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Contents

Federal Register

Vol. 88, No. 167

Wednesday, August 30, 2023

Agency for International Development

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Contractor Form for Contract with an Individual for Personal Services, 59864
Local Partner and Sub-Partner Outreach, 59864

Agency for Toxic Substances and Disease Registry

NOTICES

Toxicological Profiles, 59927–59928

Agricultural Marketing Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59865

Agriculture Department

See Agricultural Marketing Service

See Federal Crop Insurance Corporation

See Natural Resources Conservation Service

Air Force Department

NOTICES

Licenses; Exemptions, Applications, Amendments etc.:
Intent to Grant a Partially Exclusive Patent License, 59878–59879

Alcohol and Tobacco Tax and Trade Bureau

PROPOSED RULES

Establishment of Viticultural Area:
San Luis Rey, 59820–59825

Bureau of Consumer Financial Protection

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59878

Coast Guard

RULES

Drawbridge Operations:

Keweenaw Waterway, between Houghton and Hancock, MI, 59799–59800

Safety Zones:

Foster Wedding Fireworks, Lake St. Clair; Grosse Pointe Park, MI, 59802–59804

Grosse Pointe Farms Fireworks, Lake St. Clair, Grosse Pointe Farms, MI, 59800–59802

Grosse Pointe War Memorial Fireworks, Lake St. Clair, Grosse Pointe Farms, MI, 59804–59806

Special Local Regulations:

Find Your Way Home Swim; Detroit River, Grosse Ile, MI, 59797–59799

Marine Events within the Fifth Coast Guard District—Atlantic City, NJ, 59796

St Petersburg P–1 Grand Prix; Waters of Tampa Bay, 59796–59797

Commerce Department

See Industry and Security Bureau

See International Trade Administration

See National Oceanic and Atmospheric Administration

See National Telecommunications and Information Administration

Commodity Futures Trading Commission

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Ownership and Control Reports (Trader and Account Identification Reports), 59877–59878

Copyright Office, Library of Congress

NOTICES

Artificial Intelligence and Copyright, 59942–59949

Defense Acquisition Regulations System

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Covered Defense Telecommunications Equipment or Services, 59879

Defense Department

See Air Force Department

See Defense Acquisition Regulations System

See Navy Department

NOTICES

Charter Amendments, Establishments, Renewals and Terminations:
Defense Policy Board, 59879–59880

Education Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Charter Online Management and Performance System Developer Grant Profiles, 59881
Charter Online Management and Performance System State Entity Annual Performance Report, 59881–59882

Energy Department

See Energy Information Administration

See Federal Energy Regulatory Commission

See Western Area Power Administration

RULES

Energy Conservation Program:

Test Procedure for Room Air Conditioners, 59790–59791

NOTICES

Importation or Exportation of Liquefied Natural Gas or Electric Energy; Applications, Authorizations, etc.:
In Commodities US, LLC, 59882–59883
MFT Energy US Power, LLC, 59886–59887
NS Power Energy Marketing, Inc., 59885–59886
Royal Bank of Canada, 59883–59884

Meetings:

Environmental Management Site-Specific Advisory Board, Portsmouth, 59886

Permits; Applications, Issuances, etc.:

Eastern Maine Electric Cooperative, Inc.; Presidential Permit, 59884–59885

Energy Information Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59887–59888

Environmental Protection Agency**PROPOSED RULES**

Air Quality State Implementation Plans; Approvals and Promulgations:

Indiana; Volatile Organic Compounds; Cold Cleaner Degreasing, 59834–59836

NOTICES

Cancellation Order for Certain Pesticide Registrations and Amendments to Terminate Uses, 59914–59917

Charter Amendments, Establishments, Renewals and Terminations:

Children's Health Protection Advisory Committee, 59917–59918

Clean Air Act Operating Permit Program:

Petition for Objection to State Operating Permit for XTO Energy Inc., Wildcat Compressor Station, Lea County, NM, 59913–59914

