term. Proposed § 900.2 defines ''project proponent'' as a person or entity who initiates the IIP Process in anticipation of seeking a Federal authorization for a qualifying project.

[3] Section 216(h)(1) of the Federal Power Act defines ''Federal authorization'' as ''any authorization required under Federal law in order to site a transmission facility'' and provides that the term includes ''permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law in order to site a transmission facility.'' Proposed § 900.2 defines

## II. Background and Authority

The electric transmission system is the backbone of the United States' electricity system, connecting electricity generators to distributors and customers across the nation. Electric transmission facilities often traverse long distances and cross multiple jurisdictions, including Federal, State, Tribal, and private lands. To receive Federal financial support or build electric transmission facilities on or through Federal lands and waters, project developers often must secure authorizations from one or multiple Federal agencies, which can take considerable time and result in costly delays.

Recognizing the need for increased efficiency in the authorization process for transmission facilities, the Energy Policy Act of 2005 (Pub. L. 109–58) (EPAct) established a national policy to enhance coordination and communication among Federal agencies with authority to site electric transmission facilities. Section 1221(a) of EPAct added a new section 216 to Part II of the Federal Power Act (16 U.S.C. 824p) (FPA), which sets forth provisions relevant to the siting of interstate electric transmission facilities. Section 216(h) of the FPA (16 U.S.C. 824p(h)), ''Coordination of Federal Authorizations for Transmission Facilities,'' requires the DOE to coordinate all Federal authorizations and related environmental reviews needed for siting interstate electric transmission projects, including National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended, 42 U.S.C. 4321 *et seq.*) (NEPA) reviews. DOE is proposing to amend its section 216(h) implementing regulations, found in 10 CFR part 900, to implement this authority and better coordinate review of Federal authorizations for proposed interstate electric transmission facilities.

Section 216(h) of the FPA provides for DOE's coordination of Federal transmission siting determinations for project proponents seeking permits, special use authorizations, certifications, opinions, or other approvals required under Federal law to site an electric transmission facility.

First, section 216(h)(2) authorizes DOE to act as the lead agency to coordinate Federal authorizations and related environmental reviews required to site an interstate electric transmission facility. 16 U.S.C. 824p(h)(2). Section 216(h)(3) requires the Secretary of Energy, to the maximum extent practicable under Federal law, to coordinate the Federal authorization and review process with any Indian Tribes, multi-state entities, and state agencies that have their own separate permitting and environmental reviews. 16 U.S.C. 824p(h)(3).

Second, section 216(h)(4)(A) directs the Secretary to ''establish prompt and binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, the proposed facility.'' 16 U.S.C. 824p(h)(4)(A). If an agency fails to act on an application within the deadline set by DOE, or denies an application, the project proponent or any state where the facility would be located may appeal to the President for review of the application. 16 U.S.C. 824p(h)(6)(A).

Third, the statute directs the Secretary to ''provide an expeditious pre-application mechanism for prospective [project proponents]. . . .'' 16 U.S.C. 824p(h)(4)(C).

Fourth, the statute directs the Secretary, ''in consultation with the affected agencies,'' to ''prepare a single environmental review document, which shall be used as the basis for all decisions on the proposed project under Federal law.'' 16 U.S.C. 824p(h)(5)(A).

Finally, section 216(h)(7) directs the Secretary to issue regulations necessary to implement section 216(h) and directs the Secretary and the heads of all affected agencies to enter into a memorandum of understanding (MOU) to ''ensure the timely and coordinated review and permitting of electricity transmission facilities.'' 16 U.S.C. 824p(h)(7).

As discussed in the following section, DOE entered into an implementing MOU with eight other agencies and has established the pre-application mechanism required by section 216(h)(4)(C) under regulations at 10 CFR part 900. For the reasons explained in the following sections, DOE is proposing modifications to update and expand part 900.

### *A. Section 216(h): Implementation History*

In 2006, nine Federal agencies with permitting or other Federal authorization responsibility for the siting of electric transmission facilities entered into a *Memorandum of Understanding on Early Coordination of Federal Authorizations and Related Environmental Reviews Required in Order to Site Electric Transmission Facilities* (2006 MOU).[4]

On September 19, 2008, DOE published an interim final rule establishing procedures at 10 CFR part 900 under which prospective project proponents could request that DOE coordinate Federal authorizations for the siting of interstate electric transmission facilities and related environmental reviews pursuant to section 216(h) (73 FR 54456). The interim final rule became effective on October 20, 2008. Also on September 19, 2008, DOE published a NOPR, which proposed amendments to the interim final rule (73 FR 54461) (2008 NOPR). Comments were filed in response to the 2008 interim final rule and 2008 NOPR. DOE addressed the comments submitted in response to both the interim final rule and the 2008 NOPR in a 2011 NOPR issued on December 13, 2011 (77 FR 77432). In 2009, nine Federal agencies signed the *Memorandum of Understanding Regarding Coordination in Federal Agency Review of Electric Transmission Facilities on Federal Land* (2009 MOU), superseding the 2006 MOU.[5]

On February 2, 2016, DOE withdrew the 2011 NOPR and instead proposed revisions to 10 CFR part 900 that would establish an Integrated Interagency Pre-Application (IIP) Process to encourage cooperation prior to the submission of a formal application for authorizations necessary to site transmission facilities (81 FR 5383). On September 28, 2016, DOE issued a final rule establishing the IIP Process (81 FR 66500). The final rule went into effect on November 28, 2016.

In May 2023, nine Federal agencies signed the *Memorandum of Understanding Regarding Facilitating Federal Authorizations for Electric Transmission Facilities* (2023 MOU), superseding the 2009 MOU.[6] The 2023

''authorization'' as any license, permit, approval, finding, determination, or other administrative decision required under Federal, state, local, or Tribal law to site an electric transmission facility, including permits, special use authorization, certifications, opinions, or other approvals. Proposed § 900.2 defines ''Federal authorization'' as any authorization required under Federal law.

[4] The 2006 MOU signatory agencies are the Department of Energy (DOE), the Department of Agriculture (USDA), the Department of Defense (DOD), the Department of the Interior (DOI), the Department of Commerce (DOC), the Federal Energy Regulatory Commission (FERC), the Environmental Protection Agency (EPA), the Council on Environmental Quality (CEQ), and the Advisory Council on Historic Preservation (ACHP). The 2006 MOU is publicly available at *https://www.energy.gov/oe/articles/memorandum-understanding-early-coordination-federal-authorizations-and-related.*

[5] The nine 2009 MOU signatory agencies are the USDA, DOC, DOD, DOE, EPA, CEQ, ACHP, DOI, and FERC. The 2009 MOU is publicly available at *https://www.energy.gov/sites/prod/files/Transmission%20Siting%20on%20Federal%20Lands%20MOU%20October%2023%2C%202009.pdf.*

[6] The nine 2023 MOU signatory agencies are USDA, DOC, DOD, DOE, DOI, EPA, Federal Permitting Steering Improvement Steering Council

Continued

MOU signatory agencies recognized that insufficient budgetary resources, lack of agency staff, and limited mechanisms for coordination across Federal agencies have contributed to delays in permitting timelines for transmission facilities. In the 2023 MOU, DOE agreed, in consultation with the heads of the other signatory agencies, to update its regulations implementing section 216(h) within six months of signing the 2023 MOU. The 2023 MOU expands efforts to ensure pre-construction coordination and provide updated direction to Federal agencies in expediting the siting, permitting, and construction of electric transmission infrastructure. After the execution of the 2023 MOU but before the publication of this NOPR, Congress enacted the Fiscal Responsibility Act of 2023 (Pub. L. 118–5) (FRA). Section 107 of the FRA, entitled ''Timely and Unified Federal Reviews,'' amended NEPA to require the designation of a lead agency empowered to perform a coordinating and schedule-setting function. Although the source of authority for this NOPR is section 216(h), through which Congress specifically addressed Federal reviews for electric transmission facilities, the reforms proposed in this NOPR are consistent with the FRA and, DOE believes, likely to advance Congress' goal of achieving a timely and unified review process among Federal agencies. In this NOPR, DOE has referred to ''lead'' and ''co-lead'' agencies, consistent with the terminology used in the 2023 MOU. DOE believes these terms to be substantively equivalent to the FRA's ''lead'' and ''joint lead'' agencies. DOE seeks comment on its use of these terms.

*B. Need for Proposed Revisions*

DOE is proposing to update its regulations implementing section 216(h) to establish the CITAP Program, improve the IIP Process, and provide for the coordinated review of applications for Federal authorizations necessary to site transmission facilities.

First, DOE is establishing a comprehensive and integrated CITAP Program. Under this program, DOE proposes to: (i) provide for an effective IIP Process to facilitate timely submission of materials necessary for Federal authorizations and related environmental reviews required under Federal law; (ii) set intermediate milestones and ultimate deadlines for the review of such authorizations and environmental reviews; and (iii) serve as the lead agency for the preparation of a single EIS in compliance with NEPA, designed to serve the needs of all relevant Federal entities [7] and effectively inform their corresponding Federal authorization decisions. These elements of the CITAP Program are described in more detail throughout this proposed rule.

Second, pursuant to the FPA, DOE proposes to make the IIP Process a mandatory precondition for participation in the CITAP Program. Consistent with DOE's interpretation in 2016, in this rule, DOE does not propose to require the participation of any Federal or non-Federal entity [8] in the IIP Process. 81 FR 66500. Rather, Federal entities have agreed to participate through the 2023 MOU. Non-Federal entities may participate at their discretion. DOE does, however, propose that a project proponent's participation in the IIP Process is a prerequisite for the coordination and schedule-setting aspects of the CITAP Program.

DOE recognizes that this represents a departure from the IIP Process established by DOE's 2016 rule. However, DOE has concluded that a project proponent's participation in the IIP Process is necessary for the success of other elements of the CITAP Program and for the Secretary's satisfaction of the statutory obligations imposed by section 216(h). Specifically, section 216(h)(4)(B) requires that the Secretary determine that ''an application has been submitted with such data as the Secretary considers necessary'' and requires that the Secretary ''ensure'' that, once such data is submitted, ''all permit decisions and related environmental reviews under all applicable Federal law . . . be completed'' as soon as is practicable. DOE has determined that participation in the IIP Process is necessary for a project proponent to provide the ''data . . . the Secretary considers necessary'' such that the Secretary may determine that the permit decisions and related environmental reviews relevant to that application may be completed within the time period DOE will establish by schedule. As detailed further below, the IIP Process affords a unique opportunity for project proponents to provide essential information and to coordinate with Federal entities prior to submission of applications for Federal authorizations. DOE has determined that it will not be able to establish binding milestones and deadlines for projects that do not complete the IIP Process. DOE will also not be able to prepare a single EIS for such a project. Accordingly, DOE has proposed to make participation in the IIP Process a mandatory precondition for participation in those other aspects of the Program.

In 2016, when DOE issued its previous regulations, there was no CITAP Program. Accordingly, DOE had no occasion then to consider whether a project proponent was required to participate in the IIP Process to benefit from the CITAP Program. For the reasons explained above, DOE has determined that the CITAP Program requires a project proponent's participation in the IIP Process. As discussed further below, DOE tentatively concludes that the benefits of participating in the IIP Process, and the resulting access to the CITAP Program, will justify the costs to project proponents. DOE expects that the CITAP Program will substantially accelerate the process by which transmission projects are permitted and developed. The expected reduction in permitting timelines will generate benefits that, while difficult to quantify with specificity, are likely to significantly exceed the cost of participating in the IIP Process.

Third, DOE proposes to improve the IIP Process to ensure that it provides project proponents and Federal entities an opportunity to identify as early as possible potential environmental and community impacts associated with a proposed project. Accordingly, DOE proposes to require that project proponents submit resource reports and public participation and engagement plans, developed with guidance from Federal entities, and participate in a series of meetings to ensure that Federal entities have ample opportunities to provide this guidance.

As proposed, the IIP Process is an iterative process, anchored by three meetings: the initial meeting, the review meeting, and the close-out meeting. These meetings, defined in proposed §§ 900.5, 900.8 and 900.9, are milestones in the process, and are not

(FPISC), CEQ, and the Office of Management and Budget (OMB). The 2023 MOU is publicly available at *https://www.whitehouse.gov/wp-content/uploads/2023/05/Final-Transmission-MOU-with-signatures-5-04-2023.pdf.*

[7] Proposed § 900.2 defines ''Federal entity'' as any Federal agency or department. That section also defines ''relevant Federal entity'' as a Federal entity with jurisdictional interests that may have an effect on a qualifying project, that is responsible for issuing a Federal authorization for the qualifying project, that has relevant expertise with respect to environmental and other issues pertinent to or potentially affected by the qualifying project, or that provides funding for the qualifying project. The term includes participating agencies. The term includes a Federal entity with either permitting or non-permitting authority; for example, those entities with which consultation or review must be completed before a project may commence, such as DOD for an examination of military test, training or operational impacts.

[8] Proposed § 900.2 defines ''non-Federal entity'' as an Indian Tribe, multi-state governmental entity, state agency, or local government agency.

intended to preclude any additional meetings or communications between the project proponent and the relevant Federal entities. The iterative nature of the process is provided for in procedures for evaluating the completeness and the suitability for relevant agency decision-making of materials before each milestone.

The project proponent resource reports are intended to develop data and materials that will facilitate Federal entities' review of the project proponent's applications under a number of Federal statutes, including, but not limited to, NEPA, section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108) (NHPA), section 10 of the Rivers and Harbors Act (33 U.S.C. 403), section 404 of the Clean Water Act (33 U.S.C. 1344) (CWA), and the Endangered Species Act (16 U.S.C. 1531 *et seq.*) (ESA). As proposed, drafts of the reports would be submitted before the IIP Process review meeting. Federal entities responsible for making determinations under those statutes would have the opportunity to review the reports before the meeting and would then be able to present any concerns at the meeting. The project proponent would be required to submit final versions of the reports before the IIP Process close-out meeting.

DOE recognizes that the information requested in the proposed resource reports is extensive and that gathering that information will require a significant investment of time and effort on the part of the project proponent. However, the investment of time and resources required by this proposed process cannot be assessed against a zero-investment baseline. The information DOE proposes to require is information necessary for Federal entities to review applications for authorizations and prepare related environmental reviews. Accordingly, most information required to be submitted in the proposed resource reports would likely be required absent this proposal. The IIP Process is intended to ensure that all necessary information is provided to relevant Federal entities in a timely and coordinated fashion; it is also intended to avoid the duplication of cost and effort that project proponents and Federal entities face in navigating the series of authorizations necessary to site a transmission line.

DOE believes that collating this information at an early stage of the CITAP Program will ultimately allow both the project proponent and the Federal entities to avoid time and resource-consuming pitfalls that would otherwise appear during the application process. Nevertheless, the IIP Process does not relieve the relevant Federal entities of their legal obligation to comply with applicable environmental requirements.

In addition to the resource reports, DOE also proposes to require submission of public participation and engagement plans for communities that would be affected as described in the proposed qualifying project.[9] DOE further proposes requiring project proponents to follow these plans and coordinate with relevant Federal entities to conduct robust engagement with all Tribes [10] and communities that could be affected by the proposed qualifying project. This early engagement would inform a project proponent's development of a proposed project and would begin before an application is submitted to the Federal Government. Such engagement would not relieve the Federal entities of legal obligations to consult with Tribes and engage with communities, but rather would provide opportunities for Tribes and communities to express their views early in the process and to share their concerns directly with project proponents.

As a key example, the contents of Resource Report 4 in § 900.6 are intended to facilitate initiation of section 106 of the NHPA. As proposed, the rule is intended to allow project proponents to obtain as much information as possible about cultural and historic resources located within the affected environment, including preliminary detailed information about resources that may be implicated in the section 106 process, such as cultural and historic resources that may be listed on the National Register of Historic Places. This initial information-gathering and recommendation stage will give Federal entities insight into the potential range of resources and impacts implicated in the proposed project; gathering this information from project proponents does not bind Federal entity decisionmakers. Federal entities remain responsible for findings and determinations required by and reserved to them in 36 CFR part 800.

The initial information-gathering phase precedes the formal consultation process under section 106. As proposed, DOE would authorize project proponents, as applicants to the CITAP Program, to begin section 106 consultation during the IIP Process, but only at such time as a project is sufficiently well developed to allow formal consultation to begin. DOE proposes that, within 45 days of the IIP Process review meeting described in proposed § 900.8, DOE would determine whether the project proponent has developed the scope of its proposed project and alternatives adequately for DOE to determine that there exists an ''undertaking'' for purposes of section 106 of the NHPA. If DOE so determines, then DOE would authorize project proponents to initiate consultation with State Historical Preservation Officers (SHPOs), Tribal Historical Preservation Officers (THPOs), and others consistent with 36 CFR 800.2(e)(4). For all qualifying projects, DOE and the relevant Federal entity or entities shall serve as co-lead agencies for consultation for section 106 of the NHPA per 36 CFR 800.2(a)(2). This would maximize coordination between NEPA and section 106 processes per 36 CFR 800.8, for example, by enabling DOE to seek public input on the section 106 process during the opportunities for public comment provided by NEPA. Agencies often use the public input process of NEPA to seek public input on section 106. DOE would remain responsible for consulting on a government-to-government basis with Tribes (and government-to-sovereign consultation in the context of Native Hawaiian relations), including pursuant to section 106. DOE would also remain legally responsible for all findings and determinations charged to the agency under section 106.

Fourth, DOE proposes to establish intermediate milestones and ultimate deadlines for Federal authorizations and related environmental reviews through the introduction of standard and project-specific schedules. This proposal is intended to implement Congress's express directive to ''establish prompt and binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to'' the projects. 16 U.S.C. 824p(h)(4)(A). Congress also contemplated a specific timeline in section 216(h)(4)(B), which directs the Secretary of Energy to ensure that, ''once an application [for a Federal authorization] has been submitted with such data as the Secretary considers necessary,'' the decision on that application shall be completed within 1 year or as soon as practicable.

In the 2023 MOU, the agencies determined that DOE would prepare a ''standard schedule,'' upon which each project's project-specific schedule

[9] Proposed changes to the term ''qualifying project'' are discussed in more detail in this section and the following sections. ''Qualifying project'' is defined in proposed § 900.2.

[10] Proposed § 900.2 defines ''Indian Tribe'' as having the same meaning as provided by 25 U.S.C. 5304(e). The preamble discussion uses the terms ''tribe'' and ''Indian tribe'' interchangeably.

would be based. The standard schedule is intended as a template showing the steps and expected timeline of a model transmission project from the beginning of the IIP Process through the end of the Federal authorizations process. The MOU signatory agencies agreed that the standard schedule should allow for ''a final decision on all Federal authorizations within two years of the publication of a notice of intent to prepare an EIS or as soon as practicable thereafter.'' (2023 MOU at section V(b)(i)) The agencies also agreed to a process for modifying a project-specific schedule if deadlines are not met. (2023 MOU at section V(b)(v))

Consistent with the 2023 MOU and section 216(h)(4)(A), DOE proposes to establish project-specific schedules for each project participating in the IIP Process. The project-specific schedule will establish the binding deadlines by which Federal authorizations and related environmental reviews for a particular project must be completed. (*See* MOU at sections V(b) and (c)) The project-specific schedule will be developed during the IIP Process through consultation with the project proponent and other Federal agencies and finalized at the conclusion of that process.

Fifth, DOE proposes to simplify the development of an administrative record by incorporating the IIP Process administrative file into a single docket that contains all the information assembled and utilized by the relevant Federal entities as the basis for Federal authorizations and related reviews. DOE and any NEPA co-lead agency will then maintain that docket. Access to, and restrictions of access to, the docket will be worked out at the time of project-specific implementation.

Sixth, DOE proposes to amend its regulations to provide that DOE will serve as the lead NEPA agency and that, in collaboration with any NEPA co-lead agency determined pursuant to procedures established by these regulations and the 2023 MOU and in coordination with the relevant Federal entities, DOE will prepare a single EIS to serve as the NEPA document for all required Federal authorizations. DOE recognizes that this proposal reflects a departure from the 2016 Rule. This proposed change is intended to establish a transparent and consistent NEPA process for the project proponent. Under current regulations, the lead agency is determined through consultation with relevant Federal entities and may not be known until the IIP Process close-out meeting. The proposed revisions would eliminate the uncertainty of that process, instead ensuring that DOE will serve as the lead agency for every project alongside a co-lead, as appropriate. This change would provide consistency in the NEPA process for all projects under the CITAP Program. Moreover, as additional projects utilize the CITAP Program, DOE anticipates that it will be able to improve upon its NEPA processes, ultimately leading to greater efficiencies for both project proponents and Federal agencies.

Finally, DOE proposes to limit the scope of the CITAP Program to high voltage transmission projects that are expected to require preparation of an EIS. Accordingly, DOE proposes to amend its regulations to define ''qualifying projects'' as those with electric transmission lines of (generally though not necessarily) 230 kV and above. Further, DOE is proposing to revise its regulations for the application process in § 900.3 by which a project proponent may seek DOE assistance under these regulations for projects that do not meet the qualifying projects definition. DOE also proposes to clarify that, while ''qualifying project'' definition does not apply to marine lines, under the processes for accepting ''other projects'' summarized at § 900.3, these and other lines that are expected to require an EIS, may, with the agreement of the relevant Federal entities, participate in the CITAP Program.

## III. Section-by-Section Analysis

This proposed rule would revise 10 CFR part 900 in several respects. The following discussion explains the revisions using the section numbers from the proposed rule.

### *A. Section 900.1 Purpose and Scope*

DOE proposes to revise § 900.1 to update the purpose of part 900, reference the establishment of the CITAP Program, and improve readability. These changes reflect DOE's understanding that Congress intended DOE to make the process to obtain multiple Federal authorizations more efficient and reduce administrative delays, which requires clear authority, process, and timelines. The proposed changes in this section reflect DOE's intent to carry out the full scope of the authority that Congress provided.

DOE is proposing to divide § 900.1 into proposed paragraphs (b) through (d). Portions of the text dealing with the IIP Process would be updated to clarify that the process will require submission of materials necessary for Federal authorizations and that the IIP Process should be initiated prior to the submission of any application for a Federal authorization. The proposed changes also clarify that the IIP Process is integrated into the CITAP Program.

Proposed paragraph (a) would be added to establish the overarching CITAP Program and provide a roadmap to authorities and processes proposed to be added to part 900. The proposed paragraph would state that DOE will act as a lead agency for preparing an EIS for any qualifying project. Proposed paragraph (a), as well as proposed paragraph (d), would also point out DOE's role in establishing and monitoring adherence to intermediate milestones and final deadlines, as required by section 216(h). Paragraph (d) also elaborates on the role DOE will play in determining when a project proponent may initiate section 106 consultation for an undertaking consistent with 36 CFR 800.2(c)(4).

DOE proposes to add paragraph (e) to clarify the intended relationship between the early coordination envisioned by the IIP Process and the duties prescribed by section 106 of the NHPA and the implementing regulations at 36 CFR part 800. In particular, DOE intends to clarify that nothing in the IIP Process is intended to abrogate the obligations of Federal agencies under 36 CFR part 800. Additionally, DOE intends to authorize a project proponent as an applicant to the CITAP Program to initiate section 106 consultation during that proponent's involvement in the IIP Process.

DOE proposes to redesignate paragraphs (a) and (e) of current § 900.2 as new paragraphs (f) and (g) of this section because the paragraphs contain general propositions regarding part 900 and are better suited to the general ''Purpose and scope'' section.

Proposed paragraph (h) would be added to afford the Director of DOE's Grid Deployment Office, or that person's delegate, flexibility necessary to ensure that part 900 does not result in unnecessary, duplicative, or impracticable requirements. DOE proposes to authorize the Director to waive any such requirements. Further, this paragraph specifically contemplates a scenario in which a Federal entity is the principal project developer. Under such circumstances, DOE proposes that the Director will consider modifications to the requirements under this part as may be necessary under the circumstances.

### *B. Section 900.2 Definitions*

DOE proposes to redesignate § 900.3 as § 900.2 for the purpose of providing the definitions of terms before those

terms occur in the body of the regulation. DOE proposes to:

- Add a definition for ''authorization'' to provide clarity in several places where that term occurs. Amend the definition for ''Federal authorization'' to account for the new definition of ''authorization.''
- Add a definition for ''communities of interest'' to ensure broad coverage of potentially impacted populations during the public engagement process and establishment of the public engagement plan.
- Add a definition for ''participating agencies'' to serve as shorthand for the group of agencies that will serve various roles under the proposed amendments to the coordination of Federal authorizations.
- Add a definition of ''NEPA co-lead agency'' to identify where information about the designation of a NEPA co-lead agency occurs in the rule.
- Remove the term ''OE–1,'' meaning the Assistant Secretary for DOE's Office of Electricity Delivery and Energy Reliability, and replace it with the definition for ''Director,'' meaning the Director of DOE's Grid Deployment Office or that person's delegate. Under section 1.14(D) of Delegation Order No. S1–DEL–S3–2023 and section 1.9(D) of Redelegation Order No. S3–DEL–GD1–2023 the Secretary of Energy delegated authority to exercise authority under section 216(h) to the Grid Deployment Office. That authority had previously been delegated to DOE's Office of Electricity Delivery and Energy Reliability. The proposed text would make the same substitution throughout part 900 to reflect that delegation change.
- Revise the reference to the definition of ''Indian Tribe'' in the United States Code to the correct reference following the 2016 editorial reclassification. This proposed change does not amend the definition.
- Add the definitions for ''relevant Federal entity'' and ''relevant non-Federal entity'' using the substance of the definitions from ''Federal entity'' and ''non-Federal entity,'' respectively. These proposed changes are intended to show that the terms only mean Federal or non-Federal entities with some relation to a particular qualifying project. These changes would be updated throughout part 900.
- Revise the definitions for ''regional mitigation approach'' and ''regional mitigation strategies or plans'' as ''landscape mitigation approach'' and ''landscape mitigation strategies or plans'', respectively, to reflect terminology in current use. The definition of ''landscape mitigation approach'' is further revised to improve readability and promote consistency in terminology with other agencies.
- Revise the definition for ''MOU signatory agency'' to reflect the title of the 2023 MOU and the agencies to which it applies.
- Revise the definition for ''qualifying project'' in a number of ways. First, the proposed definition would remove the qualifier ''non-marine'' before high voltage transmission line and electric transmission line to match potential scope of the Program with that agreed to in the MOU. Second, the proposed definition would limit the term to projects that are expected to require preparation of an EIS because the Federal coordination will be most impactful for such projects due to their complexity. Third, the proposed revision would provide a mechanism under proposed § 900.3 by which a project that does not meet the definition of a qualifying project may still participate in the Program. This change is discussed in more detail in the following section. Fourth, in accordance with the 2023 MOU, DOE proposes to amend the definition to state that the term does not include any transmission facility authorized under section 8(p) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(p)). The exception to that restriction included in the 2023 MOU is provided for in the proposed changes to § 900.3 and discussed further in that following section. Also, in accordance with the 2023 MOU, the term excludes a transmission facility that would require a construction or modification permit from the Federal Energy Regulatory Commission (FERC) pursuant to section 216(b) of the FPA. Fifth and finally, the proposed definition would exclude projects located wholly within the Electric Reliability Council of Texas interconnection, as required by section 216(k) (16 U.S.C. 824p(k)). This exclusion is also located in § 900.2(c) of the current rule, but DOE proposes to replicate it in this proposed definition for clarity.
- Remove the definitions of ''DOE'', ''NEPA'', and ''FPA'' because those terms are acronyms best addressed in the regulatory text rather than as definitions.
- Remove the definitions for ''early identification of project issues,'' ''IIP resources report'', ''IIP process administrative file'', ''lead 216(h) agency'', ''MOU principals'', and ''other projects'' because those terms no longer occur in the proposed part 900.
- Remove the definition for ''NEPA Lead Agency'' because that term is self-explanatory in the context in which it occurs.

*C. Section 900.3 Applicability to Other Projects*

Section 900.2 of the current rule, titled ''Applicability'', provides an application process by which a project proponent may seek DOE assistance under part 900 for an ''other project.'' Current § 900.3 defines an ''other project'' to be a transmission facility that does not meet the definition of ''qualifying project''. The proposed rule would redesignate § 900.2 as § 900.3 and retain a mechanism by which projects that do not otherwise qualify as ''qualifying projects'' may be treated as such but would modify the text as follows.

Current § 900.2(b) would be reworded and divided into proposed § 900.3(a) through (c) to more clearly communicate the process by which a project proponent may request that a facility be approved as a qualifying project. In particular, the proposed rule would remove the definition of the term ''other project'' and instead include the substance of that term in paragraph (a) of the revised section.

DOE proposes to redesignate paragraphs (d) and (e) of current § 900.2 to proposed § 900.1 as new paragraphs (f) and (g), respectively, because those paragraphs contain general propositions regarding part 900 and are better suited to the general ''Purpose and scope'' section. Current paragraphs (g) and (h) would be relocated to proposed § 900.4 as paragraphs (e) and (f), respectively, because proposed § 900.4 provides a general background to the IIP Process, and the substance of those paragraphs is more relevant to the IIP Process than the rest of part 900.

The first sentence of current § 900.2(e) is proposed to be removed as unnecessary because part 900 does not purport to affect other Federal law requirements except in specific, articulated instances. Current paragraph (f), which describes the IIP process as a complementary process that does not supplant existing pre-application processes, is proposed to be removed because the proposed rule establishes the IIP Process as the mandatory precondition for coordination under section 216(h).

Whereas the current version of paragraph (d) provides that the section does not apply to a transmission facility that will require a construction or modification permit from FERC, the revised version would allow such projects to take advantage of part 900, provided that the FERC chair submits

the request to be included in the CITAP Program.

The proposed rule would add new paragraphs (e) and (f)(1) that allow a project proposed to be authorized under section 8(p) of the Outer Continental Shelf Lands Act to receive coordination assistance under part 900, provided that the project is not proposed to be authorized in connection to a generation project and that all 2023 MOU signatories agree to the project's inclusion in the CITAP Program. These additions reflect the terms of the 2023 MOU.

Finally, current paragraph (c) is proposed to be moved to paragraph (f)(2) to improve the readability of the section.

*D. Section 900.4 Purpose of IIP Process*

Section 900.4 of the current rule states the purpose and structure of the IIP Process. The proposed rule would divide this section into proposed §§ 900.4, 900.5, 900.8, and 900.9 to improve readability. Section 900.4(a) of the current rule would remain in § 900.4 but would be further divided into proposed paragraphs (a), (b), and (c) to improve readability.

Additionally, while the current paragraph (a) describes the IIP Process as an optional process, the proposed § 900.4(b) would establish the IIP Process as a prerequisite for coordination, consistent with the statutory language and the proposed revisions to the purpose of part 900 in § 900.1.

The proposed rule would add a new paragraph (d) to clarify that the IIP Process does not preclude additional communications between the project proponent and relevant Federal entities outside of the meetings envisioned by the IIP Process. The paragraph further emphasizes that DOE intends for the IIP Process to be an iterative process and that each milestone in the process is designed to improve upon the materials that Federal entities have available for authorization and environmental review decisions.

As described previously, the proposed rule would redesignate § 900.2(g) and (h) as proposed § 900.4(e) and (f), respectively, because § 900.4 provides a general background to the IIP Process, and the substance of those paragraphs is more relevant to the IIP Process than the rest of part 900.

Paragraph (g) of the proposed § 900.4 would give authority to the Director to request additional information from a project proponent during the IIP Process to ensure that DOE can collect the information needed to adequately complete the IIP Process.

Finally, the proposed rule would add new paragraphs (h) and (i), which provide processes by which a person may submit confidential information during the IIP Process or to request designation of information containing Critical Electric Infrastructure Information (CEII). These provisions would establish the mechanisms through which the IIP Process complies with 10 CFR 1004.11 and 1004.13.

*E. Section 900.5 Initiation of IIP Process*

Proposed § 900.5 is composed of current § 900.4(b), (c), (e), (g), (h), (i), and (j). DOE proposes to revise these provisions to enumerate the documents and information required to initiate the IIP Process, expedite that process, ensure that community impacts from the project are identified early, and improve the overall readability and clarity of the provisions.

Currently, an initiation request to begin the IIP Process must include a summary of the qualifying project; a summary of affected environmental resources and impacts, including associated maps, geospatial information, and studies; and a summary of early identification of project issues. The proposed rule would make several changes to the contents of the request. First, DOE proposes to update the contents required in the summary of the qualifying project in proposed paragraph (b) to include project proponent details; identification of any environmental and engineering firms and subcontractors under contract to develop the qualifying project; and a list of anticipated relevant Federal and non-Federal entities to ensure sufficient information is provided for DOE to review and to include all necessary agencies in the process. DOE also proposes to require additional maps as part of the initiation request, as detailed in proposed paragraph (c). DOE believes the additional information in proposed paragraphs (b) and (c) are necessary to properly identify the relevant agencies for efficient coordination.

DOE also proposes to require submission of a project participation plan as part of the initiation request. This plan is proposed in place of the summary of early identification of project issues currently required under the rule. The project participation plan, as detailed in proposed paragraph (d), would include the project proponent's history of engagement and a public engagement plan for the project proponent's future engagement with communities of interest and with Indian Tribes that would be affected by a proposed qualifying project. The plan would include specific information on the proponent's engagement with communities of interest and with Indian Tribes that would be affected by a proposed qualifying project. An updated public engagement plan would be required at the end of the IIP Process to reflect any activities during that process. The addition of a public engagement plan that includes communities of interest and Indian Tribes that could be affected by a proposed qualifying project, would ensure that the project proponent follows best practices around outreach. Moreover, by including this plan in the IIP Process, the proposed regulation would provide relevant Federal entities an opportunity to provide input into the project proponent's engagement efforts, and to ensure that the project proponent engages with all communities of interest and Indian Tribes that could be affected by the proposed qualifying project. The engagement would complement Tribal consultation and public engagement undertaken by the relevant Federal entities and would not substitute for Federal agencies engaging in Nation-to-Nation consultation with Indian Tribes and public engagement with stakeholders and communities of interest.

In new paragraph (e), DOE proposes to require submission of a statement regarding the project's status under Title 41 of the Fixing America's Surface Transportation Act (FAST–41) (42 U.S.C. 4370m *et seq.*) as part of the initiation request. This statement is intended to facilitate coordination between the IIP Process and the FAST–41 Process. Project proponents would be required to indicate whether their proposed project currently is a FAST–41 ''covered project''.

DOE proposes to add paragraph (f) to outline the timeline for DOE's review of the initiation request and provide relevant Federal entities and relevant non-Federal entities with a copy of the initiation request and notify each entity as to whether it should participate in the IIP Process and DOE's rationale for that determination. Under proposed paragraph (g), DOE would notify the project proponent and all relevant Federal entities and relevant non-Federal entities whether the initiation request meets the requirements of this section.

The proposed rule would remove the requirement to submit an affected environmental resources and impacts summary as part of the initiation request. As discussed in more detail in the next section, that summary would be replaced by thirteen resource reports

submitted after the IIP Process initial meeting.

This section also proposes changes to the timeline for convening the IIP Process initial meeting. Under the current rule, DOE is required to convene the initial meeting within 45 days of providing notice to the project proponent and the relevant Federal and non-Federal entities that it has received an IIP Process initiation request. The proposed rule would require DOE to convene the IIP Process initial meeting within 30 days of providing notice under proposed paragraph (g) that the initiation request meets the requirements of the section.

Likewise, the contents of the initial meeting would be updated. Under proposed § 900.5(h)(1), DOE and the relevant Federal entities would be required to discuss the IIP Process and requirements with the project proponent, and the different Federal authorization processes. This meeting would also include discussion of arrangements for the project proponent to contribute funds to DOE to cover costs in the IIP Process (in accordance with 42 U.S.C. 7278), establishment of cost recovery agreements or procedures in accordance with regulations of relevant Federal entities, where applicable, or the use of third-party contractors under DOE's supervision, where applicable. DOE believes an early discussion of the process and requirements will ensure efficient participation of the parties and early identification of potential issues.

Proposed § 900.5(h)(2) would require DOE to identify certain applications that need to be submitted to relevant Federal entities during the IIP Process (for example, Standard Form 299, which an applicant would file to seek authorization for transmission lines crossing Federal property). The timing of the expected Federal applications, including which applications may be required during the IIP Process and which should be submitted following the conclusion of the IIP Process, will be covered in the initial meeting.

Additionally, the current rule requires DOE to produce a final initial meeting summary within 30 days of receiving corrections to the draft summary. The proposed rule would reduce this timeframe to 15 days. Both changes are intended to expedite the IIP Process.

The proposed section in paragraph (l) requires DOE to add the final initial meeting summary to the consolidated administrative docket. This requirement was previously located in § 900.6 and is currently required under the proposed revision of that section, but is duplicated here for clarity.

Finally, portions of paragraph (j)(3)(v) are proposed to be removed as unnecessary because the contents are addressed elsewhere.

*F. Section 900.6 Project Proponent Resource Reports*

The proposed rule would require project proponents to develop, in collaboration with relevant Federal entities, thirteen resource reports that will serve as inputs, as appropriate, into the relevant Federal entities' own environmental analysis and authorization processes. This pre-application material would provide for earlier collection of critical information to inform the future application process relating to the proposed transmission line and facilities, including preliminary information to support DOE's and the relevant Federal entities' compliance with section 106 of the NHPA, the ESA, and NEPA. The thirteen resource reports are: General project description; Water use and quality; Fish, wildlife, and vegetation; Cultural resources; Socioeconomics; Geological resources; Soil resources; Land use, recreation, and aesthetics; Communities of interest; Air and noise quality; Alternatives; Reliability and safety; and Tribal interests.

DOE proposes to require project proponents develop these resource reports as part of the pre-application process instead of the affected environmental resources and impacts summary document required from project proponents under the existing rule at § 900.4(d). The proposed resource reports identify information needed to complete NEPA and other review and authorization requirements. However, the topics identified and the proposed reports do not limit the information relevant Federal entities may need, require from project proponents, or develop independently, as necessary to satisfy each relevant Federal entity's applicable statutory and regulatory obligations. Each resource report will comprehensively discuss the baseline conditions and anticipated impacts to resources relevant to DOE's required environmental review, namely under NEPA, ESA, and section 106 of the NHPA. NEPA requires Federal agencies to analyze and assess potential environmental effects of the proposed Federal agency action, and these effects can vary in significance and complexity. Accordingly, by giving each resource proper consideration in individualized reports, DOE anticipates it will be able to meet its requirements under the various environmental laws referenced previously. In addition, proper assessment of the resources potentially affected by the proposed action can also help DOE identify resource conflicts, missing information, and needs from other agencies, and inform the project-specific schedule. These conflicts and needs can then be discussed and addressed during the review meeting and throughout the IIP Process.

These resource reports would be developed by project proponents during the IIP Process with input and feedback from the Federal and non-Federal entities involved in authorization decisions. As proposed, this procedure better matches the IIP Process with the project development and Federal review timelines. Under the proposed changes, a project proponent may initiate the IIP Process without detailed environmental resources information, but the detailed information required by this proposed section must be developed to complete the IIP Process. The more detailed pre-application information, presented in the resource reports, would allow project proponents and the relevant Federal entities to coordinate and identify issues prior to submission of applications for authorizations, inform project design, and expedite relevant Federal entities' environmental reviews by providing environmental information that relevant Federal entities can use after submission of applications to inform their own reviews and by ensuring those applications are complete.

DOE is particularly interested in seeking comment on these items in the proposed resource reports: (1) whether 0.25 mile distance of the proposed transmission project facilities is an adequate distance to: affected landowners, the National Wild and Scenic Rivers System (16 U.S.C. 1271), the National Wildlife Refuge system (16 U.S.C. 668dd–ee), the National Wilderness Preservation System (16 U.S.C. 1131), the National Trails System (16 U.S.C. 1241), the National Park System (54 U.S.C. 100101), National Historic Landmarks (NHLs), National Natural Landmarks (NNLs), Land and Water Conservation Fund (LWCF) acquired Federal lands, LWCF State Assistance Program sites and the Federal Lands to Parks (FLP) program lands, or a wilderness area designated under the Wilderness Act (16 U.S.C. 1132); or the National Marine Sanctuary System, including national marine sanctuaries (16 U.S.C. 1431 *et seq.*) and Marine National Monuments as designated under authority by the Antiquities Act (54 U.S.C. 320301–320303) or by Congress; (2) whether any other distances listed in the regulations are appropriate; and (3) whether the page limits identified in the regulations

is appropriate; (4) whether the duplicative aspects of the resource reports should be rectified; and (5) whether further revisions are needed to proposed § 900.6(m)(8).

As discussed in the following sections, the proposed rule would provide for additional opportunity for project proponents, DOE, relevant Federal entities, and relevant non-Federal entities to communicate regarding the potential impacts of a proposed project.

*G. Section 900.7 Standard and Project-Specific Schedules*

Section 216(h) directs DOE to ''establish prompt and binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, the proposed facility.'' 16 U.S.C. 824p(h)(4)(A). DOE proposes to amend how it will carry out that obligation. Specifically, in paragraph (a), the proposed rule describes the ''standard schedule,'' which DOE will publish as guidance and update from time to time. The standard schedule is not project specific. Rather, DOE proposes that it will describe, as a general matter, the steps necessary to review applications for Federal authorizations, and the related environmental reviews necessary to site qualifying projects. DOE proposes that this schedule will contemplate that authorizations and related environmental reviews be completed within two years.

Paragraph (b) describes the project-specific schedule. As discussed further, DOE proposes to develop this schedule with the NEPA co-lead agency and the relevant Federal entities on a per-project basis during the IIP Process. This schedule would provide the ''binding intermediate milestones and ultimate deadlines'' required by section 216(h). This proposed provision is intended to specify the considerations that DOE will incorporate into its determination of the appropriate project-specific schedule including co-lead and other agency-specific regulations and schedules. Section 216(h)(4)(B) requires DOE to set a project-specific schedule under which all Federal authorizations may be completed within one year of the filing of a complete application unless other requirements of Federal law require a longer schedule. DOE intends to determine the project-specific schedule based on the considerations specified in proposed paragraph (b).

*H. Section 900.8 IIP Process Review Meeting*

The proposed rule would amend the IIP Process to ensure that DOE and the Federal and non-Federal entities involved have meaningful opportunities to identify issues of concern prior to the project proponent's submission of applications for authorizations. In addition to the initial and close-out meetings included in the current text of part 900, the proposed rule would establish an IIP Process review meeting, to be held at the request of the project proponent following initial submission of the requisite thirteen resource reports. In addition, DOE proposes to require that a project proponent requesting the review meeting also update DOE on the status of the project public engagement, and provide updated environmental information.

As proposed, the IIP Process review meeting would ensure that DOE and the relevant Federal and non-Federal entities involved have meaningful opportunities to identify issues of concern prior to the close of the IIP Process and submission of applications for Federal authorizations. To this end, DOE proposes in paragraph (e) that at the review meeting the relevant Federal entities should discuss any remaining issues of concern, information gaps, data needs, potential issues or conflicts, statutory and regulatory standards, and expectations for complete applications for Federal authorizations. Additionally, DOE proposes that the meeting participants would provide updates on the siting process, including stakeholder outreach and input. To facilitate these discussions, DOE proposes in paragraph (a) that a project proponent should submit a request for the review meeting containing helpful documents and information such as a summary table of changes made to the project since the initial meeting, maps of proposed routes within study corridors, a conceptual plan for implementation and monitoring of mitigation measures, and an updated public engagement plan.

Additionally, the proposed IIP Process review meeting would provide an opportunity for DOE and the relevant Federal and non-Federal entities to review the detailed resource reports prepared pursuant to § 900.6. Therefore, DOE proposes in paragraph (a) that the review meeting would only be held after submission of the reports. As proposed at § 900.8(e)(8), during the IIP Process review meeting DOE and the relevant Federal and non-Federal entities would identify any updates to the information included in those reports that the project proponent must make before the conclusion of the IIP Process. Finally, proposed § 900.8(i) would require the project proponent to revise resource reports based on feedback received during the meeting. DOE believes that identifying and addressing issues in the reports during the IIP Process instead of at the end of that process would expedite DOE's preparation of an EIS and increase the likelihood of readiness of the project proponent's application(s) for Federal authorization(s).

Furthermore, the IIP Process review meeting would integrate DOE's statutory schedule-setting function discussed in the previous section into the IIP Process. For this purpose, DOE proposes that the review meeting request under proposed paragraph (a) should include a schedule for completing upcoming field resource surveys, if known, and estimated dates that the project proponent will file requests for Federal and non-Federal authorizations and consultations. These resources will assist DOE in preparing the proposed project-specific schedule, which DOE would be required to present at the review meeting under proposed § 900.8(e)(9). At the meeting, the relevant Federal entities would discuss the process for, and estimated time to complete, required Federal authorizations. These discussions along with other matters discussed at the review meeting would, in turn, allow DOE to continue refining the project-specific schedule.

DOE proposes in paragraph (b) that within 15 days of receiving the review meeting request, DOE must provide relevant Federal entities and relevant non-Federal entities with materials included in the request and resource reports submitted under proposed § 900.6. In paragraph (c), DOE proposes a 60-day period to review the request for sufficiency and provide notice to the proponent and relevant Federal and non-Federal agencies. Furthermore, DOE proposes in paragraph (d) to convene the review meeting within 30 days of providing notice that the request has been accepted. These timelines will ensure that the IIP Process is pursued expeditiously while affording the relevant Federal entities sufficient time to review the relevant materials. The requirement to share the review meeting request and resources reports in paragraph (b) would ensure that all entities participating in the meeting have access to the materials being discussed at the meeting.

DOE proposes in paragraphs (e), (f), and (g) that the IIP Process review meeting would conclude with a draft and, subsequently, a final review meeting summary, to be prepared by DOE. This summary would be included in the consolidated administrative docket described by § 900.10. It would serve as a docket of the issues identified by the parties to the review meeting, and to ensure that the project

proponent, the relevant Federal and non-Federal entities, and DOE, have a shared understanding of the work remaining to be done during the IIP Process.

DOE proposes in paragraph (h) to include a mechanism by which it may determine whether the project proponent has developed the scope of its proposed project and alternatives sufficiently for DOE to determine that there exists an undertaking with the potential to affect historic properties for purposes of section 106 of the NHPA. If DOE so determines, DOE would initiate its section 106 review of the undertaking and authorize project proponents as CITAP Program applicants to initiate consultation with SHPOs, THPOs, and others consistent with 36 CFR 800.2(c)(4). This provision is intended to allow initiation of section 106 consultation during the IIP Process, prior to submission of applications for authorizations, but with sufficient opportunity for the project proponent, the relevant Federal entities, and DOE, to determine the scope of the proposed project.

*I. Section 900.9 IIP Process Close-Out Meeting*

The proposed rule also would amend the close-out meeting provisions of the current rule at § 900.4(k) and (l). As in the current rule, DOE proposes that the IIP Process would conclude with the close-out meeting. The proposed rule would require submission of a close-out meeting request to specify the modifications to the project since the review meeting. However, while the current rule states that the request may be submitted no less than 45 days after the initial meeting, DOE proposes to remove that requirement because changes to the IIP Process in the proposed rule no longer allow for a request to be submitted within that timeframe.