Meetings:

Great Lakes Advisory Board, 59914

Requests for Nominations:

Local Government Advisory Committee, 59912

Revision of Approved Primacy Program for Guam, 59912–59913

Revision of Approved State Primacy Program:

Navajo Nation, 59918–59919

Federal Accounting Standards Advisory Board**NOTICES**

Omnibus Concepts Amendments: Amending SFFAC 2 with Note Disclosures and MD and A Concepts and Rescinding SFFAC 3, 59919

Federal Aviation Administration**PROPOSED RULES**

Airworthiness Directives:

Dassault Aviation Airplanes, 59815–59818

Embraer S.A. (Type Certificate Previously Held by Yabora Industria Aeronautica S.A.; Embraer S.A.; Empresa Brasileira de Aeronautica S.A. (EMBRAER)) Airplanes, 59813–59815

NOTICES

Meetings:

Research, Engineering, and Development Advisory Committee, 60008–60009

Petition for Exemption; Summary of Petition Received:

Boeing Executive Flight Operations, 60008

Federal Communications Commission**PROPOSED RULES**

Television Broadcasting Services:

Winnemucca, NV, 59836

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59919–59920

Federal Crop Insurance Corporation**RULES**

Actual Production History and Other Crop Insurance Transparency; Correction, 59789–59790

Federal Energy Regulatory Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59895–59896

Application:

Transcontinental Gas Pipe Line Co., LLC, 59888–59890
Alabama Power Co., 59903–59904

Spencer Mountain Hydropower, LLC, 59900–59901

Combined Filings, 59888, 59899–59900

Environmental Issues:

ANR Pipeline Co.; Proposed Oak Grove Enhancement Project, 59901–59903

Rio Bravo Pipeline Co., LLC, 59896–59899

Intent To Revoke Market-Based Rate Authority:

Electric Quarterly Reports: Grand Energy, LLC, Icon Energy, LLC, 59894–59895

Meetings:

Lake Lynn Generation, LLC, Environmental Sire Review, 59892–59894

Request for Extension of Time:

Texas Eastern Transmission, LP, 59891–59892

Request under Blanket Authorization:

Columbia Gas Transmission, LLC, 59890–59891

Waiver Period for Water Quality Certification Application:

Rumford Falls Hydro, LLC, 59890

Federal Maritime Commission**NOTICES**

Agreements Filed, 59920–59921

Federal Reserve System**NOTICES**

Change in Bank Control:

Acquisitions of Shares of a Bank or Bank Holding Company, 59921–59922

Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 59921

Federal Trade Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59922–59927

Fish and Wildlife Service**PROPOSED RULES**

Endangered and Threatened Species:

Status for the Dunes Sagebrush Lizard, 59837

Food and Drug Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Customer/Partner Service Satisfaction Surveys, 59928

Foreign Assets Control Office**NOTICES**

Sanctions Action, 60011–60012

Health and Human Services Department

See Agency for Toxic Substances and Disease Registry

See Food and Drug Administration

See Health Resources and Services Administration

See Indian Health Service

See National Institutes of Health

Health Resources and Services Administration**NOTICES**

Meetings:

National Advisory Council on Migrant Health, 59928–59929

Homeland Security Department

See Coast Guard

See U.S. Customs and Border Protection

PROPOSED RULES

Minimum Standards:

Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Waiver for Mobile Driver's Licenses, 60056–60104

NOTICES

Meetings:

Homeland Security Advisory Council, 59935

Housing and Urban Development Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Eviction Counseling Survey, 59936–59937

FHA-Insured Mortgage Loan Servicing for Performing Loans; MIP Processing, Escrow Administration, Customer Service, Servicing Fees, and 235 Loans, 59937–59938

Housing Counseling Homeownership Initiative Notice of Funding Opportunity, 59935–59936

Single Family Application for Insurance Benefits, 59938–59939

Indian Affairs Bureau

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Individual Indian Money Instructions for Disbursement of Funds and Change of Address, 59939