DOE proposes to pare down the request by removing paragraphs (k)(3), (5), (8), and (9). The information required under those paragraphs would be submitted with the review meeting request under proposed § 900.8(a). Likewise, DOE proposes to remove paragraphs (k)(4), (6), and (7) because the information required under those paragraphs would be submitted in the resources reports under proposed § 900.6. Finally, paragraph (k)(1) is proposed to be removed because the submission of close-out meeting request materials is presumed to indicate that a close-out meeting is being requested.

However, DOE also proposes that new materials be included with the request for the purpose of updating meeting participants on changes to the project. Paragraphs (a)(2) and (3) would require a description of all changes made to the qualifying project since the review meeting and a final public engagement plan. In paragraph (a)(4) DOE proposes the project proponent provide the requests for Federal authorizations for the qualifying project. These are proposed to be included in the close-out meeting request to ensure that the project proponent is ready to begin the Federal authorization process.

DOE proposes to revise the timelines for requesting and convening a close-out meeting. In current paragraphs (a)(1) through (3), DOE has 30 days to respond to a close-out meeting request and 60 days from the date of providing a response to convene the close-out meeting. DOE proposes in paragraph (b) that within 15 days of receiving the request, DOE must provide relevant Federal entities and relevant non-Federal entities with materials included in the request and any updated resource reports submitted under § 900.6. Proposed paragraph (c) provides that DOE has 60 days to review the request for sufficiency and notify the project proponent and all relevant Federal and non-Federal entities of DOE's decision. Under proposed paragraph (d), DOE would convene the close-out meeting within 30 days of notifying the project proponent that the request has been accepted. These new timelines will ensure that the IIP Process is pursued expeditiously. Furthermore, the requirement to share the close-out meeting request materials in paragraph (b) would ensure that all entities participating in the meeting have access to the materials being discussed at the meeting.

DOE proposes that the substance of the close-out meeting will no longer include a description of remaining issues of concern, information gaps, data needs, and potential issues or conflicts that could impact the time it will take relevant Federal entities to process applications for Federal authorizations. That information is proposed to be covered at the review meeting under § 900.8(d). Likewise, DOE proposes to eliminate paragraphs (l)(3)(ii) through (v) because that information is now required to be discussed at the review meeting. DOE proposes in paragraph (e) that DOE will present the final project-specific schedule at the meeting, in keeping with DOE's statutory schedule-setting function discussed previously. As explained previously, the project-specific schedule will include the intermediate milestones and final deadlines for review of the project proponent's application and related environmental reviews.

DOE proposes to remove the portion of paragraph (l) of the current regulation which states that ''The IIP Process Close-Out Meeting will also result in the identification of a potential NEPA Lead Agency pursuant to § 900.6 described.'' DOE proposes to select the NEPA co-lead agency earlier in the IIP Process to allow for sufficient coordination.

DOE proposes to remove paragraph (l)(3)(vi) because the information covered by the Final IIP Resources Report is proposed to be covered by the thirteen resources reports. Additionally, DOE proposes to remove paragraph (l)(3)(vii), which encourages agencies to use the Final IIP Resources Report to inform the NEPA Process. Instead, DOE proposes at § 900.12(f) to require all relevant Federal entities to use the EIS as the basis for Federal authorization decisions. That requirement is discussed in more detail below.

DOE proposes to remove paragraph (l)(3)(viii), which requires relevant Federal entities to identify a preliminary schedule for authorizations for the proposed qualifying project, because DOE now proposes to set a project-specific schedule for all relevant Federal entities in consultation with such entities.

DOE proposes in paragraphs (f) through (h) that the IIP Process close-out meeting would conclude with a draft and, subsequently a final close-out meeting summary, to be prepared by DOE. This summary would be included in the administrative docket. It would serve as a docket of the issues identified by the parties to the close-out meeting, and ensure that the project proponent, the relevant Federal and non-Federal entities, and DOE, have a shared understanding of the conclusion of the IIP Process.

In paragraph (h)(4), in accordance with the 2023 MOU, DOE proposes to notify the Federal Permitting Improvement Steering Council (FPISC) Executive Director that the project should be included on the FPISC Dashboard as a transparency project if the project is not identified as a covered project pursuant to § 900.5(e).

Finally, in paragraph (i), DOE proposes that DOE and the NEPA co-lead agency shall issue a notice of intent to publish an EIS in accordance with the final project-specific schedule.

*J. Section 900.10 Consolidated Administrative Docket*

Current § 900.6 requires DOE to maintain an IIP Process Administrative File with all relevant documents and communications between the project

proponent and the agencies and encourages agencies to work with DOE to create a single record. To better integrate and coordinate Federal authorizations, the new section proposes to dispense with the IIP Process Administrative File and combine all documents that were previously included in that file along with all information assembled by relevant Federal entities for authorizations and reviews after completion of the IIP Process into a single, consolidated administrative docket.

To this end, the proposed § 900.10 expands current paragraph (b) as a new paragraph (a) to articulate more clearly the information that should be included in the docket, including requests made during the IIP Process, IIP Process meeting summaries, resources reports, and the final project-specific schedule. The sentence in current paragraph (b) regarding the Freedom of Information Act is proposed to be removed because that law applies to requests for information from the public on its own terms.

Current paragraph (b) also requires DOE to share the IIP Process Administrative File with the co-lead NEPA agency. However, proposed paragraph (c) would require DOE to make the consolidated administrative docket available to both the NEPA co-lead agency and any Federal or non-Federal entity that will issue an authorization for the project. This change is proposed to ensure that other entities are able to use the docket for their own authorizations. Consequently, the proposed rule also proposes to remove current paragraph (d), which says that Federal entities are strongly encouraged to maintain information developed during the IIP Process.

The proposed rule would also add a new paragraph (d) providing notice that, as necessary and appropriate, DOE may require a project proponent to contract with a qualified docket-management consultant to assist DOE and the NEPA co-lead agency in compiling and maintaining the administrative docket. Such a contractor may assist DOE and the relevant Federal entities in maintaining a comprehensive and readily accessible docket. DOE is also proposing that any such contractor shall operate at the direction of DOE, and that DOE shall retain responsibility and authority over the content of the docket to ensure the integrity and completeness of the docket.

Finally, the proposed rule relocates paragraph (a) of the current rule to paragraph (b) for organizational purposes.

*K. Section 900.11 NEPA Lead Agency and Selection of NEPA Co-Lead Agency*

Under the proposed rule, DOE would serve in the NEPA lead agency role contemplated in section 216(h) except where a co-lead is designated.

Under the current § 900.5, DOE coordinates the selection of a NEPA lead agency in compliance with NEPA, CEQ implementing regulations at 40 CFR part 1500, and each agency's respective NEPA implementing regulations and procedures. Paragraphs (a) through (d) of the current section govern the selection of a NEPA lead agency for projects that cross lands administered by both the Department of Interior (DOI) and the Department of Agriculture (USDA).

The proposed rule proposes to redesignate current § 900.5 to new § 900.11 and proposes to update this section to reflect that DOE, in accordance with section 216(h)(5)(A) and the 2023 MOU, will serve as lead agency for purposes of NEPA along with any NEPA co-lead agency as designated pursuant to the MOU and § 900.11 consistent with its obligation as lead agency to coordinate with relevant Federal entities.

In the 2023 MOU, the MOU signatory agencies agreed to a process by which a NEPA co-lead agency could be designated. Under that process, DOE and the agency with the most significant interest in the management of Federal lands or waters that would be traversed or affected by the qualifying project would serve as lead agencies jointly responsible for preparing an EIS under NEPA. Proposed § 900.11(b) reflects that agreed-upon process.

The proposed amendments also provide that, for projects that would traverse both USDA and DOI lands, DOE will request that USDA and DOI determine the appropriate NEPA co-lead agency.

*L. Section 900.12 Environmental Review*

Consistent with DOE's proposed role as lead agency, a new § 900.12 proposes to define DOE's responsibilities as lead agency for environmental reviews and the NEPA process, including by preparing a single EIS designed to serve the needs of all relevant Federal entities. In paragraph (a) of this section, the proposed rule would clarify that DOE will begin preparing an EIS following the conclusion of the IIP Process and after receipt of a relevant application. It also notes that DOE will do so in conjunction with any NEPA co-lead agency selected under § 900.11.

The other provisions of this proposed section specify details of DOE's—and any NEPA co-lead agency's—role as lead NEPA agency, including to arrange for contractors, publish completed documents, and identify the full scope of alternatives for analysis. As proposed, the applicable permitting agencies would maintain responsibility for identifying information, analysis, and alternatives necessary for their respective authorizations.

Consistent with section 216(h)(5)(A), which requires that DOE's EIS serve as ''the basis for all decisions on the project under Federal law,'' proposed paragraph (f) would establish that the relevant Federal agencies will use the EIS as the basis for their respective decisions.

Finally, proposed paragraph (g) would specify that DOE and the applicable permitting agency or agencies will serve as co-lead agencies for purposes of consultation under the ESA and compliance with the NHPA. This provision would allow DOE to meet its obligation under section 216(h)(2) to coordinate ''all . . . related environmental reviews of the facility.''

*M. Section 900.13 Severability*

Proposed § 900.13 would provide that the provisions of the proposed rule are separate and severable from one another, and that if any provision is stayed or determined to be invalid by a court of competent jurisdiction, the remaining provisions shall continue in effect. This standard severability clause is intended to clearly express the Department's intent that should a provision be stayed or invalidated the remaining provisions shall continue in effect. The Department has carefully considered the requirements of the proposed rule, both individually and in their totality, including their potential costs and benefits to project proponents. In the event a court were to stay or invalidate one or more provisions of this rule as finalized, the Department would want the remaining portions of the rule as finalized to remain in full force and legal effect.

## IV. Regulatory Review

*A. Review Under Executive Orders 12866, 13563, and 14094*

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only

upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this proposed regulatory action constitutes a ''significant regulatory action'' within the scope of E.O. 12866. Accordingly, this action is subject to review under E.O. 12866 by OIRA of the Office of Management and Budget (OMB).

Section 6(a) of E.O. 12866 requires an agency issuing a ''significant regulatory action'' to provide an assessment of the potential costs and benefits of the regulatory action. To that end, DOE has further assessed the qualitative and quantitative costs and benefits of this NOPR.

The societal costs of the action are the direct costs incurred by project proponents during the IIP Process. DOE discussed in the previous sections that most of the information required to be submitted during the IIP Process would likely be required absent this proposal and therefore the investment of time and resources required by this proposed process are unlikely to be an additional burden on respondents. However, the full costs are considered in this analysis for transparency. These costs of $399,083 per year are detailed in the Paperwork Reduction Act burden analysis. The table below captures the 10-year and 20-year net present value (NPV) of those annual costs under two discount rates (3% and 7%), assuming annual cost increases of 2%.[11]

CITAP Program NPV Cost Estimates

| Discount rate | 3% | 7% |
|---|---|---|
| 10-year NPV ..... | $3,783,815.40 | $3,096,337.74 |
| 20-year NPV ..... | 7,215,911.27 | 5,015,060.67 |

The benefits of the CITAP Program, designed to reduce the Federal authorization timelines for interstate electric transmission facilities and enable more rapid deployment of transmission infrastructure, include direct benefits to the project proponents in decreased time and expenditure on authorizations and a series of indirect social benefits. DOE seeks comment on how much time or expense could be saved by the procedures in the proposed rule.

Increasing the current pace of transmission infrastructure deployment will generate benefits to the public in multiple ways that can be categorized into grid operations, system planning, and non-market benefits. Grid operation benefits include a reduction in the congestion costs for generating and delivering energy; mitigation of weather and variable generation uncertainty enhanced diversity of supply, which increases market competition and reduces the need for regional backup power options; and increased market liquidity and competition.[12] From a system planning standpoint, accelerated transmission investments will allow the development of new, low cost power plants in areas of high congestion which might not otherwise see investment due to capacity constraints, and additional grid hardening or resilience. Finally, non-market benefits to the public include reduced costs for meeting public policy goals related to emissions and equitable energy access, as well as emissions reductions system wide.[13]

The DOE Grid Deployment Office released a draft of the 2023 National Transmission Needs Study (Needs Study), which identified significant need for the expansion of electric transmission across the contiguous United States.[14] This draft Needs Study and 2022 interconnection queue analysis by Berkeley Lab support DOE's analysis that the CITAP Program will provide substantial benefits by reducing authorization timelines for transmission projects and increasing the speed of transmission development and clean energy integration.[15]

The quantitative benefits of the CITAP Program will ultimately depend on the projects that are designed and developed by project proponents. However, the quantifiable benefits of transmission development can be estimated generally. These quantifiable benefits are the result of reductions in transmission congestion costs and avoided emissions from the increased use of clean energy enabled by additional transmission.

A 2023 analysis of transmission congestion costs by a consulting group found that congestion costs have risen from an average of $7.1 billion between 2016 and 2021 to $20.8 billion in 2022.[16] A 2022 study by Lawrence Berkeley National Lab found that between 2012 and 2021, a 1000 megawatts (MW) interregional transmission line could have provided $20 to $670 million dollars per year in value by providing congestion relief, which would have lowered energy costs to consumers.[17] Forward-looking projections for transmission value along these parameters are not available, and DOE is reluctant to project the complex changes to technical operations and market dynamics given the wide range in projected value. However, DOE notes that it has estimated that the CITAP Program will serve three projects a year that are each roughly equivalent to a 1000 MW line, an increase in the average number of these transmission projects authorized by a Federal agency

[11] NPV analysis uses a 2% annual inflation, informed by the Federal Reserve Economic Data 10-year and 30-year Inflation Expectations and 5-year Forward Inflation Expectation.

[12] Millstein, A. *et al.* (2022) *Empirical estimates of transmission value using locational marginal prices, Empirical Estimates of Transmission Value using Locational Marginal Prices | Electricity Markets and Policy Group,* 6. Available at: *https://emp.lbl.gov/publications/empirical-estimates-transmission.*

[13] *Id.*

[14] DOE, National Transmission Needs Study (Feb. 2023), available at: *https://www.energy.gov/sites/default/files/2023-02/022423-DRAFT NeedsStudyforPublicComment.pdf.*

[15] Berkeley Lab, *Queued up: Characteristics of power plants seeking transmission interconnection* (2023), *Electricity Markets and Policy Group.* Available at: *https://emp.lbl.gov/queues.*

[16] (2023) *Transmission congestion costs rise again in U.S. RTOS,* 1. Available at: *https://grid strategiesllc.com/wp-content/uploads/2023/07/GS_Transmission-Congestion-Costs-in-the-U.S.-RTOs1.pdf.*

[17] Millstein, *et al.,* 2022, 15.

in the past 17 years. With decreased authorization times after the CITAP Program is initialized, the additional capacity enabled by this proposed action would likely provide substantial congestion relief, consistent with the studies cited above.

A key driver of transmission congestion costs is that the growth of low-cost renewable energy projects is outpacing the rate of transmission expansion. Inadequate transmission capacity can lead to curtailment of available renewable energy in favor of thermal generators, which increases costs to consumers due to fuel prices and increases emissions.[18] [19] A recent projection found that transmission capacity must expand by 2.3% annually to realize the full benefits of the clean energy investments in the IRA. However, in the last decade, transmission capacity has only increased an average of 1% per year.[20] The modeling projects that increasing the rate of transmission capacity expansion by even just 50% (1% to 1.5% annually) would significantly reduce emissions by enabling more clean energy on the grid, estimating nearly 600 million tons of avoided emissions ($CO_2$ equivalent) in 2030 alone.[21] An annual 1.5% increase in transmission capacity is estimated to add 7,000 MW to the grid in 2030 and provide an estimated $53.4 billion in societal benefits from avoided emissions that year, using a $89/ton social cost of carbon.[22] DOE estimates that the CITAP Program will increase the number of high capacity projects seeking Federal authorizations, providing a portion of projected avoided emissions benefits through increased transmission capacity. These benefits would continue to grow in the following years as transmission capacity is increased.

While these estimates of quantitative benefits are necessarily approximate, the benefits of the CITAP Program to the public far offset the costs to project proponents. By enabling rapid development of enhanced transmission capacity, the CITAP Program will help increase access to a diversity of generation sources, offset transmission congestion and carbon costs, and deliver reliable, affordable power that future consumers will need when and where they need it.

### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (*see* 68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*).

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is set forth.

DOE expects that the provisions of this proposed rule, if adopted, would not affect the substantive interests of such project proponents, including any project proponents that are small entities. DOE expects actions taken under the provisions to coordinate information and agency communication before applications for Federal authorizations are submitted to Federal agencies for review and consideration would help reduce application review and decision-making timelines. Ensuring that all project proponents avail themselves of the benefits of the IIP Process will result in a clear, non-duplicative, process. Participation in the CITAP Program is optional. Thus, proposing to make the IIP Process a condition of the Program does not prevent project proponents from submitting application outside of the Program. DOE, however, encourages project proponents to take advantage of the Program based on the urgency and a consensus among 2023 MOU signatories of the anticipated benefits the Program will provide.

Furthermore, these changes are procedural and apply only to project proponents that develop electric transmission infrastructure. Historically, entities that develop transmission infrastructure are larger entities. Therefore, these procedures are unlikely to directly affect small businesses or other small entities. For these reasons, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this proposed rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

### *C. Review Under the Paperwork Reduction Act of 1995*

The proposed rule contains information collection requirements subject to review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and the procedures implementing that Act (5 CFR 1320.1 through 1320.18). The request to approve and revise this collection requirement has been submitted to OMB for approval. The proposed amendments are intended to improve the pre-application procedures and result in more efficient processing of applications.

This proposed rule would modify certain reporting and recordkeeping requirements included in OMB Control No. 1910–5185 which is an ongoing collection. The proposed revisions to DOE's regulations associated with the OMB Control No. 1910–5185 information collection are intended to ensure that DOE may carry out its statutory obligations under section 216(h) of the FPA.

Information supplied will be used to support an initiation request necessary to begin DOE's IIP Process. The proposed revisions include a project

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[18] Howland, E. (2023) *US grid congestion costs jumped 56% to $20.8B in 2022: Report, Utility Dive.* Available at: *https://www.utilitydive.com/news/grid-congestion-costs-transmission-gets-grid-strategies-report/687309/#:~:text=Costs%20to%20consumers%20from%20congestion%20on%20the%20U.S.,report%20released%20Thursday%20by%20consulting%20firm%20Grid%20Strategies.*

[19] *Nationwide transmission congestion costs rise to $20.8 billion in 2022* (2023). *Advanced Power Alliance.* Available at: *https://poweralliance.org/2023/07/13/nationwide-transmission-congestion-costs-rise-to-20-8-billion-in-2022/#:~:text=By%20extrapolating%20data%20from%20Independent%20Market%20Monitor%20reports,congestion%20costs%20reached%20%2420.8%20billion%20nationwide%20last%20year.*

[20] Jenkins, J.D. *et al.* (2022) *Electricity transmission is key to unlock the full potential of the Inflation Reduction Act, Zenodo.* Available at: *https://zenodo.org/record/7106176#:~:text=Previously%2C%20REPEAT%20Project%20estimated%20that%20IRA%20could%20cut,from%20electric%20vehicles%2C%20heat%20pumps%2C%20and%20other%20electrification.*

[21] *Id.*

[22] *Technical support document: Social cost of carbon, methane,* (2021) *whitehouse.gov,* 5. Available at: *https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.*

proponent provide: (1) additional maps and information for the summary of qualifying project; (2) a project participation plan; and (3) a statement regarding whether the project is a FAST–41 covered project. Additional information collection required includes thirteen resource reports describing the project and its impacts to allow DOE to complete a single EIS as part of the IIP Process. Those reports are: General project description; Water use and quality; Fish, wildlife, and vegetation; Cultural resources; Socioeconomics; Geological resources; Soil resources; Land use, recreation, and aesthetics; Communities of interest; Air and noise quality; Alternatives; Reliability and safety; and Tribal interests. Additionally, during the review and close-out meetings, project proponents will provide updates to project documents and the project schedule.

The proposed revisions would represent an increase in information collection requirements and burden for OMB No. 1910–5185.

The estimated burden and cost for the requirements contained in this NOPR follow.

Each entry indicates the time estimated for a meeting or the time estimated for the respondent to prepare the report or request.

ESTIMATE OF ANNUAL RESPONDENT REPORTING AND RECORDKEEPING BURDEN AND COST

| Form No./title (and/or other collection instrument name) | Estimated number of respondents | Estimated number of total responses * | Estimated number of burden hours per response | Estimated burden hours (total responses × number of hours per response) | Estimated reporting and recordkeeping cost burden ** |
|---|---|---|---|---|---|
| **Current Rule Estimate of Annual Respondent Reporting and Recordkeeping Burden and Cost** | | | | | |
| Section 900.2 | 5 | 5 | 1 | 5 | $ 283 |
| Section 900.4 | 5 | 10 | 5 | 50 | 2,830 |
| **Total** | ..... | 15 | ..... | 55 | 3,113 |
| **Proposed Rule Estimate of Annual Respondent Reporting and Recordkeeping Burden and Cost** | | | | | |
| Initiation Request | 3 | 3 | 30 | 90 | 5,855 |
| Initial Meeting | 3 | 3 | 2 | 6 | 390 |
| Resource Report 1: General project description | 3 | 3 | 96 | 288 | 18,734 |
| Resource Report 2: Water use and quality | 3 | 3 | 125 | 375 | 24,394 |
| Resource Report 3: Fish, wildlife, and vegetation | 3 | 3 | 200 | 600 | 39,030 |
| Resource Report 4: Cultural resources | 3 | 3 | 200 | 600 | 39,030 |
| Resource Report 5: Socioeconomics | 3 | 3 | 160 | 480 | 31,224 |
| Resource Report 6: Geological resources | 3 | 3 | 160 | 480 | 31,224 |
| Resource Report 7: Soil resources | 3 | 3 | 200 | 600 | 39,030 |
| Resource Report 8: Land use, Recreation and aesthetics | 3 | 3 | 220 | 660 | 42,933 |
| Resource Report 9: Communities of interest | 3 | 3 | 96 | 288 | 18,734 |
| Resource Report 10: Air and noise quality | 3 | 3 | 220 | 660 | 42,933 |
| Resource Report 11: Alternatives | 3 | 3 | 160 | 480 | 31,224 |
| Resource Report 12: Reliability and safety | 3 | 3 | 100 | 300 | 19,515 |
| Resource Report 13: Tribal interests | 3 | 3 | 160 | 480 | 31,224 |
| Review Meeting Request | 3 | 3 | 1 | 3 | 195 |
| Review Meeting | 3 | 3 | 2 | 6 | 390 |
| Close-Out Meeting Request | 3 | 3 | 1 | 3 | 195 |
| Close-Out Meeting | 3 | 3 | 1 | 3 | 195 |
| **Total** | 3 | 3 | 2,134 | 6,402 | 416,451 |

* One response per respondent.

** estimated cost based on median hourly wage for a project manager from *https://www.bls.gov/oes/current/oes131111.htm* ($45.81/hr) and fully burdened scaling factor from *https://www.bls.gov/regions/southwest/news-release/employercostsforemployeecompensation_regions.htm* (1.42).

DOE recognizes that some of the above estimates for the information collection activities proposed are new. Therefore, DOE seeks comment on the burden and costs associated with the requirements contained in this proposed rule.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

*D. Review Under the National Environmental Policy Act of 1969*

DOE has analyzed this proposed rule in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this proposed rule is covered under the categorical exclusion located at 10 CFR part 1021, subpart D, appendix A, Categorical Exclusion A5 because the proposed rule would revise existing regulations at 10 CFR part 900. The changes would affect the process for the consideration of future proposals for electricity transmission, and potential environmental impacts associated with any particular proposal would be analyzed pursuant to NEPA and other applicable requirements. DOE has considered whether this action would result in extraordinary circumstances that would warrant preparation of an Environmental Assessment or EIS and has determined that no such extraordinary circumstances exist.

Therefore, DOE has determined that this proposed rulemaking does not require an Environmental Assessment or an EIS.

*E. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; (6) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

*F. Review Under Executive Order 13132*

E.O. 13132, ''Federalism'', 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. E.O. 13132 also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (*see* 65 FR 13735). DOE has examined this document and has tentatively determined that the proposed rule would not preempt State law and would not have a substantial direct effect on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government. No further action is required by E.O. 13132.

*G. Review Under Executive Order 13175*

Under E.O. 13175, ''Consultation and Coordination with Indian Tribal Governments,'' 65 FR 67249 (Nov. 6, 2000), DOE may not issue a discretionary rule that has Tribal implications or that imposes substantial direct compliance costs on Indian Tribal governments unless DOE provides funds necessary to pay the costs of the Tribal governments or consults with Tribal officials before promulgating the rule. The proposed rule aims to improve the coordination of Federal authorizations for proposed interstate electric transmission facilities pursuant to the FPA. Specifically, the proposed amendments are intended to refine the pre-application procedures and result in more efficient processing of applications. As a result, the proposed amendments in this document would not have substantial direct effects on one or more Indian Tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal laws. Accordingly, the funding and consultation requirements of E.O. 13175 do not apply, and a Tribal summary impact statement is not required.

DOE invites Indian Tribal governments to provide comments on the costs and effects that this proposed rule could potentially have on Tribal communities.

*H. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and Tribal governments, and the private sector. (Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531)) For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a), (b)). UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant Federal intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (*see* 62 FR 12820) (this policy is also available at: *www.energy.gov/gc/guidance-opinions*). DOE examined the proposed rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a 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 in any year. Accordingly, no further assessment or analysis is required under UMRA.

*I. Review Under Executive Order 12630*

DOE has determined, under E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

*J. Review Under Executive Order 13211*

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1)(i) is a significant regulatory action under E.O. 12866, or any successor order; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (2) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the

action and their expected benefits on energy supply, distribution, and use. This proposed rule is intended to improve the pre-application procedures for certain transmission projects, and therefore result in the more efficient processing of applications, and thus this proposed rule would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*K. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*L. Review Under the Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002).

DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

## V. Public Participation—Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this document. Interested individuals are invited to participate in this proceeding by submitting data, views, or arguments with respect to the specific sections addressed in this proposed rule using the methods described in the **ADDRESSES** section at the beginning of this document.

1. *Submitting comments via www.regulations.gov.* The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable by DOE Grid Deployment Office staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment. However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through *www.regulations.gov* will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

2. *Submitting comments via email or mail.* Comments and documents submitted via email or mail will also be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

3. *Confidential Business Information.* Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data he or she believes to be confidential and exempt by law from public disclosure should submit two well-marked copies: One copy of the document marked ''CONFIDENTIAL'' including all the information believed to be confidential, and one copy of the document marked ''NON–CONFIDENTIAL'' with the information believed to be confidential deleted. Submit these documents via email to *CITAP@hq.doe.gov.* DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

4. *Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

## VI. Approval by the Office of the Secretary of Energy

The Secretary of Energy has approved publication of this notice of proposed rulemaking and request for comment.

## List of Subjects in 10 CFR Part 900

Electric power, Electric utilities, Energy, Reporting and recordkeeping requirements.

## Signing Authority

This document of the DOE was signed on August 8, 2023, by Maria D. Robinson, Director, Grid Deployment Office, 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 8, 2023.

**Treena V. Garrett,**

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

For the reasons stated in the preamble, the Department of Energy proposes to revise 10 CFR part 900 to read as follows:

## PART 900—COORDINATION OF FEDERAL AUTHORIZATIONS FOR ELECTRIC TRANSMISSION FACILITIES

Sec.



**Authority:** 16 U.S.C. 824p(h).

### § 900.1 Purpose and scope.

(a) Pursuant to section 216(h) of the Federal Power Act (16 U.S.C. 824p(h)), the Department of Energy (DOE) establishes the Coordinated Interagency Transmission Authorizations and Permits Program (CITAP Program) under this part to coordinate the review and processes related to Federal authorizations necessary to site a transmission facility. Pursuant to section 216(h)(4)(A), this part establishes the mechanism by which DOE will set intermediate milestones and ultimate deadlines for the processes related to deciding whether to issue such authorizations. In addition, as the lead agency and in collaboration with any National Environmental Policy Act (NEPA) co-lead agency and in consultation with the relevant Federal entities, as applicable, DOE will prepare a single environmental impact statement (EIS), which will be designed to serve the needs of all relevant Federal agencies and inform all Federal authorization decisions on the proposed qualifying project.

(b) This part provides a process for the timely submission of information needed for Federal decisions related to authorizations for proposed electric transmission facilities. This part seeks to ensure that electric transmission projects are developed consistent with the nation's environmental laws, including laws that protect endangered and threatened species, critical habitats, and cultural and historic properties. This part provides a framework, called the Integrated Interagency Pre-Application (IIP) Process, by which DOE will coordinate submission of materials necessary for Federal authorizations and related environmental reviews required under Federal law to site qualified electric transmission facilities, and integrates the IIP Process into the CITAP Program.

(c) This part describes the timing and procedures for the IIP Process, which should be initiated prior to a project proponent's submission of any application for a required Federal authorization. The IIP Process provides for timely and focused pre-application meetings with relevant Federal and non-Federal entities, as well as for early identification of potential siting constraints and opportunities and seeks to promote thorough and consistent stakeholder engagement by a project proponent. At the close-out of each IIP Process, DOE in coordination with the relevant Federal entities will establish the schedule by which all Federal authorizations and related reviews necessary for the qualifying project will be conducted.

(d) This part improves the Federal permitting process by facilitating the early submission, compilation, and documentation of information needed for coordinated review by relevant Federal entities under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). This part also facilitates expeditious action on necessary Federal authorizations by ensuring that relevant Federal entities coordinate their consideration of those applications and by providing non-Federal entities the opportunity to coordinate their non-Federal permitting and environmental reviews with the reviews of the relevant Federal entities.

(e) This part facilitates improved and earlier coordination of and consultation between relevant Federal entities, relevant non-Federal entities, and others pursuant to section 106 of the National Historic Preservation Act (54 U.S.C. 306108) (NHPA) and its implementing regulations found at 36 CFR part 800. Under this part, DOE may establish it has an undertaking with the potential to affect historic properties and, following the IIP review meeting, authorize a project proponent, as a CITAP applicant, to initiate section 106 consultation for the undertaking consistent with 36 CFR 800.2(c)(4). Prior to that determination, this part requires project proponents to gather initial information and make recommendations relevant to the section 106 process to the extent possible. This part also establishes DOE as co-lead for the section 106 process, consistent with DOE's role as lead or co-lead agency for purposes of NEPA, in order to maximize opportunities for coordination between the NEPA and section 106 processes. Federal entities remain responsible for government-to-government consultation with Indian Tribes (and government-to-sovereign consultation in the context of Native Hawaiian relations) and for any findings and determinations required by and reserved to Federal agencies in 36 CFR part 800.

(f) This part applies only to qualifying projects as defined by § 900.2.

(g) Participation in the IIP Process does not alter any requirements to obtain necessary Federal authorizations for electric transmission facilities. Nor does this part alter any responsibilities of the relevant Federal entities for environmental review or consultation under applicable law.

(h) The Director may waive any requirement imposed on a project proponent under this part if, in the Director's discretion, the Director determines that the requirement is unnecessary, duplicative, or impracticable under the circumstances relevant to the qualifying project. Where the principal project developer is itself a Federal entity that would be otherwise expected to prepare an EIS for the project, the Director shall consider modifications to the requirements under this part as may be necessary under the circumstances.

### § 900.2 Definitions.

As used in this part:

*Affected landowner* means an owner of real property interests who is usually referenced in the most recent county or city tax records, and whose real property:

(1) Is located within either 0.25 miles of a proposed study corridor or route of a qualifying project or at a minimum distance specified by State law, whichever is greater; or

(2) Contains a residence within 3,000 feet of a proposed construction work area for a qualifying project.

*Authorization* means any license, permit, approval, finding, determination, or other administrative decision required under Federal, State,

local, or Tribal law to site an electric transmission facility, including permits, special use authorization, certifications, opinions, or other approvals.

*Communities of interest* include disadvantaged, fossil energy, rural, Tribal, indigenous, geographically proximate, or communities with environmental justice concerns that could be affected by the qualifying project.

*Director* means the Director of the DOE Grid Deployment Office, that person's delegate, or another DOE official designated to perform the functions of this part by the Secretary of Energy.

*Federal authorization* means any authorization required under Federal law.

*Federal entity* means any Federal agency or department.

*Indian Tribe* has the same meaning as provided by 25 U.S.C. 5304(e).

*Landscape mitigation approach* means an approach that applies the mitigation hierarchy to develop mitigation measures for impacts to resources from a qualifying project at the relevant scale, however narrow or broad, that is necessary to sustain those resources, or otherwise achieve established goals for those resources. The mitigation hierarchy refers to an approach that first seeks to avoid, then minimize impacts, then, when necessary, compensate for residual impacts. A landscape mitigation approach identifies the needs and baseline conditions of targeted resources, potential impacts from the qualifying project, cumulative impacts of past and likely projected disturbances to those resources, and future disturbance trends, then uses this information to identify priorities for mitigation measures across the relevant area to provide the maximum benefit to the impacted resources. Such an approach includes full consideration of the conditions of additionality (meaning that the benefits of a compensatory mitigation measure improve upon the baseline conditions in a manner that is demonstrably new and would not have occurred without the mitigation measure) and durability (meaning that the effectiveness of a mitigation measure is sustained for the duration of the associated direct and indirect impacts).

*Landscape mitigation strategies or plans* mean documents developed through, or external to, the NEPA process that apply a landscape mitigation approach to identify appropriate mitigation measures in advance of potential impacts to resources from qualifying projects.

*MOU signatory agency* means a signatory of the interagency Memorandum of Understanding (MOU) executed in May 2023, titled ''Memorandum of Understanding among the U.S. Department of Agriculture, Department of Commerce, Department of Defense, Department of Energy, the Environmental Protection Agency, the Council on Environmental Quality, the Federal Permitting Improvement Steering Council, Department of the Interior, and the Office of Management and Budget Regarding Facilitating Federal Authorizations for Electric Transmission Facilities.''

*NEPA co-lead agency* means the agency means the Federal entity designated under § 900.11.

*Non-Federal entity* means an Indian Tribe, multi-State governmental entity, State agency, or local government agency.

*Participating agencies* means:

(1) The Department of Agriculture (USDA);

(2) The Department of Commerce;

(3) The Department of Defense (DOD);

(4) The Department of Energy;

(5) The Environmental Protection Agency (EPA);

(6) The Council on Environmental Quality;

(7) The Office of Management and Budget;

(8) The Department of the Interior (DOI);

(9) The Federal Permitting Improvement Steering Council (FPISC);

(10) Other agencies and offices as the Secretary of Energy may from time to time invite to participate; and

(11) The following independent agencies, to the extent consistent with their statutory authority and obligations, and determined by the chair or executive director of each agency, as appropriate:

(i) The Federal Energy Regulatory Commission (FERC); and

(ii) The Advisory Council on Historic Preservation.

*Project area* means the geographic area considered when the project proponent develops study corridors and then potential routes for environmental review and potential project siting as a part of the project proponent's planning process for a qualifying project. It is an area located between the two end points of the project (*e.g.,* substations), including their immediate surroundings, as well as any proposed intermediate substations. The size of the project area should be sufficient to allow for the evaluation of various potential alternative routes and route segments with differing environmental, engineering, and regulatory constraints. The project area does not necessarily coincide with ''permit area,'' ''area of potential effect,'' ''action area,'' or other defined terms of art that are specific to types of regulatory review.

*Project proponent* means a person or entity who initiates the IIP Process in anticipation of seeking a Federal authorization for a qualifying project.

*Qualifying project* means:

(1) A high-voltage electric transmission line (230 kV or above) and its attendant facilities, or other regionally or nationally significant electric transmission line and its attendant facilities:

(i) For which all or part of the proposed electric transmission line is used for the transmission of electric energy in interstate or international commerce for sale at wholesale;

(ii) Which is expected to require preparation of an environmental impact statement (EIS) pursuant to NEPA to inform an agency decision on a Federal authorization;

(iii) Which is not proposed for authorization under section 8(p) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(p));

(iv) Which will not require a construction or modification permit from FERC pursuant to section 216(b) of the Federal Power Act; and

(v) Which is not wholly located within the Electric Reliability Council of Texas interconnection; or

(2) An electric transmission facility that is approved by the Director under the process set out in § 900.3.

*Relevant Federal entity* means a Federal entity with jurisdictional interests that may have an effect on a qualifying project, that is responsible for issuing a Federal authorization for the qualifying project, that has relevant expertise with respect to environmental and other issues pertinent to or potentially affected by the qualifying project, or that provides funding for the qualifying project. The term includes participating agencies. The term includes a Federal entity with either permitting or non-permitting authority; for example, those entities with which consultation or review must be completed before a project may commence, such as DOD for an examination of military test, training or operational impacts.

*Relevant non-Federal entity* means a non-Federal entity with relevant expertise or jurisdiction within the project area, that is responsible for issuing an authorization for the qualifying project, that has special expertise with respect to environmental and other issues pertinent to or potentially affected by the qualifying

project, or that provides funding for the qualifying project. The term includes an entity with either permitting or non-permitting authority, such as an Indian Tribe, Native Hawaiian Organization, or State or Tribal Historic Preservation Offices, with whom consultation must be completed in accordance with section 106 of the NHPA prior to approval of a permit, right-of-way, or other authorization required for a Federal authorization.

*Route* means an area along a linear path within which a qualifying project could be sited that is:

(1) Wide enough to allow minor adjustments in the alignment of the qualifying project to avoid sensitive features or to accommodate potential engineering constraints; and

(2) Narrow enough to allow detailed study.

*Stakeholder* means any relevant non-Federal entity, any non-governmental organization, affected landowner, or other person potentially affected by a proposed qualifying project.

*Study corridor* means a contiguous area (not to exceed one mile in width) within the project area where alternative routes or route segments may be considered for further study.

**§ 900.3 Applicability to other projects.**

(a) Following the procedures set out in this section, the Director may determine that an electric transmission facility that does not meet the description of a *qualifying project* under paragraph (1) of the definition in § 900.2 is a *qualifying project* under paragraph (2) of the definition.

(b) A requestor seeking DOE assistance under this part for an electric transmission facility that does not meet the description of a *qualifying project* under paragraph (1) of the definition in § 900.2 must file a request for coordination with the Director. The request must contain:

(1) The legal name of the requester; its principal place of business; and the name, title, and mailing address of the person or persons to whom communications concerning the request for coordination are to be addressed;

(2) A concise description of the proposed facility sufficient to explain its scope and purpose;

(3) A list of anticipated relevant Federal entities involved in the proposed facility; and

(4) A list of anticipated relevant non-Federal entities involved in the proposed facility, including any agency serial or docket numbers for pending applications.

(c) Not later than 30 calendar days after the date that the Director receives a request under this section, the Director, in consultation with the relevant Federal entities, will determine if the electric transmission facility is a qualifying project under this part and will notify the project proponent in writing of one of the following:

(1) If accepted, that the facility is a qualifying project and the project proponent must submit an initiation request as set forth under § 900.5; or

(2) If not accepted, that the project proponent must follow the procedures of each relevant Federal entity that has jurisdiction over the facility without DOE performing a coordinating function.

(d) For a transmission facility that will require a construction or modification permit from FERC pursuant to section 216(b) of the Federal Power Act, DOE may not consider a request for assistance under this section unless the requestor under paragraph (b) of this section is FERC acting through its chair.

(e) At the discretion of the MOU signatory agencies, this section may be applied to a transmission facility proposed for authorization under section 8(p) of the Outer Continental Shelf Lands Act, if the proposed authorization is independent of any generation project.

(f) This section does not apply to:

(1) A transmission facility proposed to be authorized under section 8(p) of the Outer Continental Shelf Lands Act in conjunction with a generation project; or

(2) A transmission facility wholly located within the Electric Reliability Council of Texas interconnection.

**§ 900.4 Purpose of IIP Process.**

(a) The Integrated Interagency Pre-Application (IIP) Process is intended for a project proponent who has identified potential study corridors and/or potential routes and the proposed locations of any intermediate substations for a qualifying project.

(b) Participation in the IIP Process is a prerequisite for the coordination provided by DOE between relevant Federal entities, relevant non-Federal entities, and the project proponent.

(c) The IIP Process ensures early interaction between the project proponents, relevant Federal entities, and relevant non-Federal entities to enhance early understanding by those entities. Through the IIP Process, the project proponent will provide relevant Federal entities and relevant non-Federal entities with a clear description of the qualifying project, the project proponent's siting process, and the environmental and community setting being considered by the project proponent for siting the transmission line; and will coordinate with relevant Federal entities to develop resource reports that will serve as inputs, as appropriate, into the relevant Federal analyses and facilitate early identification of project issues.

(d) The IIP Process is an iterative process anchored by three meetings: the initial meeting, review meeting, and close-out meeting. These meetings, defined in §§ 900.5, 900.8 and 900.9, are milestones in the process and do not preclude any additional meetings or communications between the project proponent and the relevant Federal entities. The iterative nature of the process is provided for in procedures for evaluating the completeness of submitted materials and the suitability of materials for the relevant Federal entities' decision-making before each milestone.

(e) DOE, in exercising its responsibilities under this part, will communicate regularly with FERC, electric reliability organizations and electric transmission organizations approved by FERC, relevant Federal entities, and project proponents. DOE will use information technologies to provide opportunities for relevant Federal entities to participate remotely.

(f) DOE, in exercising its responsibilities under this part, will to the maximum extent practicable and consistent with Federal law, coordinate the IIP Process with any relevant non-Federal entities. DOE will use information technologies to provide opportunities and reduce burdens for relevant non-Federal entities to participate remotely.

(g) The Director may at any time require the project proponent to provide additional information necessary to resolve issues raised by the IIP Process.

(h) Pursuant to 10 CFR 1004.11, any person submitting information during the IIP Process that the person believes to be confidential and exempt by law from public disclosure should submit two well-marked copies, one marked ''confidential'' that includes all the information believed to be confidential, and one marked ''non-confidential'' with the information believed to be confidential deleted or redacted. DOE will make its own determination about the confidential status of the information and treat it according to its determination. The project proponent must request confidential treatment for all material filed with DOE containing location, character, and ownership information about cultural resources.

(i) Pursuant to 10 CFR 1004.13, any person submitting information during

the IIP Process that the person believes might contain Critical Electric Infrastructure Information (CEII) should submit a request for CEII designation of information.

**§ 900.5 Initiation of IIP Process.**

(a) *Initiation request.* A project proponent shall submit an initiation request to DOE. The project proponent may decide when to submit the initiation request. The initiation request must include, based on best available information:

(1) A summary of the qualifying project, as described by paragraph (b) of this section;

(2) Associated maps, geospatial information, and studies (provided in electronic format), as described by paragraph (c) of this section;

(3) A project participation plan, as described by paragraph (d) of this section; and

(4) A statement regarding the proposed qualifying project's status pursuant to Title 41 of the Fixing America's Surface Transportation Act (FAST–41) (42 U.S.C. 4370m–2(b)(2)), as described by paragraph (e) of this section.

(b) *Summary of the qualifying project.* The summary of the qualifying project is limited to 10 pages, single-spaced and must include:

(1) The following information:

(i) The project proponent's legal name and principal place of business;

(ii) The project proponent's contact information and designated point(s) of contact;

(iii) Whether the project proponent is an individual, partnership, corporation, or other entity and, if applicable, the State laws under which the project proponent is organized or authorized; and

(iv) If the project proponent resides or has its principal office outside the United States, documentation related to designation by irrevocable power of attorney of an agent residing within the United States;

(2) A statement of the project proponent's interests and objectives;

(3) To the extent available, copies of or links to:

(i) Any regional electric transmission planning documents, regional reliability studies, regional congestion or other related studies that relate to the qualifying project or the need for the qualifying project; and

(ii) Any relevant interconnection requests;

(4) A brief description of the evaluation criteria and methods used by the project proponent to identify and develop the potential study corridors or potential routes for the proposed qualifying project;

(5) A brief description of the proposed qualifying project, including end points, voltage, ownership, intermediate substations if applicable, and, to the extent known, any information about constraints or flexibility with respect to the qualifying project;

(6) Identification of any environmental and engineering firms and sub-contractors under contract to develop the qualifying project;

(7) The project proponent's proposed schedule for filing necessary Federal and State applications, construction start date, and planned in-service date, assuming receipt of all necessary authorizations; and

(8) A list of anticipated relevant Federal entities and relevant non-Federal entities, including contact information for each Federal agency, State agency, Indian Tribe, or multi-State entity that is responsible for or has a role in issuing an authorization or environmental review for the qualifying project.

(c) *Maps, geospatial information, and studies.* The Integrated Interagency Pre-Application (IIP) Process initiation request must include maps, geospatial information, and studies in support of the information provided in the summary of the qualifying project under paragraph (b) of this section. Maps must be of sufficient detail to identify the proposed route or routes. Project proponents must provide the maps, information, and studies as electronic data files that may be readily accessed by relevant Federal entities and relevant non-Federal entities. The maps, information, and studies described in this paragraph (c) must include:

(1) Location maps and plot plans to scale showing all major components, including a description of zoning and site availability for any permanent facilities; cultural resource location information should be submitted in accordance with § 900.4(h);

(2) A map of the project area showing potential study corridors and/or potential routes;

(3) Electronic access to any existing data or studies relevant to the summary information provided as part of the initiation request; and

(4) Citations identifying sources, data, and analyses used to develop the IIP Process initiation request materials.

(d) *Project participation plan.* The project participation plan, which may not exceed 10, single-spaced pages, summarizes the stakeholder outreach that the project proponent conducted prior to submission of the initiation request, and describes the project proponent's planned outreach to communities of interest going forward. A supplemental appendix may be submitted to provide sufficient detail in addition to the narrative elements. The project participation plan must include:

(1) A summary of prior outreach to communities of interest and stakeholders including:

(i) A description of what work already has been done, including stakeholder and community outreach and public engagement related to project engineering and route planning, as well as any entities and organizations interested in the proposed undertaking;

(ii) A list of environmental, engineering, public affairs, other contractors or consultants employed by the proponent to facilitate public outreach;

(iii) A description of any materials provided to the public, such as environmental surveys or studies;

(iv) A description of the communities of interest identified and the process by which they were identified;

(v) A general description of the real property interests that would be impacted by the project and the rights that the owners and Federal land managers of those property interests would have under State law; and

(vi) A summary of comments received during these previous engagement activities, issues identified by stakeholders, communities of interest (including various resource issues, differing project alternative corridors or routes, and revisions to routes), and responses provided to commenters, if applicable; and

(2) A public engagement plan, which must:

(i) Describe the project proponent's outreach plan and status of those activities, including planned future activities corresponding to each of the items identified in paragraphs (d)(1)(i) through (vi) of this section, specifying the planned dates or frequency;

(ii) Describe the manner in which the project proponent will reach out to communities of interest about potential mitigation of concerns;

(iii) Describe planned outreach activities during the permitting process, including efforts to identify, and engage, individuals with limited English proficiency and linguistically isolated communities, and provide accommodations for individuals with accessibility needs; and

(iv) Discuss the specific tools and actions used by the project proponent to facilitate stakeholder communications and public information, including a readily accessible, easily identifiable,

single point of contact for the project proponent.