Indian Health Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Application for Participation in the Indian Health Service Scholarship Program, 59929–59930

Industry and Security Bureau

RULES

Temporary Denial Order Provisions to Allow for Extended Renewals in Certain Circumstances, 59791–59793

Interior Department

See Fish and Wildlife Service

See Indian Affairs Bureau

Internal Revenue Service

PROPOSED RULES

Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements, 60018–60054

International Trade Administration

NOTICES

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea, 59869–59871

Certain Frozen Warmwater Shrimp from India, 59868–59869

International Trade Commission

NOTICES

Investigations; Determinations, Modifications, and Rulings, etc.:

Fine Denier Polyester Staple Fiber from China, India, South Korea, and Taiwan, 59940–59941

Justice Department

NOTICES

Proposed Consent Decree: CERCLA, 59941

Labor Department

See Occupational Safety and Health Administration

See Workers Compensation Programs Office

Library of Congress

See Copyright Office, Library of Congress

National Highway Traffic Safety Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Examine Issues with Prosecuting Driving-Under-the-Influence-of-Drugs Cases, 60009–60011

National Institutes of Health

NOTICES

Meetings:

Center for Scientific Review, 59930

National Cancer Institute, 59930–59932

National Oceanic and Atmospheric Administration

RULES

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:

Reef Fish Fishery of the Gulf of Mexico; 2023 Red Snapper Private Angling Component Closure in Federal Waters off Texas, 59810–59811

Fisheries of the Exclusive Economic Zone off Alaska:

Pacific Cod in the Bering Sea and Aleutian Islands Management Area, 59811–59812

PROPOSED RULES

Fisheries off West Coast States:

Pacific Coast Groundfish Fishery; Pacific Coast

Groundfish Fishery Management Plan; Amendment 32, 59838–59863

NOTICES

Meetings:

Evaluation of Narragansett Bay National Estuarine Research Reserve, 59871–59872

North Pacific Fishery Management Council, 59872

Taking or Importing of Marine Mammals:

Office of Naval Research's Arctic Research Activities in the Beaufort and Chukchi Seas (Year 6), 59872–59876

National Telecommunications and Information Administration

NOTICES

Meetings:

Commerce Spectrum Management Advisory Committee, 59876

Natural Resources Conservation Service

NOTICES

Environmental Impact Statements; Availability, etc.:

Lower Little Tallapoosa River Watershed, Carroll County, GA, 59865–59868

Navy Department

NOTICES

Certificate of Alternate Compliance:

USS Kingsville (LCS 36), 59880

Nuclear Regulatory Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Codes and Standards, 59950–59951
 Cumulative Occupational Dose History, 59951–59952
 Occupational Dose Record for a Monitoring Period, 59949–59950

Occupational Safety and Health Administration**RULES**

Oregon State Plan:
 Extension of Final Approval of a State Plan to Cover the Separable Portion of Temporary Labor Camps, 59793–59796

PROPOSED RULES

Worker Walkaround Representative Designation Process, 59825–59834

Postal Regulatory Commission**NOTICES**

New Postal Products, 59952–59953

Presidential Documents**PROCLAMATIONS**

Special Observances:
 Overdose Awareness Week (Proc. 10608), 59785–59786
 Women's Equality Day (Proc. 10609), 59787–59788

Securities and Exchange Commission**PROPOSED RULES**

Safeguarding Advisory Client Assets, 59818–59820

NOTICES

Order Making Fiscal Year 2024 Annual Adjustments to Registration Fee Rates, 59953–59957
 Self-Regulatory Organizations; Proposed Rule Changes:
 Cboe Exchange, Inc., 60005–60007
 Financial Industry Regulatory Authority, Inc., 59958–59968
 ICE Clear Europe, Ltd., 60001–60005
 National Securities Clearing Corp., 59968–59976
 The Options Clearing Corp., 59976–60001