(e) *FAST–41 statement.* The FAST–41 statement required under paragraph (a) of this section must specify the status of the proposed qualifying project pursuant to FAST–41. The statement must either:

(1) State whether the project proponent has sought FAST–41 coverage pursuant to 42 U.S.C. 4370m–2(a)(1); and state whether the Executive Director of the FPISC has created an entry on the Permitting Dashboard for the project as a covered project pursuant to 42 U.S.C. 4370m–2(b)(2)(A); or

(2) State that the project proponent elected not to apply to be a FAST–41 covered project at this time.

(f) *Determination.* Not later than 15 calendar days after DOE receives an IIP Process initiation request, DOE shall provide relevant Federal entities and relevant non-Federal entities with an electronic copy of the initiation request, and notify each entity that:

(1) Based on DOE's initial review of the initiation request, DOE has identified the entity as either a relevant Federal entity or relevant non-Federal entity for the project; and

(2) The entity should participate in the IIP Process for the project, with DOE's rationale for that determination.

(g) *Notification of initiation request determination.* Not later than 30 calendar days after the date that DOE receives an initiation request, DOE shall notify the project proponent and all relevant Federal entities and relevant non-Federal entities that:

(1) The initiation request meets the requirements of this section, including that the project is a qualifying project; or

(2) The initiation request does not meet the requirements of this section. DOE will provide the reasons for that finding and a description of how the project proponent may, if applicable, address any deficiencies in the initiation request so that DOE may reconsider its determination.

(h) *Initial meeting.* If a project proponent submits a valid initiation request, DOE, in consultation with the identified relevant Federal entities, shall convene the IIP Process initial meeting with the project proponent and all relevant Federal entities notified by DOE under paragraph (g) of this section as soon as practicable and no later than 30 calendar days after the date that DOE provides notice under paragraph (g) that the initiation request meets the requirements of this section. DOE shall also invite relevant non-Federal entities to participate in the initial meeting. During the initial meeting:

(1) DOE and the relevant Federal entities shall discuss with the project proponent the IIP Process, Federal authorization process, related environmental reviews, any arrangements for the project proponent to contribute funds to DOE to cover costs incurred by DOE and the relevant Federal entities in the IIP Process (in accordance with 42 U.S.C. 7278), any requirements for entering into cost recovery agreements, and paying for third-party contractors under DOE's supervision, where applicable;

(2) DOE will identify any Federal applications that must be submitted during the IIP Process, to enable relevant Federal entities to begin work on the review process, and those applications that will be submitted after the IIP Process. All application submittal timelines will be accounted for in the project-specific schedule described in § 900.7;

(3) The project proponent shall describe the qualifying project and the contents of the initiation request; and

(4) DOE and the relevant Federal entities, along with any relevant non-Federal entities who choose to participate, will review the information provided by the project proponent and publicly available information, and, to the extent possible and based on agency expertise and experience, preliminarily identify the following and other reasonable criteria for adding, deleting, or modifying preliminary routes from further consideration within the identified study corridors, including:

(i) Potential environmental, visual, historic, cultural, economic, social, or health effects or harm based on the potential project or proposed siting, and anticipated constraints (for instance, pole height and corridor width based on line capacity to improve safety and resiliency of project);

(ii) Potential cultural resources and historic properties of concern;

(iii) Areas under (or potentially under) special protection by State or Federal statute and areas subject to a Federal entity or non-Federal entity decision that could potentially increase the time needed for project evaluation and potentially foreclose approval of siting a transmission line route. Such areas may include, but are not limited to, properties or sites that may be of traditional religious or cultural importance to Indian Tribe(s), National Scenic and Historic Trails, National Landscape Conservation system units managed by the Bureau of Land Management (BLM), Land and Water Conservation Fund lands, National Wildlife Refuges, national monuments, units of the National Park System, national marine sanctuaries, or marine national monuments;

(iv) Opportunities to site routes through designated corridors, previously disturbed lands, and lands with existing infrastructure as a means of potentially reducing impacts and known conflicts as well as the time needed for affected Federal land managers to evaluate an application for a Federal authorization if the route is sited through such areas (*e.g.,* colocation with existing infrastructure or location on previously disturbed lands or in energy corridors designated by the Department of the Interior or the Department of Agriculture under section 503 of the Federal Land Policy and Management Act (Pub. L. 94–579) or section 368 of the Energy Policy Act of 2005 (Pub. L. 109–58), an existing right-of-way, a National Interest Energy Transmission Corridor, or a utility corridor identified in a land management plan);

(v) Potential constraints caused by impacts on military test, training, and operational missions, including impacts on installations, ranges, and airspace;

(vi) Potential constraints caused by impacts on the United States' aviation system;

(vii) Potential constraints caused by impacts to navigable waters of the United States;

(viii) Potential avoidance, minimization, and conservation measures, such as compensatory mitigation (onsite and offsite), developed through a landscape mitigation approach or, where available, landscape mitigation strategies or plans to reduce the potential impact of the qualifying project to resources requiring mitigation; and

(ix) Based on available information provided by the project proponent, biological (including threatened, endangered, or otherwise protected avian, aquatic, and terrestrial species and aquatic habitats), visual, cultural, historic, and other surveys and studies that may be required for preliminary proposed routes.

(i) *Feedback to project proponent.* Feedback provided to the project proponent under paragraph (h) of this section does not constitute a commitment by any relevant Federal entity to approve or deny a Federal authorization request, nor does the IIP Process limit agency discretion regarding NEPA review.

(j) *Draft initial meeting summary.* Not later than 15 calendar days after the initial meeting, DOE shall:

(1) Prepare a draft initial meeting summary that includes a summary of the meeting discussion, a description of

key issues and information gaps identified during the meeting, and any requests for more information from relevant Federal entities and relevant non-Federal entities; and

(2) Convey the draft summary to the project proponent, relevant Federal entities, and any relevant non-Federal entities that participated in the meeting.

(k) *Corrections.* The project proponent and entities that received the draft initial meeting summary under paragraph (j) of this section will have 15 calendar days following receipt of the draft initial meeting summary to review the draft and provide corrections to DOE.

(l) *Final summary.* Not later than 15 calendar days following the close of the 15-day review period under paragraph (k) of this section, DOE shall:

(1) Prepare a final initial meeting summary by incorporating received corrections, as appropriate;

(2) Add the final summary to the consolidated administrative docket described by § 900.10; and

(3) Provide an electronic copy of the summary to all relevant Federal entities, relevant non-Federal entities, and the project proponent.

**§ 900.6 Project proponent resource reports.**

(a) *Preparation and submission.* The project proponent shall prepare and submit to DOE the 13 project proponent resource reports (''resource reports'') described in this section. The project proponent may submit the resource reports at any time before requesting a review meeting under § 900.8 and shall, at the direction of DOE, revise resource reports in response to comments received from relevant Federal entities and relevant non-Federal entities during the Integrated Interagency Pre-Application (IIP) Process.

(b) *Content.* Each resource report must include concise descriptions, based on the best available scientific and commercial information, of the known existing environment and major site conditions in the project area. The detail of each resource report must be commensurate with the complexity of the proposal and its potential for environmental impacts. Each topic in each resource report must be addressed or its omission justified. If material required for one resource report is provided in another resource report or in another exhibit, it may be incorporated by reference. If any resource report topic is not addressed at the time the applicable resource report is filed or its omission is not addressed, the report must explain why the topic is missing.

(c) *Requirements for IIP Process progression.* Failure of the project proponent to provide at least the required initial or revised content will prevent progress through the IIP Process to the IIP review or close-out meetings, unless the Director determines that the project proponent has provided an acceptable reason for the item's absence and an acceptable timeline for filing it. Failure to file within the accepted timeline will prevent further progress in the IIP Process.

(d) *General requirements.* As appropriate, each resource report shall:

(1) Address conditions or resources that might be directly or indirectly affected by the qualifying project;

(2) Identify environmental effects expected to occur as a result of the project;

(3) Identify the potential effects of construction, operation (including maintenance and malfunctions), and termination of the project, as well as potential cumulative effects resulting from existing or reasonably foreseeable projects;

(4) Identify measures proposed to enhance the environment or to avoid, mitigate, or compensate for potential adverse effects of the project; and

(5) Provide:

(i) A list of publications, reports, and other literature or communications, including agency communications, that were cited or relied upon to prepare each report; and

(ii) The name and title of the person contacted in any communication, their affiliations, and telephone number or email address.

(e) *Federal responsibility.* The resource reports prepared by the project proponent under this section do not supplant the requirements under existing environmental laws related to the information required for Federal authorization or consultation processes. The agencies shall independently evaluate the information submitted and shall be responsible for the accuracy, scope, and contents of all Federal authorization decision documents and related environmental reviews.

(f) *Resource Report 1—General project description.* This report will describe facilities associated with the project, special construction and operation procedures, construction timetables, future plans for related construction, compliance with regulations and codes, and permits that must be obtained. Resource Report 1 must:

(1) Describe and provide location maps of all facilities to be constructed, modified, abandoned, replaced, or removed, including related construction and operational support activities and areas such as maintenance bases, staging areas, communications towers, power lines, and new access roads (roads to be built or modified), as well as any existing infrastructure proposed to be used for the project (*i.e.,* existing substations, connections to existing transmission, existing access roads);

(2) Describe specific generation resources that are known or reasonably foreseen to be developed or interconnected as a result of the project, if any;

(3) Identify other companies that may construct facilities related to the project (*i.e.,* fiber optic cables) and where those facilities would be located;

(4) Provide the following information for facilities described under paragraphs (f)(1) through (3) of this section:

(i) A brief description of each facility, including, as appropriate, ownership, land requirements, megawatt size, construction status, and an update of the latest status of Federal, State, and local permits and approvals;

(ii) Current topographic maps showing the location of the facilities;

(iii) Any communications with the appropriate State Historic Preservation and Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs) regarding cultural and historic resources in the project area;

(iv) Correspondence with the U.S. Fish and Wildlife Service (USFWS) (and National Marine Fisheries Service (NMFS), if appropriate) regarding potential impacts of the proposed facility on federally listed threatened and endangered species and their designated critical habitats; and

(v) An indication of whether the project proponent will need to submit a Coastal Zone Management Act (CZMA) Federal consistency certification to State coastal management program(s) for the proposed transmission project, as required by the National Oceanic and Atmospheric Administration's (NOAA) Federal consistency regulations at 15 CFR part 930, subpart D; and

(vi) An indication of whether the project proponent will need to obtain a water quality certification under section 401 of the Clean Water Act (CWA) (33 U.S.C. 1341) for the proposed project.

(5) Identify and describe the following if the project is considering abandonment of certain resources:

(i) Facilities to be abandoned, and state how they would be abandoned, how the site would be restored, who would own the site or right-of-way after abandonment, and who would be responsible for any facilities abandoned in place; and

(ii) When the right-of-way or the easement would be abandoned, identify

whether landowners were or will be given the opportunity to request that the facilities on their property, including foundations and below ground components, be removed, identify any landowners whose preferences the company does not intend to honor, and provide the reasons why the company does not intend to honor them;

(6) Describe, by milepost, proposed construction and restoration methods to be used in areas of rugged topography, residential areas, active croplands, sites where the project would be located parallel to and under roads, and sites where explosives may be used;

(7) Unless provided in response to Resource Report 5 (see paragraph (j) of this section), describe estimated workforce requirements, including the number of construction spreads, average workforce requirements for each construction spread, estimated duration of construction from initial clearing to final restoration, and number of personnel to be hired to operate the proposed project;

(8) Describe reasonably foreseeable plans for future expansion of facilities, including additional land requirements and the compatibility of those plans with the current proposal;

(9) To the extent they are available and in accordance with the project-specific schedule described by § 900.7, describe all authorizations required to complete the proposed action and the status of applications for such authorizations and identify environmental mitigation requirements specified in any permit or proposed in any permit application to the extent not specified elsewhere in this resource report or another;

(10) Provide the names and mailing addresses of all affected landowners to certify that all affected landowners have been notified;

(11) Summarize any relevant potential avoidance, minimization, and conservation measures, such as proposed compensatory mitigation (onsite and offsite), developed through the use of a landscape mitigation approach or, where available, landscape mitigation strategies or plans, and anticipated by the project proponent to reduce the potential impacts of the qualifying project to resources warranting or requiring mitigation; and

(12) Describe how the project will reduce capacity constraints and congestion on the transmission system, meet unmet demand, or connect generation resources (including the expected type of generation, if known) to load, as appropriate.

(g) *Resource Report 2—Water use and quality.* This report must describe water resources, water use, and water quality as well as potential impacts associated with the project on these resources. It must also provide data sufficient to determine the expected impact of the project and the effectiveness of mitigation, enhancement, or protective measures. Project proponents should also describe the measures taken to avoid and minimize adverse effects to such water resources, where appropriate. Resource Report 2 must:

(1) Identify and describe waterbodies, including perennial waterbodies, intermittent streams, and ephemeral waterbodies, as well as municipal water supply or watershed areas, specially designated surface water protection areas and sensitive waterbodies, floodplains, and wetlands that would be crossed by the project;

(2) For each waterbody, floodplain, or wetland crossing identified under paragraph (g)(1) of this section, identify the approximate width, State water quality classifications, any known potential pollutants present in the water or sediments, and any potable water intake sources within three miles downstream;

(3) Describe typical staging area requirements at waterbody, floodplain, and wetland crossings and identify and describe waterbodies and wetlands where staging areas are likely to be more extensive to avoid, minimize, or compensate for any potential impacts to water resources in those staging areas;

(4) Provide two copies of floodplain and National Wetland Inventory (NWI) maps or, if not available, appropriate State wetland maps clearly showing the proposed route and mileposts;

(5) For each wetland crossing, identify the milepost, the wetland classification specified by the USFWS, and the length of the crossing, and describe, by milepost, wetland crossings as determined by field delineations using the current Federal methodology;

(6) For each floodplain crossing, identify the mileposts, acres of floodplains affected, flood elevation, and basis for determining that elevation;

(7) Discuss proposed avoidance and mitigation measures to reduce the potential for adverse impacts to surface water, wetlands, floodplains, or groundwater quality, as well as any potential compensation that will be provided for remaining unavoidable impacts;

(8) Identify the location of known public and private groundwater supply wells or springs within 150 feet of proposed construction areas;

(9) Identify locations of EPA or State-designated principal-source aquifers and wellhead protection areas crossed by the proposed facilities; and

(10) Discuss the results of any coordination with relevant Federal entities or non-Federal entities related to permitting and include any written correspondence that resulted from the coordination.

(h) *Resource Report 3—Fish, wildlife, and vegetation.* This report must describe aquatic life, wildlife, and vegetation in the proposed project area; expected impacts on these resources including potential effects on biodiversity; and proposed mitigation, enhancement, avoidance, or protection measures. Surveys may be required to determine specific areas of significant habitats or communities of species of special concern to Federal, Tribe, State, or local agencies. If species surveys are impractical, there must be field surveys to determine the presence of suitable habitat unless the entire project area is suitable habitat. Project proponents should describe proposed measures to avoid and minimize incidental take of federally protected species, including eagles and migratory birds. Resource Report 3 must:

(1) Describe commercial and recreational warmwater, coldwater, and saltwater fisheries in the affected area and associated significant habitats such as spawning or rearing areas and estuaries;

(2) Describe terrestrial habitats, including wetlands, typical wildlife habitats, and rare, unique, or otherwise significant habitats that might be affected by the proposed project;

(3) Describe typical species that have commercial, recreational, or aesthetic value and that may be affected by the proposed project;

(4) Describe and provide the acreage of vegetation cover types that would be affected, including unique ecosystems or communities such as remnant prairie or old-growth forest, or significant individual plants, such as old-growth specimen trees;

(5) Describe the impact of construction and operation on aquatic and terrestrial species and their habitats, including the possibility of a major alteration to ecosystems or biodiversity, and any potential impact on State-listed endangered or threatened species;

(6) Describe the impact of maintenance, clearing, and treatment of the project area on fish, wildlife, and vegetation;

(7) Identify all federally listed or proposed endangered or threatened species and critical habitats that potentially occur in the project area;

(8) Identify all known and potential bald and golden eagle nesting and

roosting sites, migratory bird flyways, and any sites important to migratory bird breeding, feeding, and sheltering within 10 miles of the proposed project area. This should coincide with the USFWS's most current maps at the time this resource report is submitted;

(9) Discuss the results of any discussions conducted by the proponent to date with relevant Federal entities or relevant non-Federal entities related to fish, wildlife, and vegetation resources, and include any written correspondence that resulted from the discussions;

(10) Include the results of any required surveys unless seasonal considerations make this impractical, in which case such seasonal considerations should be specified in the report;

(11) If present, identify all federally listed essential fish habitat (EFH) that potentially occurs in the project area and provide:

(i) Information on all EFH, as identified by the pertinent Federal fishery management plans, which may be adversely affected by the project;

(ii) The results of discussions with NMFS; and

(iii) Any resulting EFH assessments;

(12) Describe anticipated site-specific mitigation measures to minimize impacts on fisheries, wildlife (including migration corridors), grazing, and vegetation; and

(13) Include copies of any correspondence not provided pursuant to paragraph (h)(9) or (10) of this section containing recommendations from appropriate Federal and State fish and wildlife agencies to avoid or limit impact on wildlife, fisheries, and vegetation, and the project proponent's response to those recommendations.

(i) *Resource Report 4—Cultural resources.* This report must describe potential impacts to cultural resources, including but not limited to preliminary identification of the project's area of potential effects, of cultural resources within that area that may be eligible for listing on the National Register of Historic Places, and of potential adverse effects to those cultural resources. To the extent possible, the project proponent should provide initial recommendations for avoidance and minimization measures to address potential adverse effects. The information provided in Resource Report 4 will contribute to the satisfaction of DOE's and relevant Federal entities' obligations under section 106 of the NHPA.

(1) Resource Report 4 must contain:

(i) A summary of initial known cultural and historic resources in the affected environment including but not limited to those listed or eligible for listing on the National Register of Historic Places;

(ii) A description of potential adverse effects to the resources identified in paragraph (i)(1)(i) of this section;

(iii) Documentation of the project proponent's initial communications and engagement, including preliminary outreach and coordination, with Indian Tribes, indigenous peoples, THPOs, SHPOs, communities of interest, and other entities having knowledge of, interest regarding, or an understanding about the resources identified in paragraph (i)(1)(i) of this section and any written comments from SHPOs, THPOs, other tribal historic preservation offices or governments, or others, as appropriate and available;

(iv) Recommended avoidance and minimization measures to address potential effects;

(v) Any initial and preliminary existing surveys or listing of cultural and historic resources in the affected environment; and

(vi) Recommendations for any additional surveys needed.

(2) If the project proponent chooses to undertake further preliminary surveys identified in paragraph (i)(1)(vi) of this section, the associated preliminary survey reports should be submitted as part of this report; if landowners deny access to private property and certain areas are not surveyed, the unsurveyed area must be identified by mileposts.

(3) The project proponent must request confidential treatment for all material filed with DOE containing location, character, and ownership information about cultural resources in accordance with § 900.4(h).

(j) *Resource Report 5—Socioeconomics.* This report must identify and quantify the impacts of constructing and operating the proposed project on the demographics and economics of communities in the project area, including minority and underrepresented communities. Resource Report 5 must:

(1) Describe the socioeconomic resources that may be affected in the proposed project area;

(2) Describe the positive and adverse socioeconomic impacts of the project;

(3) Evaluate the impact of any substantial migration of people into the proposed project area on governmental facilities and services and describe plans to reduce the impact on the local infrastructure;

(4) Describe on-site labor requirements during construction and operation, including projections of the number of construction personnel who currently reside within the impact area, who would commute daily to the site from outside the impact area, or who would relocate temporarily within the impact area;

(5) Determine whether existing affordable housing within the impact area is sufficient to meet the needs of the additional population; and

(6) Describe the number and types of residences and businesses that would be displaced by the project, procedures to be used to acquire these properties, and types and amounts of relocation assistance payments.

(k) *Resource Report 6—Geological resources.* This report must describe geological resources and hazards in the project area that might be directly or indirectly affected by the proposed action or that could place the proposed facilities at risk, the potential effects of those hazards on the facility, and methods proposed to reduce the effects or risks. Resource Report 6 must:

(1) Describe mineral resources that are currently or potentially exploitable, if relevant;

(2) Describe, by milepost, existing and potential geological hazards and areas of nonroutine geotechnical concern, such as high seismicity areas, active faults, and areas susceptible to soil liquefaction; planned, active, and abandoned mines; karst terrain (including significant caves protected under the Federal Cave Resources Protection Act (Pub. L. 100–691, as amended) (16 U.S.C. 4301 *et seq.*)); and areas of potential ground failure, such as subsidence, slumping, and land sliding;

(3) Discuss the risks posed to the project from each hazard identified in paragraph (k)(2) of this section;

(4) Describe how the project would be located or designed to avoid or minimize adverse effects to the resources or risk to itself, including geotechnical investigations and monitoring that would be conducted before, during, and after construction;

(5) Discuss the potential for blasting to affect structures and the measures to be taken to remedy such effects; and

(6) Specify methods to be used to prevent project-induced contamination from mines or from mine tailings along the right-of-way and whether the project would hinder mine reclamation or expansion efforts.

(l) *Resource Report 7—Soil resources.* This report must describe the soils that would be affected by the proposed project, the effect on those soils, and measures proposed to avoid, minimize, or mitigate impact. Resource Report 7 must:

(1) List, by milepost, the soil associations that would be crossed and describe the erosion potential, fertility,

and drainage characteristics of each association;

(2) If a site is larger than five acres:

(i) List the soil series within the property and the percentage of the property comprised of each series;

(ii) List the percentage of each series which would be permanently disturbed;

(iii) Describe the characteristics of each soil series; and

(iv) Indicate which are classified as prime or unique farmland by the USDA, Natural Resources Conservation Service;

(3) Identify, potential impact from: soil erosion due to water, wind, or loss of vegetation; soil compaction and damage to soil structure resulting from movement of construction vehicles; wet soils and soils with poor drainage that are especially prone to structural damage; damage to drainage tile systems due to movement of construction vehicles and trenching activities; and interference with the operation of agricultural equipment due to the probability of large stones or blasted rock occurring on or near the surface as a result of construction;

(4) Identify, by milepost, cropland and residential areas where loss of soil fertility due to trenching and backfilling could occur; and

(5) Describe proposed avoidance, minimization, or mitigation measures to reduce the potential for adverse impact to soils or agricultural productivity.

(m) *Resource Report 8—Land use, recreation, and aesthetics.* This report must describe the existing uses of land on, and within various distances (as specified in paragraphs (m)(1) through (16) of this section), the proposed project and changes to those land uses and impacts to inhabitants and users that would occur if the project is approved. The report must discuss proposed mitigation measures, including protection and enhancement of existing land use. Resource Report 8 must:

(1) Describe the width and acreage requirements of all construction and permanent rights-of-way required for project construction, operation, and maintenance;

(2) List locations where the proposed right-of-way would be adjacent to existing rights-of-way of any kind, and where lines in the proposed project may be co-located within existing rights-of-way for other facilities (*e.g.,* for roads, other utility) and any required utility coordination, permits, and fees that would be associated as a result;

(3) Identify, preferably by diagrams, existing rights-of-way that will be used for a portion of the construction or operational right-of-way, the overlap and how much additional width will be required;

(4) Identify the total amount of land to be purchased or leased for each project facility, the amount of land that would be disturbed for construction, operation, and maintenance of the facility, and the use of the remaining land not required for project operation and maintenance, if any;

(5) Identify the size of typical staging areas and expanded work areas, such as those at railroad, road, and waterbody crossings, and the size and location of all construction materials storage yards and access roads;

(6) Identify, by milepost, the existing use of lands crossed by the proposed transmission facility, or on or adjacent to each proposed project facility;

(7) Describe planned development on land crossed by or within 0.25 mile of proposed facilities, the time frame (if available) for such development, and proposed coordination to minimize impacts on land use. Planned development means development that is included in a master plan or is on file with the local planning board or the county;

(8) Identify, by milepost and length of crossing, the area of direct effect of each proposed facility and operational site on lands owned or controlled by Federal or State agencies with special designations not otherwise mentioned in other resource reports, as well as lands controlled by private preservation groups (examples include sugar maple stands, orchards and nurseries, landfills, hazardous waste sites, nature preserves, game management areas, remnant prairie, old-growth forest, national or State forests, parks, designated natural, recreational or scenic areas, registered natural landmarks, or areas managed by Federal entities under existing land use plans as Visual Resource Management Class I or Class II areas), and identify if any of those areas are located within 0.25 mile of any proposed facility;

(9) Describe Tribal resources, including Indian Tribes, Tribal lands, and interests, including established treaty rights, that may be affected by the project; and

(i) Identify Indian Tribes and indigenous communities that may attach traditional cultural or religious significance to properties, whether on or off of any federally recognized Indian reservation; and

(ii) Submit, consistent with § 900.4(h), information made available under this paragraph (m)(9), including specific site or property locations, the disclosure of which will create a risk of harm, theft, or destruction of archaeological or Native American cultural resources or to the site at which the resources are located, or which would violate any Federal law, including section 9 of the Archaeological Resources Protection Act of 1979 (Pub. L. 96–95, as amended) (16 U.S.C. 470hh) and section 3 of the NHPA (54 U.S.C. 307103);

(10) Describe any areas crossed by or within 0.25 mile of the proposed transmission project facilities that are included in, or are designated for study for inclusion in if available: the National Wild and Scenic Rivers System (Pub. L. 90–542) (16 U.S.C. 1271 *et seq.*), the National Wildlife Refuge system (16 U.S.C. 668dd 668ee), the National Wilderness Preservation System (16 U.S.C. 1131), the National Trails System (16 U.S.C. 1241), the National Park System (54 U.S.C. 100101), National Historic Landmarks (NHLs), National Natural Landmarks (NNLs), Land and Water Conservation Fund (LWCF) acquired Federal lands, LWCF State Assistance Program sites and the Federal Lands to Parks (FLP) program lands, or a wilderness area designated under the Wilderness Act (16 U.S.C. 1132); or the National Marine Sanctuary System, including national marine sanctuaries (16 U.S.C. 1431 *et seq.*) and Marine National Monuments as designated under authority by the Antiquities Act (54 U.S.C. 320301–320303) or by Congress;

(11) Indicate whether the project proponent will need to submit a CZMA Federal consistency certification to State coastal management program(s) for the proposed transmission project, as required by NOAA's Federal consistency regulations at 15 CFR part 930, subpart D;

(12) Describe the impact the project will have on present uses of the affected areas as identified in paragraphs (m)(1) through (11) of this section, including commercial uses, mineral resources, recreational areas, public health and safety, Federal scientific survey, research and observation activities, protected resources and habitats, and the aesthetic value of the land and its features and describe any temporary or permanent restrictions on land use resulting from the project;

(13) Describe mitigation measures intended for all special use areas identified under this paragraph (m);

(14) Provide a detailed operations and maintenance plan for vegetation management;

(15) Describe the visual characteristics of the lands and waters affected by the project. Components of this description include a description of how the transmission line project facilities will impact the visual character of project right-of-way and surrounding vicinity,

and measures proposed to lessen these impacts. Project proponents are encouraged to supplement the text description with visual aids; and

(16) Identify, by milepost, all residences and buildings within 200 feet of the edge of the proposed transmission line construction right-of-way and the distance of the residence or building from the edge of the right-of-way and provide survey drawings or alignment sheets to illustrate the location of the transmission facilities in relation to the buildings.

(i) *Buildings.* The report must list all dwellings and related structures, commercial structures, industrial structures, places of worship, hospitals, nursing homes, schools, or other structures normally inhabited by humans or intended to be inhabited by humans on a regular basis within a 0.5 mile-wide corridor centered on the proposed transmission line alignment and provide a general description of each habitable structure and its distance from the centerline of the proposed project. In cities, towns, or rural subdivisions, houses can be identified in groups, and the report must provide the number of habitable structures in each group and list the distance from the centerline to the closest habitable structure in the group.

(ii) *Electronic installations.* The report must list all known commercial AM radio transmitters located within 10,000 feet of the centerline of the proposed project and all known FM radio transmitters, microwave relay stations, or other similar electronic installations located within 2,000 feet of the centerline of the proposed project; provide a general description of each installation and its distance from the centerline of the projects; and locate all installations on a routing map.

(iii) *Airstrips.* list all known private airstrips within 10,000 feet of the centerline of the project. List all airports registered with the Federal Aviation Administration (FAA) with at least one runway more than 3,200 feet in length that are located within 20,000 feet of the centerline of the proposed project. Indicate whether any transmission structures will exceed a 100:1 horizontal slope (one foot in height for each 100 feet in distance) from the closest point of the closest runway. List all airports registered with the FAA having no runway more than 3,200 feet in length that are located within 10,000 feet of the centerline of the proposed project. Indicate whether any transmission structures will exceed a 50:1 horizontal slope from the closest point of the closest runway. List all heliports located within 5,000 feet of the centerline of the proposed project. Indicate whether any transmission structures will exceed a 25:1 horizontal slope from the closest point of the closest landing and takeoff area of the heliport. Provide a general description of each private airstrip, registered airport, and registered heliport, and state the distance of each from the centerline of the proposed transmission line. Locate all airstrips, airports, and heliports on a routing map.

(n) *Resource Report 9—Communities of Interest.* This report must summarize known information about the presence of communities of interest that could be affected by the qualifying project. The resource report must identify and describe the potential impacts of constructing, operating, and maintaining the project on communities of interest; and describe any proposed measures intended to avoid, minimize, or mitigate such impacts or community concerns. The report must include a discussion of any disproportionate and/or adverse human health or environmental impacts to communities of interest.

(o) *Resource Report 10—Air quality and noise effects.* This report must identify the effects of the project on the existing air quality and noise environment and describe proposed measures to mitigate the effects. Resource Report 10 must:

(1) Describe the existing air quality in the project area, indicate if any project facilities are located within a designated nonattainment or maintenance area under the Clean Air Act (42 U.S.C. 7401 *et seq.*), and provide the distance from the project facilities to any Class I area in the project area;

(2) Estimate emissions from the proposed project and the corresponding impacts on air quality and the environment;

(i) Estimate the reasonably foreseeable emissions from construction, operation, and maintenance of the project facilities (such as emissions from tailpipes, equipment, fugitive dust, open burning, and substations) expressed in tons per year; include supporting calculations, emissions factors, fuel consumption rates, and annual hours of operation;

(ii) Estimate the reasonably foreseeable change in greenhouse gas emissions from the existing, proposed, and reasonably foreseeable generation resources identified in Resource Report 1 (see paragraph (f) of this section) that may connect to the project or interconnect as a result of the line, if any, as well as any other modeled air emissions impacts;

(iii) For each designated nonattainment or maintenance area, provide a comparison of the emissions from construction, operation, and maintenance of the project facilities with the applicable General Conformity thresholds (40 CFR part 93);

(iv) Identify the corresponding impacts on communities and the environment in the project area from the estimated emissions;

(v) Describe any proposed mitigation measures to control emissions identified under this section; and

(vi) Estimate the reasonably foreseeable effect of the project on indirect emissions;

(3) Describe existing noise levels at noise-sensitive areas, such as schools, hospitals, or residences, including any areas covered by relevant State or local noise ordinances, and consider noise effects in sensitive wildlife habitat for federally threatened or endangered species, if appropriate;

(i) Report existing noise levels as the a-weighted decibel (dBA) Leq (day), Leq (night), and Ldn (day-night sound level) and include the basis for the data or estimates;

(ii) Include a plot plan that identifies the locations and duration of noise measurements, the time of day, weather conditions, wind speed and direction, engine load, and other noise sources present during each measurement; and

(iii) Identify any State or local noise regulations that may be applicable to the project facilities;

(4) Estimate the impact of the proposed project on the noise environment;

(i) Provide a quantitative estimate of the impact of transmission line operation on noise levels at the edge of the proposed right-of-way, including corona, insulator, and Aeolian noise; and for proposed substations and appurtenant facilities, provide a quantitative estimate of the impact of operations on noise levels at nearby noise-sensitive areas, including discrete tones; the operational noise estimates must demonstrate that the proposed project will comply with applicable State and local noise regulations and that noise attributable to any proposed substation or appurtenant facility does not exceed a day-night sound level (Ldn) of 55 dBA at any pre-existing noise-sensitive area;

(A) Include step-by-step supporting calculations or identify the computer program used to model the noise levels, the input and raw output data and all assumptions made when running the model, far-field sound level data for maximum facility operation, and the source of the data;

(B) Include sound pressure levels for project facilities, dynamic insertion loss for structures, and sound attenuation

from the project facilities to the edge of the right-of-way or to nearby noise-sensitive areas (as applicable);

(C) Include far-field sound level data measured from similar project facilities in service elsewhere, when available, may be substituted for manufacturers' far-field sound level data; and

(D) Describe wildlife-specific noise thresholds, like those specific to avian species that may be relevant in significant wildlife areas, if appropriate; and

(ii) Describe the impact of proposed construction activities, including any nighttime construction, on the noise environment; estimate the impact of any horizontal directional drilling, pile driving, or blasting on noise levels at nearby noise-sensitive areas and include supporting assumptions and calculations; and

(5) Describe measures, and manufacturer's specifications for equipment, proposed to mitigate impact to air and noise quality, including emission control systems, installation of filters, mufflers, or insulation of piping and buildings, and orientation of equipment away from noise-sensitive areas.

(p) *Resource Report 11—Alternatives.* This report must describe alternatives identified by the proponent during its initial analysis, which may inform the relevant Federal entities' subsequent analysis of alternatives. The report should address alternative routes and alternative design methods and compare the potential environmental impacts and potential impacts to cultural and historic resources of such alternatives to those of the proposed project. This report must also include all the alternatives identified by the proponent, including those the proponent chose not to examine or not examine in greater detail. The proponent should provide an explanation for the proponent's choices regarding the identification and examination of alternatives. The discussion must demonstrate whether and how environmental benefits and costs were weighed against economic benefits and costs to the public, and technological and procedural constraints in developing the alternatives, as well as an explanation of the costs to construct, operate, and maintain each alternative and the potential for each alternative to meet project deadlines and the potential environmental impacts of each alternative. Resource Report 11 must:

(1) Discuss the ''no action'' alternative and the potential for accomplishing the proponent's proposed objectives using alternative means;

(2) Provide an analysis of the potential relative environmental benefits and costs for each alternative; and

(3) Describe alternative routes or locations considered for the proposed transmission line and related facilities during the initial screening for the project and include the analysis in the thirteen environmental reports.

(i) Identify all the alternative routes the project proponent considered in the initial screening for the project but not recommended for further study and describe the environmental characteristics of each route or site and include the reasons why the proponent chose not to examine such alternatives. The report must identify the location of such alternatives on maps of sufficient scale to depict their location and relationship to the proposed action, and the relationship of the proposed transmission line to existing rights-of-way.

(ii) For alternative routes or locations recommended for more in-depth consideration, the report must describe the environmental characteristics of each route or site the proponent chose not to examine such alternatives in greater detail. The report must provide comparative tables showing the differences in environmental characteristics for the alternative and proposed action. The location of any alternatives in this paragraph (p)(3)(ii) shall be provided on maps.

(q) *Resource Report 12—Reliability, resilience, and safety.* This report must address the potential hazard to the public from failure of facility components resulting from accidents, intentional destructive acts, or natural catastrophes; how these events would affect reliability; and what procedures and design features have been used to reduce potential hazards. This report should account for any changes to the likelihood of relevant natural catastrophes resulting from climate change. This report must also address any benefits to reliability likely to result from the project. Resource Report 12 must:

(1) Describe measures proposed to protect the public from failure of the proposed facilities (including coordination with local agencies);

(2) Discuss hazards, the environmental impact, and service interruptions that could reasonably ensue from failure of the proposed facilities;

(3) Discuss design and operational measures to avoid or reduce risk;

(4) Discuss contingency plans for maintaining service or reducing downtime;

(5) Describe measures used to exclude the public from hazardous areas, measures used to minimize problems arising from malfunctions and accidents (with estimates of probability of occurrence) and identify standard procedures for protecting services and public safety during maintenance and breakdowns; and

(6) Describe improvements to reliability likely to result from the project.

(r) *Resource Report 13—Tribal interests.* This report will identify the Indian Tribes, indigenous communities, and their respective interests, if any, that may be affected by the construction, operation, and maintenance of the proposed transmission facilities, including those Indian Tribes and indigenous communities that may attach religious and cultural significance to historic properties within the right-of-way or in the project area as well as any underlying Federal land management agencies. To the extent Indian Tribes are willing to communicate and share resource information, this report should discuss the potential impacts of project construction, operation, and maintenance on Indian Tribes and Tribal interests, including impacts related to enumerated resources and areas identified in the resource reports listed in this section (for instance, water rights, access to property, wildlife and ecological resources, etc.), and set forth available information on traditional cultural and religious resources that could be affected by the proposed project. This resource report should acknowledge existing relationships between adjacent and underlying Federal land management agencies and the local Tribes and engage the Federal land manager early to leverage existing relationships. Specific site or location information, disclosure of which may create a risk of harm, theft, or destruction, or otherwise violate Federal law (see, *e.g.,* 16 U.S.C. 470 *et seq.,* 43 CFR 7.18, 36 CFR 800.11(c)), should be submitted separately. The project proponent must request confidential treatment for all material filed with DOE containing location, character, and ownership information about Tribal resources in accordance with § 900.4(h).

(s) *Docketing of resource reports.* DOE shall include in the consolidated administrative docket, as detailed in § 900.10, the resource reports developed under this section, and any revisions to those reports.

**§ 900.7 Standard and project-specific schedules.**

(a) DOE shall publish, and update from time to time, a standard schedule that identifies the steps generally needed to complete decisions on all Federal environmental reviews and authorizations for a qualifying project. The standard schedule will include recommended timing for each step so as to allow final decisions on all Federal authorizations within two years of the publication of a notice of intent to prepare an environmental impact statement under § 900.9 or as soon as practicable thereafter, considering the requirements of relevant Federal laws, and the need for robust analysis of project impacts and early and meaningful consultation with potentially affected Indian Tribes and public engagement with potentially-affected stakeholders and communities of interest.

(b) During the Integrated Interagency Pre-Application (IIP) Process, DOE, in coordination with any NEPA co-lead agency and relevant Federal entities, shall prepare a project-specific schedule that is informed by the standard schedule prepared under paragraph (a) of this section and that establishes prompt and binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, a qualifying project, accounting for relevant statutory requirements, the proposed route, reasonable alternative routes, if any, the need to assess and address any impacts to military testing, training, and operations, and other factors particular to the specific qualifying project, including the need for early and meaningful consultation with potentially affected Indian Tribes and engagement with stakeholders. DOE may revise the project-specific schedule as needed to satisfy applicable statutory requirements, meaningfully engage with stakeholders, and to account for delays caused by the actions or inactions of the project proponent.

**§ 900.8 IIP Process review meeting.**

(a) An Integrated Interagency Pre-Application (IIP) Process review meeting is required for each qualifying project utilizing the IIP Process and may only be held after the project proponent submits a review meeting request to DOE. The project proponent may submit the request at any time following submission of the resource reports required under § 900.6. The review meeting request must include:

(1) A summary table of changes made to the qualifying project since the IIP Process initial meeting, including potential environmental and community benefits from improved siting or design;

(2) Maps of potential proposed routes within study corridors, including the line, substations and other infrastructure, which include at least as much detail as required for the initial meeting initiation request described by § 900.5 and as modified in response to early stakeholder input and outreach and feedback from relevant Federal entities and relevant non-Federal entities as documented in the final initial meeting summary described by § 900.5;

(3) If known, a schedule for completing any upcoming field resource surveys, as appropriate;

(4) A conceptual plan for implementation and monitoring of mitigation measures, including avoidance, minimization, and conservation measures, such as compensatory mitigation (offsite and onsite), developed through the use of a landscape mitigation approach or, where available, landscape mitigation strategies or plans to reduce the potential impact of the qualifying project to resources warranting or requiring mitigation;

(5) An updated public engagement plan described in § 900.5(d)(2), reflecting actions undertaken since the project proponent submitted the initiation request and input received from relevant Federal entities and relevant non-Federal entities;

(6) Dates that the project proponent has already filed applications or requests for Federal authorizations for the qualifying project, if any, as well as estimated dates for any remaining such applications or requests or any revisions to applications or requests that have already been filed; and

(7) Estimated dates that the project proponent will file requests for authorizations and consultations with relevant non-Federal entities.

(b) Not later than 15 calendar days after the date that DOE receives the review meeting request, DOE shall provide relevant Federal entities and relevant non-Federal entities with materials included in the request and resource reports submitted under § 900.6 via electronic means.

(c) Not later than 60 calendar days after the date that DOE receives the review meeting request, DOE shall notify the project proponent and all relevant Federal entities and relevant non-Federal entities that:

(1) The meeting request meets the requirements of this section, including that the initial resource reports are sufficiently detailed; or

(2) The meeting request does not meet the requirements of this section. DOE will provide the reasons for that finding and a description of how the project proponent may, if applicable, address any deficiencies in the meeting request or resource reports so that DOE may reconsider its determination.

(d) Not later than 30 calendar days after the date that DOE provides notice to the project proponent under paragraph (c) of this section that the review meeting request has been accepted, DOE shall convene the review meeting with the project proponent and the relevant Federal entities. All relevant non-Federal entities participating in the IIP Process shall also be invited.

(e) During the IIP Process review meeting:

(1) Relevant Federal entities shall identify any remaining issues of concern, identified information gaps or data needs, and potential issues or conflicts that could impact the time it will take the relevant Federal entities to process applications for Federal authorizations for the qualifying project;

(2) Relevant non-Federal entities may identify remaining issues of concern, information needs, and potential issues or conflicts for the project;

(3) The participants shall discuss the project proponent's updates to the siting process to date, including stakeholder outreach activities, resultant stakeholder input, and project proponent response to stakeholder input;

(4) Based on information provided by the project proponent to date, the relevant Federal entities shall discuss key issues of concern and potential mitigation measures identified for the qualifying project;

(5) Led by DOE, all relevant Federal entities shall discuss statutory and regulatory standards that must be met to make decisions for Federal authorizations required for the qualifying project;

(6) Led by DOE, all relevant Federal entities shall describe the process for, and estimated time to complete, required Federal authorizations and, where possible, the anticipated cost (*e.g.,* processing and monitoring fees and land use fees);

(7) Led by DOE, all relevant Federal entities shall describe their expectations for a complete application for a Federal authorization for the qualifying project;

(8) Led by DOE, all relevant Federal entities shall identify necessary updates to the resource reports that must be made before conclusion of the IIP Process, or, as necessary, following conclusion of the IIP Process; and

(9) DOE shall present the proposed project-specific schedule developed under § 900.7.

(f) Not later than 15 calendar days after the review meeting, DOE shall:

(1) Prepare a draft review meeting summary that includes a summary of the meeting discussion, a description of key issues and information gaps identified during the meeting, and any requests for more information from relevant Federal entities and relevant non-Federal entities; and

(2) Convey the draft summary to the project proponent, relevant Federal entities, and any non-Federal entities that participated in the meeting.

(g) The project proponent and entities that received the draft review meeting summary under paragraph (f) of this section will have 15 calendar days following receipt of the draft to review the draft and provide corrections to DOE.

(h) Not later than 15 calendar days following the close of the 15-day review period under paragraph (g) of this section, DOE shall:

(1) Prepare a final review meeting summary incorporating received corrections, as appropriate;

(2) Add the final summary to the consolidated administrative docket described by § 900.10;

(3) Provide an electronic copy of the summary to the relevant Federal entities, relevant non-Federal entities, and the project proponent; and

(4) Determine whether the project proponent has developed the scope of its proposed project and alternatives sufficiently for DOE to determine that there exists an undertaking for purposes of section 106 of the NHPA. If DOE so determines, then DOE shall authorize project proponents to initiate consultation with SHPOs, THPOs, and others consistent with 36 CFR 800.2(c)(4).

(i) After the review meeting and before the IIP Process close-out meeting described by § 900.9 the project proponent shall revise resource reports submitted under § 900.6 based on feedback from relevant Federal entities and relevant non-Federal entities received during the review meeting.

### § 900.9 IIP Process close-out meeting.

(a) An Integrated Interagency Pre-Application (IIP) Process close-out meeting concludes the IIP Process for a qualifying project and may only be held after the project proponent submits a close-out meeting request to DOE. The close-out meeting request shall include:

(1) A summary table of changes made to the qualifying project during the IIP Process, including potential environmental and community benefits from improved siting or design;

(2) A description of all changes made to the qualifying project since the review meeting, including a summary of changes made in response to the concerns raised during the review meeting;

(3) A final public engagement plan, as described in § 900.5(d)(2);

(4) Requests for Federal authorizations for the qualifying project; and

(5) An updated estimated time of filing requests for all other authorizations and consultations with non-Federal entities.

(b) Not later than 15 calendar days after the date that DOE receives the close-out meeting request, DOE shall provide relevant Federal entities and relevant non-Federal entities with materials included in the request and any updated resource reports submitted under § 900.6 via electronic means.

(c) Not later than 60 calendar days after the date that DOE receives the review meeting request, DOE shall notify the project proponent and all relevant Federal entities and relevant non-Federal entities that:

(1) The meeting request meets the requirements of this section, including that the initial resource reports are sufficiently detailed; or

(2) The meeting request does not meet the requirements of this section. DOE will provide the reasons for that finding and a description of how the project proponent may, if applicable, address any deficiencies in the meeting request or resource reports so that DOE may reconsider its determination.

(d) Not later than 30 calendar days after the date that DOE provides notice to the project proponent under paragraph (c) of this section that the close-out meeting request has been accepted, DOE shall convene the close-out meeting with the project proponent and all relevant Federal entities. All relevant non-Federal entities participating in the IIP Process shall also be invited.

(e) The IIP Process close-out meeting concludes the IIP Process. During the close-out meeting:

(1) The participants shall discuss the project proponent's updates to the siting process to date, including stakeholder outreach activities, resultant stakeholder input, and project proponent response to stakeholder input; and

(2) DOE shall present the final project-specific schedule.

(f) Not later than 15 calendar days after the close-out meeting, DOE shall:

(1) Prepare a draft close-out meeting summary; and

(2) Convey the draft summary to the project proponent, relevant Federal entities, and any non-Federal entities that participated in the meeting.

(g) The project proponent and entities that received the draft close-out meeting summary under paragraph (f) of this section will have 15 calendar days following receipt of the draft to review the draft and provide corrections to DOE.

(h) Not later than 15 calendar days following the close of the 15-day review period under paragraph (g) of this section, DOE shall:

(1) Prepare a final close-out meeting summary by incorporating received corrections, as appropriate;

(2) Add the final summary to the consolidated administrative docket described by § 900.10;

(3) Provide an electronic copy of the summary to all relevant Federal entities, relevant non-Federal entities, and the project proponent; and

(4) In the event that the project is not identified as a covered project pursuant to § 900.5(e), notify the Federal Permitting Improvement Steering Council (FPISC) Executive Director that the project ought to be included on the FPISC Dashboard as a transparency project.

(i) DOE and any NEPA co-lead agency shall issue a Notice of Intent to publish an environmental impact statement, consistent with the final project-specific schedule.

### § 900.10 Consolidated administrative docket.

(a) DOE shall maintain a consolidated docket of:

(1) All information that DOE distributes to or receives from the project proponent, relevant Federal entities, and relevant non-Federal entities related to the Integrated Interagency Pre-Application (IIP) Process, including:

(i) The IIP initiation request, review meeting request, and close-out meeting request required by §§ 900.5, 900.8, and 900.9;

(ii) The IIP Process final meeting summaries required by §§ 900.5, 900.8 and 900.9;

(iii) The IIP Process final resources reports developed under § 900.6;

(iv) The final project-specific schedule developed under §§ 900.7 and 900.8;

(v) Other documents submitted by the project proponent as part of the IIP Process or provided to the project proponent as part of the IIP Process, including but not limited to maps, publicly available data, and other supporting documentation; and

(vi) Communications between any Federal or non-Federal entity and the project proponent regarding the IIP Process; and

(2) All information assembled and used by relevant Federal entities as the basis for Federal authorizations and related reviews following completion of the IIP Process.

(b) Federal entities should include DOE in all communications with the project proponent related to the IIP Process for the qualifying project.

(c) DOE shall make the consolidated docket available, as appropriate, to the NEPA co-lead agency selected under § 900.11; any Federal or non-Federal entity responsible for issuing an authorization for the qualifying project; and any consulting parties per section 106 of the NHPA, consistent with 36 CFR part 800. DOE shall exclude or redact privileged documents, as appropriate.

(d) Where necessary and appropriate, DOE may require a project proponent to contract with a qualified record-management consultant to compile a contemporaneous docket on behalf of all participating agencies. Any such contractor shall operate at the direction of DOE, and DOE shall retain responsibility and authority over the content of the docket.

**§ 900.11 NEPA lead agency and selection of NEPA co-lead agency.**

(a) For a qualifying project that is accepted for the Integrated Interagency Pre-Application (IIP) Process under § 900.5, DOE shall serve as the lead agency to prepare an environmental impact statement (EIS) to serve the needs of all relevant entities. A NEPA co-lead agency to prepare the EIS may also be designated pursuant to this section, no later than by the IIP review meeting.

(b) The NEPA co-lead agency, if any, shall be the Federal entity with the most significant interest in the management of Federal lands or waters that would be traversed or affected by the qualifying project. DOE shall make this determination in consultation with all Federal entities that manage Federal lands or waters traversed or affected by the qualifying project. For projects that would traverse lands managed by both the USDA and the DOI, DOE will request that USDA and DOI determine the appropriate NEPA co-lead agency, if any.

**§ 900.12 Environmental review.**

(a) After the Integrated Interagency Pre-Application (IIP) Process close-out meeting, and after receipt of a relevant application in accordance with the project-specific schedule, DOE and any NEPA co-lead agency selected under § 900.11 shall prepare an environmental impact statement (EIS) for the qualifying project designed to serve the needs of all relevant Federal entities.

(b) When preparing the EIS, DOE and any NEPA co-lead agency shall:

(1) Consider the materials developed throughout the IIP Process; and

(2) Consult with relevant Federal entities and relevant non-Federal entities.

(c) DOE, in consultation with any NEPA co-lead agency, will be responsible for:

(1) Identifying, contracting with, directing, supervising, and arranging for the payment of contractors, as appropriate, to draft the EIS; and

(2) Publishing all completed environmental review documents.

(d) Each Federal entity or non-Federal entity that is responsible for issuing a separate Federal authorization for the qualifying project shall:

(1) Identify all information and analysis needed to make the authorization decision; and

(2) Identify all alternatives that need to be included, including a preferred alternative, with respect to the authorization.

(e) DOE and any NEPA co-lead agency, in consultation with relevant Federal entities, shall identify the full scope of alternatives for analysis, including the no action alternative.

(f) To the maximum extent permitted under law, relevant Federal entities shall use the EIS as the basis for all Federal authorization decisions on the qualifying project. Those entities shall execute their own records of decision.

(g) For all qualifying projects, DOE and the applicable Federal entity or entities shall serve as co-lead agencies for consultation under the Endangered Species Act, per 50 CFR 402.07, and compliance with section 106 of the National Historic Preservation Act, per 36 CFR 800.2(a)(2).

**§ 900.13 Severability.**

The provisions of this part are separate and severable from one another. Should a court of competent jurisdiction hold any provision(s) of this part to be stayed or invalid, such action shall not affect any other provision of this part.

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Part III

## Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[EPA–HQ–OAR–2002–0085, EPA–HQ–OAR–2003–0051; FRL–8471–01–OAR]**

**RIN 2060–AV19**

## National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing amendments to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Coke Ovens: Pushing, Quenching, and Battery Stacks (PQBS) source category, and the NESHAP for the Coke Oven Batteries (COB) source category. This proposal presents the results of the residual risk and technology review (RTR) conducted as required under the Clean Air Act (CAA) for the PQBS source category, and the periodic technology review for the COB source category, also required under the CAA. The EPA is proposing that risks due to emissions of hazardous air pollutants (HAP) from the PQBS source category are acceptable and that the current NESHAP provides an ample margin of safety to protect public health. Under the technology review for PQBS NESHAP, we are proposing there are no developments in practices, processes or control technologies that necessitate revision of standards for this source category. Under the technology review for the COB source category, the EPA is proposing amendments to the NESHAP to lower the limits for leaks from doors, lids, and offtakes to reflect improvements in technology to minimize emissions. We also are proposing a requirement for fenceline monitoring for benzene (as a surrogate for coke oven emissions) and a requirement to conduct root cause analysis and corrective action upon exceeding an action level. In addition, we are proposing: (1) new standards for several unregulated HAP or sources of HAP at facilities subject to PQBS NESHAP; (2) the removal of exemptions for periods of startup, shutdown, and malfunction consistent with a 2008 court decision, and clarifying that the standards apply at all times for both source categories; and (3) the addition of electronic reporting for performance test results and compliance reports. We solicit comments on all aspects of this proposed action.

**DATES:**

*Comments.* Comments must be received on or before October 2, 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 15, 2023.

*Public hearing:* If anyone contacts us requesting a public hearing on or before August 21, 2023, we will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

**ADDRESSES:** You may send comments, identified by Docket ID Nos. EPA–HQ–OAR–2002–0085 (Coke Ovens: Pushing, Quenching, and Battery Stacks source category) and EPA–HQ–OAR–2003–0051 (Coke Oven Batteries source category) by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID Nos. EPA–HQ–OAR–2002–0085 or EPA–HQ–OAR–2003–0051 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID Nos. EPA–HQ–OAR–2002–0085 or EPA–HQ–OAR–2003–0051.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID Nos. EPA–HQ–OAR–2002–0085 or EPA–HQ–OAR–2003–0051, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except federal holidays).

*Instructions:* All submissions received must include the Docket ID Nos. 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 **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For questions about this proposed action, contact Donna Lee Jones, Sector Policies and Programs Division (MD–243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5251; email address: *jones.donnalee@epa.gov.* For specific information regarding the risk modeling methodology, contact Michael Moeller, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2766; email address: *moeller.michael@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Participation in virtual public hearing.* To request a virtual public hearing, contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* If requested, the hearing will be held via virtual platform on August 31, 2023. The hearing will convene at 11:00 a.m. Eastern Time (ET) and will conclude at 3:00 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at *https://www.epa.gov/stationary-sources-air-pollution/coke-ovens-pushing-quenching-and-battery-stacks-national-emission or https://www.epa.gov/stationary-sources-air-pollution/coke-ovens-batteries-national-emissions-standards-hazardous-air.*

If a public hearing is requested, the EPA will begin pre-registering speakers for the hearing no later than 1 business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/stationary-sources-air-pollution/coke-ovens-pushing-quenching-and-battery-stacks-national-emission or https://www.epa.gov/stationary-sources-air-pollution/coke-ovens-batteries-national-emissions-standards-hazardous-air,* or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* The last day to pre-register to speak at the hearing will be August 28, 2023. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: *https://www.epa.gov/stationary-sources-air-pollution/coke-ovens-pushing-quenching-and-battery-stacks-national-emission, or https://www.epa.gov/stationary-sources-air-pollution/coke-ovens-batteries-national-emissions-standards-hazardous-air.*

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 4 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 *jones.donnalee@epa.gov.* The EPA also recommends submitting the text of your oral testimony 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 testimony 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/stationary-sources-air-pollution/coke-ovens-pushing-quenching-and-battery-stacks-national-emission, or https://www.epa.gov/stationary-sources-air-pollution/coke-ovens-batteries-national-emissions-standards-hazardous-air.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by August 23, 2023. The EPA may not be able to arrange accommodations without advanced notice.

*Docket.* The EPA has established dockets for this rulemaking under Docket ID Nos. EPA–HQ–OAR–2002–0085 (Coke Ovens: Pushing, Quenching, and Battery Stacks source category) and EPA–HQ–OAR–2003–0051 (Coke Oven Batteries source category). All documents in the dockets are listed in *https://www.regulations.gov/.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov*.

*Instructions.* Direct your comments to Docket ID Nos. EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to *https://www.regulations.gov/* any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed below.

The EPA may publish any comment received to its public docket. 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.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

*Submitting CBI.* Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address *oaqpscbi@epa.gov,* and as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No's EPA–HQ–OAR–2002–0085 or EPA–HQ–OAR–2003–0051. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

*Preamble acronyms and abbreviations.* Throughout this preamble the use of ''we,'' ''us,'' or ''our'' is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

1–BP 1-bromopropane
ACI activated carbon injection
AEGL acute exposure guideline level
AERMOD air dispersion model used by the HEM model
B/W Bypass/Waste
BTF beyond-the-floor
ByP by-product recovery coke production process
CAA Clean Air Act
CalEPA California EPA
CBI confidential business information
CBRP coke by-product chemical recovery plant
CFR Code of Federal Regulations
COE coke oven emissions
delta c lowest concentration subtracted from the highest concentration
EPA Environmental Protection Agency
ERPG emergency response planning guideline
ERT electronic reporting tool
FGD flue gas desulfurization
gr/dscf grains per dry standard cubic feet
HAP hazardous air pollutant(s)
HCl hydrochloric acid
HCN hydrogen cyanide
HEM human exposure model
HF hydrogen fluoride
HI hazard index
HNR heat and nonrecovery, or only nonrecovery, no heat
HQ hazard quotient
HRSG heat recovery steam generator
IBR incorporation by reference
IRIS integrated risk information system
km kilometer
LAER lowest achievable emissions rate
lb/ton pounds per ton
MACT maximum achievable control technology
mg/L milligrams per liter
$mg/m^3$ milligrams per cubic meter
MIR maximum individual risk
NAAQS national ambient air quality standards
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PAH polycyclic aromatic hydrocarbons
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
PM particulate matter
POM polycyclic organic matter
ppm parts per million
RDL representative detection limit
REL reference exposure level
RFA Regulatory Flexibility Act
RfC reference concentration
RfD reference dose
RTR residual risk and technology review
SAB Science Advisory Board
$SO_2$ sulfur dioxide
SSM startup, shutdown, and malfunction
TBD to be determined
TOSHI target organ-specific hazard index
tpy tons per year
TRIM.FaTE total risk integrated methodology.fate, transport, and ecological exposure model
UF uncertainty factor
UPL upper prediction limit
$\mu g/m^3$ microgram per cubic meter
UMRA Unfunded Mandates Reform Act
URE unit risk estimate
VCS voluntary consensus standards
VE visible emissions
WAS wet alkaline scrubber

*Organization of this document.* The information in this preamble is organized as follows:



## I. General Information

### *A. Executive Summary*

#### 1. Purpose of the Regulatory Action

The EPA is proposing amendments to the NESHAP for Coke Ovens: Pushing, Quenching, and Battery Stacks and the NESHAP for Coke Oven Batteries. The purpose of this proposed action is to fulfill the EPA's statutory obligations pursuant to Clean Air Act (CAA) sections 112(d)(2), (d)(3) and (d)(6) and improve the emissions standards for the Coke Oven Batteries and Coke Ovens Pushing, Quenching, and Battery Stacks source categories based on information regarding developments in practices, processes, and control technologies (''technology review''). In addition, this action fulfills the EPA's statutory obligations pursuant to CAA section 112(f)(2) to evaluate the maximum achievable control technology (MACT) standards for the Coke Ovens Pushing, Quenching, and Battery Stacks source category to determine whether additional standards are needed to address any remaining risk associated with HAP emissions from this Coke Ovens Pushing, Quenching, and Battery Stacks source category (''residual risk review'').

#### 2. Summary of the Major Provisions of This Regulatory Action

The EPA is proposing amendments under the technology review for the Coke Oven Batteries NESHAP pursuant to CAA section 112(d)(6), including: (1) revising the emission leak limits for coke oven doors, lids, and offtakes; and (2) requiring fenceline monitoring for benzene along with an action level for benzene (as a surrogate for coke oven emissions (COE)) and a requirement for root cause analysis and corrective actions if the action level is exceeded.

Under the technology review for the Coke Ovens Pushing, Quenching, and Battery Stacks NESHAP pursuant to CAA section 112(d)(6), the EPA did not identify any cost-effective options to reduce actual emissions from currently regulated sources under the Coke Ovens Pushing, Quenching, and Battery Stacks NESHAP. However, EPA is asking for comment on whether a 1-hour opacity standard would identify short-term periods of high opacity that are not identified from the current 24-hour standard of 15 percent opacity; and on whether COE are emitted from ovens after being pushed and while they are waiting to be charged again (*i.e.,* ''soaking emissions'').

As part of the technology review, the EPA must also set MACT standards for previously unregulated HAP emissions pursuant to CAA sections 112(d)(2) and (3). The EPA identified 17 unregulated HAP or emissions sources from Coke Ovens Pushing, Quenching, and Battery Stacks sources including hydrogen chloride (HCl), hydrogen fluoride (HF), mercury (Hg), and PM metals (*e.g.,* lead and arsenic) from heat nonrecovery (HNR) facility heat recovery steam generators (HRSG) main stacks and bypass/waste (B/W) stacks, and HCl, HF, hydrogen cyanide (HCN), Hg, and PM metals from pushing and coke oven battery stacks. In this action, under the authority of CAA sections 112(d)(2) and (3), we are proposing MACT floor limits (*i.e.,* the minimum stringency level allowed by the CAA) for 15 of the 17 unregulated HAP and beyond the floor limits (*i.e.,* more stringent than the MACT floor) for two HAP (mercury and nonmercury HAP metals) from B/W stacks.

With regard to the residual risk review for the Coke Pushing, Quenching, and Battery Stacks NESHAP pursuant to CAA section 112(f)(2), the estimated inhalation maximum individual risk (MIR) for cancer for the baseline scenario (*i.e.,* current actual emissions levels) due to HAP emissions from Coke Ovens Pushing, Quenching, and Battery Stacks sources is 9-in-1 million, and the MIR based on allowable emissions was only slightly higher (10-in-1 million), as shown in Table 1. Furthermore, all estimated noncancer risks are below a level of concern. Based on these risk results and subsequent evaluation of potential controls (*e.g.,* costs, feasibility and impacts) that could be applied to reduce these risks even further, we are proposing that risks due to HAP emissions from the Coke Ovens Pushing, Quenching, and Battery Stacks source category are acceptable and the Coke Ovens Pushing, Quenching, and Battery Stacks NESHAP provides an ample margin of safety to protect public health. Therefore, we are not proposing amendments under CAA section 112(f)(2); however, we note that the proposed BTF MACT limit for B/W stacks would reduce the estimated MIR from 9-in-1 million to 2-in-1 million, and the population estimated to be exposed to cancer risks greater than or equal to 1-in-1 million would be reduced from approximately 2,900 to 390. However, the whole facility cancer MIR (the maximum cancer risk posed by all sources of HAP at coke oven facilities) would remain unchanged, at 50-in-1 million because the whole facility MIR is driven by the estimated actual current fugitive emissions from coke oven doors (as described in section IV.B. of this preamble) and we do not expect reductions of the actual emissions from doors as a result of this proposed rule (as explained further in section IV.D. of this preamble).

TABLE 1—SUMMARY OF ESTIMATED CANCER RISK REDUCTIONS

| Item | Inhalation cancer risk | Population cancer risk | |
|---|---|---|---|
| | MIR in 1 million | Estimated annual cancer incidence (cases per year) | ≥ 1-in-1 million |
| Coke Ovens Pushing, Quenching, and Battery Stacks Source Category | 9 | 0.02 | 2,900 |
| Post Control Risks for the Coke Ovens Pushing, Quenching, and Battery Stacks Source Category | 2 | [a] 0.02 | 390 |
| Whole Facility | 50 | 0.2 | 2.7M |
| Post Control Whole Facility Risks | 50 | 0.2 | 2.7M |

[a] The estimated incidence of cancer due to inhalation exposures is 0.02 excess cancer case per year (or 1 case every 50 years) and stays approximately the same due to emission reductions as a result of this proposed action.

Furthermore, we conducted a demographics analysis, which indicates that the population within 10 km of the coke oven facilities with risks greater than or equal to 1-in-1 million is disproportionately African American.

With regard to other actions, we are proposing the removal of exemptions for periods of startup, shutdown, and malfunction consistent with a 2008 court decision, *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), and clarifying that the emissions standards apply at all times; and the addition of electronic reporting for performance test results and compliance reports for both NESHAPs.

With regard to costs and emissions reductions, we estimate that the proposed BTF limits for B/W stacks will achieve an estimated 237 tons per year (tpy) reduction of PM emissions, 14 tpy of $PM_{2.5}$ emissions, 4.0 tpy reduction of nonmercury metal HAP emissions, and 144 pounds per year reduction of mercury emissions. The total capital costs for the industry (for 1 facility) are estimated to be $7.5M and the estimated annual costs for the industry for all proposed requirements are about $9.1M/yr for 11 affected facilities.

*B. Does this action apply to me?*

Table 2 of this preamble lists the NESHAP and associated regulated industrial source categories that are the subjects of this proposal. Table 2 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this proposed action. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (*see* EPA–450/3–91–030, July 1992), the Coke Ovens: Pushing, Quenching, and Battery Stacks source category includes emissions from pushing and quenching operations, and battery stacks at a coke oven facility. The Coke Oven Batteries source category includes emissions from the batteries themselves. A coke oven facility is defined as a facility engaged in the manufacturing of metallurgical

coke by the destructive distillation of coal.

TABLE 2—NESHAP AND SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

| Source category | NESHAP | NAICS Code [a] |
|---|---|---|
| Coke Ovens: Pushing, Quenching, and Battery Stacks. | 40 CFR part 63, subpart CCCCC | 331110 Iron and Steel Mills and Ferroalloy Manufacturing. |
| Coke Oven Batteries | 40 CFR part 63, subpart L | 324199 All Other Petroleum and Coal Products Manufacturing. |

[a] North American Industry Classification System.

*C. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/coke-ovens-pushing-quenching-and-battery-stacks-national-emission* and *https://www.epa.gov/stationary-sources-air-pollution/coke-ovens-batteries-national-emissions-standards-hazardous-air.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at these same websites. Information on the overall residual risk and technology review (RTR) program is available at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.*

A memorandum showing the rule edits that would be necessary to incorporate the changes to 40 CFR part 63, subpart CCCCC and 40 CFR part 63, subpart L proposed in this action are available in the dockets (Docket ID Nos. EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051). Following signature by the EPA Administrator, the EPA also will post a copy of this document to *https://www.epa.gov/stationary-sources-air-pollution/coke-ovens-pushing-quenching-and-battery-stacks-national-emission* and *https://www.epa.gov/stationary-sources-air-pollution/coke-ovens-batteries-national-emissions-standards-hazardous-air.*

## II. Background

*A. What is the statutory authority for this action?*

The statutory authority for this action is provided by sections 112 of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*). Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of hazardous air pollutants (HAP) from stationary sources. Generally, the first stage involves establishing technology-based standards and the second stage involves evaluating those standards that are based on maximum achievable control technology (MACT) to determine whether additional standards are needed to address any remaining risk associated with HAP emissions. This second stage is commonly referred to as the ''residual risk review.'' In addition to the residual risk review, the CAA also requires the EPA to review standards set under CAA section 112 every 8 years and revise the standards as necessary taking into account any ''developments in practices, processes, or control technologies.'' This review is commonly referred to as the ''technology review.'' When the two reviews are combined into a single rulemaking, it is commonly referred to as the ''risk and technology review.'' The discussion that follows identifies the most relevant statutory sections and briefly explains the contours of the methodology used to implement these statutory requirements. A more comprehensive discussion appears in the document titled *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology,* in the docket for this rulemaking.

In the first stage of the CAA section 112 standard setting process, the EPA promulgates technology-based standards under CAA section 112(d) for categories of sources identified as emitting one or more of the HAP listed in CAA section 112(b). Sources of HAP emissions are either major sources or area sources, and CAA section 112 establishes different requirements for major source standards and area source standards. ''Major sources'' are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. All other sources are ''area sources.'' For major sources, CAA section 112(d)(2) provides that the technology-based NESHAP must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and nonair quality health and environmental impacts). These standards are commonly referred to as MACT standards. CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT ''floor.'' In certain instances, as provided in CAA section 112(h), the EPA may set work practice standards in lieu of numerical emission standards. Pursuant to CAA sections 112(d)(2) and (3), the EPA must also consider control options that are more stringent than the floor. Standards more stringent than the floor are commonly referred to as beyond-the-floor (BTF) MACT standards. The EPA evaluates whether BTF standards are needed based on emission reductions, costs of control, and other factors. If EPA determines that there are potential BTF standards that might be cost-efffective, the EPA typicallly develops and evaluates those BTF control options. After evaluating the BTF options, the EPA typically proposes such BTF options if EPA determines those BTF options under consideration are technically feasible, costs impacts are reasonable, and that the BTF standard would achieve meaningful reductions and not result in significant non-air impacts such as impacts to other media or excessive energy use. For area sources, CAA section 112(d)(5) gives the EPA discretion to set standards based on generally available control technologies or management practices (GACT standards) in lieu of MACT standards.

The second stage in standard-setting focuses on identifying and addressing any remaining (*i.e.,* ''residual'') risk pursuant to CAA section 112(f). For source categories subject to MACT standards, section 112(f)(2) of the CAA requires the EPA to determine whether promulgation of additional standards is needed to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. Section 112(d)(5) of the CAA provides that this residual risk review is not required for categories of area sources subject to GACT standards. Section 112(f)(2)(B) of the CAA further expressly preserves the EPA's use of the two-step approach for developing standards to address any residual risk

and the Agency's interpretation of ''ample margin of safety'' developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* (Benzene NESHAP) (54 FR 38044, September 14, 1989). The EPA notified Congress in the Residual Risk Report that the Agency intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11). The EPA subsequently adopted this approach in its residual risk determinations and the United States Court of Appeals for the District of Columbia Circuit upheld the EPA's interpretation that CAA section 112(f)(2) incorporates the approach established in the Benzene NESHAP. See *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008).

The approach incorporated into the CAA and used by the EPA to evaluate residual risk and to develop standards under CAA section 112(f)(2) is a two-step approach. In the first step, the EPA determines whether risks are acceptable. This determination ''considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [1] of approximately 1 in 10 thousand.'' (54 FR 38045). If risks are unacceptable, the EPA must determine the emissions standards necessary to reduce risk to an acceptable level without considering costs. In the second step of the approach, the EPA considers whether the emissions standards provide an ample margin of safety to protect public health ''in consideration of all health information, including the number of persons at risk levels higher than approximately 1 in 1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety to protect public health or determine that the standards being reviewed provide an ample margin of safety without any revisions. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

CAA section 112(d)(6) separately requires the EPA to review standards promulgated under CAA section 112 and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less often than every 8 years. In conducting this review, which we call the ''technology review,'' the EPA is not required to recalculate the MACT floors that were established during earlier rulemakings. *Natural Resources Defense Council (NRDC)* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008). *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (D.C. Cir. 2013). The EPA may consider cost in deciding whether to revise the standards pursuant to CAA section 112(d)(6). The EPA is required to address regulatory gaps, such as missing MACT standards for listed air toxics known to be emitted from the source category. *Louisiana Environmental Action Network (LEAN)* v. *EPA,* 955 F.3d 1088 (D.C. Cir. 2020).

### *B. What are the source categories and how do the current NESHAPs regulate HAP emissions?*

Coke oven facilities produce metallurgical coke from coal in coke ovens. Coke ovens are chambers of brick or other heat-resistant material in which coal is heated to separate the coal gas, coal water, and tar to produce coke. In a coke oven, coal undergoes destructive distillation to produce coke, which is almost entirely carbon. A coke oven ''battery'' is a group of ovens connected by common walls. There are two types of metallurgic coke: (1) furnace coke, which is primarily used in integrated iron and steel furnaces, along with iron ore pellets (known as Taconite pellets) and other materials, to produce iron and steel; and (2) foundry coke, which is primarily used in foundry furnaces for melting iron to produce iron castings.

The process begins when a batch of coal is discharged from the coal bunker into a larry car (*i.e.,* charging vehicle that moves along the top of the battery). The larry car is positioned over the empty, hot oven; the lids on the charging ports are removed; and the coal is discharged from the hoppers of the larry car into the oven. The coal is heated in the oven in the absence of air to temperatures approaching 2,000 degrees Fahrenheit (°F) which drives off most of the volatile organic constituents of the coal as gases and vapors, forming coke which consists almost entirely of carbon. Coking continues for 15 to 18 hours to produce blast furnace coke and 25 to 30 hours to produce foundry coke.

At the end of the coking cycle, doors at both ends of the oven are removed, and the incandescent coke is pushed out of the oven by a ram that is extended from the pusher machine. The coke is pushed through a coke guide into a special rail car, called a quench car, which transports the coke to a quench tower, typically located at the end of a row of batteries. Inside the quench tower, the hot coke is deluged with water so that it will not continue to burn after being exposed to air. The quenched coke is discharged onto an inclined ''coke wharf'' to allow excess water to drain and to cool the coke.

This process takes place at two types of facilities: (1) by-product recovery (ByP) facilities, where chemical by-products are recovered from coke oven emissions (COE) in a co-located coke by-product chemical recovery plant (CBRP); or (2) heat and nonrecovery, or only nonrecovery with no heat recovery (HNR) facilities, where chemicals are not recovered but heat may be recovered from the exhaust from coke ovens in a heat recovery steam generator (HRSG).

The coke production process described above is similar at both types of facilities, except that at by-product facilities the ovens are under positive pressure and the organic gases and vapors that evolve are removed through an offtake system and sent to a CBRP for chemical recovery and coke oven gas cleaning. The CBRPs are not part of the Coke Ovens: Pushing, Quenching, and Battery Stacks source category or the Coke Oven Batteries source category. The CBRPs comprise a separate source category that is regulated under the 40 CFR part 61, subpart L NESHAP, which was promulgated in 1989.

At the HNR facilities and the only nonrecovery with no heat recovery facilities, as the names imply, the coke production process does not recover the chemical by-products. Instead, all of the coke oven gas is burned and the hot exhaust gases can be recovered for the cogeneration of electricity. Furthermore, the non-recovery ovens are of a horizontal design (as opposed to the vertical design used in the by-product process). Ovens at HNR facilities are typically 30 to 45 feet long, 6 to 12 feet wide, and 5 to 12 feet high. Typically, the individual ovens at ByP facilities are 36 to 56 feet long, 1 to 2 feet wide, and 8 to 20 feet high, and each oven holds 15 to 25 tons of coal. Ovens at ByP facilities operate under positive pressure and, consequently, leak COE, a HAP, that includes both gases and particulate matter (PM), via oven door jams (''doors''), charging port lids (''lids''), offtake ducts (''offtakes''), and during charging. Ovens at HNR facilities

[1] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk if an individual were exposed to the maximum level of a pollutant for a lifetime.

are designed to operate under negative pressure to reduce or eliminate leaks but require maintenance and monitoring to ensure constant operation at negative pressure.

There are 14 coke facilities in the United States (U.S.). Nine of these facilities use the ByP process and five use the HNR process, as listed in Table 3. Of these 14 facilities, 11 are currently operating, with six ByP process facilities and five HNR facilities. Of the five HNR facilities, four have HRSGs and one does not. The one facility without HRSGs sends COE directly to the atmosphere via waste heat stacks, 24 hours per day, 7 days per week. At the current heat recovery facilities, each HRSG can be bypassed ranging from 192 to 1,139 hours per year, depending on the facilities' permits, sending COE directly into the atmosphere.

TABLE 3—COKE OVEN FACILITIES

| Firm name | Parent company | City | State | Coke process | Currently operating |
|---|---|---|---|---|---|
| ABC Coke | Drummond Co. | Tarrant | AL | ByP | Yes. |
| Bluestone | Bluestone | Birmingham | AL | ByP | No. |
| Cleveland-Cliffs | Cleveland-Cliffs | Middletown | OH | ByP | No. |
| Cleveland-Cliffs | Cleveland-Cliffs | Follansbee | WV | ByP | No. |
| Cleveland-Cliffs | Cleveland-Cliffs | Burns Harbor | IN | ByP | Yes. |
| Cleveland-Cliffs | Cleveland-Cliffs | Monessen | PA | ByP | Yes. |
| Cleveland-Cliffs | Cleveland-Cliffs | Warren | OH | ByP | Yes. |
| EES Coke Battery | DTE Vantage | Detroit | MI | ByP | Yes. |
| Indiana Harbor Coke | SunCoke Energy | East Chicago | IN | HNR | Yes. |
| Haverhill Coke | SunCoke Energy | Franklin Furnace | OH | HNR | Yes. |
| Gateway Coke | SunCoke Energy | Granite City | IL | HNR | Yes. |
| Middletown Coke | SunCoke Energy | Middletown | OH | HNR | Yes. |
| Jewell Coke | SunCoke Energy | Vansant | VA | HNR | Yes. |
| US Steel Clairton | United States Steel | Clairton | PA | ByP | Yes. |

The Coke Ovens: Pushing, Quenching, and Battery Stacks NESHAP regulates both ByP and HNR facilities. Emissions occur during the pushing process, where coke oven doors are opened at both ends of the coke oven and a pusher machine positioned next to the ovens pushes the incandescent coke from the oven's coke end (or coke side of the battery) using a ram that is extended from the coal or push end of the oven (or push side of the battery) to the coke end, where coke then leaves the oven. Particulate emissions that escape from open ovens during pushing are collected by particulate control devices such as baghouses, cyclones, and scrubbers that remove metal HAP in the form of PM. The Coke Ovens: Pushing, Quenching, and Battery Stacks NESHAP includes limits for PM emissions (as a surrogate for nonmercury metal HAPs) from the pushing control device, ranging from 0.01 to 0.04 pounds per ton (lb/ton), depending on whether the control device is mobile or stationary, and whether the battery is tall or short, according to the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP definitions.[2] Opacity (which also is a surrogate for nonmercury metal HAPs) during pushing is limited by the NESHAP to 30 or 35 percent, depending on whether the battery is short or tall, respectively.

The incandescent coke pushed from the ovens is received by rail quench cars that travel to the nearby quench tower. In the quenching process, several thousand gallons of water are sprayed from multiple ports within the quench tower onto the coke mass to cool it. The quench towers have baffles along the inside walls to condense any steam and coke aerosols, which then fall down the inside of the tower and exit as wastewater. The Coke Ovens: Pushing, Quenching, and Battery Stacks NESHAP requires that baffles limit the quench towers to 5 percent open space and that the dissolved solids in the quench water are no greater than 1,100 milligrams per liter (mg/L). The Coke Ovens: Pushing, Quenching, and Battery Stacks NESHAP also requires the use of clean quench water.

The battery stack that collects the underfire hot gases, which surround the oven and do not contact the coke or coke gas, into the oven flues and discharges to the atmosphere is limited to 15 percent opacity during normal operation, as a daily average, and to 20 percent opacity during extended coking, as a daily average, which is the period when the coke ovens are operated at a lower temperature to slow down the coke-making process.

The HAP emissions from HRSG main stacks and COE from bypass/waste heat stacks are not currently regulated by any NESHAP and, therefore, we are proposing to revise the NESHAP for the Coke Ovens: Pushing, Quenching, and Battery Stacks source category to add standards for these emission points. The exhaust from HRSGs currently is controlled by flue gas desulfurization (FGD) units and baghouses for removal of sulfur dioxide ($SO_2$) and PM, respectively. The control of PM also reduces HAP (nonmercury metal) emissions from the baghouse exhaust.

The Coke Oven Batteries source category addresses emissions from both ByP and HNR facilities. At HNR facilities, the NESHAP addresses emissions from charging and emissions from doors (offtake and lids leaks also are addressed but only ''if applicable to the new nonrecovery coke oven battery,'' which they are not). The HNR facilities are required to have 0 emissions from leaking doors on the coke oven battery (and 0 emissions from leaking lids to ovens and offtake systems, if any). Door leaks include emissions from coke oven doors when they are closed and the oven is in operation. Charging at HNR facilities involves opening one of the two doors on an oven and loading coal into the oven using a ''pushing/charging machine.'' Because coal is charged on the ''coal side'' of a HNR battery, there are no ports with ''lids'' on top of HNR ovens for charging coal as there are on ByP ovens. The Coke Oven Battery NESHAP (40 CFR part 63, subpart L), promulgated in 1993, set emission limits (via limiting the number of seconds of visible emissions (VE)) from doors, lids, and offtakes at HNR and any new ByP facilities to 0 percent leaking.

For HNR facilities operating before 2004, the 1993 Coke Oven Batteries NESHAP required good operating and

[2] Tall battery in the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP means a ByP coke oven battery with ovens 16.5 feet (five meters) or more in height; short battery means a ByP coke oven battery with ovens less than 16.5 feet (five meters) in height. Note the two rules (40 CFR part 63, subparts CCCCC and L) differ in their designation of tall ovens (5 meters for subpart 5C and 6 meters for Coke Oven Batteries NESHAP).

maintenance practices to minimize emissions during charging. This requirement for charging affects only SunCoke's Vansant (Virginia) facility, which is a nonrecovery coke facility and does not recover heat. For HNR facilities operating after 2004, which includes the other four HNR facilities (that are heat recovery) and any future HNR facilities, the NESHAP regulates charging via PM and opacity limits, and requires a PM control device and work practices for minimizing VE during charging.

For ByP facilities, the Coke Oven Batteries NESHAP regulates emissions occurring during the charging of coal into the ovens and from leaking of oven doors, leaking topside charging port lids, and leaking offtake ducts. The charging process for ByP facilities includes opening the lids on the charging ports on the top of the ovens and discharging of coal from hoppers of a car that positions itself over the oven port and drops coal into the oven. The Coke Oven Batteries NESHAP limits the number of seconds of visible emissions during a charge at ByP facilities, as determined by measurements made according to EPA Method 303.

The emissions from leaks at ByP batteries are regulated under the Coke Oven Batteries NESHAP by limits on the percent of doors, lids and offtakes that leak COE. Doors are located on both sides of the ovens. The offtake system at ByP facilities includes ascension pipes and collector main offtake ducts that are located on the top of the coke oven and battery. The Coke Oven Batteries NESHAP established limits for the percent of leaking doors, lids, and offtakes for the current ByP coke facilities that are shown in Table 4 and are based on the regulatory ''track'' of the facilities. The facilities were required by the CAA section 112(i)(8) to choose either the MACT track or the lowest achievable emissions rate (LAER) track by 1993 (58 FR 57898). Only one of the nine ByP coke oven facilities remains as a MACT track facility today (Cleveland Cliffs, Middletown, OH). The remaining eight existing ByP facilities are on the LAER track.

TABLE 4—LIMITS FOR EXISTING BYP FACILITIES UNDER THE COKE OVEN BATTERIES NESHAP

| Emission source | Limits by track[a] and effective date | | |
|---|---|---|---|
| | MACT | LAER | |
| | July 14, 2005[b] (residual risk) | January 2010 | Residual Risk |
| Percent leaking lids | 0.4 | 0.4 | TBD[c]. |
| Percent leaking offtakes | 2.5 | 2.5 | TBD. |
| Charging (log[d]) s/charge[e] | 12 | 12 | TBD. |
| Percent leaking doors—Tall[f] | 4.0 | 4.0 | TBD. |
| Percent leaking doors—All other[g] | 3.3 | 3.3 | TBD. |
| Percent leaking doors—Foundry[h] | 3.3 | 4.0 | TBD. |

[a] The tracks were established in the 1993 NESHAP for Coke Oven Batteries in a tiered approach (58 FR 57898).
[b] Established in the 2005 RTR final rule for Coke Oven Batteries (70 FR 19992). Only applies to one current ByP facility, which is idle.
[c] TBD = to be determined, as specified in section 171 of the CAA.
[d] Log = the logarithmic average of the observations of multiple charges (as opposed to an arithmetic average).
[e] s/charge = seconds of visible emissions per charge of coal into the oven.
[f] Tall = doors 20 feet (six meters) or more in height (Coke Oven Batteries).
[g] All other = all blast furnace coke oven doors that are not tall, *i.e.,* doors less than 20 feet (six meters).
[h] Foundry = doors on ovens producing foundry coke. Two of the 14 coke oven facilities, both LAER track, produce foundry coke exclusively.

One HNR facility is on the LAER track (SunCoke's Vansant facility in Virginia) and the other four HNR facilities are under the MACT track. Any future coke facilities of any type (HNR or ByP) would be under the MACT track,[3] but no additional ByP facilities are expected in the future due to the requirement for 0 percent leaking doors, lids, and offtakes (as determined by EPA Method 303) for new facilities under the Coke Oven Batteries NESHAP. The positive pressure operation of ByP ovens makes it impossible to achieve 0 leaks with the current ByP coke oven technology.

*C. What data collection activities were conducted to support this action?*

The EPA sent two CAA section 114 information requests to industry in 2016 and 2022 (CAA section 114 request). The CAA section 114 request in 2016 was sent to nine parent coke companies, which included a facility questionnaire and source testing request, and resulted in information gathered for 11 facilities of which seven were requested to perform testing. After testing was conducted and data were submitted, the EPA was notified that one of the CAA section 114 request facilities (Erie Coke) was shut down in late 2019.

The 2016 CAA section 114 request questionnaire was composed of ten parts: owner information, general facility information, regulatory information, process flow diagrams and plot plans, emission points, process and emission unit operations, air pollution control and monitoring equipment, economics/costs, startup and shutdown procedures, and management practices. The compilation of the facility responses can be found in the dockets to this proposed rulemaking (EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051).

Through the 2016 CAA section 114 request, source test data were obtained for HAP and PM emissions at the following coke stack sources: pushing, ByP battery combustion stacks, ByP boiler stacks, HRSG main stacks, HRSG bypass/waste heat stacks, HNR charging control device outlets, and quench towers for a total of 18 units among the seven facilities that performed testing. In addition, results of daily and monthly EPA Method 303 leak tests were obtained for ByP charging, lids, doors, and offtakes. The EPA sent each facility its compiled testing results for review, and corrections, if needed, and incorporated the facilities' comments and revisions into the final results. The final compilation of 2016 source testing results can be found in the docket to this action (EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051).

The CAA section 114 request in 2022 was sent to six parent companies, which included a facility questionnaire and source testing request, and resulted in information gathered for eight facilities. In the 2022 CAA section 114 request, the 2016 CAA section 114 request questionnaire was resent to six facilities that already had received the CAA

[3] *See* CAA section 112(i)(8)(D).

section 114 request in 2016 to update if needed and then also sent to two facilities for the first time. The 2022 CAA section 114 request also included additional questionnaire sections for work practices that prevent leaks at ByP facilities; EPA Method 303 leak data for coke oven doors, lids, offtakes, and charging at ByP coke oven facilities; coke ByP battery stack opacity data and work practices that prevent stack limit exceedances; information concerning miscellaneous sources, such as emergency battery flares; community issues; and paperwork reduction act estimates. The compilation of the facility responses can be found in the dockets to this proposed rulemaking (EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051).

Through the 2022 CAA section 114 request, source test data were obtained for volatile and particulate HAP and COE at the following coke point sources: HRSG main stacks and HRSG bypass/waste heat stacks. In addition, data and information were obtained for HAP from: the CBRP cooling towers, light oil condensers, sulfur recovery/desulfurization units, and flares; EPA Method 303 door leaks from the bench and yard; and fugitive emissions monitoring at the fenceline and interior on site locations. The fenceline monitoring requirements and results are described in much more detail in section IV.D.5. of this preamble. The CAA section 114 requests sent by EPA and compilation of source testing results can be found in the docket to this action (EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051).

The 2016 and 2022 CAA section 114 request responses and other data for emissions for coke facilities were used to populate the risk assessment modeling input files and included all source testing results and relevant questionnaire responses on facility operations (*e.g.,* stack parameters, stack locations) as well as estimates for sources not currently operating.

### *D. What other relevant background information and data were available?*

1. Noncategory Emissions

The 2017 National Emission Inventory (NEI)/Emission Inventory System (EIS) data were used to estimate some emissions for the noncategory sources at coke facilities, such as CBRPs, excess coke oven gas flares, and other miscellaneous units not related to coke manufacturing (*e.g.,* process heaters, metal finishing, steel pickling, annealing furnaces, reheat furnaces, thermal coal dryers, etc.). Other emissions, such as number of leaking doors, lids, and offtakes and emissions from charging, which are regulated under Coke Oven Batteries NESHAP, were obtained from CAA section 114 request responses obtained in 2016 and 2022.

2. Emissions From CBRP

The emissions from operations at the CBRP are sources of HAP at ByP facilities, which are regulated by the Benzene NESHAP for Coke By-Product Recovery Plants in 40 CFR part 61. We intend to list CBRP operations (as we are calling the co-located plants at coke ByP facilities) that currently are addressed under the Benzene NESHAP in 40 CFR part 61, as a source category under CAA section 112(c)(5). We request additional information on the individual HAP emitted, the process units that are the source(s) of the HAP emissions, and the estimated amount of HAP emissions, if known, by these CBRP activities. Once we have this information, we will be in a better position to finalize the decision to list and to identify the appropriate scope of the source category to be listed. Details on the currently available estimates of CBRP emissions are located in the document: *Coke Ovens Risk and Technology Review: Data Summary,*[4] hereafter referred to as the ''Data Memorandum,'' available in the docket for this proposed rulemaking.

## III. Analytical Procedures and Decision-Making

In this section, we describe the analyses performed to support the proposed decisions for the RTR and other issues addressed in this proposal.

### *A. How do we consider risk in our decision-making?*

As discussed in section II.A. of this preamble and in the Benzene NESHAP, in evaluating and developing standards under CAA section 112(f)(2), we apply a two-step approach to determine whether or not risks are acceptable and to determine if the standards provide an ample margin of safety to protect public health. As explained in the Benzene NESHAP, ''the first step judgment on acceptability cannot be reduced to any single factor'' and, thus, ''[t]he Administrator believes that the acceptability of risk under [CAA] section 112 is best judged on the basis of a broad set of health risk measures and information.'' (54 FR 38046). Similarly, with regard to the ample margin of safety determination, ''the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.'' *Id.*

The Benzene NESHAP approach provides flexibility regarding factors the EPA may consider in making determinations and how the EPA may weigh those factors for each source category. The EPA conducts a risk assessment that provides estimates of the MIR posed by emissions of HAP that are carcinogens from each source in the source category, the hazard index (HI) for chronic exposures to HAP with the potential to cause noncancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause noncancer health effects.[5] The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The scope of the EPA's risk analysis is consistent with the explanation in EPA's response to comments on our policy under the Benzene NESHAP. That policy, chosen by the Administrator, permits the EPA to consider multiple measures of health risk. Not only can the MIR be considered, but also cancer incidence, the presence of noncancer health effects, and uncertainties of the risk estimates. This allows the effect on the most exposed individuals to be reviewed as well as the impact on the general public. The various factors can then be weighed in each individual case. This approach complies with the *Vinyl Chloride* mandate that the Administrator determine an acceptable level of risk to the public by employing his or her expertise to assess available data. It also complies with Congressional intent behind the CAA, which did not exclude use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in his or her judgment,

[4] *Coke Ovens Risk and Technology Review, Data Summary.* D.L. Jones, U.S. Environmental Protection Agency and G.E. Raymond, RTI International. U.S. Environmental Protection Agency, Research Triangle Park, North Carolina. May 1, 2023. Docket ID Nos. EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051.

[5] The MIR is defined as the cancer risk associated with a lifetime of exposure at the highest concentration of HAP where people are likely to live. The HQ is the ratio of the potential HAP exposure concentration to the noncancer dose-response value; the HI is the sum of HQs for HAP that affect the same target organ or organ system.

believes are appropriate to determining what will ''protect the public health. (54 FR 38057). Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risk. The Benzene NESHAP explained that ''an MIR of approximately one in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes an MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors.'' *Id.* at 38045. In other words, risks that include an MIR above 100-in-1 million may be determined to be acceptable, and risks with an MIR below that level may be determined to be unacceptable, depending on all of the available health information. Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that: ''EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category.'' *Id.* at 38061. We also consider the uncertainties associated with the various risk analyses, as discussed earlier in this preamble, in our determinations of acceptability and ample margin of safety.

The EPA notes that it has not considered certain health information to date in making residual risk determinations. At this time, we do not attempt to quantify the HAP risk that may be associated with emissions from other facilities that do not include the source categories under review, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in the categories.

The EPA understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. We recognize that such consideration may be particularly important when assessing noncancer risk, where pollutant-specific exposure health reference levels (*e.g.,* reference concentrations (RfCs)) are based on the assumption that thresholds exist for adverse health effects. For example, the EPA recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse noncancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.,* other facilities) to which an individual is exposed may be sufficient to result in an increased risk of adverse noncancer health effects. In May 2010, the Science Advisory Board (SAB) advised the EPA ''that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area.'' [6]

In response to the SAB recommendations, the EPA incorporates cumulative risk analyses into its RTR risk assessments. The Agency (1) conducts facility-wide assessments, which include source category emission points, as well as other emission points within the facilities; (2) combines exposures from multiple sources in the same category that could affect the same individuals; and (3) for some persistent and bioaccumulative pollutants, analyzes the ingestion route of exposure. In addition, the RTR risk assessments consider aggregate cancer risk from all carcinogens and aggregated noncancer HQs for all noncarcinogens affecting the same target organ or target organ system.

Although we are interested in placing source category and facility-wide HAP risk in the context of total HAP risk from all sources combined in the vicinity of each source, we note there are uncertainties of doing so. Estimates of total HAP risk from emission sources other than those that we have studied in depth during this RTR review would have significantly greater associated uncertainties than the source category or facility-wide estimates.