Small Business Administration**NOTICES**

Meetings:
 National Women's Business Council, 60007–60008

State Department**NOTICES**

Meetings:
 Overseas Security Advisory Council, 60008

Surface Transportation Board**RULES**

Fees for Services Performed in Connection with Licensing and Related Services, 59806–59809

Transportation Department

See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department

See Alcohol and Tobacco Tax and Trade Bureau
See Foreign Assets Control Office
See Internal Revenue Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 60012–60016

U.S. Customs and Border Protection**NOTICES**

Meetings:
 Commercial Customs Operations Advisory Committee, 59933–59935
 Vessel Entrance Clearance System, 59932–59933

Western Area Power Administration**NOTICES**

Rate Order:
 No. WAPA–207; Formula Rates for Central Valley Project Power, Transmission, and Ancillary Services; and California-Oregon Transmission Project Transmission Service, 59909–59912
 No. WAPA–210; Pacific Northwest-Pacific Southwest Intertie Project and Parker-Davis Project, 59904–59909

Workers Compensation Programs Office**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Rehabilitation Plan and Award, 59941–59942

Separate Parts In This Issue**Part II**

Treasury Department, Internal Revenue Service, 60018–60054

Part III

Homeland Security Department, 60056–60104

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR**Proclamations:**

10608.....59785
10609.....59787

6 CFR**Proposed Rules:**

37.....60056

7 CFR

457.....59789

10 CFR

430.....59790

14 CFR**Proposed Rules:**

39 (2 documents) 59813,
59815

15 CFR

766.....59791

17 CFR**Proposed Rules:**

275.....59818
279.....59818

26 CFR**Proposed Rules:**

1.....60018

27 CFR**Proposed Rules:**

9.....59820

29 CFR

1952.....59793

Proposed Rules:

1903.....59825

33 CFR

100 (3 documents) 59796,
59797

117.....59799

165 (3 documents) 59800,
59802, 59804

40 CFR**Proposed Rules:**

52.....59834

47 CFR**Proposed Rules:**

73.....59836

49 CFR

1002.....59806

50 CFR

622.....59810

679 (2 documents) 59811

Proposed Rules:

17.....59837

300.....59838

660.....59838

Presidential Documents

Title 3—

Proclamation 10608 of August 25, 2023

The President

Overdose Awareness Week, 2023

By the President of the United States of America

A Proclamation

The overdose epidemic is a national crisis, and for millions of Americans, it is personal. Too many families have lost their children, siblings, parents, and friends to substance misuse and overdose. Every loss is a painful reminder that we must take bold action to end our Nation's overdose epidemic. During Overdose Awareness Week, we reaffirm our commitment to beating this public health and public safety epidemic—in memory of all those we have lost and to protect all the lives we can still save.

People with substance use disorder face too many barriers to treatment. And while synthetic opioids, like illicitly produced fentanyl, are driving the majority of overdose deaths today and perpetuating addiction, we know that prevention and recovery are possible if people get the support and treatment they need. That's why my Administration established a National Drug Control Strategy that goes after two major drivers of the overdose epidemic: untreated addiction and drug trafficking.

My Administration has worked hard to ensure that substance use disorder is treated like any other disease, funding the expansion of prevention, treatment, harm reduction, and recovery support services. As a part of my Unity Agenda, we passed a law making it easier for doctors to prescribe effective treatments, leading to an unprecedented and historic expansion that finally put help within reach for millions of Americans.

Through the American Rescue Plan, we delivered more than \$5 billion to strengthen and expand State and community mental health and substance use disorder services. We also addressed the mental health of frontline workers, like nurses, who are dealing with this crisis every day, by directing \$103 million specifically to meet their needs. And my Bipartisan Safer Communities Act went even further—providing billions of dollars to improve mental health services for young people, including hiring and training more school mental health counselors so young people get the care they need.