### *B. How do we perform the technology review?*

Our technology review primarily focuses on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards were promulgated. Where we identify such developments, we analyze their technical feasibility, estimated costs, energy implications, and nonair environmental impacts. We also consider the emission reductions associated with applying each development. This analysis informs our decision of whether it is ''necessary'' to revise the emissions standards. In addition, we consider the appropriateness of applying controls to new sources versus retrofitting existing sources. For this exercise, we consider any of the following to be a ''development'':

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In addition to reviewing the practices, processes, and control technologies that were considered at the time we originally developed or last updated the NESHAP, we review a variety of data sources in our investigation of potential practices, processes, or controls. We also review the NESHAP and the available data to determine if there are any unregulated emissions of HAP within the source categories and evaluate this data for use in developing new emission standards. See sections II.C. and II.D. of this preamble for information on the specific data sources that were reviewed as part of the technology review.

### *C. How do we estimate post-MACT risk posed by the coke ovens: pushing, quenching, and battery stacks source category?*

In this section, we provide a complete description of the types of analyses that we generally perform during the risk assessment process. In some cases, we do not perform a specific analysis because it is not relevant. For example, in the absence of emissions of HAP known to be persistent and

[6] Recommendations of the SAB Risk and Technology Review Methods Panel are provided in their report, which is available at: *https://www.epa.gov/sites/default/files/2021-02/documents/epa-sab-10-007-unsigned.pdf.*

bioaccumulative in the environment (PB–HAP), we would not perform a multipathway exposure assessment. Where we do not perform an analysis, we state that we do not and provide the reason. While we present all of our risk assessment methods, we only present risk assessment results for the analyses actually conducted (see section IV.B. of this preamble).

The EPA conducts a risk assessment that provides estimates of the MIR for cancer posed by the HAP emissions from each source in the source category, the HI for chronic exposures to HAP with the potential to cause noncancer health effects, and the HQ for acute exposures to HAP with the potential to cause noncancer health effects. The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The eight sections that follow this paragraph describe how we estimated emissions and conducted the risk assessment. The docket for this rulemaking contains the following document which provides more information on the risk assessment inputs and models: *Residual Risk Assessment for the Coke Ovens: Pushing, Quenching, and Battery Stacks Source Category in Support of the 2023 Risk and Technology Review Proposed Rule.*[7] The methods used to assess risk (as described in the eight primary steps below) are consistent with those described by the EPA in the document reviewed by a panel of the EPA's SAB in 2009; [8] and described in the SAB review report issued in 2010. They are also consistent with the key recommendations contained in that report.

1. How did we estimate actual emissions and identify the emissions release characteristics?

The Coke Ovens: Pushing, Quenching, and Battery Stacks source category emits HAP from pushing of coke out of ovens, ByP battery (combustion) stacks, HNR HRSG control device main stacks, and quench towers; and volatile and particulate COE from HNR HRSG bypass/waste heat stacks. Emissions estimates and release characteristics for HAP and COE from the above affected sources at current coke facilities were derived from stack test data obtained through the 2016 and 2022 CAA section 114 requests. The derivation of actual emissions estimates and release characteristics for the emission points are described in the Data Memoradum,[4] which is available in the docket for this proposed rulemaking.

The affected sources of the Coke Oven Battery NESHAP include COE leaks from oven doors, charging port lids, and offtakes; charging control device HAP emissions; and visible fugitive emissions from charging. Emissions estimates for leaks were derived from EPA Method 303 data submitted as part of the CAA section 114 requests (with estimates for door leak emissions derived using an equation described in section IV.D.6. of this preamble). Emissions estimates and release characteristics for HAP from charging control devices were derived from stack test data obtained through the CAA section 114 requests. The derivation of all actual emissions estimates and release characteristics for sources subject to the Coke Oven Battery NESHAP are discussed in more detail in the Data Memorandum,[4] available in the docket for this proposed rulemaking.

2. How did we estimate MACT-allowable emissions?

The available emissions data in the RTR emissions dataset include estimates of the mass of HAP emitted during a specified annual time period. These ''actual'' emission levels are often lower than the emission levels allowed under the requirements of the current MACT standards. The emissions allowed under the MACT standards are referred to as the ''MACT-allowable'' emissions. We discussed the consideration of both MACT-allowable and actual emissions in the final Coke Oven Batteries RTR (70 FR 19992, 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP RTR (71 FR 34421, 34428, June 14, 2006, and 71 FR 76603, 76609, December 21, 2006, respectively). In those actions, we noted that assessing the risk at the MACT-allowable level is inherently reasonable since that risk reflects the maximum level facilities could emit and still comply with national emission standards. We also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP approach. (54 FR 38044.)

For pushing, the PM limits in the Coke Ovens: Pushing, Quenching, and Battery Stacks NESHAP were used along with measured HAP and PM data from the 2016 CAA section 114 request for pushing operations to estimate allowable HAP emissions. The ratio of allowable PM based on the standards to actual PM was multiplied by HAP emissions measured in the 2016 CAA section 114 request to estimate allowable HAP emissions. For battery stacks, the ratio of the opacity limits to opacity data from the 2016 CAA section 114 request was used with HAP test data from battery stacks from the 2016 CAA section 114 request to develop allowable HAP emissions for battery stacks. The ratios of the quench tower water limit for total dissolved solids (TDS) to water TDS test data from the 2016 CAA section 114 request were used along with test data for HAP air emissions from the 2016 CAA section 114 request for the quench tower to estimate allowable HAP air emissions from the quench tower. For HAP from HRSG main control device stacks and COE from HRSG bypass/waste heat stacks, allowable emissions were set equal to actual emissions, developed from 2016 and 2022 CAA section 114 test request data because the Coke Ovens: Pushing, Quenching, and Battery Stacks NESHAP currently does not have emission limits for these sources.

For sources subject to the Coke Oven Batteries NESHAP, the limits for COE from doors, lids, offtakes, and charging were used with 2016 and 2022 CAA section 114 request operating data to estimate allowable emissions from these emission points.

Further details regarding the development of allowable emissions estimates using data from source test reports and other parts of the 2016 and 2022 CAA section 114 request responses are provided in the Data Memorandum[4] available in the docket for this proposed rulemaking.

3. How do we conduct dispersion modeling, determine inhalation exposures, and estimate individual and population inhalation risk?

Both long-term and short-term inhalation exposure concentrations and health risk from the source category addressed in this proposal were estimated using the Human Exposure Model (HEM).[9] The HEM performs three primary risk assessment activities: (1) conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to

[7] *Coke Ovens: Pushing, Quenching, and Battery Stacks Source Category in Support of the 2023 Risk and Technology Review Proposed Rule.* M. Moeller. U.S. Environmental Protection Agency, Research Triangle Park, North Carolina. May 1, 2023. Docket ID No. EPA–HQ–OAR–2002–0085).

[8] *U.S. EPA. Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing.* EPA–452/R–09–006. June 2009. *https://www3.epa.gov/airtoxics/rrisk/rtrpg.html.*

[9] For more information about HEM, go to *https://www.epa.gov/fera/risk-assessment-and-modeling-human-exposure-model-hem.*

individuals residing within 50 kilometers (km) of the modeled sources, and (3) estimating individual and population-level inhalation risk using the exposure estimates and quantitative dose-response information.

a. Dispersion Modeling

The air dispersion model AERMOD, used by the HEM model, is one of the EPA's preferred models for assessing air pollutant concentrations from industrial facilities.[10] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year (2019) of hourly surface and upper air observations from 838 meteorological stations selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block[11] internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2010). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant-specific dose-response values is used to estimate health risk. These are discussed below.

b. Risk From Chronic Exposure to HAP

In developing the risk assessment for chronic exposures, we use the estimated annual average ambient air concentrations of each HAP emitted by each source in the source category. The HAP air concentrations at each nearby census block centroid located within 50 km of the facility are a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. A distance of 50 km is consistent with the limitations of Gaussian dispersion models, including AERMOD.

For each facility, we calculate the MIR as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, 52 weeks per year, 70 years) exposure to the maximum concentration at the centroid of each inhabited census block. We calculate individual cancer risk by multiplying the estimated lifetime exposure to the ambient concentration of each HAP (in micrograms per cubic meter ($\mu g/m^3$) by its unit risk estimate (URE). The URE is an upper-bound estimate of an individual's incremental risk of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, we generally use UREs from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) UREs, where available. In cases where new, scientifically credible dose-response values have been developed in a manner consistent with EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate. The pollutant-specific dose-response values used to estimate health risk are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

To estimate individual lifetime cancer risks associated with exposure to HAP emissions from each facility in the source category, we sum the risks for each of the carcinogenic HAP[12] emitted by the modeled facility. We estimate cancer risk at every census block within 50 km of every facility in the source category. The MIR is the highest individual lifetime cancer risk estimated for any of those census blocks. In addition to calculating the MIR, we estimate the distribution of individual cancer risks for the source category by summing the number of individuals within 50 km of the sources whose estimated risk falls within a specified risk range. We also estimate annual cancer incidence by multiplying the estimated lifetime cancer risk at each census block by the number of people residing in that block, summing results for all of the census blocks, and then dividing this result by a 70-year lifetime.

To assess the risk of noncancer health effects from chronic exposure to HAP, we calculate either an HQ or a target organ-specific hazard index (TOSHI). We calculate an HQ when a single noncancer HAP is emitted. Where more than one noncancer HAP is emitted, we sum the HQ for each of the HAP that affects a common target organ or target organ system to obtain a TOSHI. The HQ is the estimated exposure divided by the chronic noncancer dose-response value, which is a value selected from one of several sources. The preferred chronic noncancer dose-response value is the EPA RfC, defined as ''an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime'' (*https://iaspub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&vocabName=IRIS%20Glossary*). In cases where an RfC from the EPA's IRIS is not available or where the EPA determines that using a value other than the RfC is appropriate, the chronic noncancer dose-response value can be a value from the following prioritized sources, which define their dose-response values similarly to the EPA: (1) the Agency for Toxic Substances and Disease Registry (ATSDR) Minimum Risk Level (*https://www.atsdr.cdc.gov/mrls/index.asp*); (2) the CalEPA Chronic Reference Exposure Level (REL) (*https://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0*); or (3) as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that

[10] U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[11] A census block is the smallest geographic area for which census statistics are tabulated.

[12] The EPA's 2005 *Guidelines for Carcinogen Risk Assessment* classifies carcinogens as: ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' and ''suggestive evidence of carcinogenic potential.'' These classifications also coincide with the terms ''known carcinogen, probable carcinogen, and possible carcinogen,'' respectively, which are the terms advocated in the EPA's *Guidelines for Carcinogen Risk Assessment,* published in 1986 (51 FR 33992, September 24, 1986). In August 2000, the document, *Supplemental Guidance for Conducting Health Risk Assessment of Chemical Mixtures* (EPA/630/R–00/002), was published as a supplement to the 1986 document. Copies of both documents can be obtained from *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=20533&CFID=70315376&CFTOKEN=71597944.* Summing the risk of these individual compounds to obtain the cumulative cancer risk is an approach that was recommended by the EPA's SAB in their 2002 peer review of the EPA's National Air Toxics Assessment (NATA) titled *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory,* available at *https://nepis.epa.gov/Exe/ZyNET.exe/P100JOEY.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2000+Thru+2005&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C00thru05%5CTxt%5C00000033%5CP100JOEY.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL.*

used by the EPA. The pollutant-specific dose-response values used to estimate health risks are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

c. Risk From Acute Exposure to HAP That May Cause Health Effects Other Than Cancer

For each HAP for which appropriate acute inhalation dose-response values are available, the EPA also assesses the potential health risks due to acute exposure. For these assessments, the EPA makes conservative assumptions about emission rates, meteorology, and exposure location. As part of our efforts to continually improve our methodologies to evaluate the risks that HAP emitted from categories of industrial sources pose to human health and the environment,[13] we revised our treatment of meteorological data to use reasonable worst-case air dispersion conditions in our acute risk screening assessments instead of worst-case air dispersion conditions. This revised treatment of meteorological data and the supporting rationale are described in more detail in *Residual Risk Assessment for Coke Ovens: Pushing, Quenching, and Battery Stacks Source Category in Support of the 2023 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment.* This revised approach has been used in this proposed rule and in all other RTR rulemakings proposed on or after June 3, 2019.

To assess the potential acute risk to the maximally exposed individual, we use the peak hourly emission rate for each emission point,[14] reasonable worst-case air dispersion conditions (*i.e.,* 99th percentile), and the point of highest off-site exposure. Specifically, we assume that peak emissions from the source category and reasonable worst-case air dispersion conditions co-occur and that a person is present at the point of maximum exposure.

To characterize the potential health risks associated with estimated acute inhalation exposures to a HAP, we generally use multiple acute dose-response values, including acute RELs, acute exposure guideline levels (AEGLs), and emergency response planning guidelines (ERPG) for 1-hour exposure durations, if available, to calculate acute HQs. The acute HQ is calculated by dividing the estimated acute exposure concentration by the acute dose-response value. For each HAP for which acute dose-response values are available, the EPA calculates acute HQs.

An acute REL is defined as ''the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration.'' [15] Acute RELs are based on the most sensitive, relevant, adverse health effect reported in the peer-reviewed medical and toxicological literature. They are designed to protect the most sensitive individuals in the population through the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact. AEGLs represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to 8 hours.[16] They are guideline levels for ''once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.'' *Id.* at 21. The AEGL–1 is specifically defined as ''the airborne concentration (expressed as ppm (parts per million) or mg/m$^3$ (milligrams per cubic meter)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.'' The document also notes that ''Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects.'' *Id.* AEGL–2 are defined as ''the airborne concentration (expressed as ppm or mg/m$^3$) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.'' *Id.*

ERPGs are developed, by the American Industrial Hygiene Association (AIHA), for emergency planning and are intended to be health-based guideline concentrations for single exposures to chemicals. The ERPG–1 is the maximum airborne concentration, established by AIHI below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor. Similarly, the ERPG–2 is the maximum airborne concentration, established by AIHA, below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.

An acute REL for 1-hour exposure durations is typically lower than its corresponding AEGL–1 and ERPG–1. Even though their definitions are slightly different, AEGL–1s are often the same as the corresponding ERPG–1s, and AEGL–2s are often equal to ERPG–2s. The maximum HQs from our acute inhalation screening risk assessment typically result when we use the acute REL for a HAP. In cases where the maximum acute HQ exceeds 1, we also report the HQ based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1).

For these source categories, a factor of 2 was applied to actual emissions to calculate the acute emissions. Coke oven charging, pushing, and quenching operations maintain largely consistent hour-to-hour pushing rates because plants are constrained by oven capacity, coking temperatures, coking times, and plant design/equipment. Coke plants may have small deviations in short-term emission rates from annual average emission rates. An analysis of hourly pushing records at five coke plants showed that the hourly pushing rate

[13] See, *e.g.,* U.S. EPA. *Screening Methodologies to Support Risk and Technology Reviews (RTR): A Case Study Analysis* (Draft Report, May 2017. *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html*).

[14] In the absence of hourly emission data, we develop estimates of maximum hourly emission rates by multiplying the average actual annual emissions rates by a factor (either a category-specific factor or a default factor of 10) to account for variability. This is documented in *Residual Risk Assessment for Coke Ovens: Pushing, Quenching, and Battery Stacks in Support of the 2023 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment.* Both are available in the docket for this rulemaking.

[15] CalEPA issues acute RELs as part of its Air Toxics Hot Spots Program, and the 1-hour and 8-hour values are documented in *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants,* which is available at *https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.*

[16] National Academy of Sciences, 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals,* page 2. Available at *https://www.epa.gov/sites/production/files/2015-09/documents/sop_final_standing_operating_procedures_2001.pdf.* Note that the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances ended in October 2011, but the AEGL program continues to operate at the EPA and works with the National Academies to publish final AEGLs (*https://www.epa.gov/aegl*).

does not deviate significantly from the annual average pushing rate, with multipliers ranging from 1.26 to 2.06.[17] Acute levels of HAP emissions from other coke emission sources are thought to mirror the pushing emissions based on a reasonable expectation that those levels would mirror the acute levels estimated for pushing operations; therefore, an acute factor of two was used for all sources at coke facilities. A further discussion of why this factor was chosen can be found in the Data Memorandum,[4] located in the docket for the rule. We request comments on the validity of the assumption of two for an acute factor.

In our acute inhalation screening risk assessment, acute impacts are deemed negligible for HAP for which acute HQs are less than or equal to 1, and no further analysis is performed for these HAP. In cases where an acute HQ from the screening step is greater than 1, we assess the site-specific data to ensure that the acute HQ is at an off-site location.

4. How do we conduct the multipathway exposure and risk screening assessment?

The EPA conducts a tiered screening assessment examining the potential for significant human health risks due to exposures via routes other than inhalation (*i.e.,* ingestion). We first determine whether any sources in the source categories emit any HAP known to be persistent and bioaccumulative in the environment, as identified in the EPA's Air Toxics Risk Assessment Library (see Volume 1, Appendix D, at *https://www.epa.gov/fera/risk-assessment-and-modeling-air-toxics-risk-assessment-reference-library*).

*For the Coke Ovens:* Pushing, Quenching, and Battery Stacks source category, we identified PB–HAP emissions of arsenic, cadmium, dioxin, lead, mercury and POMs (polycyclic organic matter), so we proceeded to the next step of the evaluation. Except for lead, the human health risk screening assessment for PB–HAP consists of three progressive tiers. In a Tier 1 screening assessment, we determine whether the magnitude of the facility-specific emissions of PB–HAP warrants further evaluation to characterize human health risk through ingestion exposure. To facilitate this step, we evaluate emissions against previously developed screening threshold emission rates for several PB–HAP that are based on a hypothetical upper-end screening exposure scenario developed for use in conjunction with the EPA's Total Risk Integrated Methodology. Fate, Transport, and Ecological Exposure (TRIM.FaTE) model. The PB–HAP with screening threshold emission rates are arsenic compounds, cadmium compounds, chlorinated dibenzodioxins and furans, mercury compounds, and POM. Based on the EPA estimates of toxicity and bioaccumulation potential, these pollutants represent a conservative list for inclusion in multipathway risk assessments for RTR rules. (See Volume 1, Appendix D at *https://www.epa.gov/sites/production/files/2013-08/documents/volume_1_reflibrary.pdf*.) In this assessment, we compare the facility-specific emission rates of these PB–HAP to the screening threshold emission rates for each PB–HAP to assess the potential for significant human health risks via the ingestion pathway. We call this application of the TRIM.FaTE model the Tier 1 screening assessment. The ratio of a facility's actual emission rate to the Tier 1 screening threshold emission rate is a ''screening value.''

We derive the Tier 1 screening threshold emission rates for these PB–HAP (other than lead compounds) to correspond to a maximum excess lifetime cancer risk of 1-in-1 million (*i.e.,* for arsenic compounds, polychlorinated dibenzodioxins and furans, and POM) or, for HAP that cause noncancer health effects (*i.e.,* cadmium compounds and mercury compounds), a maximum HQ of 1. If the emission rate of any one PB–HAP or combination of carcinogenic PB–HAP in the Tier 1 screening assessment exceeds the Tier 1 screening threshold emission rate for any facility (*i.e.,* the screening value is greater than 1), we conduct a second screening assessment, which we call the Tier 2 screening assessment. The Tier 2 screening assessment separates the Tier 1 combined fisher and farmer exposure scenario into fisher, farmer, and gardener scenarios that retain upper-bound ingestion rates.

In the Tier 2 screening assessment, the location of each facility that exceeds a Tier 1 screening threshold emission rate is used to refine the assumptions associated with the Tier 1 fisher and farmer exposure scenarios at that facility. A key assumption in the Tier 1 screening assessment is that a lake and/or farm is located near the facility. As part of the Tier 2 screening assessment, we use a U.S. Geological Survey (USGS) database to identify actual waterbodies within 50 km of each facility and assume the fisher only consumes fish from lakes within that 50 km zone. We also examine the differences between local meteorology near the facility and the meteorology used in the Tier 1 screening assessment. We then adjust the previously-developed Tier 1 screening threshold emission rates for each PB–HAP for each facility based on an understanding of how exposure concentrations estimated for the screening scenario change with the use of local meteorology and the USGS lakes database.

In the Tier 2 farmer scenario, we maintain an assumption that the farm is located within 0.5 km of the facility and that the farmer consumes meat, eggs, dairy, vegetables, and fruit produced near the facility. We may further refine the Tier 2 screening analysis by assessing a gardener scenario to characterize a range of exposures, with the gardener scenario being more plausible in RTR evaluations. Under the gardener scenario, we assume the gardener consumes home-produced eggs, vegetables, and fruit products at the same ingestion rate as the farmer. The Tier 2 screen continues to rely on the high-end food intake assumptions that were applied in Tier 1 for local fish (adult female angler at 99th percentile fish consumption)[18] and locally grown or raised foods (90th percentile consumption of locally grown or raised foods for the farmer and gardener scenarios).[19] If PB–HAP emission rates do not result in a Tier 2 screening value greater than 1, we consider those PB–HAP emissions to pose risks below a level of concern. If the PB–HAP emission rates for a facility exceed the Tier 2 screening threshold emission rates, we may conduct a Tier 3 screening assessment.

There are several analyses that can be included in a Tier 3 screening assessment, depending upon the extent of refinement warranted, including validating that the lakes are fishable, locating residential/garden locations for urban and/or rural settings, considering plume-rise to estimate emissions lost above the mixing layer, and considering hourly effects of meteorology and plume-rise on chemical fate and transport (a time-series analysis). If necessary, the EPA may further refine the screening assessment through a site-specific assessment.

[17] Personal communication (email). A.C. Dittenhoefer, Coke Oven Environmental Task Force (COETF) of the American Coke and Coal Chemicals Institute, with D.L. Jones, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina. August 31, 2020.

[18] Burger, J. 2002. *Daily consumption of wild fish and game: Exposures of high end recreationists. International Journal of Environmental Health Research,* 12:343–354.

[19] U.S. EPA. *Exposure Factors Handbook 2011 Edition (Final).* U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–09/052F, 2011.

In evaluating the potential multipathway risk from emissions of lead compounds, rather than developing a screening threshold emission rate, we compare maximum estimated chronic inhalation exposure concentrations to the level of the current National Ambient Air Quality Standard (NAAQS) for lead.[20] Values below the level of the primary (health-based) lead NAAQS are considered to have a low potential for multipathway risk.

For further information on the multipathway assessment approach, see the *Residual Risk Assessment for the Coke Ovens: Pushing, Quenching, and Battery Stacks Source Category in Support of the 2023 Risk and Technology Review Proposed Rule* available in the docket for this action.

5. How do we conduct the environmental risk screening assessment?

a. Adverse Environmental Effect, Environmental HAP, and Ecological Benchmarks

The EPA conducts a screening assessment to examine the potential for an adverse environmental effect as required under section 112(f)(2)(A) of the CAA. Section 112(a)(7) of the CAA defines ''adverse environmental effect'' as ''any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.''

The EPA focuses on eight HAP, which are referred to as ''environmental HAP,'' in its screening assessment: six PB–HAP and two acid gases. The PB–HAP included in the screening assessment are arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. The acid gases included in the screening assessment are hydrochloric acid (HCl) and hydrogen fluoride (HF).

The HAP that persist and bioaccumulate are of particular environmental concern because they accumulate in the soil, sediment, and water. The acid gases, HCl and HF, are included due to their well-documented potential to cause direct damage to terrestrial plants. In the environmental risk screening assessment, we evaluate the following four exposure media: terrestrial soils, surface water bodies (includes water-column and benthic sediments), fish consumed by wildlife, and air. Within these four exposure media, we evaluate nine ecological assessment endpoints, which are defined by the ecological entity and its attributes. For PB–HAP (other than lead), both community-level and population-level endpoints are included. For acid gases, the ecological assessment evaluated is terrestrial plant communities.

An ecological benchmark represents a concentration of HAP that has been linked to a particular environmental effect level. For each environmental HAP, we identified the available ecological benchmarks for each assessment endpoint. We identified, where possible, ecological benchmarks at the following effect levels: probable effect levels, lowest-observed-adverse-effect level, and no-observed-adverse-effect level. In cases where multiple effect levels were available for a particular PB–HAP and assessment endpoint, we use all of the available effect levels to help us to determine whether ecological risks exist and, if so, whether the risks could be considered significant and widespread.

For further information on how the environmental risk screening assessment was conducted, including a discussion of the risk metrics used, how the environmental HAP were identified, and how the ecological benchmarks were selected, see Appendix 9 of the *Residual Risk Assessment for the Coke Ovens: Pushing, Quenching, and Battery Stacks Source Category in Support of the 2023 Risk and Technology Review Proposed Rule* available in the docket for this action.

b. Environmental Risk Screening Methodology

For the environmental risk screening assessment, the EPA first determined whether any facilities in the Coke Ovens: Pushing, Quenching, and Battery Stacks source category emitted any of the environmental HAP. For the Coke Ovens: Pushing, Quenching, and Battery Stacks source category, we identified emissions of arsenic, cadmium, dioxin, HCl, HF, lead, mercury (methyl mercury and divalent mercury), and POMs. Because one or more of these environmental HAP are emitted by at least one facility in the source category, we proceeded to the second step of the evaluation for the source category.

c. PB–HAP Methodology

The environmental screening assessment includes six PB–HAP, arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. With the exception of lead, the environmental risk screening assessment for PB–HAP consists of three tiers. The first tier of the environmental risk screening assessment uses the same health-protective conceptual model that is used for the Tier 1 human health screening assessment. TRIM.FaTE model simulations were used to back-calculate Tier 1 screening threshold emission rates. The screening threshold emission rates represent the emission rate in tons of pollutant per year that results in media concentrations at the facility that equal the relevant ecological benchmark. To assess emissions from each facility in the category, the reported emission rate for each PB–HAP was compared to the Tier 1 screening threshold emission rate for that PB–HAP for each assessment endpoint and effect level. If emissions from a facility do not exceed the Tier 1 screening threshold emission rate, the facility ''passes'' the screening assessment, and, therefore, is not evaluated further under the screening approach. If emissions from a facility exceed the Tier 1 screening threshold emission rate, we evaluate the facility further in Tier 2.

In Tier 2 of the environmental screening assessment, the screening threshold emission rates are adjusted to account for local meteorology and the actual location of lakes in the vicinity of facilities that did not pass the Tier 1 screening assessment. For soils, we evaluate the average soil concentration for all soil parcels within a 7.5 km-radius for each facility and PB–HAP. For the water, sediment, and fish tissue concentrations, the highest value for each facility for each pollutant is used. If emission concentrations from a facility do not exceed the Tier 2 screening threshold emission rate, the facility ''passes'' the screening assessment and typically is not evaluated further. If emissions from a facility exceed the Tier 2 screening threshold emission rate, we evaluate the facility further in Tier 3.

As in the multipathway human health risk assessment, in Tier 3 of the

[20] In doing so, the EPA notes that the legal standard for a primary NAAQS—that a standard is requisite to protect public health and provide an adequate margin of safety (CAA section 109(b))—differs from the CAA section 112(f) standard (requiring, among other things, that the standard provide an ''ample margin of safety to protect public health''). However, the primary lead NAAQS is a reasonable measure of determining risk acceptability (*i.e.,* the first step of the Benzene NESHAP analysis) since it is designed to protect the most susceptible group in the human population—children, including children living near major lead emitting sources. 73 FR 67002/3; 73 FR 67000/3; 73 FR 67005/1. In addition, applying the level of the primary lead NAAQS at the risk acceptability step is conservative since that primary lead NAAQS reflects an adequate margin of safety.

environmental screening assessment, we examine the suitability of the lakes around the facilities to support life and remove those that are not suitable (*e.g.,* lakes that have been filled in or are industrial ponds), adjust emissions for plume-rise, and conduct hour-by-hour time-series assessments. If these Tier 3 adjustments to the screening threshold emission rates still indicate the potential for an adverse environmental effect (*i.e.,* facility emission rate exceeds the screening threshold emission rate), we may elect to conduct a more refined assessment using more site-specific information. If, after additional refinement, the facility emission rate still exceeds the screening threshold emission rate, the facility may have the potential to cause an adverse environmental effect.

To evaluate the potential for an adverse environmental effect from lead, we compared the average modeled air concentrations (from HEM) of lead around each facility in the source category to the level of the secondary NAAQS for lead. The secondary lead NAAQS is a reasonable means of evaluating environmental risk because it is set to provide substantial protection against adverse welfare effects which can include ''effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

d. Acid Gas Environmental Risk Methodology

The environmental screening assessment for acid gases evaluates the potential phytotoxicity and reduced productivity of plants due to chronic exposure to HF and HCl. The environmental risk screening methodology for acid gases is a single-tier screening assessment that compares modeled ambient air concentrations (from AERMOD) to the ecological benchmarks for each acid gas. To identify a potential adverse environmental effect (as defined in section 112(a)(7) of the CAA) from emissions of HF and HCl, we evaluate the following metrics: the size of the modeled area around each facility that exceeds the ecological benchmark for each acid gas, in acres and square kilometers; the percentage of the modeled area around each facility that exceeds the ecological benchmark for each acid gas; and the area-weighted average screening value around each facility (calculated by dividing the area-weighted average concentration over the 50 km-modeling domain by the ecological benchmark for each acid gas). For further information on the environmental screening assessment approach, see Appendix 9 of the *Residual Risk Assessment for the Coke Ovens: Pushing, Quenching, and Battery Stacks Source Category in Support of the 2023 Risk and Technology Review Proposed Rule* available in the docket for this action.

6. How do we conduct facility-wide assessments?

To put the source category risks in context, we typically examine the risks from the entire ''facility,'' where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, we examine the HAP emissions not only from the source category emission points of interest, but also emissions of HAP from all other emission sources at the facility for which we have data. For this source category, we conducted the facility-wide assessment using a dataset compiled from CAA section 114 request data from 2016 and 2022, as well as from the 2017 NEI. The source category data were evaluated as described in section II.C. of this preamble: *What data collection activities were conducted to support this action?* Once a quality-assured source category dataset was available, the facility-wide file was then used to analyze risks due to the inhalation of HAP that are emitted ''facility-wide'' for the populations residing within 50 km of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, the modeled source category risks were compared to the facility-wide risks to determine the portion of the facility-wide risks that could be attributed to the source category addressed in this risk assessment. We also specifically examined the facility that was associated with the highest estimate of risk and determined the percentage of that risk attributable to the source category of interest. The *Residual Risk Assessment for the Coke Ovens: Pushing, Quenching, and Battery Stack Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* available through the docket for this action, provides the methodology and results of the facility-wide analyses, including all facility-wide risks and the percentage of source category contribution to facility-wide risks.

7. How do we conduct community-based risk assessments?

In addition to the source category and facility-wide risk assessments, we also assessed the combined inhalation cancer risk from all local stationary sources of HAP for which we have emissions data. Specifically, we combined the modeled impacts from the facility-wide assessment (which includes category and non-category sources) with other nearby stationary point source model results. The facility-wide emissions used in this assessment are discussed in section II.C. of this preamble. For the other nearby point sources, we used AERMOD model results with emissions based primarily on the 2018 NEI. After combining these model results, we assessed cancer risks due to the inhalation of all HAP emitted by point sources for the populations residing within 10 km of coke oven facilities. In the community-based risk assessment, the modeled source category and facility-wide cancer risks were compared to the cancer risks from other nearby point sources to determine the portion of the risks that could be attributed to the source category addressed in this proposal. The document titled The *Residual Risk Assessment for the Coke Ovens: Pushing, Quenching, and Battery Stack Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking, provides the methodology and results of the community-based risk analyses.

8. How do we consider uncertainties in risk assessment?

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health and environmentally protective. A brief discussion of the uncertainties in the RTR emissions dataset, dispersion modeling, inhalation exposure estimates, and dose-response relationships follows below. Also included are those uncertainties specific to our acute screening assessments, multipathway screening assessments, and our environmental risk screening assessments. A more thorough discussion of these uncertainties is included in the *Residual Risk Assessment for the Coke Ovens: Pushing, Quenching, and Battery Stacks Source Category in Support of the 2023 Risk and Technology Review Proposed Rule* available in the docket for this action.

a. Uncertainties in the RTR Emissions Dataset

Although the development of the RTR emissions dataset involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors in emission estimates, and other factors. The emission estimates considered in this analysis generally are annual totals for certain years, and they do not reflect short-term fluctuations during the course of a year or variations from year to year. The estimates of peak hourly emission rates for the acute effects screening assessment were based on an emission adjustment factor applied to the average annual hourly emission rates, which are intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

We recognize there is uncertainty in ambient concentration estimates associated with any model, including the EPA's recommended regulatory dispersion model, AERMOD. In using a model to estimate ambient pollutant concentrations, the user chooses certain options to apply. For RTR assessments, we select some model options that have the potential to overestimate ambient air concentrations (*e.g.,* not including plume depletion or pollutant transformation). We select other model options that have the potential to underestimate ambient impacts (*e.g.,* not including building downwash). Other options that we select have the potential to either under- or overestimate ambient levels (*e.g.,* meteorology and receptor locations). On balance, considering the directional nature of the uncertainties commonly present in ambient concentrations estimated by dispersion models, the approach we apply in the RTR assessments should yield unbiased estimates of ambient HAP concentrations. We also note that the selection of meteorology dataset location could have an impact on the risk estimates. As we continue to update and expand our library of meteorological station data used in our risk assessments, we expect to reduce this variability.

c. Uncertainties in Inhalation Exposure Assessment

Although every effort is made to identify all of the relevant facilities and emission points, as well as to develop accurate estimates of the annual emission rates for all relevant HAP, the uncertainties in our emission inventory likely dominate the uncertainties in the exposure assessment. Some uncertainties in our exposure assessment include human mobility, using the centroid of each census block, assuming lifetime exposure, and assuming only outdoor exposures. For most of these factors, there is neither an under nor overestimate when looking at the maximum individual risk or the incidence, but the shape of the distribution of risks may be affected. With respect to outdoor exposures, actual exposures may not be as high if people spend time indoors, especially for very reactive pollutants or larger particles. For all factors, we reduce uncertainty when possible. For example, with respect to census-block centroids, we analyze large blocks using aerial imagery and adjust locations of the block centroids to better represent the population in the blocks. We also add additional receptor locations where the population of a block is not well represented by a single location.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and noncancer effects from both chronic and acute exposures. Some uncertainties are generally expressed quantitatively, and others are generally expressed in qualitative terms. We note, as a preface to this discussion, a point on dose-response uncertainty that is stated in the EPA's *2005 Guidelines for Carcinogen Risk Assessment;* namely, that ''the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective'' (the EPA's *2005 Guidelines for Carcinogen Risk Assessment,* page 1–7). This is the approach followed here as summarized in the next paragraphs.

Cancer UREs used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk.[21] That is, they represent a ''plausible upper limit to the true value of a quantity'' (although this is usually not a true statistical confidence limit). In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[22] Chronic noncancer RfC and reference dose (RfD) values represent chronic exposure levels that are intended to be health-protective levels. To derive dose-response values that are intended to be ''without appreciable risk,'' the methodology relies upon an uncertainty factor (UF) approach,[23] which considers uncertainty, variability, and gaps in the available data. The UFs are applied to derive dose-response values that are intended to protect against appreciable risk of deleterious effects.

Many of the UFs used to account for variability and uncertainty in the development of acute dose-response values are quite similar to those developed for chronic durations. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute dose-response value at another exposure duration (*e.g.,* 1 hour). Not all acute dose-response values are developed for the same purpose, and care must be taken when interpreting the results of an acute assessment of human health effects relative to the dose-response value or values being exceeded. Where relevant to the estimated exposures, the lack of acute dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Uncertainty also exists in the selection of ecological benchmarks for the environmental risk screening assessment. We established a hierarchy of preferred benchmark sources to allow selection of benchmarks for each environmental HAP at each ecological assessment endpoint. We searched for benchmarks for three effect levels (*i.e.,* no-effects level, threshold-effect level, and probable effect level), but not all combinations of ecological assessment/environmental HAP had benchmarks for all three effect levels. Where multiple effect levels were available for a particular HAP and assessment endpoint, we used all of the available effect levels to help us determine whether risk exists and whether the risk

[21] IRIS glossary (*https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary*).

[22] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

[23] See *A Review of the Reference Dose and Reference Concentration Processes,* U.S. EPA, December 2002, and *Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry,* U.S. EPA, 1994.

could be considered significant and widespread.

Although we make every effort to identify appropriate human health effect dose-response values for all pollutants emitted by the sources in this risk assessment, some HAP emitted by the source category are lacking dose-response assessments. Accordingly, these pollutants cannot be included in the quantitative risk assessment, which could result in quantitative estimates understating HAP risk. To help to alleviate this potential underestimate, where we conclude similarity with a HAP for which a dose-response value is available, we use that value as a surrogate for the assessment of the HAP for which no value is available. To the extent use of surrogates indicates appreciable risk, we may identify a need to increase priority for an IRIS assessment for that substance. We additionally note that, generally speaking, HAP of greatest concern due to environmental exposures and hazard are those for which dose-response assessments have been performed, reducing the likelihood of understating risk. Further, HAP not included in the quantitative assessment are assessed qualitatively and considered in the risk characterization that informs the risk management decisions, including consideration of HAP reductions achieved by various control options.

For a group of compounds that are unspeciated (*e.g.,* glycol ethers), we conservatively use the most protective dose-response value of an individual compound in that group to estimate risk. Similarly, for an individual compound in a group (*e.g.,* ethylene glycol diethyl ether) that does not have a specified dose-response value, we also apply the most protective dose-response value from the other compounds in the group to estimate risk.

e. Uncertainties in Acute Inhalation Screening Assessments

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and the presence of a person. In the acute screening assessment that we conduct under the RTR program, we assume that peak emissions from the source category and reasonable worst-case air dispersion conditions (*i.e.,* 99th percentile) co-occur. We then include the additional assumption that a person is located at this point at the same time. Together, these assumptions represent a reasonable worst-case actual exposure scenario. In most cases, it is unlikely that a person would be located at the point of maximum exposure during the time when peak emissions and reasonable worst-case air dispersion conditions occur simultaneously.

f. Uncertainties in the Multipathway and Environmental Risk Screening Assessments

For each source category, we generally rely on site-specific levels of PB–HAP or environmental HAP emissions to determine whether a refined assessment of the impacts from multipathway exposures is necessary or whether it is necessary to perform an environmental screening assessment. This determination is based on the results of a three-tiered screening assessment that relies on the outputs from models—TRIM.FaTE and AERMOD—that estimate environmental pollutant concentrations and human exposures for five PB–HAP (dioxins, POM, mercury, cadmium, and arsenic) and two acid gases (HF and HCl). For lead, we use AERMOD to determine ambient air concentrations, which are then compared to the secondary NAAQS standard for lead. Two important types of uncertainty associated with the use of these models in RTR risk assessments and inherent to any assessment that relies on environmental modeling are model uncertainty and input uncertainty.[24]

Model uncertainty concerns whether the model adequately represents the actual processes (*e.g.,* movement and accumulation) that might occur in the environment. For example, does the model adequately describe the movement of a pollutant through the soil? This type of uncertainty is difficult to quantify. However, based on feedback received from previous EPA SAB reviews and other reviews, we are confident that the models used in the screening assessments are appropriate and state-of-the-art for the multipathway and environmental screening risk assessments conducted in support of RTRs.

Input uncertainty is concerned with how accurately the models have been configured and parameterized for the assessment at hand. For Tier 1 of the multipathway and environmental screening assessments, we configured the models to avoid underestimating exposure and risk. This was accomplished by selecting upper-end values from nationally representative datasets for the more influential parameters in the environmental model, including selection and spatial configuration of the area of interest, lake location and size, meteorology, surface water, soil characteristics, and structure of the aquatic food web. We also assume an ingestion exposure scenario and values for human exposure factors that represent reasonable maximum exposures.

In Tier 2 of the multipathway and environmental screening assessments, we refine the model inputs to account for meteorological patterns in the vicinity of the facility versus using upper-end national values, and we identify the actual location of lakes near the facility rather than the default lake location that we apply in Tier 1. By refining the screening approach in Tier 2 to account for local geographical and meteorological data, we decrease the likelihood that concentrations in environmental media are overestimated, thereby increasing the usefulness of the screening assessment. In Tier 3 of the screening assessments, we refine the model inputs again to account for hour-by-hour plume-rise and the height of the mixing layer. We can also use those hour-by-hour meteorological data in a TRIM.FaTE run using the screening configuration corresponding to the lake location. These refinements produce a more accurate estimate of chemical concentrations in the media of interest, thereby reducing the uncertainty with those estimates. The assumptions and the associated uncertainties regarding the selected ingestion exposure scenario are the same for all three tiers.

For the environmental screening assessment for acid gases, we employ a single-tiered approach. We use the modeled air concentrations and compare those with ecological benchmarks.

For all tiers of the multipathway and environmental screening assessments, our approach to addressing model input uncertainty is generally cautious. We choose model inputs from the upper end of the range of possible values for the influential parameters used in the models, and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure. This approach reduces the likelihood of not identifying high risks for adverse impacts.

Despite the uncertainties, when individual pollutants or facilities do not

[24] In the context of this discussion, the term ''uncertainty'' as it pertains to exposure and risk encompasses both *variability* in the range of expected inputs and screening results due to existing spatial, temporal, and other factors, as well as *uncertainty* in being able to accurately estimate the true result.

exceed screening threshold emission rates (*i.e.,* screen out), we are confident that the potential for adverse multipathway impacts on human health is very low. On the other hand, when individual pollutants or facilities do exceed screening threshold emission rates, it does not mean that impacts are significant, only that we cannot rule out that possibility and that a refined assessment for the site might be necessary to obtain a more accurate risk characterization for the source category.

The EPA evaluates the following HAP in the multipathway and/or environmental risk screening assessments, where applicable: arsenic, cadmium, dioxins/furans, lead, mercury (both inorganic and methyl mercury), POM, HCl, and HF. These HAP represent pollutants that can cause adverse impacts either through direct exposure to HAP in the air or through exposure to HAP that are deposited from the air onto soils and surface waters and then through the environment into the food web. These HAP represent those HAP for which we can conduct a meaningful multipathway or environmental screening risk assessment. For other HAP not included in our screening assessments, the model has not been parameterized such that it can be used for that purpose. In some cases, depending on the HAP, we may not have appropriate multipathway models that allow us to predict the concentration of that pollutant. The EPA acknowledges that other HAP beyond these that we are evaluating may have the potential to cause adverse effects and, therefore, the EPA may evaluate other relevant HAP in the future, as modeling science and resources allow.

## IV. Analytical Results and Proposed Decisions

### *A. What actions are we taking pursuant to CAA sections 112(d)(2) and 112(d)(3)?*

We are proposing the following pursuant to CAA sections 112(d)(2) and (3):[25] MACT standards for acid gases, hydrogen cyanide (HCN), mercury, and polycyclic aromatic hydrocarbons (PAH) from pushing operations for existing and new sources; MACT standards for acid gases, HCN, mercury, and PM (as a surrogate for nonmercury HAP metals[26]) from battery stacks for existing and new sources; and MACT standards for acid gases, mercury, PAH, and PM (as a surrogate for nonmercury HAP metals) from HNR HRSG control device main stacks for existing and new sources.

To determine the proposed MACT standards, we first calculated the MACT floor limits. The MACT floor limits were calculated by ranking the data for each emission point per HAP and determining the top 5 sources with emissions information, as per CAA sections 112(d)(2) and (3) for existing sources and the best performing source for new sources. These sources are referred to as the ''MACT floor pool.'' However, for two of the emissions points, ByP battery combustion and ByP and HNR pushing, we only had data from four facilities, so the MACT floor limits were based on data from the four facilities (except for mercury for pushing, we had data from five facilities); and for two other point sources, HNR Main stack and HNR bypass/waste stacks, we only had data from two facilities, so the MACT floor was based on data from the two facilities for these two emissions points.

The existing and new source MACT floor pool datasets were evaluated statistically to determine the distributions for both existing and new sources, by process type and by HAP. After determining the type of data distribution for the dataset, the upper predictive limit (UPL) was calculated using the corresponding equation for the distribution for that dataset and groupings of emission points. The UPL represents the value which one can expect the mean of a specified number of future observations (*e.g.,* 3-run average) to fall below for the specified level of confidence (99 percent), based upon the results from the same population. The UPL approach encompasses all the data point-to-data point variability in the collected data, as derived from the dataset to which it is applied. The UPL was then compared to 3 times the representative detection limit (RDL) to ensure that data measurement variability is addressed and the higher value used as the MACT limit. The EPA also considered BTF options for each of the HAP emitted from pushing operations, battery stacks and HNR HRSG control device main stacks for existing and new sources. The EPA did not identify any cost-effective BTF options for HAP from these three sources; therefore, the EPA is proposing MACT floor limits for the HAP from pushing, battery stacks and HNR HRSG control device main stacks. For details on the MACT floor limits and BTF options see the memorandum titled *Maximum Achievable Control Technology (MACT) Standard Calculations, MACT Cost Impacts, and Beyond-the-Floor Cost Impacts for Coke Ovens Facilities under 40 CFR part 63, subpart CCCCC*[27] (hereafter referred to as the ''MACT/BTF Memorandum''), located in the docket for the proposed rule (EPA–HQ–OAR–2002–0085). The results and proposed decisions based on the analyses performed pursuant to CAA sections 112(d)(2) and (3) are presented in Table 5.

TABLE 5—PROPOSED MACT STANDARDS FOR UNREGULATED HAP OR SOURCES DEVELOPED UNDER CAA SECTION 112(d)(2) AND (d)(3) FOR THE NESHAP FOR COKE OVENS: PUSHING, QUENCHING, BATTERY STACKS

[Subpart CCCCC]

| Source or process | Pollutant | Type of affected source (new or existing) | |
|---|---|---|---|
| | | Existing | New |
| Pushing | acid gases | 0.0052 lb/ton coke [UPL] | 5.1E–04 lb/ton coke [UPL]. |
| | HCN | 0.0011 lb/ton coke [UPL] | 3.8E–05 lb/ton coke [UPL]. |
| | mercury | 8.9E–07 lb/ton coke [UPL] | 3.4E–07 lb mercury/ton coke [3xRDL]. |

[25] The EPA not only has authority under CAA sections 112(d)(2) and (3) to set MACT standards for previously unregulated HAP emissions at any time, but is required to address any previously unregulated HAP emissions as part of its periodic review of MACT standards under CAA section 112(d)(6). *LEAN* v. *EPA,* 955 F3d at 1091–1099.

[26] Nonmercury HAP metals include the following compounds: antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, nickel, and selenium.

[27] *Maximum Achievable Control Technology Standard Calculations, Cost Impacts, and Beyond-the-Floor Cost Impacts for Coke Ovens Facilities under 40 CFR part 63, subpart CCCCC.* D. L. Jones, U.S. Environmental Protection Agency, and G. Raymond, RTI International. U.S. Environmental Protection Agency, Research Triangle Park, North Carolina. May 1, 2023. Docket ID No. EPA–HQ–OAR–2002–0085.

TABLE 5—PROPOSED MACT STANDARDS FOR UNREGULATED HAP OR SOURCES DEVELOPED UNDER CAA SECTION 112(d)(2) AND (d)(3) FOR THE NESHAP FOR COKE OVENS: PUSHING, QUENCHING, BATTERY STACKS—Continued

[Subpart CCCCC]

| Source or process | Pollutant | Type of affected source (new or existing) | |
|---|---|---|---|
| | | Existing | New |
| Battery Stack | PAH | 3.4E–04 lb/ton coke [UPL] | 1.4E–05 lb/ton coke [UPL]. |
| | acid gases | 0.083 lb/ton coke [UPL] | 0.013 lb/ton coke [UPL]. |
| | HCN | 0.0039 lb/ton coke [UPL] | 7.4E–04 lb/ton coke [UPL]. |
| | mercury | 5.8E–05 lb/ton coke [UPL] | 7.1E–06 lb/ton coke [UPL]. |
| | PM[28] | 0.10 PM gr/dscf [UPL] | 0.014 gr/dscf [UPL]. |
| HNR HRSG Control Device Main Stack | acid gases | 0.038 gr/dscf [UPL] | 0.0029 gr/dscf [UPL]. |
| | mercury | 2.4E–06 gr/dscf [UPL] | 1.5E–06 gr/dscf [UPL]. |
| | PAH | 4.7E–07 gr/dscf [UPL] | 3.7E–07 gr/dscf [UPL]. |
| | PM[28] | 0.0065 gr/dscf [UPL] | 7.5E–04 gr/dscf [UPL]. |

**Note:** gr/dscf = grains per dry standard cubic feet. RDL = representative detection level. UPL = upper prediction limit.

For HNR bypass/waste heat stacks, there is one HNR facility without HRSGs that sends COE directly to the atmosphere via waste heat stacks, 24 hours per day, 7 days per week. The other four heat recovery facilities utilize HRSGs most of the time (*i.e.,* process COE through the HRSG units) but send COE via ductwork to a bypass stack periodically to conduct maintenance on the HRSGs or because of other operational issues. All four heat recovery facilities with HRSGs have limits in their permits prepared under CAA title V requirements that limit the number of hours per year that they are allowed to use the bypass stacks. We are proposing to establish two subcategories with regard to the HNR bypass/waste stacks based on whether or not they process COE through an HRSG, as follows: (1) HNR facilities that have HRSGs; and (2) HNR facilities that do not have HRSGs. We only received CAA section 114 request test data (in 2016 and 2022) for bypass/waste stacks from two HNR facilities that have HRSGs (SunCoke's Granite City, Illinois, and Franklin Furnace, Ohio facilities). We did not receive bypass/waste stacks test data from the one HNR facility without HRSGs (SunCoke's Vansant, Virginia) nor for bypass/waste stacks at the other two HNR facilities with HRSGs (SunCoke's East Chicago, Indiana, and Middletown, Ohio, facilities). However, we concluded that the COE data from SunCoke's Granite City, Illinois, and SunCoke Franklin Furnace, Ohio, facilities (in units of gr/dscf by individual HAP tested) are representative of emissions from bypass/waste heat stacks for all 5 HNR facilities (including SunCoke's Vansant, Virginia, facility) due to the nearly identical conditions in the ovens at all the HNR facilities. The MACT floor limit, which is determined from the average of the lowest-emitting top 5 facilities, as stated in CAA section 112(d)(2), is therefore equal to the average emissions from SunCoke's Granite City, Illinois, and SunCoke Franklin Furnace, Ohio, facilities, where the COE from bypass/waste heat stacks are reported as the individual HAP emissions able to be tested with EPA test methods (in units of gr/dscf).

To determine whether or not more stringent MACT limits should be proposed as BTF standards for the two subcategories described above, we initially evaluated potential additional control options to lower the MACT limits for five HAP (referred to as ''BTF Approach 1'') as follows: activated carbon injection (ACI) with 95 percent control efficiency for mercury; wet alkaline scrubber (WAS) with 95 percent control efficiency for PM as a surrogate for nonmercury HAP metals;[26] WAS with 99.9 percent control efficiency for acid gases (HCl and HF); regenerative thermal oxidizer (RTO) with 98 percent control efficiency for PAH; and RTO with 98 percent control efficiency for formaldehyde.

Next, we evaluated the BTF costs to control two HAP (mercury and nonmercury HAP metals) (referred to as ''BTF Approach 2'') as follows: a baghouse with 99.9 percent control efficiency for PM as a surrogate for HAP metals; and ACI with 90 percent control efficiency for mercury. Table 6 shows the estimated capital and annualized costs, emission reductions, and cost effectiveness of the BTF controls for mercury, PM, acid gases, PAH, and formaldehyde at all five HNR facilities for BTF Approach 1. Table 6 shows the estimated capital and annualized costs, emission reductions, and cost-effectiveness of the BTF controls for mercury and PM (as a surrogate for nonmercury HAP metals) for BTF Approach 2.

TABLE 6—COMPARISON OF ESTIMATED COSTS OF CONTROLS AND EMISSION REDUCTIONS FOR POTENTIAL BTF MACT STANDARDS FOR HNR COKE FACILITIES FOR MERCURY AND NONMERCURY METALS FOR B/W STACKS UNDER BTF APPROACHES 1 AND 2

| Cost item[a] | Approach 1 | | Approach 2 | |
|---|---|---|---|---|
| | HNR facilities with HRSGs (includes 4 facilities) | HNR facilities without HRSGs (includes one facility) | HNR facilities with HRSGs (includes 4 facilities) | HNR facilities without HRSGs (includes one facility) |
| **Capital Cost** | | | | |
| Ductwork | $1,249K | $540K | $1,249K | $540K |

[28] PM as a surrogate for HAP metals.

TABLE 6—COMPARISON OF ESTIMATED COSTS OF CONTROLS AND EMISSION REDUCTIONS FOR POTENTIAL BTF MACT STANDARDS FOR HNR COKE FACILITIES FOR MERCURY AND NONMERCURY METALS FOR B/W STACKS UNDER BTF APPROACHES 1 AND 2—Continued

| Cost item [a] | Approach 1 | | Approach 2 | |
|---|---|---|---|---|
| | HNR facilities with HRSGs (includes 4 facilities) | HNR facilities without HRSGs (includes one facility) | HNR facilities with HRSGs (includes 4 facilities) | HNR facilities without HRSGs (includes one facility) |
| ACI | $1,299K | $314K | $1,299K | $314K |
| BH | n/a | n/a | $30M | $6.6M |
| WAS | $225M | $54M | n/a | n/a |
| RTO | $150M | $36M | n/a | n/a |
| Total Capital Cost | $378M | $91M | $33M | $7.5M |
| **Annual Cost** | | | | |
| Ductwork | $315K | $426K | $315K | $426K |
| ACI | $6.7M | $1.6M | $6.7M | $1.6M |
| BH | n/a | n/a | $5.7M | $2.6M |
| WAS | $32M | $7.7M | n/a | n/a |
| RTO | $57M | $13M | n/a | n/a |
| Total Annual Cost | $95M | $22M | $13M | $4.7M |
| **Uncontrolled Emissions (ton/yr, unless otherwise indicated) [b]** | | | | |
| Mercury (lbs/yr) | 60 | 160 | 60 | 160 |
| Nonmercury metal HAP | 1.5 | 4.0 | 1.5 | 4.0 |
| Acid Gases | 360 | 956 | n/a | n/a |
| PAH | 0.0034 | 0.0091 | n/a | n/a |
| Formaldehyde | 0.28 | 0.74 | n/a | n/a |
| **Emission Reductions (ton/yr, unless otherwise indicated) [b]** | | | | |
| Mercury w/ACI (lb/yr) [CE% [c]] | 57 [95%] | 152 [95%] | 54 [90%] | 144 [90%] |
| Nonmercury Metal HAP w/BH [CE%] | n/a | n/a | 1.5 [99.9%] | 4.0 [99.9%] |
| Nonmercury Metal HAP w/WAS [CE%] | 1.4 [95%] | 3.8 [95%] | n/a | n/a |
| Acid Gases w/WAS [CE%] | 359 [99.9%] | 955 [99.9%] | n/a | n/a |
| PAH w/RTO [CE%] | 0.0034 [98%] | 0.0089 [98%] | n/a | n/a |
| Formaldehyde w/RTO [CE%] | 0.27 [98%] | 0.72 [98%] | n/a | n/a |
| **Pollutant Cost Effectiveness ($/ton, unless otherwise indicated)** | | | | |
| Mercury w/ACI ($/lb) | $117K | $11K | $123K | $11K |
| Nonmercury Metal HAP w/BH | n/a | n/a | $4.0M | $756K |
| Nonmercury Metal HAP w/WAS | $22M | $2.0M | n/a | n/a |
| Acid Gases w/WAS | $88K | $8.1K | n/a | n/a |
| PAH w/RTO | $17B | $1.4B | n/a | n/a |
| Formaldehyde w/RTO | $209M | $18M | n/a | n/a |

[a] Acid gases = HCl and HF; activated carbon injection = ACI; control efficiency = CE; baghouse = BH; not applicable to Approach 2 = n/a; regenerative thermal oxidizer = RTO; wet alkaline scrubber = WAS.

[b] The COE from bypass/waste heat stacks are broken down into the individual HAP that are able to be tested with EPA test methods. Once the COE pass through control devices, the emissions are no longer considered COE.

[c] Typically, ACI achieves about 90 percent mercury control, which is reflected in Approach 2. For Approach 1, the facility also would need to install a WAS for acid gas control. Because there is a small amount of Hg control from the WAS, incorporating the WAS control with the ACI control results in an estimated overall Hg of 95 percent.

Based on consideration of the estimated capital costs, annualized costs, reductions and cost effectiveness of the two approaches described above, we are proposing BTF emissions limits for the individual COE HAP, as nonmercury metals and mercury from B/W stacks, consistent with BTF Approach 2 for the subcategory that includes HNR facilities without HRSGs, which includes one facility (Vansant). We are proposing this option because we estimate that BTF Approach 2 achieves similar reductions of mercury. Mercury reduction under Approach 1 is 57 lb/yr for HNR facilities with HRSGs and 152 lb/yr for HNR facilities without HRSGs, while mercury reduction under Approach 2 is 54 lb/yr for HNR facilities with HRSGs and 144 lb/yr for HNR facilities without HRSGs. Nonmercury metal reduction under Approach 1 is 1.4 tpy for HNR facilities with HRSGs and 3.8 tpy for HNR facilities without HRSGs, while nonmercury metal reduction under Approach 2 is 1.5 tpy for HNR facilities with HRSGs and 4.0 tpy for HNR facilities without HRSGs.

The BTF Approach 2 achieves similar (although slightly lower) reductions of mercury compared to Approach 1 at similar cost effectiveness (slightly higher $/lb for HNR with HRSG but same $/lb value for HNR without HRSGs). However, Approach 2 includes much more cost-effective controls for nonmercury HAP (COE) metals and slightly more reductions.

We conclude that both approaches are cost-effective for mercury. Regarding nonmercury metals, the BTF Approach 2 is clearly cost-effective based on historical decisions regarding nonmercury HAP metals (for example, the EPA accepted cost effectiveness of $1.3 million per ton HAP metals in the 2012 Secondary Lead Smelters RTR final rule based on 2009 dollars). BTF Approach 1 also could potentially be considered cost-effective for nonmercury metals. However, we conclude it is appropriate to propose the more cost-effective approach because it achieves similar reductions of the COE HAP metals at lower cost. With regard to the other three COE HAP from HNR without a HRSG subcategory (acid gases, formaldehyde and PAHs), based on consideration of capital costs, annual costs and cost effectiveness, we are proposing MACT floor limits (not BTF limits).

For the nonrecovery facility without HRSGs subcategory, the potential BTF limits for COE HAP emitted as nonmercury HAP metals and mercury were calculated by assuming the addition of a baghouse (with estimated 99.9 percent reduction for metals) and ACI (with 90 percent reduction for mercury). We then compared the limits to the applicable 3xRDL value to ensure a measurable standard. For HAP metals, the 3xRDL value was greater than the BTF limit, and thus the proposed BTF standard was set at the 3xRDL value (a measurable value), which is 2 percent of the level of the MACT floor standard. For mercury, the 3xRDL value was less than the BTF UPL limit, and thus the proposed BTF standard was set at the BTF UPL limit. The results and proposed decisions based on the analyses performed pursuant to CAA sections 112(d)(2) and (3) for HNR bypass/waste heats stacks are presented in Table 7.

TABLE 7—MACT FLOOR AND BTF STANDARDS DEVELOPED FOR EMISSIONS FROM COKE OVENS HNR HRSG BYPASS/WASTE HEAT STACKS SOURCES

| Source or process | Pollutant [a] [b] | Type of MACT standard [a] | |
|---|---|---|---|
| | | Existing | New |
| HNR bypass/waste heat stack for 2 subcategories (for all 5 HNR facilities). | acid gases | 0.13 gr/dscf [UPL] | 0.070 gr/dscf [UPL]. |
| | Formaldehyde | 0.0011 gr/dscf | 1.9E–05 gr/dscf. |
| | PAH | 2.4E–06 gr/dscf [UPL] | 2.4E–06 gr/dscf [UPL]. |
| Heat recovery facilities (only) bypass/waste heat stack (with HRSGs) subcategory. | Mercury | 1.7E–05 gr/dscf [UPL] | 7.8E–06 gr/dscf [UPL]. |
| | PM [28] | 0.034 gr/dscf [UPL] | 0.025 gr/dscf [UPL]. |
| Nonrecovery facilities (only) waste heat stack (without HRSGs) (BTF) subcategory. | Mercury | BTF 1.7E–06 gr/dscf | BTF 7.8E–07 gr/dscf. |
| | PM [28] | BTF 6.6E–04 gr/dscf | BTF 6.6E–04 gr/dscf. |

[a] gr/dscf = grains per dry standard cubic feet. RDL = representative detection level. UPL is the upper performance limit. PM is a surrogate for nonmercury metal HAP.

[b] Once the bypass/waste heat stacks COE pass through control devices, the emissions are no longer considered COE.

We are proposing that testing for compliance with these proposed MACT and BTF limits be performed every 5 years. Annualized costs for testing, including recordkeeping and reporting, are estimated to be $3.2 million/year for the 11 operating facilities in the source category, or an average of $290,000 per year per facility.

We are soliciting comments regarding other potential approaches to establish emissions standards for the HRSG main stacks and bypass stacks, including: (1) whether the EPA should consider the emission points all together (*i.e.,* HRSG main stack plus HRSG bypass stack emissions) and establish standards based on the best five units or best five facilities including emissions from the HRSGs and their control devices, and emissions from the bypass over a period of time (*e.g.,* per year or per month); or (2) a standard that is based in part on limiting the number of hours per year or per month that bypass stacks can be used.

We are also soliciting comments regarding the use of bypass stacks. For the Coke Ovens: Pushing, Quenching, Battery Stacks source category, we understand that bypass of HRSGs is needed for maintenance and repair of HRSGs or their control devices. Furthermore, the facilities recover heat from coke oven exhaust and sell or produce power for sale, so they lose revenue when bypass is used; therefore, it is in the facilities' interest to not bypass HRSGs. For this source category's HNR subcategory, we have emissions tests data and, therefore, are able to propose numeric emissions limits for these emissions sources. We solicit comments regarding whether the EPA should consider other approaches to regulate bypass stacks.

For details of how these MACT and BTF standards were developed and other BTF options that were considered see the MACT/BTF memorandum,[27] located in the docket for the proposed rule (EPA–HQ–OAR–2002–0085).

*B. What are the results of the risk assessment and analyses for the coke ovens: pushing, quenching, and battery stacks source category?*

1. Chronic Inhalation Risk Assessment Results

The results of the chronic baseline inhalation cancer risk assessment indicate that, based on estimates of current actual emissions, the MIR posed by the Coke Ovens: Pushing, Quenching, and Battery Stacks source category is 9-in-1 million driven by arsenic emissions primarily from bypass/waste heat stacks. The total estimated cancer incidence based on actual emission levels is 0.02 excess cancer cases per year, or 1 case every 50 years. No people are estimated to have inhalation cancer risks above 100-in-1 million due to actual emissions, and the population exposed to cancer risks greater than or equal to 1-in-1 million is approximately 2,900 (see Table 8 of this preamble). In addition, the maximum modeled chronic noncancer TOSHI for the source category based on actual emissions is estimated to be 0.1 (for developmental effects from arsenic emissions).

TABLE 8—COKE OVEN PUSHING, QUENCHING, AND BATTERY STACKS SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS

| Risk assessment | Number of facilities | Maximum individual cancer risk (in 1 million) [a] | Estimated population at increased risk of cancer ≥1-in-1 million | Estimated annual cancer incidence (cases per year) | Maximum chronic noncancer TOSHI | Maximum screening acute noncancer HQ |
|---|---|---|---|---|---|---|
| **Based on Actual Emissions Level** | | | | | | |
| Source Category Emissions | 14 | 9 | 2,900 | 0.02 | 0.1 (arsenic) | $HQ_{REL}$ = 0.6 (arsenic). |
| Facility-Wide [b] | 14 | 50 | 2.7 million | 0.2 | 2 (hydrogen cyanide) | $HQ_{REL}$ = 0.6 (arsenic). |
| **Based on Allowable Emissions Level** | | | | | | |
| Source Category Emissions | 14 | 10 | 440,000 | 0.05 | 0.2 (arsenic). | |

[a] Maximum individual excess lifetime cancer risk due to HAP emission.
[b] See ''Facility-Wide Risk Results'' in section III.C.6. of this preamble for more detail on this risk assessment.

Considering MACT-allowable emissions, results of the inhalation risk assessment indicate that the cancer MIR is 10-in-1 million, driven by arsenic emissions primarily from HNR pushing and bypass/waste heat stacks. The total estimated cancer incidence from this source category based on allowable emissions is 0.05 excess cancer cases per year, or one excess case every 20 years. No people are estimated to have inhalation cancer risks above 100-in-1 million due to allowable emissions, and the population exposed to cancer risks greater than or equal to 1-in-1 million is approximately 440,000. In addition, the maximum modeled chronic noncancer TOSHI for the source category based on allowable emissions is estimated to be 0.2 (for developmental effects from arsenic emissions).

2. Screening Level Acute Risk Assessment Results

As presented in Table 8 of this preamble, the estimated worst-case off-site acute exposures to emissions from the Coke Ovens: Pushing, Quenching, and Battery Stacks source category result in a maximum modeled acute HQ of 0.6 based on the REL for arsenic. Detailed information about the assessment is provided in *Residual Risk Assessment for the Coke Ovens: Pushing, Quenching, and Battery Stacks Source Category in Support of the 2023 Risk and Technology Review Proposed Rule* available in the docket for this action.

3. Multipathway Risk Screening Results

Of the 14 facilities in the source category, all 14 emit PB–HAP, including arsenic, cadmium, dioxins, mercury, and POMs. Emissions of these PB–HAP from each facility were compared to the respective pollutant-specific Tier 1 screening emission thresholds. The Tier 1 screening analysis indicated 14 facilities exceeded the Tier 1 emission threshold for arsenic, dioxins, mercury, and POM; and two facilities exceeded for cadmium.

For facilities that exceeded the Tier 1 multipathway screening threshold emission rate for one or more PB–HAP, we used additional facility site-specific information to perform a Tier 2 multipathway risk screening assessment. The multipathway risk screening assessment based on the Tier 2 gardener scenario resulted in a maximum cancer Tier 2 cancer screening value (SV) equal to 400 driven by arsenic emissions. Individual Tier 2 cancer screening values for dioxin and POM emissions were less than 1 for the gardener scenario. The maximum Tier 2 cancer SV, based on the fisher scenario, is equal to 10, with arsenic and dioxin emissions contributing to the SV, with a maximum individual Tier 2 SV of 10 for arsenic and a maximum Tier 2 SV of 5 for dioxin emissions. The maximum POM SV was less than 1. The multipathway risk screening assessment based on the Tier 2 fisher scenario resulted in a maximum noncancer Tier 2 SV equal to 6 for methyl mercury and less than 1 for cadmium emissions.

A Tier 3 cancer screening assessment was performed for arsenic based on the gardener scenario as well as a Tier 3 noncancer screening assessment for methyl mercury based on the fisher scenario. The Tier 3 gardener scenario was refined by identifying the location of the residence most impacted by arsenic emissions from the facility as opposed to the worst-case near-field location used in the Tier 2 assessment. Based on these Tier 3 refinements to the gardener scenario, the maximum Tier 3 cancer screening value for arsenic was adjusted from 400 to 300. For the fisher scenario, we evaluated the Tier 2 noncancer SV for methyl mercury, to determine whether the results would change based on a review of the lakes, to determine if they were fishable. This review resulted in no change to the Tier 2 noncancer SV of 6 for methyl mercury.

An exceedance of a screening threshold emission rate or SV in any of the tiers cannot be equated with a risk value or an HQ (or HI). Rather, it represents a high-end estimate of what the risk or hazard may be. For example, an SV of 6 for a noncarcinogen can be interpreted to mean that the Agency is confident that the HQ would be lower than 6. Similarly, a Tier 2 cancer SV of 300 means that we are confident that the cancer risk is lower than 300-in-1 million. Our confidence comes from the conservative, or health-protective, assumptions encompassed in the screening tiers. The Agency chooses inputs from the upper end of the range of possible values for the influential parameters used in the screening tiers, and the Agency assumes that the exposed individual exhibits ingestion behavior that would lead to a high total exposure.

The EPA determined that it is not necessary to go beyond the Tier 3 gardener or Tier 2 fisher scenario and conduct a site-specific assessment for arsenic and mercury. The EPA compared the Tier 2 and 3 screening results to site-specific risk estimates for five previously assessed source categories. These are the five source categories, assessed over the past 4 years, which had characteristics that make them most useful for interpreting the Coke Ovens: Pushing, Quenching, and Battery Stacks screening results. For these source categories, the EPA assessed fisher and/or gardener risks for arsenic, cadmium, and/or mercury by conducting site-specific assessments. The EPA used AERMOD for air dispersion and Tier 2 screens that used multi-facility aggregation of chemical loading to lakes where appropriate. These assessments indicated that cancer and noncancer site-specific risk values were at least 50 times lower than the

respective Tier 2 screening values for the assessed facilities, with the exception of noncancer risks for cadmium for the gardener scenario, where the reduction was at least 10 times (refer to EPA Docket ID: EPA–HQ–OAR–2017–0015 and EPA–HQ–OAR–2019–0373 for a copy of these reports).[29]

Based on our review of these analyses, if the Agency was to perform a site-specific assessment for the Coke Ovens: Pushing, Quenching, and Battery Stacks source category, the Agency would expect similar magnitudes of decreases from the Tier 2 and 3 SV. As such, based on the conservative nature of the screens and the level of additional refinements that would go into a site-specific multipathway assessment, were one to be conducted, we are confident that the HQ for ingestion exposure, specifically mercury through fish ingestion, is less than 1. For arsenic, maximum cancer risk posed by fish ingestion would also be reduced to levels below 1-in-1 million, and maximum cancer risk under the rural gardener scenario would decrease to 5-in-1 million or less at the MIR location. Further details on the Tier 3 screening assessment can be found in the *Residual Risk Assessment for the Coke Ovens: Pushing, Quenching, and Battery Stacks, Source Category in Support of the 2023 Risk and Technology Review Proposed Rule.*

In evaluating the potential for multipathway risk from emissions of lead, we compared modeled annual lead concentrations to the primary NAAQS for lead (0.15 microgram per cubic meter ($\mu g/m^3$)). The highest annual lead concentration of 0.014 $\mu g/m^3$ is well below the NAAQS for lead, indicating low potential for multipathway risk of concern due to lead emissions.

4. Environmental Risk Screening Results

As described in section III.A. of this preamble, we conducted an environmental risk screening assessment for the Coke Ovens: Pushing, Quenching, and Battery Stacks source category for the following pollutants: arsenic, cadmium, dioxin, HCl, HF, lead, mercury (methyl mercury and divalent mercury), and POMs.

In the Tier 1 screening analysis for PB–HAP (other than lead, which was evaluated differently), the maximum screening value was 80 for methyl mercury emissions for the surface soil No Observed Adverse Effects Level (NOAEL) avian ground insectivores benchmark. The other pollutants (arsenic, cadmium, dioxins, POMs, divalent mercury, methyl mercury) had Tier 1 screening values above various benchmarks. Therefore, a Tier 2 screening assessment was performed for arsenic, cadmium, dioxins, POMs, divalent mercury, and methyl mercury emissions. In the Tier 2 screen no PB–HAP emissions exceeded any ecological benchmark.

In evaluating the potential for multipathway risk from emissions of lead, we compared modeled annual lead concentrations to the primary NAAQS for lead (0.15 μg/m3). The highest annual lead concentration is well below the NAAQS for lead, indicating low potential for multipathway risk of concern due to lead emissions. We did not estimate any exceedances of the secondary lead NAAQS.

For HCl and HF, the average modeled concentration around each facility (*i.e.,* the average concentration of all off-site data points in the modeling domain) did not exceed any ecological benchmark. In addition, each individual modeled concentration of HCl and HF (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities.

Based on the results of the environmental risk screening analysis, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

5. Facility-Wide Risk Results

An assessment of facility-wide (or ''whole facility'') risks was performed as described above to characterize the source category risk in the context of whole facility risks. Whole facility risks were estimated using the data described in section III.C. of this preamble. The maximum lifetime individual cancer risk posed by the 14 modeled facilities, based on whole facility emissions is 50-in-1 million, with COE from coke oven doors (a regulated source in the Coke Oven Batteries NESHAP source category), driving the whole facility risk. The total estimated cancer incidence based on facility-wide emission levels is 0.2 excess cancer cases per year. No people are estimated to have inhalation cancer risks above 100-in-1 million due to facility-wide emissions, and the population exposed to cancer risk greater than or equal to 1-in-1 million is approximately 2.7 million people. These facility-wide estimated cancer risks are substantially lower than the estimated risks in the 2005 Coke Ovens RTR rulemaking (see 70 FR 1992, April 15, 2005). For example, the facility-wide MIR in the 2005 final rule (based on estimated actual emissions) was at least 500-in-1 million. The facility-wide MIRs in 2005 also were driven by estimated COE from coke oven doors. The estimated cancer risks are lower in this current action largely due to the following: (1) the COE from coke oven doors in 2005 were based on an older equation and the current COE have been estimated using a revised equation (as described in section IV.D.6. of this preamble); and (2) the facility driving the risks in 2005 was a MACT track facility that is no longer operating.

Regarding the noncancer risk assessment, the maximum chronic noncancer HI posed by whole facility emissions is estimated to be 2 (for the neurological and thyroid systems as the target organs) driven by emissions of hydrogen cyanide from CBRPs, which are emissions sources not included within the source category addressed in the risk assessment in this proposed rule. Approximately 60 people are estimated to be exposed to a TOSHI greater than 1 due to whole facility emissions. The results of the analysis are summarized in Table 8 above.

6. Community-Based Risk Assessment

We also conducted a community-based risk assessment for the Coke Ovens: Pushing, Quenching, and Battery Stacks source category. The goal of this assessment is to estimate cancer risk from HAP emitted from all local stationary point sources for which we have emissions data. We estimated the overall inhalation cancer risk due to emissions from all stationary point sources impacting census blocks within 10 km of the 14 coke oven facilities. Specifically, we combined the modeled impacts from category and non-category HAP sources at coke oven facilities, as well as other stationary point source HAP emissions. Within 10 km of coke oven facilities, we identified 583 facilities not in the source category that could potentially also contribute to HAP inhalation exposures.

The results indicate that the community-level maximum individual cancer risk is 100-in-1 million with 99 percent of the risk coming from a source outside the source category. Furthermore, there are no people

[29] EPA Docket records (EPA–HQ–OAR–2017–0015): *Appendix 11 of the Residual Risk Assessment for the Taconite Manufacturing Source Category in Support of the Risk and Technology Review 2019 Proposed Rule; Appendix 11 of the Residual Risk Assessment for the Integrated Iron and Steel Source Category in Support of the Risk and Technology Review 2019 Proposed Rule; Appendix 11 of the Residual Risk Assessment for the Portland Cement Manufacturing Source Category in Support of the 2018 Risk and Technology Review Final Rule; Appendix 11 of the Residual Risk Assessment for the Coal and Oil-Fired EGU Source Category in Support of the 2018 Risk and Technology Review Proposed Rule;* and EPA Docket: (EPA–HQ–OAR–2019–0373): *Appendix 11* of the *Residual Risk Assessment for Iron and Steel Foundries Source Category in Support of the 2019 Risk and Technology Review Proposed Rule.*

exposed to cancer risks greater than 100-in-1 million. The population exposed to cancer risks greater than or equal to 1-in-1 million in the community-based assessment is approximately 1.1 million people. For comparison, approximately 2,900 people have cancer risks greater than or equal to 1-in-1 million due to the process emissions from the Coke Ovens: Pushing, Quenching, and Battery Stacks source category, and approximately 440,000 people have cancer risks greater than 1-in-1 million due to facility-wide emissions (see Table 8 of this preamble). The overall cancer incidence for this exposed population (*i.e.,* people with risks greater than or equal to 1-in-1 million and living within 10 km of coke oven facilities) is 0.07, with 4 percent of the incidence due to emissions from Coke Ovens: Pushing, Quenching, and Battery Stacks NESHAP processes, 59 percent from emissions of non-category processes at coke oven facilities (that is, a total of 63 percent from emissions from coke oven facilities) and 37 percent from emissions from other nearby stationary sources that are not coke oven facilities.

*C. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effect?*

1. Risk Acceptability

As noted in section III.A. of this preamble, we weigh a wide range of health risk measures and factors in our risk acceptability determination, including the cancer MIR, the number of persons in various cancer and noncancer risk ranges, cancer incidence, the maximum noncancer TOSHI, the maximum acute noncancer HQ, and risk estimation uncertainties (54 FR 38044, September 14, 1989).

Under the current MACT standards for the Coke Ovens: Pushing, Quenching, and Battery Stacks source category, the risk results indicate that the MIR is 9-in-1 million, driven by emissions of arsenic. The estimated incidence of cancer due to inhalation exposures is 0.02 excess cancer case per year. No people are estimated to have inhalation cancer risks greater than 100-in-1 million, and the population estimated to be exposed to cancer risks greater than or equal to 1-in-1 million is approximately 2,900. The estimated maximum chronic noncancer TOSHI from inhalation exposure for this source category is 0.1 for developmental effects. The acute risk screening assessment of reasonable worst-case inhalation impacts indicates a maximum acute HQ of 0.6.

Considering all of the health risk information and factors discussed above, including the uncertainties discussed in section III. of this preamble, the EPA proposes that the risks for this source category under the current NESHAP provisions are acceptable.

2. Ample Margin of Safety Analysis and Proposed Controls

The second step in the residual risk decision framework is a determination of whether more stringent emission standards are required to provide an ample margin of safety to protect public health. In making this determination, we considered the health risk and other health information considered in our acceptability determination, along with additional factors not considered in the risk acceptability step, including costs and economic impacts of controls, technological feasibility, uncertainties, and other relevant factors, consistent with the approach of the 1989 Benzene NESHAP.

The proposed BTF limit for PM, as a surrogate for nonmercury HAP metals, which we are proposing pursuant to CAA sections 112(d)(2) and (3) for HRSG waste heat stacks in the Coke Ovens: Pushing, Quenching, and Battery Stack source category, described in section IV.A. above, would achieve a reduction of the metal HAP emissions (*e.g.,* arsenic and lead). This reduction in emissions also would reduce the estimated MIR due to arsenic from these units from 9-in-1 million to less than 1-in-1 million at a cost of $756,000 per ton nonmercury metals. The overall MIR for this source category would be reduced from a 9-in-1 million to 2-in-1 million, where the 2-in-1 million is due to arsenic emissions from the quench tower at U.S. Steel Clairton. We evaluated the potential to propose this same PM emission limit for the HNR waste heat stacks under CAA section 112(f); however, because the control technology would be infeasible to install, operate and implement within the maximum time allowed under CAA section 112(f),[30] we are proposing the emission limit as a BTF standard under CAA sections 112(d)(2) and (3) only.

We did not identify any other potential cost-effective controls to reduce the remaining risk (2-in-1 million) from quench towers (or from any other emission source). Therefore, based on all of the information discussed earlier in this section, we conclude that the current standards in the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP provide an ample margin of safety to protect public health.

Although we are not proposing the BTF PM limit for waste stacks as part of our ample margin of safety analysis, as described earlier in this section, we note that once the proposed rule for Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP is fully implemented (within 3 years), the MIR would be reduced from 9-in-1 million to 2-in-1 million and the total population living within 50 km of a facility with risk levels greater than or equal to 1-in-1 million due to emissions from the Coke Ovens: Pushing, Quenching, and Battery Stacks source category would be reduced from 2,900 to 390 people due to the BTF PM limit. However, the total estimated cancer incidence would remain unchanged at 0.02 excess cancer cases per year, and the maximum modeled chronic noncancer TOSHI for the source category would remain unchanged at 0.1 (for respiratory effects from hydrochloric acid emissions). The estimated worst-case acute exposures to emissions from the Coke Ovens: Pushing, Quenching, and Battery Stacks source category would be reduced from a maximum acute HQ of 0.6 to 0.3, based on the REL for arsenic.

3. Adverse Environmental Effect

Based on our screening assessment of environmental risk presented in section IV.B.4. of this preamble, we have determined that HAP emissions from the Coke Ovens: Pushing, Quenching, and Battery Stacks source category do not result in an adverse environmental effect, and we are proposing that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

*D. What are the results and proposed decisions based on our technology review?*

We have reviewed the standards under the two rules, Coke Ovens: Pushing, Quenching, and Battery Stack and Coke Oven Batteries, and considered whether revising the standards is necessary based on

[30] The facility that is affected by the new BTF PM limit is located between three rivers, a state road, and a railroad track. Therefore, due to the unique configuration of facility, the resulting lack of space available to construct control devices and ductwork to reduce arsenic emissions from bypass stacks creates an impediment to a typical construction schedule. We estimate that the facility will need 3 years to complete all this work and comply with the new PM limit. Consequently, we are proposing this standard under CAA sections 112(d)(2) and (3) and proposing the maximum amount of time allowed under CAA section 112(d) be provided (3 years) to comply. See section IV.F of this preamble for further explanation of why we are proposing 3 years to comply with the BTF limit.

developments in practices, processes, and control technologies. For the Coke Ovens: Pushing, Quenching, and Battery Stack source category, we did not identify developments in practices, processes, or technologies to further reduce HAP emissions from pushing coke from ovens and from quench tower sources in the source category. The pushing sources already are equipped with capture and control devices, and quench tower emissions are controlled by baffles inside of the quench towers and with limits on quench water dissolved solids. However, we are seeking information on emissions and on control options and work practice standards to reduce ByP battery stack emissions and to reduce soaking emissions from HNR ovens. These subjects are discussed in sections 1. and 2. below.

For the Coke Oven Batteries source category, we did not identify any developments in practices, processes, or controls that would reduce charging emissions from ByP or HNR facilities regulated under the source category. The current rule requires the use of baghouses and scrubbers to minimize emissions from charging and to limit opacity from control devices used for charging emissions at HNR facilities. However, we identified improvements in control of ByP battery leaks, and we are proposing reduced allowable leak limits for leaks from doors, lids, and offtakes at ByP facilities that range from a 10 to 70 percent reduction in allowable door leak rate, depending on the size of the facility and oven door height, and a 50 percent reduction in allowable leak rates for lids and offtakes for all sizes of facilities and ovens. The current leak limits and proposed revised leak limits are described in detail in section IV.D.3. of this preamble. Also, we are asking for comments on the proposed revised monitoring techniques for leaks from HNR ovens. These proposed changes are discussed in sections 3. and 4. below. To further address fugitive emissions at the Coke Oven Batteries facilities, we are proposing a requirement for fenceline monitoring for benzene along with an action level for benzene (as a surrogate for coke oven emissions (COE)) and a requirement for root cause analysis and corrective actions if the action level is exceeded. These proposed requirements are discussed in section 5. below.

Lastly, we are proposing a revised equation for estimating leaks from ByP coke oven doors based on evaluating the historic equation developed from 1981 coke oven data. The discussion of this issue is in section 6. below.

1. ByP Battery Stack 1-Hour Standards

We are considering whether an additional 1-hour battery stack standard is warranted to support the current 24-hour average ByP battery stack standard in Coke Ovens: Pushing, Quenching, and Battery Stacks NESHAP so as to identify short-term periods of high opacity that are not identified from the current rule's requirement for a 24-hour opacity average. Battery stack opacity is perhaps the best single indicator of the maintenance status of coke ovens and could be considered as an indicator of fugitive and excess HAP emissions from coke oven batteries.

We acquired 1-hour battery stack opacity data as part of the 2022 CAA section 114 test request and also obtained information about work practices that are performed on ovens to maintain oven integrity, which minimizes battery stack opacity, in general. We are not proposing a 1-hour limit in this proposed action because of the processing of large quantities of data that would be needed to develop a 1-hour emissions limit for all coke facilities and also to analyze oven wall work practices reported by coke facilities in the CAA section 114 request responses to see if there is a correlation between the work practices and lower opacities in the 1-hour time data. Therefore, we are soliciting comment and information regarding these issues, including comments regarding whether or not the EPA should finalize a 1-hour battery stack opacity standard in the NESHAP in addition to or in lieu of the current standard that is a 24-hour average, and an explanation as to why or why not; and what work practices would reduce high opacity on an hourly basis. The 1-hour opacity and work practice data collected as part of the 2022 CAA section 114 request are summarized in a memorandum titled *Preliminary Analysis and Recommendations for Coke Oven Combustion Stacks, Technology Review for NESHAP for Coke Ovens: Pushing, Quenching, and Battery Stacks (40 CFR part 63, subpart CCCCC)* [31] that graphically shows the 1-hour data, located in the docket to this rule.

2. Soaking Emissions From ByP Coke Ovens

*The Coke Ovens:* Pushing, Quenching, and Battery Stacks NESHAP regulates soaking COE from coke ovens via work practice standards. Under 40 CFR 63.7294, coke oven facilities must prepare and operate according to a written work practice plan for soaking emissions. The plan must include measures and procedures to identify soaking COE that require corrective actions, such as procedure for dampering off ovens; determining why soaking COE emissions do not ignite automatically and, if not, then to manually do so; determining whether COE which are not fully processed in the ovens are leaking into the collecting main and if there is incomplete coking; and determining whether the oven damper needs to be reseated or other equipment needs to be cleaned.

Soaking, for the purposes of the NESHAP, means the period in the coking cycle that starts when an oven is dampered off the collecting main and vented to the atmosphere through an open standpipe prior to pushing, and ends when the coke begins to be pushed from the oven. Visible soaking COE occur from the discharge of COE via open standpipes during the soaking period due to either incomplete coking or leakage into the standpipe from the collecting main.

We are asking for comments on the feasibility of capturing and controlling soaking COE. Soaking COE are most pronounced with ''green'' coke, *i.e.,* coke that has not completed the coking process. Work practice standards for soaking, covered in 40 CFR 63.7294, do not include opacity limits or control device requirements and rely on subjective observations from facility personnel. Furthermore, operational practices may prevent topside workers from seeing soaking COE, which is a prerequisite for the current soaking work practice standards to apply. Currently, EPA Method 303A observations do not consider soaking COE because intentional standpipe cap opening during pushing is not considered a leak from the oven and, therefore, is not included in the visible emissions observation field for oven testing.

We are asking for estimates of COE from soaking to better understand the scope and scale of these emissions. In addition, we are asking for comments on options for capturing and controlling the soaking COE using a secondary collecting main that routes standpipe COE exhaust to a control device with or without an associated VE, opacity, or

[31] *Preliminary Analysis and Recommendations for Coke Oven Combustion Stacks, Technology Review for NESHAP for Coke Ovens: Pushing, Quenching, and Battery Stacks (40 CFR part 63, subpart CCCCC).* J. Carpenter, U.S. Environmental Protection Agency Region IV, Atlanta, GA; K. Healy, U.S. Environmental Protection Agency, Region V; D.L. Jones, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, and G.E. Raymond, RTI International. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina. May 1, 2023.

emissions limit. We are not proposing controls or an opacity limit in this current action; however, we solicit comment and information regarding soaking COE, including comments as to whether or not the EPA should include such a standard in the NESHAP in the final rule and an explanation as to why or why not. We also solicit comments on changes to the soaking work practice requirements currently in the rule.

3. ByP Door, Lids, and Offtakes Leak Limits

Due to improvements in leak control at coke oven facilities, we are proposing to lower the door leak limits in the NESHAP under the technology review for the Coke Oven Batteries source category for both MACT track and LAER track ByP coke facilities. We are proposing for facilities with coke production capacity of more than 3 million tpy coke to lower the allowable leaking door limit from the current limit of 4 percent to 1.5 percent for tall leaking doors (63 percent reduction) and from 3.3 percent to 1.0 percent for ''not tall'' leaking doors (70 percent reduction), in leaks as observed from the yard. These proposed standards would currently only apply to the U.S. Steel Clairton facility. For Coke Oven Batteries facilities that have coke production capacity less than 3 million tpy coke, we are proposing an allowable leaking door limit of 3.0 percent leaking doors observed from the yard for all sizes of doors (currently the NESHAP includes limits of 4.0 and 3.3 percent allowable leaking doors for tall and not tall doors, respectively, as described earlier in this preamble), a 25 and 9 percent reduction, respectively. Both proposed changes to the allowable limits would ensure continued low emissions from leaking doors. These reduced levels reflect improvements in performance of the facilities to minimize leaks from doors.

Due to improvements in operation by the coke facilities, where actual emissions are much lower than allowable limits in many cases, we also are proposing to lower the lid and offtake leak allowable limits in the NESHAP under the technology review for the Coke Oven Batteries source category. The current NESHAP includes limits of 0.4 percent leaking lids and 2.5 percent leaking offtakes. We are proposing a revised leaking lid limit of 0.2 percent leaking lids and for offtakes a limit of 1.2 percent leaking offtakes (both an approximately 50 percent reduction). Both proposed changes to the limits would ensure continued low emissions from leaking lids and offtakes. These reduced levels reflect improvements in performance of the facilities to minimize leaks from lids and offtakes.

Table 9 shows the estimated allowable emissions (tpy) before and after lowering the leak limits from doors, lids, and offtakes for each of eight ByP facilities.

TABLE 9—ESTIMATED ALLOWABLE EMISSIONS BEFORE AND AFTER PROPOSED CHANGES TO THE LEAK LIMITS FOR LEAKING DOORS, LIDS, AND OFFTAKES AT BYPRODUCT COKE OVEN FACILITIES

[Coke oven batteries NESHAP]

| Facility ID | Allowable emissions (tpy) | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | With current leak limits | | | | With proposed leak limits | | | |
| | Doors[a b] (%) | Lids (%) | Offtakes (%) | Total (tpy) | Doors[c] (%) | Lids (%) | Offtakes (%) | Total (tpy) |
| ABC-Tarrant-AL | 3.4 | 0.076 | 0.11 | 3.6 | 3.0 | 0.038 | 0.052 | 3.1 |
| BLU-Birmingham-AL | 3.1 | 0.079 | 0.099 | 3.3 | 2.7 | 0.039 | 0.047 | 2.8 |
| CC-Follansbee-WV | 5.5 | 0.12 | 0.25 | 5.9 | 5.1 | 0.059 | 0.12 | 5.2 |
| CC-Middletown-OH | 1.8 | 0.030 | 0.12 | 2.0 | 1.7 | 0.015 | 0.060 | 1.8 |
| CC-BurnsHarbor-IN | 4.3 | 0.086 | 0.13 | 4.5 | 3.7 | 0.043 | 0.065 | 3.8 |
| CC-Monessen-PA | 1.3 | 0.029 | 0.092 | 1.4 | 1.3 | 0.015 | 0.044 | 1.3 |
| CC-Warren-OH | 2.0 | 0.034 | 0.14 | 2.2 | 1.9 | 0.017 | 0.067 | 2.0 |
| EES-RiverRouge-MI | 2.2 | 0.045 | 0.14 | 2.4 | 1.9 | 0.022 | 0.067 | 2.0 |
| USS-Clairton-PA | 17 | 0.38 | 1.1 | 19 | 11 | 0.19 | 0.53 | 12 |
| Total | 41 | 0.88 | 2.2 | 44 | 33 | 0.44 | 1.0 | 34 |

[a] Door emissions are calculated using the revised equation. See section IV.D.6. of this preamble.

[b] For doors, two limits apply in the current rule: 4 percent leaking doors for tall ovens (equal to or greater than 6 meters or 29 feet) and 3.3 percent leaking doors for all other shorter ovens (less than 6 meters).

[c] For facilities with coke production capacity more than 3 million tpy coke, proposed limits from doors are 1.5 percent leaking doors for tall ovens and 1.0 percent leaking doors for all other shorter ovens; for facilities with coke production capacity less than 3 million tpy coke, proposed limits from doors is 3.0 percent leaking doors for all doors sizes.

We are asking for comment on these proposed limits and whether there are other methods available to reduce leaks from doors, lids, and offtakes, and from charging at coke oven batteries that are not discussed here. Additional information on the available methods is included in the memorandum *Technology Review for the Coke Ovens: Pushing, Quenching, and Battery Stack and Coke Oven Batteries Source Categories*[32] (hereafter referred to as the Technology Review Memorandum), located in the dockets for the rules.

4. HNR Oven Door Leaks

a. HNR Leak-Related Monitoring

We are revising the Coke Oven Batteries NESHAP for new and existing HNR doors (40 CFR 63.303(a)(1) and (b)(1)) to require both monitoring of leaking doors at HNR facilities using EPA Method 303A, which relies on observing VE emanating from the ovens, and monitoring pressure in the ovens (and common tunnel), instead of choosing one or the other, as the current rule allows. We also are adding the requirement to measure pressure in the ovens during the main points in the entire oven cycle to include, at minimum, during pushing, coking, and charging (but not necessarily continuously throughout the oven cycle). We are asking for comment on these changes.

b. Alternative Monitoring Approaches—HNR Oven Doors

The current method of assessing HNR oven doors for leaks under the Coke Oven Battery NESHAP (40 CFR

[32] *Technology Review for the Coke Ovens: Pushing, Quenching, and Battery Stack and Coke Oven Batteries Source Categories.* D.L. Jones, U.S. Environmental Protection Agency, and G.E. Raymond, RTI International U.S. Environmental Protection Agency, Research Triangle Park, North Carolina. May 1, 2023. Docket ID Nos. EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051.