We continue to fight the stigmatization that surrounds substance use disorder so people feel comfortable reaching out for help when they need it. The Food and Drug Administration approved two Naloxone products—an opioid overdose reversal medication—for over-the-counter use. Now, every American will be able to access this life-saving medication. And our new National Response Plan to address the deadly combination of fentanyl mixed with xylazine coordinates efforts across all of government to confront this dangerous emerging threat.

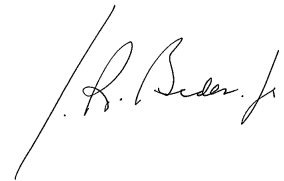
My Administration is also disrupting the flow of illicit drugs by making it costlier to bring killer drugs into America; going after drug traffickers' profits; and targeting their financial networks, supply chains, and delivery routes, including on the internet. We have strengthened coordination and information sharing among our intelligence and domestic law enforcement agencies to dismantle drug traffickers and their networks. So far, my Administration has seized more than 1.6 million pounds of drugs before they crossed the border and entered into our communities, including over 42,500 pounds of illicitly manufactured fentanyl. And we are not done. Drug overdose deaths leveled off in 2022 after sharp increases from 2019 to 2021. Now,

we must double down on this work, which is why my proposed budget for Fiscal Year 2024 requests a historic \$46.1 billion for national drug control programs. The Congress must act to invest in solutions that will prevent these drugs from ever hitting our streets and getting into the hands of our loved ones, including by passing all of the measures called for in my Administration's 2021 recommendations to the Congress on reducing illicit fentanyl-related substances, which will strengthen public health and public safety.

Today, I grieve with all those who have lost someone to an overdose. May we find hope in the more than 20 million brave Americans recovering from substance use disorder, who show us what is possible when people have the care, treatment, and support they need. My Administration will continue to ensure that our Nation has the resources we need to address this crisis, prevent illicit drugs from reaching our communities, and finally defeat the overdose epidemic in our Nation.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim August 27 through September 2, 2023, as Overdose Awareness Week. I call upon citizens, government agencies, civil society organizations, health care providers, and research institutions to raise awareness of substance use disorder so that our Nation can combat stigmatization, promote treatment, celebrate recovery, and strengthen our collective efforts to prevent overdose deaths. August 31st also marks Overdose Awareness Day, on which we honor and remember those who have lost their lives to the drug overdose epidemic.

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

A handwritten signature in dark ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

Presidential Documents

Proclamation 10609 of August 25, 2023

Women's Equality Day, 2023

By the President of the United States of America

A Proclamation

America is the only Nation in the world based on an idea—the idea that all people are created equal and deserve to be treated equally throughout their lives. We have never fully lived up to that idea, but we have never walked away from it either. On Women's Equality Day, we honor the pioneering suffragists who persisted through decades of struggle to finally win American women the right to vote, and we celebrate the advocates and everyday heroes who have continued the long march for equality ever since. On this day, we recommit to delivering a better future for all of America's daughters and for our Nation.

The 19th Amendment was certified 103 years ago, but more remained to be done—especially for women of color, many of whom fought for the right to vote for another four decades until the Voting Rights Act passed in 1965. Today, women still face discrimination and threats to their health and safety, as well as gaps in pay, access to health care, and caregiving responsibilities. These gaps are often even greater for women and girls of color. Last year, the Supreme Court overturned *Roe v. Wade*, eliminating a woman's constitutional right to make fundamental decisions about her own body and putting women's health and lives at risk. And we are facing new efforts to suppress the fundamental right to vote and undermine our democracy.

My Administration is committed to realizing the promise of the suffragists, who knew that equality begins at the ballot box and requires women to have a seat at the table. That is why we will keep fighting to pass the John Lewis Voting Rights Advancement Act to restore and strengthen the Voting Rights Act and the Freedom to Vote Act to ensure fair Congressional maps give all Americans an equal chance to be heard. It is also why I have delivered on my promise to build an Administration that looks like America—with courageous leaders like Vice President Kamala Harris and the record number of women who serve in our Nation's first gender-equal Cabinet leading the way. I have also appointed more Black women to Federal appellate courts—including the first Black woman on the Supreme Court, Justice Ketanji Brown Jackson—than all prior Presidents combined. And I established the White House Gender Policy Council to advance gender equity and equality across all domestic and foreign policy.