63.303(b)) is through the use of EPA Method 303 or 303A, methods based on observing VE emanating from the ovens and seen with the unaided eye, excluding steam or condensing water, by trained human observers. While VE has been used as an effective surrogate for monitoring door leaks in the past, especially for ByP facilities, the EPA is soliciting comments on whether there are other surrogates or practices which could be applied to HNR door leaks. For those alternative techniques that could be applied to measuring door leaks, the EPA is soliciting information on equivalency studies that have been performed against Method 303 and/or 303A, and any potential training requirements and/or associated monitoring procedures for the alternative techniques.

c. Use of Pressure Transducers—HNR Ovens and Common Tunnels

As discussed earlier in this preamble, monitoring pressure in the ovens and common tunnel to establish negative oven pressure and establish leaks of 0.0 for HNR doors currently is allowed as an alternate method to observing leaks with EPA Method 303A under 40 CFR 63.303(b). We are proposing to require both methods, EPA Method 303A and pressure monitoring, to establish negative pressure in the ovens and 0.0 leaks. The current practice at HNR facilities is to operate one pressure monitor per common tunnel that may connect to 15 to 20 ovens and is, therefore, not very sensitive to pressure loss at one oven. Despite leaking emissions in one oven, a common tunnel with one pressure transducer may still show negative pressure within the tunnel. Also, facilities often only have one pressure transducer per oven, which might not be sufficient to monitor and establish negative pressure. We are considering a requirement for HNR facilities to develop and submit a monitoring plan to their delegated authority to ensure that there are sufficient pressure monitors in the ovens and common tunnels to be able to determine that all ovens are operated under negative pressure. We are not proposing this requirement at this time, however we are soliciting comment on this potential requirement and whether the EPA should allow each facility to suggest a site-specific number of monitors needed as part of the monitoring plan that they submit to the delegated authority for review and approval or whether EPA should establish a prescriptive minimum number of pressure monitors for each of the ovens and common tunnels in the NESHAP.

5. Fenceline Monitoring

We are proposing a fenceline monitoring work practice standard (for benzene, as a surrogate for COE) under the technology review for the Coke Oven Batteries source category. Fenceline monitoring refers to the placement of monitors along the perimeter of a facility to measure fugitive pollutant concentrations. The fenceline monitoring work practice standard would require owners and operators to monitor for benzene, as a surrogate for COE, and conduct root cause analysis and corrective action upon exceeding an annual average concentration action level of benzene. Details regarding the proposed requirements for fenceline monitoring, the action level, and root cause analysis and corrective action are discussed in this section.

The EPA recognizes that, in many cases, it is impractical to directly measure emissions from fugitive emission sources at coke manufacturing facilities. Direct measurement of fugitive emissions can be costly and difficult. The EPA is concerned about the potential magnitude of emissions from fugitive sources and the difficulty in monitoring actual fugitive emission levels.

To improve our understanding of fugitive emissions and to potentially address fugitive emissions sources at coke facilities, we required fenceline monitoring for benzene and several other HAP through the 2022 CAA section 114 request that is described in section II.C. of this preamble. In the 2022 CAA section 114 requests, five selected facilities (four ByP facilities and 1 HNR facility) were required to perform sampling using EPA Methods 325A/B for benzene, toluene, ethylbenzene, xylenes, and 1,3 butadiene and Compendium Methods TO–13A and TO–15A for VOC and PAHs to determine the facility fugitive HAP concentrations at the fenceline and interior on-site facility grounds.

At the fenceline, facilities were required to sample for six months (thirteen 14-day sampling periods) (24 hours per day) at monitoring locations determined by EPA Method 325A, for a combined total of 182 days of sampling with analysis by EPA Method 325B. Facilities were also required to collect seven 24-hour samples at each fenceline TO monitor location for a total of at least 21 samples ($3 \times 7$) for TO–13A and at least 28 samples ($4 \times 7$) of TO–15A. In addition to fenceline monitoring, facilities were required to sample fugitive emissions within the interior facility grounds using methods TO–13A and 15A. Facility interior samples were collected at one location at the HNR facility and two locations at the ByP facilities for seven 24-hour periods at each location resulting in a total of 7 TO–13A and TO–15A samples at the HNR facility and 14 (2 times 7) TO–13A and TO–15A samples at each ByP facility.

The requirements and decisions that we are proposing in this action are informed by the fenceline monitoring results reported by facilities in response to the 2022 Coke Ovens CAA section 114 request, consideration of dispersion modeling results, and consideration of the uncertainty with estimating emissions from fugitive emission sources. Based on the monitoring results and the other considerations, we determined that it is appropriate under CAA section 112(d)(6) to require coke oven facilities to monitor, and if necessary, take corrective action to minimize fugitive emissions, to ensure that facilities appropriately limit emissions of HAP from fugitive sources. More specifically, in this action, we are proposing that benzene concentrations be monitored at the fenceline of each coke oven facility using EPA Methods 325A/B. For each 2-week time-integrated sampling period, the facility would determine a delta c, calculated as the lowest benzene sample value subtracted from the highest benzene sample value. This approach is intended to subtract out the estimated contribution from background emissions that do not originate from the facility. The delta c for the most recent year of samples (26 sampling periods) would be averaged to calculate an annual average delta c. The annual average delta c would be determined on a 12-month rolling basis, meaning that it is updated with every new sample (*i.e.,* every 2 weeks a new annual average delta c is determined from the most recent 26 sampling periods). This rolling annual average delta c would be compared against a benzene action level and owners and operators would be required to conduct root cause analysis and corrective action upon exceeding the benzene action level.

We are proposing an action level of 3 ug/m$^3$ benzene. The proposed action level was determined by modeling fenceline benzene concentrations using the benzene emissions inventories used in the facility-wide risk assessment, assuming that those reported emissions represented full compliance with all standards, adjusted for additional control requirements we are proposing in this action.

After modeling each facility, we then selected the maximum annual average

benzene fenceline concentration modeled at any facility as the benzene action level. Thus, if the reported inventories are accurate, all facilities should be able to meet the benzene fenceline concentration action level. We note that this analysis does not correlate to any particular metric related to risk. This approach would provide the owner or operator with the flexibility to determine how best to reduce HAP emissions to ensure the benzene levels remain below the fenceline concentration action level. The details of this proposed approach are set forth in more detail in this section.

a. Siting, Design, and Sampling Requirements for Fenceline Monitors

The EPA is proposing that passive fenceline monitors collecting 2-week time-integrated samples be deployed to measure fenceline benzene concentrations at coke oven facilities. We are proposing that coke oven facilities deploy passive samplers at a minimum of 12 points circling the coke oven facility perimeter according to EPA Method 325A.

Fenceline passive diffusive tube monitoring networks employ a series of diffusive tube samplers at set intervals along the fenceline to measure a time-integrated [33] ambient air concentration at each sampling location. A diffusive tube sampler consists of a small tube filled with an adsorbent, selected based on the pollutant(s) of interest, and capped with a specially designed cover with small holes that allow ambient air to diffuse into the tube at a small, fixed rate. Diffusive tube samplers have been demonstrated to be a cost-effective, accurate technique for measuring concentrations of pollutants (*e.g.,* benzene) resulting from fugitive emissions in a number of studies [34] [35] as well as in the petroleum refining sector.[36] In addition, diffusive samplers are used in the European Union to monitor and maintain air quality, as described in European Union directives 2008/50/EC and Measurement Standard EN 14662–4:2005 for benzene. The International Organization for Standardization developed a standard method for diffusive sampling (ISO/FDIS 16017–2).

We are proposing that the highest concentration of benzene, as an annual rolling average measured at any individual monitor and adjusted for background (see ''*Adjusting for background benzene concentrations*'' in this section), would be compared against the concentration action level (of 3 ug/m$^3$) in order to determine if there are significant excess fugitive emissions that need to be addressed. We are proposing that existing sources would need to deploy samplers no later than 1 year after the effective date of the final rule which will enable facilities to begin generating annual averages after 2 years, and then within 3 years of the effective date the facilities would need to demonstrate that they meet the action level or would need to conduct the root cause analyses and corrective actions. New facilities would be required to deploy samplers by the effective date of the final rule or startup, whichever is later, and generate the first annual average 1 year later. We are proposing that coke oven facility owners and operators would be required to demonstrate compliance with the concentration action level for the first time 3 years following the date the final rule is published in the **Federal Register**, and thereafter on a 1-year rolling annual average basis (*i.e.,* considering results from the most recent 26 consecutive 2-week sampling intervals and recalculating the average every 2 weeks).

b. Benzene as an Appropriate Target Analyte

Passive diffusive tube monitors can be used to determine the ambient concentration of a large number of compounds. However, different sorbent materials are typically needed to collect compounds with significantly different properties. Rather than require multiple tubes per monitoring location and a full analytical array of compounds to be determined, which would significantly increase the cost of the proposed fenceline monitoring program, we are proposing that the fenceline monitors be analyzed specifically for benzene. Coke oven facility owners or operators may elect to do more detailed speciation of the air at the fenceline, which could help identify the process unit that may be contributing to a high fenceline concentration, but we are only establishing monitoring requirements and action level requirements for benzene. We consider benzene to be a surrogate for organic HAP from fugitive sources at coke ovens facilities for multiple reasons. First, benzene is ubiquitous at coke oven facilities since it accounts for about 70 percent of all volatile compounds in the fenceline volatile emissions. Benzene is also present in emissions from CBRPs, where benzene is recovered from coke oven gas for sale along with other coke oven gas components. Second, the primary releases of benzene occur at ground level as fugitive emissions and the highest ambient benzene concentrations outside the facility would likely occur near the property boundary, also near ground level, so fugitive releases of benzene would be effectively detected at the ground-level monitoring sites. According to the emissions inventory we have relied on for this proposed action, 38 percent of benzene emissions from coke oven facilities result from fugitive emissions from coke batteries and CBRP equipment. See the emission inventory description in the document *Residual Risk Assessment for Coke Ovens: Pushing, Quenching, and Battery Stacks Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,*[8] and the memorandum titled *Fugitive Monitoring at Coke Oven Facilities* (hereafter referred to as the *Fugitive Monitoring* memorandum),[37] located in the dockets for the rules. Lastly, benzene is present in nearly all coke oven facility equipment exhaust. Therefore, the presence of benzene at the fenceline is also an indicator of other HAP emitted as part of COE or gas that is derivative of COE. For this reason and the reasons discussed earlier in this section, we believe that benzene is the most appropriate pollutant to monitor.

We believe that other compounds, such as naphthalene and other PAH, would be less suitable indicators of total fugitive HAP for a couple of reasons. First, they are prevalent in stack emissions as well as fugitive emissions, so there is more potential for fenceline monitors to pick up contributions from nonfugitive sources. In contrast, almost

[33] Time-integrated sampling refers to the collection of a sample at a controlled rate over a period of time. The sample then provides an average concentration over the sample period. For the diffusive tube samplers, the controlled sampling rate is dictated by the uptake rate, which is the amount of a compound that can be absorbed by a particular sorbent over time during the sampling period.

[34] McKay, J., M. Molyneux, G. Pizzella, V. Radojcic. *Environmental Levels of Benzene at the Boundaries of Three European Refineries,* prepared by the CONCAWE Air Quality Management Group's Special Task Force on Benzene Monitoring at Refinery Fenceline (AQ/STF–45), Brussels, June 1999.

[35] Thoma, E.D., M.C. Miller, K.C. Chung, N.L. Parsons, B.C. Shine. 2011. Facility Fenceline Monitoring using Passive Sampling, J. Air & Waste Manage Assoc. 61: 834–842.

[36] See EPA–HQ–OAR–2010–0682; fenceline concentration data collected for the petroleum refining sector rulemaking can be accessed via the Benzene Fenceline Monitoring Dashboard at *https://awsedap.epa.gov/public/extensions/Fenceline_Monitoring/Fenceline_Monitoring.html?sheet=MonitoringDashboard.*

[37] *Fugitive Monitoring at Coke Oven Facilities.* D.L. Jones, K. Boaggio, K. McGinn, and N. Shappley, U.S. Environmental Protection Agency; and G.E. Raymond, RTI International. U.S. Environmental Protection Agency, Research Triangle Park, North Carolina. July 1, 2023. Docket ID No. EPA–HQ–OAR–2003–0051).

all benzene comes from fugitive sources, so monitoring for benzene increases our confidence that the concentration detected at the fenceline is from fugitive emissions. Second, as compared to benzene, these other compounds are expected to be present at lower concentrations and, therefore, would be more difficult to measure accurately using fenceline monitoring. We request comments on the suitability of selecting benzene or other HAP, including naphthalene and other PAH, as the indicator to be monitored by fenceline samplers. We also request comment on whether it would be appropriate to require multiple HAP to be monitored at the fenceline, considering the capital and annual cost for additional monitors that are not passive/diffusion type, and if so, which pollutants should be monitored.

c. Adjusting for Background Benzene Concentrations

Under this proposed approach, absolute measurements along a facility fenceline cannot completely characterize which emissions are associated with the coke oven facility and which are associated with other background sources outside the facility fenceline. The EPA recognizes that sources outside the coke oven facility boundaries may influence benzene levels monitored at the fenceline. Furthermore, background levels driven by local upwind sources are spatially variable. Both of these factors could result in inaccurate estimates of the actual contribution of fugitive emissions from the facility itself to the concentration measured at the fenceline. Many coke oven facilities are located in industrial areas that include facilities in other industries that also may emit benzene. With this spatial positioning, there is a possibility that the local upwind neighbors of a coke oven facility could cause different background levels on different sides of the coke oven facility.

In this proposal, we are proposing to allow the subtraction of offsite interfering sources (because they are not within the control of the owner or operators of coke ovens facilities) through site-specific monitoring plans, but we are not providing this option for onsite, non-source category emissions. The action levels described in this section are based on facility-wide emissions, and therefore these nonsource category sources have been considered in their development. We solicit comment on alternative approaches for making these adjustments for off-site contributions to the fenceline concentration of benzene.

d. Concentration Action Level

As mentioned above, the EPA is proposing to require coke oven facilities to take corrective action to reduce fugitive emissions if monitored fenceline concentrations exceed a specific concentration action level on a rolling annual average basis (recalculated every two weeks). We selected this proposed fenceline action level by modeling fenceline benzene concentrations using the benzene emissions estimates reported in response to the 2016 and 2022 CAA section 114 requests and estimated benzene emissions in the 2017 NEI for the CRBPs (see the model file description in *Residual Risk Assessment for Coke Ovens: Pushing, Quenching, and Battery Stacks Source Category in Support of the 2023 Risk and Technology Review Proposed Rule).* We estimated the long-term ambient benzene concentrations at each coke oven facility using the emission inventory and the EPA's American Meteorological Society/EPA Regulatory Model dispersion modeling system (AERMOD). Concentrations were estimated by the model at a set of polar grid receptors centered on each facility, as well as surrounding census block centroid receptors extending from the facility outward to 50 km. For purposes of this modeling analysis, we assumed that the nearest off-site polar grid receptor was the best representation of each facility's fenceline concentration, unless there was a census block centroid nearer to the fenceline than the nearest off-site polar grid receptor or an actual receptor was identified from review of the site map. In those instances, we estimated the fenceline concentration as the concentration at the census block centroid. Only receptors (either the polar or census block) that were estimated to be outside the facility fenceline were considered in determining the maximum benzene level for each facility. The maximum benzene concentration modeled at the fenceline for any coke oven facility is 3 μg/m$^3$ (annual average). For additional details of the analysis, see the *Fugitive Monitoring* memorandum.[37]

Due to differences in short-term meteorological conditions, short-term (*i.e.,* 2-week average) concentrations at the fenceline can vary greatly. Given the high variability in short-term fenceline concentrations and the difficulties and uncertainties associated with estimating a maximum 2-week fenceline concentration given a limited time period of meteorological data (one year) typically used in the modeling exercise, we determined that it would be inappropriate and ineffective to propose a short-term concentration action level that would trigger corrective action based on a single 2-week sampling event.

One objective for this monitoring program is to identify fugitive emission releases more quickly, so that corrective action can be implemented in a timelier fashion than might otherwise occur without the fenceline monitoring requirement. We conclude the proposed fenceline monitoring approach and a rolling annual average concentration action limit (*i.e.,* using results from the most recent 26 consecutive 2-week samples and recalculating the average every 2 weeks) would achieve this objective. The proposed fenceline monitoring would provide the coke oven facility owner or operator with fenceline concentration information once every 2 weeks. Therefore, the coke oven facility owner or operator would be able to timely identify emissions leading to elevated fenceline concentrations. We anticipate that the coke oven facility owners or operators would elect to identify and correct these sources early in efforts to avoid exceeding the annual benzene concentration action level.

An ''exceedance'' of the benzene concentration action level would occur when the rolling annual average delta c, exceeds 3 μg/m$^3$. Upon exceeding the concentration action level, we propose that coke oven facility owners or operators would be required to conduct analyses to identify sources contributing to fenceline concentrations and take corrective action to reduce fugitive emissions to ensure fenceline benzene concentrations remain at or below 3 μg/m$^3$ (rolling annual average).

e. Corrective Action Requirements

As described previously, the EPA is proposing that coke oven facility owners or operators analyze the fenceline samples and compare the rolling annual average delta c to the concentration action level. This section summarizes the root cause and corrective action requirements in this proposed rule. First, we are proposing that the calculation of the rolling annual average delta c must be completed within 30 days after the completion of each sampling episode. If the rolling annual average benzene delta c exceeds the proposed concentration action level (*i.e.,* 3 $\mu g$/m$^3$), the facility must, within 5 days of comparing the rolling annual delta c to the concentration action level, initiate a root cause analysis to determine the primary cause, and any other contributing cause(s), of the exceedance. The facility must complete

the root cause analysis and implement corrective action within 45 days of initiating the root cause analysis. We are not proposing specific controls or corrections that would be required when the concentration action level is exceeded because the cause of an exceedance could vary greatly from facility to facility and episode to episode since many different sources emit fugitive emissions. Rather, we are proposing to allow facilities to determine, based on their own analysis of their operations, the action that must be taken to reduce air concentrations at the fenceline to levels at or below the concentration action level, representing full compliance with Coke Oven Batteries NESHAP requirements for fenceline emissions until the next fenceline measurement.

If, upon completion of the root cause analysis and corrective actions described above, the coke oven facility subsequently exceeds the action level for the next two-week sampling episode following the earlier of the completion of a first set of corrective actions or the 45-day period commencing at initiation of root cause analysis (''subsequent exceedance''), the owner or operator would be required to develop and submit to the EPA a corrective action plan that would describe the corrective actions completed to date. This plan would include a schedule for implementation of additional emission reduction measures that the owner or operator can demonstrate as soon as practical. This plan would be submitted to the Administrator within 60 days after receiving the analytical results indicating that the delta c value for the 14-day sampling period following the completion of the initial corrective action is greater 3 μg/m$^3$, or if any corrective action measures identified require more than 45 days to implement, or, if no initial corrective actions were identified, no later than 60 days following the completion of the corrective action analysis.

The coke oven facility owner or operator is not deemed out of compliance with the proposed concentration action level at the time of the fenceline concentration determination provided that the appropriate corrective action measures are taken according to the timeframe detailed in an approved corrective action plan.

The EPA requests comment on whether it is appropriate to establish a standard time frame for compliance with actions listed in a corrective action plan.

We expect that facilities may identify ''poor-performing'' sources (*e.g.,* due to unusual or excessive leaks) using the fenceline monitoring data and, based on this additional information, would take action to reduce HAP emissions before they would have otherwise been aware of the issue through existing inspection and enforcement measures. By selecting a fenceline monitoring approach and by selecting benzene as the surrogate for COE, we believe that the proposed monitoring approach would effectively provide emissions information for all coke oven facility fugitive emission sources.

f. Additional Requirements of the Fenceline Monitoring Program

We are proposing that fenceline data at each monitor location be reported electronically for each quarterly period's worth of sampling periods (*i.e.,* each report would contain data for at least six 2-week sampling periods per quarterly period). These data would be reported electronically to the EPA within 45 days of the end of each quarterly period and would be made available to the public through the EPA's electronic reporting and data retrieval portal, in keeping with the EPA's efforts to streamline and reduce reporting burden and to move away from hard copy submittals of data where feasible. We are proposing that facilities be required to conduct fenceline monitoring on a continuous basis at all monitors, in accordance with the specific methods described above.

In light of the low annual monitoring and reporting costs associated with the fenceline monitors (as described in the next section), and the importance of the fenceline monitors as a means of ensuring the control of fugitives achieves the expected emission levels, we believe it is appropriate to require collection of fenceline monitoring data on a continuous basis. However, the EPA recognizes that fugitive benzene emissions at some monitors may be so low as to make it improbable that exceedances of the concentration action level would ever occur. In the interest of reducing the cost burden on facilities to comply with this rule, if a coke oven facility maintains the fenceline concentration below 0.3 ug/m$^3$ (a concentration that is 10 percent of the benzene action level) at any individual monitor for 2 years, the sampling frequency at that monitor can be reduced by 50 percent (*e.g.,* 2 weeks of sampling for every 4-week period). For each sample location and monitor that continues to register below 0.3 ug/m$^3$ for an additional 2 years, the sampling may be reduced further to approximately once per quarter, with sampling occuring every sixth two-week period (*i.e.,* five two-week periods are skipped between active sampling periods). If a monitor at the quarterly frequency continues to maintain a concentration of 0.3 ug/m$^3$ for an additional 2 years, sampling at that monitor may be reduced further to annual sampling. However, if the concentration at any sample location that is allowed a reduced frequency of testing increases above 0.3 ug/m$^3$ at any time, sampling would need to immediately return to the original continuous sampling requirement.

The EPA solicits comment on the proposed approach for reducing fenceline monitoring requirements for facilities that consistently measure fenceline concentrations below the concentration action level, and the measurement level that should be used to provide such relief. The proposed approach would be consistent with the fenceline alternate sampling frequency for burden reduction (40 CFR 63.658(e)(3)) as well as the graduated requirements for valve leak monitoring in Refinery MACT 1 [38] and other equipment leak standards, where the frequency of required monitoring varies depending on the percent of leaking valves identified during the previous monitoring period (See *e.g.,* 40 CFR 63.648(c). The EPA requests comment on the minimum time period facilities should be required to conduct fenceline monitoring; and the level of performance, in terms of monitored fenceline concentrations, that would enable a facility to reduce the frequency of data collection and reporting.

Total costs for fenceline monitoring are estimated to be $116,000 per year per facility including reporting and recordkeeping and $1.3M annually for the industry including reporting and recordkeeping (11 affected facilities). The EPA requests comment on these cost estimates.

6. Revised Emissions Equation for Leaking Doors

As part of the technology review under CAA section 112(d)(6), we are proposing to use an updated, revised version of the equation than that which has historically been used to estimate COE from leaking oven doors. The revised equation would provide more accurate estimates of COE from doors that reflects operation of any coke facility, not just the facility upon which the equation was derived, and includes facilities where advancements in preventing and reducing door leaks

[38] Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards Final Rule. U.S. Environmental Protection Agency, Research Triangle Park, North Carolina. 80 FR 75178. December 1, 2015.

have occurred since 1981, which is when the equation was first developed.

A summary of the revised equation and the rationale for its development follows here. A more detailed explanation can be found in the memorandum *Revised Equation to Estimate Coke Oven Emissions from Oven Doors,*[39] located in the dockets for these rules. We are asking for comment on the revised equation to estimate coke oven door leaks.

In the 2005 RTR for Coke Oven Batteries, COE from leaking oven doors were estimated using the following equation taken from the estimating procedures in AP–42 (section 12.2: Coke Production, revised draft, July 2001).[40]

$$\text{COE-doors (lb/hr)} = ND \times (PLD_{yard}/100) \times (0.04 \text{ lb/hr}^{41}) + ND \times (PLD_{bench}/100) \times (0.023 \text{ lb/hr}^{41})$$

Where:

ND = number of doors
PLD = percent leaking doors
Bench = walking platform running next to the ovens (and doors)
Yard = 50 to 100 feet from the oven doors
$PLD_{yard}$ = percent of doors with visible leaks observed from the yard
$PLD_{bench}$= percent of doors with visible leaks only observable from the bench.

Because of safety concerns, observations are not typically taken from bench and, therefore, this equation has historically included a default value of 6 percent for the percent leaking doors only able to be observed from the bench. As reported in the July 2008 update to AP–42 Chapter 12.2,[42] this default value was derived from 1981 data, where the percent leaking doors from the yard was 6.4 percent and the total percent leaking doors visible from the bench was 12.4 percent, which included both leaks visible from yard and leaks visible only from the bench. The difference between 12.4 and 6.4 percent, equal to 6 percent, represented the percent leaking doors only able to be observed from the bench.

In the current coke industry, the percent leaking doors measured from the yard is much lower, 2.5 percent or less, based on 2016 and 2022 source tests performed for the CAA section 114 request. The facility that was used in 1981 to establish the 6 percent leaking doors that were visible only from the bench was U.S. Steel Clairton-PA, which had 6.4 percent leaking doors visible from the yard at that time but now has a facility average of 0.54 percent leaking doors visible from the yard based on 2016 data and facility average of 0.46 percent leaking doors visible from the yard based on 2021 data. The default fixed value of 6 percent leaking doors visible only from the bench obviously does not reflect changes in practices for door leaks in the years since 1981 and should be reevaluated so that the total emissions from doors are not overestimated.

Consequently, for the analyses conducted for this proposed rule, we revised the equation to include a bench-to-yard ''ratio'' instead of the 6 percent default value for doors seen leaking from the bench in the door leak emissions equation. The revised value in the equation (*i.e.,* adjustment ratio) is still based on the historic values measured in 1981 but instead of using the 6 percent default value, the equation includes the ratio of the 1981 value for percent leaking doors visible only from the bench to the 1981 value for percent leaking doors visible from the yard. This adjustment ratio was used with current measured percent leaking doors from the yard to estimate the current percent leaking doors visible only from the bench. The ratio of bench-only emissions to yard emissions from 1981 is $((12.4 - 6.4)/6.4)$, equal to 6.0/6.4 or 0.94. The adjustment ratio (0.94) was multiplied by measured data for percent leaking doors measured from the yard to estimate the bench-only component of door emissions in the equation for COE for doors. Use of this adjustment ratio in the revised equation below is being proposed to better reflect operation of all coke ovens:

$$\text{COE-doors (lb/hr)} = ND \times (PLD_{yard}/100) \times (0.04 \text{ lb/hr}) + ND \times (PLD_{yard} \times 0.94)/100) \times (0.023 \text{ lb/hr})$$

As part of the 2022 CAA section 114 request, we requested two coke oven facilities to perform EPA Method 303 tests simultaneously from both the bench and the yard at two batteries at each facility. However, we did not receive the data until after preparation of this proposal preamble (data received on June 27, 2023). The EPA intends to complete analysis of these data in time to address in the final rule. The facility test reports from the recent method 303 door leak testing are included in the docket for the proposed rule. We solicit comments regarding the results of these method 303 tests and how those results could affect the door leak equation discussed in this section.

*E. What other actions are we proposing?*

In addition to the proposed actions described above, we are proposing additional revisions to these NESHAP. We are proposing revisions to the startup, shutdown, and malfunction (SSM) provisions of these rules in order to ensure that they are consistent with the decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), in which the court vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. We also are proposing electronic reporting. Our analyses and proposed changes related to these issues are discussed as follows.

1. SSM

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the United States Court of Appeals for the District of Columbia Circuit (the court) vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

With the issuance of the mandate in *Sierra Club* v. *EPA,* the exemptions that were in 63.6(f)(1) and (h)(1) are null and void. The EPA amended 40 CFR 63.6(f)(1) and (h)(1)) on March 11, 2021, to reflect the court order and correct the CFR to remove the SSM exemption.[43] In this action, we are eliminating any cross-reference to the vacated provisions in the regulatory text including 40 CFR 63.7310(a) and Table 1 of the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP and 40 CFR 63.300(e) and 63.310 for the Coke Oven Batteries NESHAP. Consistent with *Sierra Club* v. *EPA,* we are proposing standards in these rules that apply at all times. We are also proposing several revisions to Table 1 of the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP (the General Provisions applicability table) as is explained in more detail below.

[39] *Revised Equation to Estimate Coke Oven Emissions from Oven Doors.* D.L. Jones and K. McGinn. U.S. Environmental Protection Agency, Research Triangle Park, North Carolina. August 2021. Docket ID Nos. EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051.

[40] Compilation of Emission Factors (AP–42). Section 12.2, Coke Production. See *https://www3.epa.gov/ttn/chief/old/ap42/ch12/s02/final/c12s02.pdf.*

[41] Emission factors for leaks from yard (0.04 lb/hr) and bench (0.023 lb/hr) developed from 1981 coke facility data and reported in AP–42.[40]

[42] See Emission Factor Documentation for AP–42, Section 12.2 Coke Production Final Report, May 2008. Chapter 6, Summary of Comments and Response for the July 2001 Draft. Response A–3. pg. 6–5. *https://www3.epa.gov/ttnchie1/ap42/ch12/bgdocs/b12s02_may08.pdf.*

[43] U.S. EPA, *Court Vacatur of Exemption From Emission Standards During Periods of Startup, Shutdown, and Malfunction.* (86 FR 13819, March 11, 2021).

For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We also are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described as follows.

The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully done so.

In proposing the standards in this rule, the EPA has taken into account SS periods and, for the reasons explained as follows, has not proposed alternate standards for those periods. The coke oven industry has not identified (and there are no data indicating) any specific problems with removing the SSM provisions due to the nature of the coke process to operate continuously. If an oven is shut down, it has to be rebuilt before starting back up, which is the reason why coke ovens are put in idle mode when not operating. However, we solicit comment on whether any situations exist where separate standards, such as work practices, would be more appropriate during periods of startup and shutdown rather than the current standard.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead they are, by definition, sudden infrequent and not reasonably preventable failures of emissions control, process, or monitoring equipment (40 CFR 63.2) (definition of malfunction). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards and this reading has been upheld as reasonable by the court in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016). Therefore, the standards that apply during normal operation apply during periods of malfunction.

a. General Duty

We are proposing to revise the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP General Provisions Applicability table (Table 1) by adding an entry for 40 CFR 63.6(e)(1)(i) and including a ''no'' in column 3 and revising 40 CFR 63.7310(c) text. In 40 CFR 63.6(e)(1)(i), the general duty to minimize emissions is described. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events. Therefore, the language the EPA is proposing to revise for 40 CFR 63.7310(c) does not include that language from 40 CFR 63.6(e)(1). The EPA is also proposing to revise 40 CFR 63.300(e) in the Coke Oven Batteries NESHAP to reflect the elimination of the SSM exemption.

We are also proposing to revise the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP General Provisions Applicability table (Table 1) by adding an entry for 40 CFR 63.6(e)(1)(ii) and including a ''no'' in column 3. In 40 CFR 63.6(e)(1)(ii), requirements are imposed that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.7310(a). The EPA is also proposing to revise 40 CFR 63.300(e) in Coke Oven Batteries NESHAP to reflect the elimination of the SSM exemption.

b. SSM Plan

We are proposing to revise the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP General Provisions Applicability table (Table 1) by adding an entry for 40 CFR 63.6(e)(3) and including a ''no'' in column 3. Generally, the paragraphs under 40 CFR 63.6(e)(3) require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. The EPA is also proposing to revise 40 CFR 63.310(b) in 40 CFR part 63, subpart L to reflect the elimination of the SSM plan requirements. With the elimination of the SSM exemptions, affected units would be subject to an emission standard during such events. The applicability of a standard during such events would ensure that sources have ample incentive to plan for and achieve compliance and thus, the SSM plan requirements are no longer necessary.

c. Compliance With Standards

We are proposing to revise the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP General Provisions Applicability table (Table 1) by adding an entry for 40 CFR 63.6(f)(1) and including a ''no'' in column 3. Consistent with *Sierra Club,* EPA amended 40 CFR 63.6(f)(1) and (h)(1) on March 11, 2021, to reflect the court order and correct the CFR to remove the SSM exemption. However, the second sentence of 40 CFR 63.6(f)(1) contains language that is premised on the existence of an exemption and is inappropriate in the absence of the exemption. Thus, rather than cross-referencing 63.6(f)(1), we are adding the language of 63.6(f)(1) that requires compliance with standards at all times to the regulatory text at 40 CFR 63.7310(a). The EPA is also proposing to revise 40 CFR 63.300(e) in Coke Oven Batteries NESHAP: to reflect that standards apply at all times.

We are proposing to revise the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP General Provisions Applicability table (Table 1) by adding an entry for 40 CFR 63.6(h)(1) and including a ''no'' in column 3. Consistent with *Sierra Club,* EPA amended 40 CFR 63.6(h)(1) on March 11, 2021, to reflect the court order and correct the CFR to remove the SSM exemption. However, the second sentence of 40 CFR 63.6(f)(1) contains language that is premised on the existence of an exemption and is inappropriate in the absence of the exemption. Thus, rather than cross-referencing 63.6(f)(1), we are adding the language of 63.6(f)(1) that requires compliance with standards at all times to the regulatory text at 40 CFR 63.7310(a). The EPA is also proposing to revise 40 CFR 63.300(e) in Coke Oven Batteries NESHAP to reflect that standards apply at all times.

d. Performance Testing

We are proposing to revise the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP General Provisions Applicability table (Table 1) by adding an entry for 40 CFR 63.7(e)(1) and including a ''no'' in column 3 and revising 40 CFR 63.7336(b) text. In 40 CFR 63.7(e)(1) performance testing is required. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.7322(a), 63.7324(a), and 63.7325(a). In addition, we are revising 40 CFR 63.309(a) and removing the citation to 40 CFR 63.7(e)(1) from 40 CFR 63.309(k). The performance testing requirements we are proposing to add differ from the General Provisions performance testing provisions in several respects. The regulatory text does not include the language in 40 CFR 63.7(e)(1) that restated the SSM exemption and language that precluded startup and shutdown periods from being considered ''representative'' for purposes of performance testing. The revised performance testing provisions require testing under representative operating conditions and exclude periods of startup and shutdown.

As in 40 CFR 63.7(e)(1), performance tests conducted under these subparts should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. The EPA is proposing to add language that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. In 40 CFR 63.7(e), the owner or operator is required to make available to the Administrator such records ''as may be necessary to determine the condition of the performance test'' available to the Administrator upon request but does not specifically require the information to be recorded. The regulatory text the EPA is proposing to add to this provision builds on that requirement and makes explicit the requirement to record the information.

e. Monitoring

We are proposing to revise the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP General Provisions Applicability table (Table 1) by adding entries for 40 CFR 63.8(c)(1)(i) and (iii) and including a ''no'' in column 3. The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)). In addition, the EPA is proposing to revise 40 CFR 63.305(f)(4)(i) in Coke Oven Batteries NESHAP to reflect changes to General Provisions due to general duty and SSM.

We are proposing to revise the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP General Provisions Applicability table (Table 1) by adding an entry for 40 CFR 63.8(d)(3) and including a ''no'' in column 3. The final sentence in 40 CFR 63.8(d)(3) refers to the General Provisions' SSM plan requirement which is no longer applicable. The EPA is proposing to add to the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP at 40 CFR 63.7342(b)(3) text that is identical to 40 CFR 63.8(d)(3) except that the final sentence is replaced with the following sentence: ''The program of corrective action should be included in the plan required under § 63.8(d)(2).'' We note that the revisions to 40 CFR 63.305(f)(4)(i) in Coke Oven Batteries NESHAP will also comport to this change.

f. Recordkeeping

We are proposing to revise the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP Applicability table (Table 1) by adding an entry for 40 CFR 63.10(b)(2)(i) and including a ''no'' in column 3. In 40 CFR 63.10(b)(2)(i), the recordkeeping requirements during startup and shutdown are described. In addition, the EPA is proposing to revise 40 CFR 63.311(f) in Coke Oven Batteries NESHAP. These recording provisions are no longer necessary because the EPA is proposing that recordkeeping and reporting applicable to normal operations would apply to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We are proposing to revise Table 1 of Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP by adding an entry for 40 CFR 63.10(b)(2)(ii) and including a ''no'' in column 3. In 40 CFR 63.10(b)(2)(ii), the recordkeeping requirements during a malfunction are described. The EPA is proposing to revise and add such requirements to 40 CFR 63.7342(a)(2)–(4). We are also revising the 40 CFR 63.311(f) to update the recordkeeping requirements in Coke Oven Batteries NESHAP. The regulatory text we are proposing to add differs from the General Provisions and other regulatory text it is replacing in that these provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment. The EPA is proposing that this requirement apply to all malfunction events requiring that the source record the date, time, cause, and duration of the malfunction and report any failure to meet the standard. The EPA is also proposing to add to 40 CFR 63.7342(a)(3) and 40 CFR 63.311(f)(1)(iv) a requirement that sources keep records that include a list of the affected source or equipment and actions taken to minimize emissions, whether the failure occurred during a period of SSM, an estimate of the quantity of each regulated pollutant emitted over the standard for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are proposing to revise the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP General Provisions Applicability table (Table 1) by adding an entry for 40 CFR 63.10(b)(2)(iv) and including a ''no'' in column 3. The EPA is proposing to revise 40 CFR 63.311(f) in the Coke Oven Batteries NESHAP. When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans would no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.7342(a)(4) and 40 CFR 63.311(f)1(iv).

We are proposing to revise the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP General Provisions Applicability table (Table 1) by adding an entry for 40 CFR 63.10(b)(2)(v) and including a ''no'' in column 3. The EPA is also proposing to revise 40 CFR 63.311(f) in Coke oven Batteries NESHAP. When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans would no longer be required.

We are proposing to revise the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP General Provisions Applicability table (Table 1) by adding an entry for 40 CFR 63.10(c)(15) and including a ''no'' in column 3. The EPA is proposing that 40 CFR 63.10(c)(15) no longer apply. When applicable, the provision allows an owner or operator to use the affected source's SSM plan or records to satisfy the recordkeeping requirements of the SSM plan specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is proposing to eliminate this requirement because SSM plans would no longer be required, and, therefore, 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units. The EPA is also proposing to revise 40 CFR 63.311(f) in Coke Oven Batteries NESHAP for similar changes.

g. Reporting

We are proposing to revise the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP General Provisions Applicability table (Table 1) by adding an entry for 40 CFR 63.10(d)(5)(i) and including a ''no'' in column 3. The EPA is also proposing to revise 40 CFR 63.311(b)(2), 63.311(b)(5), 63.311(d)(2), in Coke oven Batteries NESHAP to reflect similar changes. In 40 CFR 63.10(d)(5)(i), the reporting requirements for SSMs are described. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.7341(d)(4) and 40 CFR 63.311(f)(1)(iv) and revise reporting requirements in 40 CFR 63.311(b)(2), (b)(5), and (d)(2). The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semiannual reporting period compliance report already required under this rule. We are proposing that the report would contain the number, date, time, duration, and the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

We are proposing to revise the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP General Provisions Applicability table (Table 1) by adding an entry for 40 CFR 63.10(d)(5)(i) and including a ''no'' in column 3 and revising the 40 CFR 63.7341(c)(4) text. We would no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans would no longer be required. The proposed amendments, therefore, eliminate the cross reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events would be reported in otherwise required reports with similar format and submittal requirements.

We are proposing to revise the Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP General Provisions Applicability table (Table 1) by adding an entry for 40 CFR 63.10(d)(5)(ii) and including a ''no'' in column 3. The EPA is also proposing to revise 40 CFR 63.311(b)(2), 63.311(b)(5), 63.311(d)(2), in Coke Oven Batteries to reflect similar changes. In 40 CFR 63.10(d)(5)(ii) and 63.311, an immediate report is described for SSMs when a source failed to meet an applicable standard but did not follow the SSM plan. We would no longer require owners and operators to report when actions taken during a SSM were not consistent with an SSM plan, because plans would no longer be required.

2. Electronic Reporting

The EPA is proposing that owners and operators of coke oven facilities, under rules for both Coke Ovens Pushing, Quenching, and Battery Stacks NESHAP and Coke Oven Batteries NESHAP source categories, submit electronic copies of required performance test reports, periodic reports (including fenceline monitoring reports), and periodic certifications through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). A description of the electronic data submission process is provided in the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in the docket for this action. The proposed rule requires that performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the ERT website [44] at the time of the test be submitted in the format generated through the use of the ERT or an electronic file consistent with the *xml* schema on the ERT website, and other performance test results be submitted in portable document format (PDF) using the attachment module of the ERT.

For the quarterly and semiannual compliance reports of the Coke Ovens: Pushing, Quenching, and Battery Stacks NESHAP source category and the semiannual compliance certification of the Coke Oven Batteries NESHAP source category, the proposed rule requires that owners and operators use the appropriate spreadsheet template to submit information to CEDRI. A draft version of the proposed templates for these reports is included in the docket for this action.[45] The EPA specifically requests comment on the content, layout, and overall design of the templates.

The electronic submittal of the reports addressed in this proposed rulemaking would increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, would further assist in the protection of public health and the environment, would improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and would ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan [46] to implement Executive Order 13563 and is in keeping with the EPA's agency-wide policy [47] developed in response to the White House's Digital Government Strategy.[48] For more information on the benefits of electronic reporting, see the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and*

[44] *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

[45] See Draft Form 5900–618 Coke Ovens Part 63 Subpart L Semiannual Report.xlsx, Draft Form 5900–619 Part 63 Subpart L Fenceline Quarterly Report.xlsx, and Draft Form 5900–621 Coke Ovens Part 63 Subpart CCCCC Semiannual Report.xlsx, available at Docket ID. No's EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051.

[46] EPA's Final Plan for Periodic Retrospective Reviews, August 2011. Available at: *https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154.*

[47] E-Reporting Policy Statement for EPA Regulations, September 2013. Available at: *https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

[48] Digital Government: Building a 21st Century Platform to Better Serve the American People, May 2012. Available at: *https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html.*

*National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* referenced earlier in this section.

*F. What compliance dates are we proposing?*

The proposed date for complying with the proposed SSM changes is no later than the effective date of the final rule with the exception of recordkeeping provisions. For recordkeeping under the SSM, we are proposing that facilities must comply with this requirement 180 days after the effective date of the final rule. Recordkeeping provisions associated with malfunction events shall be effective no later than 180 days after the effective date of the final rule. The EPA is requiring additional information for recordkeeping of malfunction events, so the additional time is necessary to permit sources to read and understand the new requirements and adjust record keeping systems to comply. Reporting provisions are in accordance with the reporting requirements during normal operations and the semi-annual report of excess emissions.

The proposed date for complying with the proposed ERT submission requirements is 180 days after publication of the final rule. The proposed compliance date for the revisions to the allowable limits for leaking doors, lids, and offtakes under the Coke Oven Batteries NESHAP is 1 year after publication of the final rule. The proposed compliance date to begin fenceline monitoring is 1 year after the publication date of the final rule; facilities must perform root cause analysis and apply corrective action requirements upon exceedance of an annual average concentration action level starting 3 years after the publication date of the final rule.

The proposed compliance date for the 15 new MACT limits (based on the MACT floor, as described in section IV.A. of this preamble), in the NESHAP for Coke Ovens: Pushing, Quenching and Battery Stacks is 1 year after publication of the final rule. The proposed compliance date for the two new BTF emission limits for HNR waste heat stacks in the NESHAP for Coke Ovens: Pushing, Quenching and Battery Stacks is 3 years after publication of the final rule to allow time for the installation of ductwork to capture large volumes of battery COE and for acquisition and installation of control devices to treat the captured air. As described earlier in this section, the facility that is affected by the new BTF PM limit is located between three rivers, a state road, and a railroad track. Therefore, due to the unique configuration of facility, and the resulting space available to construct control devices and ductwork to reduce arsenic emissions from bypass stacks creates an impediment to a typical construction schedule. We estimate that the facility will need 3 years to complete all this work and comply with the new PM limit. Consequently, the proposed compliance date for the BTF PM limit for waste stacks in the Coke Ovens: Pushing, Quenching and Battery Stacks NESHAP is 3 years after publication of the final rule.

*G. Adding 1-bromopropane to List of HAP*

On January 5, 2022, the EPA published a final rule amending the list of hazardous air pollutants (HAP) under the CAA to add 1-bromopropane (1–BP) in response to public petitions previously granted by the EPA. (87 FR 393). Consequently, as each NESHAP is reviewed, we are evaluating whether the addition of 1–BP to the CAA section 112 HAP list impacts the source category. For the Coke Ovens: Pushing, Quenching, and Battery Stacks and Coke Oven Batteries source categories, we conclude that the inclusion of 1–BP as a regulated HAP would not impact the representativeness of the MACT standard because, based on available information, we have no evidence that 1–BP is emitted from this source category. As a result, no changes are being proposed to the Coke Ovens: Pushing, Quenching, Battery Stacks and Coke Oven Batteries NESHAPs based on the January 2022 rule adding 1–BP to the list of HAP. Nevertheless, we are requesting comments regarding the use of 1–BP and any potential emissions of 1–BP from this source category.

## V. Summary of Cost, Environmental, and Economic Impacts

Table 10 below summarizes the proposed amendments for emission sources at coke oven facilities. The fenceline monitoring requirement under 40 CFR part 63, subpart L and the BTF limit for mercury (Hg) and non-Hg metals from HNR HRSG B/W heat stacks under 40 CFR part 63, subpart 5C are expected to require facilities to incur incremental costs relative to current standards. The proposed lowering of leak limits for coke oven doors, lids, and offtake systems under 40 CFR part 63, subpart L is not expected to achieve actual emission reductions but would reduce allowable emissions.

TABLE 10—SUMMARY OF THE PROPOSED AMENDMENTS TO 40 CFR PART 63, SUBPARTS CCCCC AND L

| | Emissions source | Current standard | Proposed standard |
|---|---|---|---|
| **40 CFR part 63, subpart L (Coke Oven Batteries)** | | | |
| Facility-wide Fugitive Emissions | ..... | no requirement | Fenceline monitoring work practice standard for benzene. |
| Leaking from Coke Oven Doors [a] | | | |
| | Clairton facility | 3.3–4% limit | 1–1.5% limit. |
| | All other by-product facilities | 3.3–4% limit | 3% limit. |
| Leaking Lids | ..... | 0.4% limit | 0.2% limit. |
| Leaking Offtake Systems | ..... | 2.5% limit | 1.2% limit. |
| **40 CFR part 63, subpart 5C (Pushing, Quenching, Battery Stacks) Regulatory Gaps** | | | |
| HNR HRSG B/W Heat Stacks | Acid gases, formaldehyde, PAHs | no requirement | MACT floor limit. |
| | Hg and non-Hg metals | no requirement | BTF limit (one facility-Vansant, VA); MACT limit (all remaining facilities). |
| HNR HRSG Main Stack | Acid gases, Hg, PM metals, PAHs | no requirement | MACT floor limit. |
| Coke Pushing | Acid gases, hydrogen cyanide, Hg, PAHs. | no requirement | MACT floor limit. |
| By-product Recovery Battery Stack | Acid gases, hydrogen cyanide, Hg, PM metals. | no requirement | MACT floor limit. |

[a] The higher opacity limit applies to ''tall'' doors (equal to or greater than 6 meters); lower leak limit applies to other doors.

*A. What are the affected sources?*

These proposed amendments to the NESHAP for Coke Ovens: Pushing, Quenching and Battery Stacks affect sources of HAP emissions from pushing coke out of ovens, quenching hot coke with water in quench towers, battery stacks of oven combustion gas at ByP coke plants, and from HRSG and HNR bypass/waste heat stacks at HNR facilities. These proposed amendments also apply to the NESHAP for Coke Oven Batteries, where the affected sources are the visible leaks from oven doors, charging port lids, and offtake ducts; and from emissions from charging coal into the coke ovens.