Equality also means ensuring women's economic security—and I am pleased that a majority of the record 13 million jobs we have added to our economy since I took office are held by women. We are working to ensure women have access to opportunities in sectors like manufacturing and construction, where women have long been underrepresented. I also signed an Executive Order to eliminate discriminatory pay practices and advance pay equity. I have fought for safe and healthy workplaces, including by signing into law long-overdue protections for pregnant, postpartum, and nursing workers. I signed an Executive Order with the most comprehensive set of actions ever to support caregivers and expand child- and long-term care, and we have made other historic investments in affordable child care while requiring firms that receive significant Federal dollars to ensure that high-quality

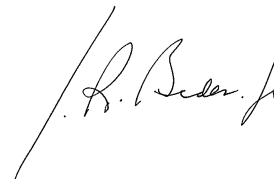
child care is available so parents can actually take the new jobs that we are creating.

We have to ensure women's physical safety as well. As a United States Senator, I wrote the Violence Against Women Act to not only change the laws but also the culture that had allowed the scourge of domestic violence, sexual assault, and other forms of gender-based violence to persist in America. As Vice President and now as President, I have worked to reauthorize and strengthen that law, improving law enforcement training, increasing support for survivors, addressing online harassment and abuse, expanding services for LGBTQI+ survivors, and more. I have also pushed to improve our military justice system, signing into law and implementing bipartisan reforms to better prevent and respond to sexual assault, sexual harassment, and domestic violence in the Armed Forces.

This year, we also mark the 100th anniversary of the introduction of the Equal Rights Amendment. It is long past time to definitively enshrine the principle of gender equality in the Constitution, and I will continue to fight for the Equal Rights Amendment as I have throughout my career. Together we can and must build a future where our daughters have all the same rights and opportunities as our sons, where all women and girls have a chance to realize their God-given potential, and where we can finally realize the full promise of America for all Americans. May we be a Nation worthy of the abilities and ambitions of our women and girls.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim August 26, 2023, as Women's Equality Day. I call upon the people of the United States to celebrate and continue to build on our country's progress toward gender equality and to defend and strengthen the right to vote.

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

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Rules and Regulations

Federal Register
Vol. 88, No. 167
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE
Federal Crop Insurance Corporation

7 CFR Part 457
[Docket ID FCIC–23–0004]
RIN 0563–AC83

Actual Production History (APH) and Other Crop Insurance Transparency; Corrections

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).
ACTION: Correcting amendment.

SUMMARY: On June 29, 2023, the Federal Crop Insurance Corporation revised the Area Risk Protection Insurance (ARPI) Regulations, Common Crop Insurance Policy (CCIP) Basic Provisions, and the General Administrative Regulations. In reviewing the changes made, FCIC found some incorrect references and conflicting provisions that were not updated to accurately incorporate the changes, and a grammatical error was included in the amendatory instructions. This document makes the corrections.

DATES: Effective August 30, 2023.
FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926–7730; email francie.tolle@usda.gov. Persons with disabilities who require alternative means of communication should contact the USDA Target Center at (202) 720–2600 or 844–433–2774.
SUPPLEMENTARY INFORMATION:

Background

The Common Crop Insurance Regulations in 7 CFR part 457 were revised by a final rule with request for comments published in the **Federal Register** on June 29, 2023 (88 FR 42015–42026). Changes were made in that rule to the Area Risk Protection Insurance (ARPI) Basic Provisions (7 CFR part 407), Common Crop Insurance Policy (CCIP) Basic Provisions (7 CFR 457.8),

and the General Administrative Regulations in subpart G of part 400 (Actual Production History) (7 CFR 400.51 through 400.56). The rule moved existing regulatory language from 7 CFR part 400 (subpart G) into the CCIP Basic Provisions and obsoleted subpart G. Since the publication of the rule, FCIC has identified several references to subpart G that need correction to refer to CCIP Basic Provisions. Additionally, the rule revised production reporting requirements for producers to report “current” year production rather than “previous” year production. Since the publication of the rule, FCIC has found similar references to “previous” year production in various Crop Provisions that need to be corrected to “current” year for consistency with changes made in the rule. Lastly, the final rule allowed for enterprise units and whole farm units to be identified by the actuarial documents. FCIC has identified conflicting provisions that need to be updated. This document makes the corrections in the following Provisions:

- Common Crop Insurance Policy Basic Provisions (7 CFR 457.8);
- Texas Citrus Fruit Crop Insurance Provisions (7 CFR 457.119);
- Arizona-California Citrus Crop Insurance Provisions (7 CFR 457.121);
- Macadamia Nut Crop Insurance Provisions (7 CFR 457.131); and
- California Avocado Crop Insurance Provisions (7 CFR 457.175).

List of Subjects in 7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.
Accordingly, 7 CFR part 457 is corrected by making the following amendments:

PART 457—COMMON CROP INSURANCE REGULATIONS

- 1. The authority citation for part 457 continues to read as follows:
Authority: 7 U.S.C. 1506(l), 1506(o).
- 2. In § 457.8 in the “Common Crop Insurance Policy”:
 - a. In section 3, in paragraph (f)(1) introductory text, remove the words “specified in the Special Provisions” and add “specified in the Crop Provisions or Special Provisions” in their place;
 - b. In section 21, in paragraph (f)(1), remove the words “section 3(f)(1) and 7

CFR part 400, subpart G” and add “section 3(f)(1) and section 5” in their place;

- c. In section 22, in paragraph (a) introductory text, remove the words “(For example)” and add “(for example)” in their place; and
- d. In section 34:
 - i. Revise paragraph (a)(2)(iii);
 - ii. In paragraph (a)(3)(i)(A)(1), remove the words “Special Provisions” and add “actuarial documents” in their place; and
 - iii. In paragraph (a)(3)(v) introductory text, remove the words “, even though you elected revenue protection for all your crops”.

The revision reads as follows:

§ 457.8 The application and policy.

* * * * *

Common Crop Insurance Policy

* * * * *

34. Units
- (a) * * *
 - (2) * * *
 - (iii) Enterprise units must be allowed by the actuarial documents;
* * * * *
- 3. In § 457.119 in the “Texas Citrus Fruit Crop Provisions” in section 3, revise paragraphs (f) and (g) to read as follows:

§ 457.119 Texas citrus fruit crop insurance provisions.

* * * * *

- 3. Insurance Guarantees, Coverage Levels, and Prices
* * * * *
- (f) Your approved yield will be determined in accordance with sections 3 and 5 of the Basic Provisions.
- (g) Instead of reporting your production for the current crop year, as required by section 3(f)(1) of the Basic Provisions, there is a lag year and you are required to report production from two crop years ago by the production reporting date, e.g., 2023 crop year production must be reported by the production reporting date for the 2025 crop year.
* * * * *
- 4. In § 457.121 in the “Arizona-California Citrus Crop Provisions” in section 3 revise paragraph (b) to read as follows:

§ 457.121 Arizona-California citrus crop insurance provisions.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices

* * * * *

(b) Instead of reporting your production of marketable fresh fruit for the current crop year, as required by section 3(f)(1) of the Basic Provisions, there is a lag year and you are required to report production from two crop years ago by the production reporting date, *e.g.*, 2023 crop year production must be reported by the production reporting date for the 2025 crop year.

* * * * *

■ 5. In § 457.131 in the “Macadamia Nut Crop Provisions”, section 3:

■ i. In paragraph (c), remove the words “The yield used to compute your production guarantee will be determined in accordance with Actual Production History (APH) regulations, 7 CFR part 400, subpart G, and applicable policy provisions” and add “Your approved yield will be determined in accordance with sections 3 and 5 of the Basic Provisions” in their place; and

■ ii. Revise paragraph (d).