*B. What are the air quality impacts?*

The proposed BTF MACT standards for waste heat stacks at nonrecovery facilities in the Coke Ovens: Pushing, Quenching, and Battery Stacks source category would achieve an estimated 237 tpy reduction of PM emissions, 14 tpy reduction of $PM_{2.5}$ emissions, 4.0 tpy reduction of nonmercury metal HAP emissions, and 0.072 tpy (144 pounds per year) reduction of mercury emissions.

We expect that there will be no other air quality impacts due to this proposed rulemaking (*e.g.,* from the proposed 15 MACT floor limits for the Coke Ovens: Pushing, Quenching, and Battery Stacks NESHAP source category). However, the 15 proposed MACT floor standards would ensure that air quality does not degrade over time.

We also expect that there will be no air quality impacts due to proposed reduction in allowable emissions from coke oven doors, lids and offtakes in the Coke Oven Batteries source category, but the proposed revised standards would ensure that air quality does not degrade over time.

*C. What are the other environmental impacts?*

Baghouses and ACI that are used to reduce air emissions of mercury and nonmercury HAP metals from bypass waste stacks at one HNR facility have the following environmental impacts: 15.1 million kilowatt-hour increased electricity use and 761 tons of hazardous dust for disposal. Baghouses and ACI are commonly used control devices for air emissions of PM and mercury. Consequently, there is a reduction in air emissions of 4.0 tpy nonmercury HAP metals and 144 pounds per year mercury.

*D. What are the cost impacts?*

Cost impacts would occur due to the required source testing every 5 years to demonstrate compliance with the proposed MACT floor and BTF standards for Coke Ovens: Pushing, Quenching, and Battery Stacks. Testing costs are estimated to be $3.2 million annualized costs including reporting and recordkeeping for the 11 operating facilities in the source category, with an average of $290,000 per year per facility including reporting and recordkeeping.

Cost impacts would occur due to the control device needed to reduce HAP emissions to meet the two BTF MACT standards. For the ACI and baghouses used to achieve the BTF standard for mercury, capital costs would be $314,000 for activated carbon and the injection systems and $7.2M for the baghouses along with necessary ductwork; annual costs for activated carbon and the injection systems would be $1.6M/yr and $3.0M/yr for the baghouses with necessary ductwork. For nonmercury metal HAP control, capital costs would be $7.2M for the baghouses along with necessary ductwork and annual costs would be $3.0M/yr. Total estimated capital costs for the BTF limit for waste heat stacks (nonmercury metal HAP and mercury) are $7.5M, with annualized costs of $4.7M (1 affected facility).

Total costs for fenceline monitoring are estimated to be $116,000 per year per facility including reporting and recordkeeping and $1.3M annually for the industry including reporting and recordkeeping (11 affected facilities).

Total capital costs for the industry (for 1 facility) are $7.5M and the estimated annual costs for the industry for all proposed requirements are about $9.1M/yr (including reporting and recordkeeping) for 11 affected facilities.

*E. What are the economic impacts?*

The EPA prepared an Economic Impact Analysis (EIA) for the proposed rule, which is available in the docket for this action. This proposed rule is not a significant regulatory action under Executive Order 12866 section 3(f)(1), as amended by Executive Order 14094, since it is not likely to have an annual effect on the economy of $200 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities. The EIA analyzes the cost and emissions impact under the proposed requirements, and the projected impacts are presented for the 2025–2036 time period. The EIA analyzes the projected impacts of the proposed rule in order to better inform the public about its potential effects.

If the compliance costs, which are key inputs to an economic impact analysis, are small relative to the receipts of the affected industries, then the impact analysis may consist of a calculation of annual (or annualized) costs as a percent of sales for affected parent companies. This type of analysis is often applied when a partial equilibrium or more complex economic impact analysis approach is deemed unnecessary given the expected size of the impacts. The annualized cost per sales for a company represents the maximum price increase in the affected product or service needed for the company to completely recover the annualized costs imposed by the regulation. We conducted a cost-to-sales analysis to estimate the economic impacts of this proposal, given that the equivalent annualized value (EAV), which represents a flow of constant annual values that would yield a sum equivalent to the present value, of the compliance costs over the period 2025–2036 range from $8.9 million using a 7 percent discount rate to $9.6 million using a 3 percent discount rate in 2022 dollars, which is small relative to the revenues of the steel industry (of which the coke industry is a part).

There are five parent companies that operate active coke facilities: Cleveland-Cliffs, Inc. U.S. Steel, SunCoke Energy, Inc., DTE Energy Company, and the Drummond Company. Each reported greater than $1 billion in revenue in 2021. The EPA estimated the annualized compliance cost each firm is expected to incur and determined the estimated cost-to-sales ratio for each firm is less than 0.5 percent. James C. Justice Companies owns the idled Bluestone Coke facility, and the EPA estimated the compliance cost-to-sales ratio, if the facility were to resume operations, would be less than 0.1 percent. Therefore, the projected economic impacts of the expected compliance costs of the proposal are likely to be small. The EPA also conducted a small business screening to determine the possible impacts of the proposed rule on small businesses. Based on the Small Business Administration size standards and business information gathered by the EPA, this source category has one small business, which would not be subject to significant cost by the proposed requirements.

Details of the EIA can be found in the document prepared for this rule titled *Economic Impact Analysis for the Proposed National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, Residual Risk and Technology Review; National Emission Standards for Hazardous Air Pollutants for Coke*

*Oven Batteries Technology Review* [49] that is located in the dockets for these rules.

*F. What are the benefits?*

The BTF MACT standards for waste heat stacks at nonrecovery facilities are expected to reduce HAP emissions (with concurrent control of $PM_{2.5}$) and could improve air quality and the health of persons living in surrounding communities. These standards are expected to reduce 4.0 tpy of nonmercury HAP metal (including arsenic and lead) and 144 lbs per year of mercury. These standards are also projected to reduce PM emissions by 237 tpy, of which 14 tpy is expected to be $PM_{2.5}$. The proposed amendments also revise the standards such that they apply at all times, which includes periods of SSM, and may result in some unquantified additional emissions reductions compared to historic or current emissions (*i.e.,* before the SSM exemptions were removed), and improve accountability and compliance assurance. In addition, we are also proposing fenceline monitoring, which would improve compliance assurance and potentially result in some unquantified additional emission reductions. The risk assessment (described in section IV.B.) quantifies the estimated health risks associated with the current emissions, although we did not attempt to monetize the health benefits of reductions in HAP in this analysis. The EPA remains committed to improving methods for monetizing HAP benefits by continuing to explore additional aspects of HAP-related risk, including the distribution of that risk.

*G. What analysis of environmental justice did we conduct?*

Executive Order 12898 directs EPA to identify the populations of concern who are most likely to experience unequal burdens from environmental harms, which are specifically minority populations, low-income populations, and Indigenous peoples (59 FR 7629, February 16, 1994). Additionally, Executive Order 14096 built upon and supplemented that order (88 FR 25,251; April 26, 2023). For this action, pursuant to the Executive Orders, the EPA conducted an assessment of the impacts that would result from the proposed rule amendments, if promulgated, on communities with environmental justice concerns living near coke oven facilities.

Consistent with the EPA's commitment to integrating environmental justice in the Agency's actions, the Agency has carefully considered the impacts of this action on communities with environmental justice concerns. The EPA defines environmental justice 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.'' [50] The EPA further defines 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.'' In recognizing that communities with environmental justice concerns often bear an unequal burden of environmental harms and risks, the EPA continues to consider ways of protecting them from adverse public health and environmental effects of air pollution. For purposes of analyzing regulatory impacts, the EPA relies upon its June 2016 ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,'' [51] which provides recommendations that encourage analysts to conduct the highest quality analysis feasible, recognizing that data limitations, time, resource constraints, and analytical challenges will vary by media and circumstance. The Technical Guidance states that a regulatory action may involve potential environmental justice concerns if it could: (1) Create new disproportionate impacts on minority populations, low-income populations, and/or Indigenous peoples; (2) exacerbate existing disproportionate impacts on minority populations, low-income populations, and/or Indigenous peoples; or (3) present opportunities to address existing disproportionate impacts on minority populations, low-income populations, and/or Indigenous peoples through an action under development.

1. Coke Ovens: Pushing, Quenching, and Battery Stacks Source Category Demographics

The EPA examined the potential for the 14 coke oven facilities to disproportionately impact residents in certain demographic groups in proximity to the facilities, both in the baseline and under the control options considered in this proposal. Specifically, the EPA analyzed how demographics and risk are distributed both pre- and post-control under the Coke Ovens: Pushing, Quenching, and Battery Stack NESHAP, enabling us to address the core questions that are posed in the EPA's 2016 Technical Guidance for Assessing Environmental Justice in Regulatory Analysis. In conducting this analysis, we considered key variables highlighted in the guidance including minority populations (including Hispanic or Latino), low-income populations, and/or Indigenous peoples. The methodology and detailed results of the demographic analysis are presented in the document titled *Analysis of Demographic Factors for Populations Living Near Coke Oven Facilities,* [52] which is available in the docket for this action.

To examine the potential for disproportionate impacts on certain population groups, the EPA conducted a proximity analysis, baseline risk-based analysis (*i.e.,* before implementation of any controls proposed in this action), and post-control risk-based analysis (*i.e.,* after implementation of the controls proposed in this action). The proximity demographic analysis is an assessment of individual demographic groups in the total population living within 10 km (~6.2 miles) and 50 km (~31 miles) of the facilities. The baseline risk-based demographic analysis is an assessment of risks to individual demographic groups in the population living within 10 km and 50 km of the facilities prior to the implementation of any controls proposed by this action (''baseline''). The post-control risk-based demographic analysis is an assessment of risks to individual demographic groups in the population living within 10 km and 50 km of the facilities after implementation of the controls proposed by this action (''post-control''). In this preamble, we focus on the 10 km radius for the demographic analysis because it encompasses all the facility MIR locations and captures 99 percent

[49] *Economic Impact Analysis for the Proposed National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, Residual Risk and Technology Review; National Emission Standards for Hazardous Air Pollutants for Coke Oven Batteries, Technology Review* (EPA–452/R–23–005). U.S. Environmental Protection Agency Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Research Triangle Park, NC. May 2023.

[50] *https://www.epa.gov/environmentaljustice.*

[51] See *https://www.epa.gov/environmentaljustice/technical-guidance-assessing-environmental-justice-regulatory-analysis.*

[52] Analysis of Demographic Factors for Populations Living Near Coke Oven Facilities. C. Sarsony. U.S. Environmental Protection Agency, Research Triangle Park, North Carolina. May 1, 2023. Docket ID Nos. EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051.

of the population with baseline cancer risks greater than or equal to 1-in-1 million from coke ovens source category emissions. The results of the proximity analysis for populations living within 50 km are included in the document titled *Analysis of Demographic Factors for Populations Living Near Coke Oven Facilities,* which is available in the docket for this action.

Under the risk-based demographic analysis, the total population, population percentages, and population count for each demographic group for the entire U.S. population is shown in the column titled ''Nationwide Average for Reference'' in Table 11 of this preamble. These national data are provided as a frame of reference to compare the results of the baseline proximity analysis, the baseline risk-based analyses, and the post-control risk-based analyses.

The results of the category proximity demographic analysis (see Table 11, column titled ''Baseline Proximity Analysis for Pop. Living within 10 km of Coke Oven Facilities'') indicate that a total of 1.3 million people live within 10 km of the 14 Coke Oven facilities. The percent of the population that is African American is more than double the national average (27 percent versus 12 percent). The percent of people living below the poverty level is almost double the national average (22 percent versus 13 percent).

The category baseline risk-based demographic analysis (see Table 11, column titled ''Pre-Control Baseline''), which focuses on populations that have higher cancer risks, indicates that the population with cancer risks greater than or equal to 1-in-1 million due to emissions from the Coke Ovens: Pushing, Quenching, and Battery Stacks source category is predominantly white (86 percent versus 60 percent nationally).[53] The population with cancer risks greater than or equal to 1-in-1 million is above the national average for percent of the population living below poverty (17 percent versus 13 percent) and the percent of the population that is over 25 without a high school diploma is almost 2 times the national average (21 percent versus 12 percent). The category post-control risk-based demographic analysis (see Table 11, column titled ''Post-Control'') shows that the controls under consideration in this proposal would reduce the number of people who are exposed to cancer risks greater than or equal to 1-in-1 million resulting from emissions from the Coke Ovens: Pushing, Quenching, and Battery Stacks source category by almost 90 percent, from approximately 2,900 to 400 people. The post-control population with risks greater than or equal to 1-in-1 million (approximately 400 people) live within 10 km of three facilities, two located in Pennsylvania and one in Virginia. However, over 90 percent of the 400 people with risks greater than or equal to 1-in-1 million are located around one facility in Clairton, Pennsylvania. The total post-control population with risks equal to or greater than 1-in-1 million is predominately white (96 percent). Note that there are only 26 people with post-control risks greater than 1-in-1 million (MIR of 2-in-1 million) due to emissions from the Coke Ovens: Pushing, Quenching, and Battery Stacks source category within 10 km of the coke oven facilities.

TABLE 11—COKE OVENS: PUSHING, QUENCHING, AND BATTERY STACKS SOURCE CATEGORY: PRE-CONTROL AND POST-CONTROL DEMOGRAPHICS OF POPULATIONS LIVING WITHIN 10 KM OF FACILITIES WITH CANCER RISK GREATER THAN OR EQUAL TO 1-IN-1 MILLION COMPARED TO THE NATIONAL AVERAGE AND PROXIMITY DEMOGRAPHICS

| Demographic group | Nationwide average for reference | Baseline proximity analysis for population living within 10 km of Coke Oven facilities | Cancer risk ≥1-in-1 million within 10 km of Coke Oven facilities | |
|---|---|---|---|---|
| | | | Pre-control baseline | Post-control |
| Total Population | 328M | 1.3M | 3K | 400 |
| Number of Facilities | ..... | 14 | 3 | 3 |
| **Race and Ethnicity by Percent/Number of People** | | | | |
| White | 60% | 59% | 86% | 96% |
| | 197M | 789K | 2.5K | 400 |
| African American | 12% | 27% | 11% | 2% |
| | 40M | 364K | 300 | <100 |
| Native American | 0.7% | 0.2% | 0.1% | 0.0% |
| | 2.2M | 2.5K | <100 | 0 |
| Hispanic or Latino (includes white and nonwhite) | 19% | 11% | 1% | 1% |
| | 62M | 144K | <100 | <100 |
| Other and Multiracial | 8% | 3% | 2% | 1% |
| | 27M | 44K | <100 | <100 |
| **Income by Percent/Number of People** | | | | |
| Below Poverty Level | 13% | 22% | 17% | 10% |
| | 44M | 297K | 500 | <100 |
| Above Poverty Level | 87% | 78% | 83% | 90% |
| | 284M | 1M | 2.4K | 300 |

[53] Note that, since there are only 57 people with a noncancer HI greater than or equal to 1 living around one facility, we did not conduct risk-based demographics for noncancer.

TABLE 11—COKE OVENS: PUSHING, QUENCHING, AND BATTERY STACKS SOURCE CATEGORY: PRE-CONTROL AND POST-CONTROL DEMOGRAPHICS OF POPULATIONS LIVING WITHIN 10 KM OF FACILITIES WITH CANCER RISK GREATER THAN OR EQUAL TO 1-IN-1 MILLION COMPARED TO THE NATIONAL AVERAGE AND PROXIMITY DEMOGRAPHICS—Continued

| Demographic group | Nationwide average for reference | Baseline proximity analysis for population living within 10 km of Coke Oven facilities | Cancer risk ≥1-in-1 million within 10 km of Coke Oven facilities | |
|---|---|---|---|---|
| | | | Pre-control baseline | Post-control |
| **Education by Percent/Number of People** | | | | |
| Over 25 and without a High School Diploma | 12%<br>40M | 14%<br>194K | 21%<br>600 | 7%<br><100 |
| Over 25 and with a High School Diploma | 88%<br>288M | 86%<br>1.1M | 79%<br>2.3K | 93%<br>400 |
| **Linguistically Isolated by Percent/Number of People** | | | | |
| Linguistically Isolated | 5%<br>18M | 3%<br>39K | 1%<br><100 | 0%<br>0 |

**Notes:**
Nationwide population and demographic percentages are based on Census' 2015–2019 ACS 5-year block group averages. Total population count is based on 2010 Decennial Census block population.
To avoid double counting, the ''Hispanic or Latino'' category is treated as a distinct demographic category. A person who identifies as Hispanic or Latino is counted as Hispanic or Latino, regardless of race.
The number of facilities represents facilities with a cancer MIR above level indicated. When the MIR was located at a user assigned receptor at an individual residence and not at a census block centroid, we were unable to estimate population and demographics for that facility.
The sum of individual populations with a demographic category may not add up to total due to rounding.

2. Coke Oven Whole-Facility Demographics

As described in section IV.B.5. of this preamble, we assessed the facility-wide (or ''whole-facility'') risks for 14 coke oven facilities in order to compare the Coke Ovens: Pushing, Quenching, and Battery Stacks NESHAP source category risk to the whole facility risks. This whole-facility demographic analysis characterizes the risks communities face from all HAP sources at coke oven facilities both before and after implementation of the controls proposed in this action that result in reduction of actual emissions. The whole facility risk assessment includes all sources of HAP emissions at each facility (described in section III.C.7. of this preamble). Note, no reduction in actual emissions or risk is expected at the whole facility level apart from the reduction in actual emissions and risk estimated for the proposed standards for the Coke Ovens: Pushing, Quenching, and Battery Stacks NESHAP source category.

The whole-facility demographic analysis is an assessment of individual demographic groups in the total population living within 10 km (~6.2 miles) and 50 km (~31 miles) of the facilities. In this preamble, we focus on the 10 km radius for the demographic analysis because it encompasses all the facility MIR locations and captures 99 percent of the population with baseline cancer risks greater than or equal to 1-in-1 million from the Coke Ovens: Pushing, Quenching, and Battery Stacks NESHAP source category emissions. The results of the whole-facility demographic analysis for populations living within 50 km are included in the document titled *Analysis of Demographic Factors for Populations Living Near Coke Oven Facilities,* which is available in the docket for this action.

The whole-facility demographic analysis post-control results are shown in Table 12 of this preamble. This analysis focused on the populations living within 10 km of the coke oven facilities with estimated whole-facility post-control cancer risks greater than or equal to 1-in-1 million. The risk analysis indicated that all emissions from the coke oven facilities, after the proposed reductions, expose a total of about 575,000 people living within 10 km of the 14 facilities to a cancer risk greater than or equal to 1-in-1 million. About 83 percent of these 575,000 people with a cancer risk greater than or equal to 1-in-1 million live within 10 km of 3 facilities—2 in Alabama and 1 in Pennsylvania. The population with cancer risks greater than or equal to 1-in-1 million living within 10 km of the two facilities in Alabama is 56 percent African American, which is significantly higher than the national average of 12 percent. Note that, in the baseline, there are only 26 people with post-control risks greater than 50-in-1 million within 10 km of the coke oven facilities, therefore, the demographics of this population is not discussed.

When the coke oven whole-facility populations are compared to the Coke Ovens: Pushing, Quenching, and Battery Stacks NESHAP source category populations in the post-control scenarios, 573,000 additional people are estimated to have risks greater than or equal to 1-in-1 million. The maximum lifetime individual cancer risk posed by the 14 modeled facilities based on whole facility emissions is 50-in-1 million, with COE from coke oven doors (a regulated source in the Coke Oven Batteries source category) driving the whole facility risk.

While the pre-control and post-control Coke Ovens: Pushing, Quenching, and Battery Stacks source category population with risks ≥1-in-1 million (shown in Table 12) is disproportionately White, the pre-control and post-control whole-facility population with risks ≥1-in-1 million (shown in Table 12) is disproportionately African American. Specifically, the pre-control and post-control whole-facility population with risk greater than 1-in-1 million is 26 percent African American compared to the national average of 12 percent. In addition, the percentage of the pre-control and post-control whole-facility population with risks ≥1-in-1 million that is below the poverty level (17 percent) is above the national average (13 percent).

TABLE 12—WHOLE-FACILITY: PRE-CONTROL AND POST-CONTROL DEMOGRAPHICS OF POPULATIONS LIVING WITHIN 10 KM OF FACILITIES WITH CANCER RISK GREATER THAN OR EQUAL TO 1-IN-1 MILLION FROM COKE OVEN WHOLE-FACILITY EMISSIONS COMPARED TO THE NATIONAL AVERAGE AND PROXIMITY DEMOGRAPHICS

| Demographic group | Nationwide average for reference | Baseline proximity analysis for pop. living within 10 km of Coke Oven facilities | Cancer risk ≥1-in-1 million within 10 km of Coke Oven facilities | |
|---|---|---|---|---|
| | | | Pre-control baseline | Post-control |
| Total Population | 328M | 1.4M | 575K | 573K |
| Number of Facilities | ..... | 14 | 9 | 9 |
| **Race and Ethnicity by Percent/Number of People** | | | | |
| White | 60% | 58% | 66% | 66% |
| | 197M | 805K | 379K | 377K |
| African American | 12% | 27% | 26% | 26% |
| | 40M | 381K | 151K | 151K |
| Native American | 0.7% | 0.2% | 0.2% | 0.2% |
| | 2.2M | 2.5K | 900 | 900 |
| Hispanic or Latino (includes white and nonwhite) | 19% | 12% | 4% | 4% |
| | 62M | 166K | 25K | 25K |
| Other and Multiracial | 8% | 3% | 3% | 3% |
| | 27M | 45K | 19K | 19K |
| **Income by Percent/Number of People** | | | | |
| Below Poverty Level | 13% | 22% | 17% | 17% |
| | 44M | 310K | 100K | 100K |
| Above Poverty Level | 87% | 78% | 83% | 83% |
| | 284M | 1.1M | 475K | 474K |
| **Education by Percent/Number of People** | | | | |
| Over 25 and without a High School Diploma | 12% | 15% | 10% | 9% |
| | 40M | 206K | 55K | 54K |
| Over 25 and with a High School Diploma | 88% | 85% | 90% | 91% |
| | 288M | 1.2M | 520K | 519K |
| **Linguistically Isolated by Percent/Number of People** | | | | |
| Linguistically Isolated | 5% | 3% | 1% | 1% |
| | 18M | 44K | 6K | 6K |

**Notes:**

Nationwide population and demographic percentages are based on Census' 2015–2019 ACS 5-year block group averages. Total population count is based on 2010 Decennial Census block population.

To avoid double counting, the ''Hispanic or Latino'' category is treated as a distinct demographic category. A person who identifies as Hispanic or Latino is counted as Hispanic or Latino, regardless of race.

The number of facilities represents facilities with a cancer MIR above level indicated. When the MIR was located at a user assigned receptor at an individual residence and not at a census block centroid, we were unable to estimate population and demographics for that facility.

The sum of individual populations with a demographic category may not add up to total due to rounding.

*H. What analysis of children's environmental health did we conduct?*

This action is not subject to Executive Order 13045 because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The EPA's assessment of the potential impacts to human health from emissions at existing coke ovens sources in the Coke Ovens: Pushing, Quenching, and Battery Stacks source category are discussed in section IV.B. and IV.C. of this preamble. The proposed BTF limit for mercury at HNR waste heat stacks, described in section IV.A. of this preamble, would reduce actual and allowable mercury emissions, thereby reducing potential exposure to children, including the unborn. Although we did not perform a risk assessment of the Coke Oven Batteries source category in this action, we note that COE, which is primarily emitted from this source category, has a mutagenic mode of action; therefore, changes to the standards for the Coke Oven Batteries NESHAP under the technology review could reduce the exposure of children to mutagens.

## VI. Request for Comments

We solicit comments on this proposed action. In addition to general comments on this proposed action, we are also interested in specific issues, as follows:

- Additional data that may improve the risk assessments and other analyses. We are specifically interested in receiving any improvements to the data used in the site-specific emissions profiles used for risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII. of this preamble provides more information on submitting data;
- All aspects of cost and benefit estimates for the proposed action;

- New methods available to reduce leaks from doors, lids, and offtakes from coke oven batteries;
- The revised equation to estimate coke oven door leaks [39] discussed in section IV.D.6., above, as well as the recently received (June 27, 2023) EPA Method 303 data from two batteries at each of two coke facilities, that are located in the dockets for the rules;
- The validity of the assumption of 2 for an acute factor;
- Establishing a 1-hour battery stack MACT standard, including comments regarding whether or not EPA should include such a standard in the final rule and an explanation as to why or why not;
- For fenceline monitoring, we request comment on the following:
- The suitability of selecting benzene or other HAP, including naphthalene and other PAH, as the indicator to be monitored by fenceline samplers;
- Whether it would be appropriate to require multiple HAP to be monitored at the fenceline, considering the capital and annual cost for additional monitors that are not passive/diffusion type, and if so, which pollutants should be monitored;
- Alternative approaches for making adjustments for off-site contributions to the fenceline concentration of benzene; whether it is appropriate to establish a standard time frame for compliance with actions listed in a corrective action plan and whether the approval of the corrective action plan should be performed by to state, local and tribal governments;
- The proposed approach for reducing fenceline monitoring requirements for facilities that consistently measure fenceline concentrations below the concentration action level and the measurement level that should be used to provide such relief;
- Suggestions for other ways to improve the fenceline monitoring requirements; and
- The minimum time period facilities should be required to conduct fenceline monitoring before allowing a reduction in monitoring frequency due to low fenceline concentration levels;
- The level of performance, in terms of monitored fenceline concentrations, that would enable a facility to reduce the frequency of data collection and reporting; and
- The costs associated with changes in equipment or practices resulting from an exceedance of the fenceline action level;
- Whether we have successfully ensured that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption;
- Whether any situations exist where separate standards, such as work practices, would be more appropriate during periods of startup and shutdown rather than the current standard;
- The content, layout, and overall design of the templates for quarterly and semiannual compliance reports;
- The use of other surrogates, practices, or techniques to determine leaks from HNR ovens, that could be applied to HNR door leaks as an alternatives to EPA Method 303A, to include alternative monitoring approaches or techniques. For those alternative techniques that could be applied to measuring HNR door leaks, we are soliciting information on equivalency studies that have been performed against EPA Method 303 and/or 303A, and any potential training requirements.
- The use of either additional pressure transducers to monitor for negative pressure inside HNR common tunnels and ovens (including comments on number and placement of monitors) or a requirement for an approved monitoring plan; or a requirement for both additional monitors and an approved plan.
- The measures or monitoring methods for limiting soaking emissions from ByP ovens (including the definition of soaking).
- Changes to Coke Oven Batteries NESHAP to require both leak monitoring and pressure monitoring instead of a choice between the two, and whether pressure monitoring should be measured at least during key points in the whole oven cycle, possibly more often.
- Other potential approaches to establish emissions standards for the HRSG main stacks and bypass stacks, including: (1) whether the EPA should consider the emission points all combined (*i.e.,* HRSG main stack plus HRSG bypass stack emissions) and establish standards based on the best five units or best five facilities including emissions following the HRSGs and their control devices and emissions from the bypass over a period of time (*e.g.,* per year or per month); or (2) a standard that is based in part on limiting the number of hours per year or per month that bypass stack can be used.
- The accuracy of revenue and employment data included in the EIA;
- The accuracy of the cost-to-sales ratios calculated in the EIA and whether the BTF limit for Hg and non-Hg metals could put SunCoke's Vansant facility at risk of closure;
- Other ongoing rulemaking efforts (such as integrated iron and steel manufacturing, taconite iron ore processing) that may impact facilities in this source category and the cumulative regulatory burden of rules affecting these facilities;
- Potential interactions between this proposed action and potential timelines and changes to facilities installing carbon capture and/or using hydrogen, or how the regulation might affect steel decarbonization efforts; and
- Potential impacts, if any, on: U.S. manufacturing, the creation or retention of jobs (and the quality of those jobs) and supply chains; National Security; renewable and clean energy projects; projects funded by the Bipartisan Infrastructure Law and the CHIPS and Science Act; aerospace manufacturing; telecommunications; critical infrastructure for national defense, and global competitiveness.

## VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses and instructions are available for download on the source category websites at *https://www.epa.gov/stationary-sources-air-pollution/coke-ovens-pushing-quenching-and-battery-stacks-national-emission,* or *https://www.epa.gov/stationary-sources-air-pollution/coke-ovens-batteries-national-emissions-standards-hazardous-air.* The data files include detailed information for each HAP emissions release point for the facilities and sources in the source categories.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any ''improved'' data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR website, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information.
2. Fill in the commenter information fields for each suggested revision (*i.e.,* commenter name, commenter organization, commenter email address, commenter phone number, and revision comments).
3. Gather documentation for any suggested emissions revisions (*e.g.,* performance test reports, material balance calculations).

4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID Nos. EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051 (through the method described in the **ADDRESSES** section of this preamble).

5. If you are providing comments on a single facility or multiple facilities, you need only submit one file for all facilities. The file should contain all suggested changes for all sources at that facility (or facilities). We request that all data revision comments be submitted in the form of updated Microsoft® Excel files that are generated by the Microsoft® Access file. These files are provided on the source category websites at *https://www.epa.gov/stationary-sources-air-pollution/coke-ovens-pushing-quenching-and-battery-stacks-national-emission* and *https://www.epa.gov/stationary-sources-air-pollution/coke-ovens-batteries-national-emissions-standards-hazardous-air.*

## VIII. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review*

This action is a ''significant regulatory action'' as defined in Executive Order 12866, as amended by Executive Order 14094. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket. The EPA prepared an economic analysis of the potential impacts associated with this action. This analysis, *Economic Impact Analysis for the Proposed National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, Residual Risk and Technology Review; National Emission Standards for Hazardous Air Pollutants for Coke Oven Batteries Technology Review,* is available in the dockets EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051.

### *B. Paperwork Reduction Act (PRA)*

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA. The information collection request (ICR) documents that the EPA prepared have been assigned EPA ICR numbers 1995.09 and 1362.14. You can find a copy of the ICRs in the dockets for this rule, and they are briefly summarized here.

We are proposing amendments to the Coke Ovens: Pushing, Quenching, and Battery Stacks NESHAP that require compliance testing for 15 MACT and 2 BTF limits and to the Coke Oven Battery NESHAP that require fenceline monitoring. Furthermore, the amendments also require electronic reporting and remove the SSM exemptions in both NESHAPs. We are also incorporating other revisions (*e.g.,* facility counts) that affect reporting and recordkeeping for coke oven facilities. This information would be collected to assure compliance with the CAA.

For ICR: NESHAP for Coke Oven Pushing, Quenching, and Battery Stacks (40 CFR part 63, subpart CCCCC) (OMB Control Number 2060–0521).

*Respondents/affected entities:* Coke Ovens: Pushing, Quenching, and Battery Stacks source category.

*Respondent's obligation to respond:* Mandatory (40 CFR part 63, subpart CCCCC).

*Estimated number of respondents:* 14 facilities.

*Frequency of response:* One time.

*Total estimated burden of entire rule:* The annual recordkeeping and reporting burden for facilities to comply with all of the requirements in the NESHAPs is estimated to be 32,500 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost of entire rule:* The annual recordkeeping and reporting cost for all facilities to comply with all of the requirements in the NESHAPs is estimated to be $4,230,000 (per year), of which $1,060,000 (per year) is for this proposal, and $3,043,000 is for other costs related to continued compliance with the NESHAPs in addition to $125,000 for the operation and maintenance of leak detectors and continuous opacity monitors. The total rule costs reflect an overall increase of $1,280,000 (per year) from the previous ICR due to the compliance with 17 additional MACT/BTF limits, transition to electronic reporting, and elimination of SSM requirements.

For ICR: NESHAP for Coke Oven Batteries (40 CFR part 63, subpart L) (OMB Control Number 2060–0253).

*Respondents/affected entities:* Coke Oven Batteries source category.

*Respondent's obligation to respond:* Mandatory (40 CFR part 63, subpart L).

*Estimated number of respondents:* 14 facilities.

*Frequency of response:* One time.

*Total estimated burden of entire rule:* The annual recordkeeping and reporting burden for facilities to comply with all of the requirements in the NESHAPs is estimated to be 63,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost of entire rule:* The annual recordkeeping and reporting cost for all facilities to comply with all of the requirements in the NESHAPs is estimated to be $7,795,000 (per year), of which $530,000 (per year) is for this proposal and $7,410,000 is for other costs related to continued compliance with the NESHAPs. The total rule costs reflect an increase of $1,070,000 (per year) from the previous ICR, due to revised HNR facility counts, transition to electronic reporting, addition of fenceline monitoring, and elimination of SSM requirements.

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 to the EPA 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 *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 15, 2023.

### *C. Regulatory Flexibility Act (RFA)*

I certify that this action would not have a significant economic impact on a substantial number of small entities under the RFA. Small entities that may be impacted by this rulemaking include Coke facilities located within an integrated iron and steel manufacturing facility under NAICS 331110 (Iron and Steel Mills and Ferroalloy Manufacturing) with 1,500 or fewer employees, or facilities under NAICS 324199 (All Other Petroleum and Coal Products Manufacturing, with 500 or fewer workers. None of the facilities currently in operation that are potentially affected by this rulemaking proposal under these size definitions are ''small businesses'' and therefore will not have a significant economic impact. Additional details of the analysis can be found in the document prepared for this rule titled *Economic Impact Analysis for the Proposed National Emission Standards for Hazardous Air Pollutants*

*for Coke Ovens: Pushing, Quenching, and Battery Stacks, Residual Risk and Technology Review; National Emission Standards for Hazardous Air Pollutants for Coke Oven Batteries Technology Review.*

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While this action creates an enforceable duty on the private sector, the cost does not exceed $100 million or more.

*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. It will not have substantial direct effects on tribal governments, 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. No tribal governments own facilities subject to these NESHAP. 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 directs federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Due to control of mercury and nonmercury metal HAP at waste heat stacks at nonrecovery facilities, we believe the health of children living nearby would be improved. This action's health and risk assessments for the Coke Ovens: Pushing, Quenching, and Battery Stack source category are contained in section IV. of this preamble and further documented in *The Residual Risk Assessment or the Coke Ovens: Pushing, Quenching, and Battery Stack Source Category in Support of the 2023 Risk and Technology Review Proposed Rule,* available in the docket for this action (EPA–HQ–OAR–2002–0085). However, EPA's Policy on Children's Health applies to this action.

Although we did not perform a risk assessment of the Coke Oven Batteries source category in this action, we note that COE, which is primarily emitted from this source category, has a mutagenic mode of action; therefore, changes to the standards for the Coke Oven Batteries NESHAP under the technology review could reduce the exposure of children to mutagens.

Information on how this policy was applied is available under ''Children's Environmental Health'' in the **SUPPLEMENTARY INFORMATION** section of this preamble.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded this action is not likely to have any adverse energy effects because energy use is projected to increase by only 15 million kilowatt-hours to operate control devices to achieve the proposed air emissions reductions in HAP metals (see section V.C. of this preamble, ''What are the other environmental impacts?'').

*I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51*

This action involves technical standards. Therefore, the EPA conducted searches for the RTR for the Coke Ovens: Pushing, Quenching, and Battery Stacks NESHAP and the NESHAP for Coke Oven Batteries through the Enhanced National Standards Systems Network Database managed by the American National Standards Institute (ANSI). We also contacted VCS organizations and accessed and searched their databases. For Coke Oven Batteries NESHAP, we conducted searches for EPA Methods EPA Methods 1, 2, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, 9, 18, 22 of 40 CFR part 60, appendix A, EPA Methods 303, 303A of 40 CFR part 63, appendix A. No applicable voluntary consensus standards were identified for EPA Methods 2F, 2G, 5D, 22, 303, and 303A. For Coke Ovens: Pushing, Quenching, Battery Stacks NESHAP, searches were conducted for EPA Methods 1, 2, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, 9, 23, 26, 26A, 29 of 40 CFR part 60, appendix A, EPA Method 160.1 in 40 CFR part 136.3, appendix A, EPA Methods 316 and 320 40 CFR part 63, appendix A. No applicable voluntary consensus standards were identified for EPA Methods 2F, 2G, 5D, 316, and 160.1.

During the EPA's VCS search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's reference method, the EPA reviewed it as a potential equivalent method. We reviewed all potential standards to determine the practicality of the VCS for this rule. This review requires significant method validation data that meet the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering and policy equivalence to procedures in the EPA reference methods. The EPA may reconsider determinations of impracticality when additional information is available for a particular VCS.

The EPA proposes to incorporate by reference the VCS ANSI/ASME PTC 19.10–1981—Part 10 (2010), ''Flue and Exhaust Gas Analyses.'' The manual procedures (but not instrumental procedures) of VCS ANSI/ASME PTC 19.10–1981—Part 10 may be used as an alternative to EPA Method 3B for measuring the oxygen or carbon dioxide content of the exhaust gas. This standard is acceptable as an alternative to EPA Method 3B and is available from ASME at *http://www.asme.org;* by mail at Three Park Avenue, New York, NY 10016–5990; or by telephone at (800) 843–2763. This method determines quantitatively the gaseous constituents of exhausts resulting from stationary combustion sources. The gases covered in ANSI/ASME PTC 19.10–1981 are oxygen, carbon dioxide, carbon monoxide, nitrogen, sulfur dioxide, sulfur trioxide, nitric oxide, nitrogen dioxide, hydrogen sulfide, and hydrocarbons, however the use in this rule is only applicable to oxygen and carbon dioxide.

The EPA proposes to incorporate by reference the VCS ASTM D7520–16, ''Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere'' which is an instrumental method to determine plume opacity in the outdoor ambient environment as an alternative to visual measurements made by certified smoke readers in accordance with EPA Method 9. The concept of ASTM D7520–16, also known as the Digital Camera Opacity Technique or DCOT, is a test protocol to determine the opacity of visible

emissions using a digital camera. This method is based on previous method development using digital still cameras and field testing of those methods. The purpose of ASTM D7520–16 is to set a minimum level of performance for products that use DCOT to determine plume opacity in ambient environments.

The DCOT method is an acceptable alternative to EPA Method 9 with the following caveats:

- During the digital camera opacity technique (DCOT) certification procedure outlined in section 9.2 of ASTM D7520–16, you or the DCOT vendor must present the plumes in front of various backgrounds of color and contrast representing conditions anticipated during field use such as blue sky, trees, and mixed backgrounds (clouds and/or a sparse tree stand).
- You must also have standard operating procedures in place including daily or other frequency quality checks to ensure the equipment is within manufacturing specifications as outlined in section 8.1 of ASTM D7520–16.
- You must follow the record keeping procedures outlined in 40 CFR 63.10(b)(1) for the DCOT certification, compliance report, data sheets, and all raw unaltered JPEGs used for opacity and certification determination.
- You or the DCOT vendor must have a minimum of four (4) independent technology users apply the software to determine the visible opacity of the 300 certification plumes. For each set of 25 plumes, the user may not exceed 15 percent opacity of any one reading and the average error must not exceed 7.5 percent opacity.
- This approval does not provide or imply a certification or validation of any vendor's hardware or software. The onus to maintain and verify the certification and/or training of the DCOT camera, software and operator in accordance with ASTM D7520–16 and this letter is on the facility, DCOT operator, and DCOT vendor. This method describes procedures to determine the opacity of a plume, using digital imagery and associated hardware and software, where opacity is caused by PM emitted from a stationary point source in the outdoor ambient environment. The opacity of emissions is determined by the application of a DCOT that consists of a digital still camera, analysis software, and the output function's content to obtain and interpret digital images to determine and report plume opacity.

The ASTM D7520–16 document is available from ASTM at *https://www.astm.org* or 1100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, telephone number: (610) 832–9500, fax number: (610) 832–9555 at *service@astm.org.*

The EPA proposes to incorporate by reference the VCS ASTM D6420–18, ''Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry'' which provides on-site analysis of extracted, unconditioned, and unsaturated (at the instrument) gas samples from stationary sources. The ASTM D6420–18 method employs a direct interface gas chromatograph/mass spectrometer to identify and quantify 36 volatile organic compounds (or sub-set of these compounds). The ASTM method incorporates a performance-based approach, which validates each analysis by placing boundaries on the instrument response to gaseous internal standards and their specific mass spectral relative abundance; using this approach, the test method may be extended to analyze other compounds.

This ASTM D2460–18 method is an acceptable alternative to EPA Method 18 only when the target compounds are all known and the target compounds are all listed in ASTM D6420 as measurable. It should not be used for methane and ethane because atomic mass is less than 35. ASTM D6420 should never be specified as a total VOC method. The ASTM D6420–18 document is available from ASTM at *https://www.astm.org* or 1100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, telephone number: (610) 832–9500, fax number: (610) 832–9555 at *service@astm.org.*

The EPA proposes to incorporate by reference the VCS ASTM D6784–16, ''Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro 3 Method)'' as an acceptable alternative to EPA Method 29 (portion for mercury only) as a method for measuring mercury.

**Note:** This applies to concentrations approximately 0.5–100 $\mu g/Nm^3$.

The ASTM D6784–16 document is available from ASTM at *https://www.astm.org* or 1100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, telephone number: (610) 832–9500, fax number: (610) 832–9555 at *service@astm.org.*

The EPA proposes to incorporate by reference the VCS ASTM D6348–12e1, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy'' as an acceptable alternative to EPA Method 320. This ASTM method is an FTIR-based field test method used to quantify gas phase concentrations of multiple target analytes from stationary source effluent. The method provides near real time analysis of extracted gas samples from stationary sources. The method employs an extractive sampling system to direct stationary source effluent to an FTIR spectrometer for the identification and quantification of gaseous compounds. The test method is potentially applicable for the determination of compounds that (1) have sufficient vapor pressure to be transported to the FTIR spectrometer and (2) absorb a sufficient amount of infrared radiation to be detected.

In the 9/22/08 NTTA summary, ASTM D6348–03(2010) was determined equivalent to EPA Method 320 with caveats. ASTM D6348–12e1 is a revised version of ASTM D6348–03(2010) and includes a new section on accepting the results from direct measurement of a certified spike gas cylinder, but still lacks the caveats we placed on the D6348–03(2010) version. The voluntary consensus standard ASTM D6348–12e1 ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy'' is an acceptable alternative to EPA Method 320 at this time with caveats requiring inclusion of selected annexes to the standard as mandatory. When using ASTM D6348–12e1, the following conditions must be met:

- The test plan preparation and implementation in the Annexes to ASTM D 6348–12e1, sections A1 through A8 are mandatory; and
- In ASTM D6348–12e1 Annex A5 (Analyte Spiking Technique), the percent (%) R must be determined for each target analyte (Equation A5.5).

In order for the test data to be acceptable for a compound, %R must be $70\% \geq R \leq 130\%$. If the %R value does not meet this criterion for a target compound, the test data is not acceptable for that compound and the test must be repeated for that analyte (*i.e.,* the sampling and/or analytical procedure should be adjusted before a retest). The %R value for each compound must be reported in the test report, and all field measurements must be corrected with the calculated %R value for that compound by using the following equation:

$$\text{Reported Results} = (\text{Measured Concentration in Stack})/(\%R) \times 100$$

The ASTM D6348–12e1 document is available from ASTM at *https://www.astm.org* or 1100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, telephone number: (610) 832–

9500, fax number: (610) 832–9555 at *service@astm.org.*

Additional information for the VCS search and determinations can be found in the memorandum titled *Voluntary Consensus Standard Results for Coke Ovens: Pushing, Quenching and Battery Stacks: National Emission Standards for Hazardous Air Pollutants* and *Voluntary Consensus Standard Results for Coke Oven Batteries: National Emission Standards for Hazardous Air Pollutants,* available in the EPA–HQ–OAR–2002–0085, EPA–HQ–OAR–2003–0051 dockets for this proposed rule.

The EPA is also incorporating by reference Quality Assurance Handbook for Air Pollution Measurement Systems, Volume IV: Meteorological Measurements, Version 2.0 (Final), March 2008 (EPA–454/B–08–002). This EPA document is dedicated to meteorological measurement systems and their support equipment, and is designed to provide clear and concise information and guidance to the State/Local/Tribal air pollution control agencies that operate meteorological monitoring equipment and systems. New monitoring rules require that meteorological data be collected at all National Core network stations, as stated in the CFR Chapter 40 Section 58, Appendix D.3.b. Thus, there is a need for updated information to guide agencies as they implement the new network. Since the last version of Volume IV was written, there have been a number of breakthroughs in instrument development and support equipment, which are reflected in this revision (2.0). A copy of this handbook can be obtained from the National Service Center for Environmental Publications at *https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=P100FOMB.txt* or from the dockets to these rules (EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051).

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on communities with environmental justice concerns.

The EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental justice concerns.

As discussed in section V.G. of this preamble, the population with risks greater than or equal to 1-in-1 million due to emissions from all sources of HAP at coke oven facilities is disproportionately (26 percent) African American compared to the national average (12 percent African American). About 83 percent of the 575,000 people with a cancer risk greater than or equal to 1-in-1 million live within 10 km of 3 facilities—two in Alabama and one in Pennsylvania. The population with cancer risks greater than or equal to 1-in-1 million living within 10 km of the two facilities in Alabama is 56 percent African American, which is significantly higher than the national average of 12 percent. In addition, the population with risks ≥1-in-1 million due to emissions from all sources of HAP at coke oven facilities that is below the poverty level (17 percent) is above the national average (13 percent).

The EPA believes that this action is likely to reduce existing disproportionate and adverse effects on communities with environmental justice concerns. The impacts of these proposed rules are to limit allowable emissions from coke ovens sources in 40 CFR part 63, subparts CCCCC and L. In addition, proposed BTF standards for HNR waste heat stacks would limit actual emissions for mercury and nonmercury metal HAP [26] from these sources.

While the proposed measures do not significantly decrease the number of those below the poverty level and those over 25 years of age without a high school diploma who have risks greater than or equal to 1-in-1 million due to HAP emissions from pushing, quenching, and battery stacks sources (Table 12), the proposed standards for the Coke Ovens: Pushing, Quenching, and Battery Stacks source category achieve a reduction in the disparity for these groups (Table 12). Specifically, of the people living within 10 km of a coke oven facility with risk greater than or equal to 1-in-1 million due to HAP emissions from the Coke Ovens: Pushing, Quenching, and Battery Stacks source category, the percentage who are below the poverty level is estimated to decrease from 17 percent to 10 percent under the proposed standards and the percentage who are over 25 without a high school diploma is estimated to decrease from 21 percent to 7 percent under the proposed standards. The EPA also is proposing that coke oven facilities conduct fenceline monitoring for benzene and report these data electronically to the EPA so that it can be made public and provide fenceline communities with greater access to information about potential emissions impacts.

The information supporting this Executive Order review is contained in section V.G. of this preamble and in the document *Analysis of Demographic Factors for Populations Living Near Coke Oven Facilities* located in the dockets for this rule (EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051) and described above in section V.G.

**Michael S. Regan,**

*Administrator.*

[FR Doc. 2023–16620 Filed 8–15–23; 8:45 am]

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