The revision reads as follows:

§ 457.131 Macadamia nut crop insurance provisions.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices

* * * * *

(d) Instead of reporting your production for the current crop year, as required by section 3(f)(1) of the Basic Provisions, there is a lag year and you are required to report production from two crop years ago by the production reporting date, *e.g.*, 2023 crop year production must be reported by the production reporting date for the 2025 crop year.

* * * * *

■ 6. In § 457.175, in the “California Avocado Crop Provisions”, in section 3, revise paragraph (e) and the last two sentences of paragraph (f)(2) to read as follows:

§ 457.175 California avocado crop insurance provisions.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices

* * * * *

(e) Instead of reporting your production for the current crop year as required by section 3(f)(1) of the Basic Provisions, you are required to report the production for the crop year that

ended on the October 31 immediately preceding the cancellation date, *e.g.*, 2023 crop year production must be reported by the production reporting date for the 2025 crop year.

(f) * * *

(2) * * * The percentages will be those described in sections 3 and 5 of the Basic Provisions. All other provisions of sections 3 and 5 of the Basic Provisions apply.

* * * * *

Marcia Bunger,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2023–18689 Filed 8–29–23; 8:45 am]

BILLING CODE 3410–08–P**DEPARTMENT OF ENERGY****10 CFR Part 430****[EERE–2017–BT–TP–0012]****RIN 1904–AD47****Energy Conservation Program: Test Procedure for Room Air Conditioners**

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

ACTION: Correcting amendments.

SUMMARY: On March 29, 2021, the U.S. Department of Energy (“DOE”) published a final rule that amended the test procedure for room air conditioners (“room ACs”). This document corrects errors in the amended regulatory text as it appeared in the March 2021 final rule. Neither the errors nor the corrections in this document affect the substance of the rulemaking or any conclusions reached in support of the final rule.

DATES: Effective August 30, 2023.

FOR FURTHER INFORMATION CONTACT:

Mr. Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–5904. Email: ApplianceStandardsQuestions@ee.doe.gov.

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–1777. Email: sarah.butler@hq.doe.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

DOE published a final rule in the **Federal Register** on March 29, 2021, amending the procedure for room ACs

at title 10 of the Code of Federal Regulations (“CFR”), part 430, subpart B, appendix F (“appendix F”). 86 FR 16446. Since publication of the final rule, DOE identified errors in the regulatory text for the room AC test procedure. The first identified error in the regulatory text is in section 4.2.1 of appendix F, which states, “If the unit has an inactive mode, as defined in section 2.14 of this appendix, as defined in section 2.17 of this appendix, measure and record the average inactive mode power, *P_{ia}*, in watts.” Since the term “inactive mode” is defined in section 2.14, the phrase “as defined in section 2.17” is erroneous and should be removed from that sentence. The second error is in section 5.3.6, in which the term “*AEC_{ia/om}*” is defined to mean “annual energy consumption in inactive mode of off mode, in kWh/year, determined in section 5.1 of this appendix.” Section 5.1 correctly defines “*AEC_{ia/om}*” as annual energy consumption in inactive mode and off mode. Thus, the definition in section 5.3.6 should read “annual energy consumption in inactive mode and off mode, in kWh/year, determined in section 5.1 of this appendix.” Similarly, the definition for “*AEC_{ia/om}*” in sections 5.2.2 and 5.3.7 should also read “annual energy consumption in inactive mode and off mode, in kWh/year, determined in section 5.1 of this appendix.”

II. Need for Correction

As published, the regulatory text in the March 2021 final rule may result in confusion as to the meaning of these terms and the references to provisions elsewhere in the test procedure. Because this final rule would simply correct errors in the text without making substantive changes in the March 2021 final rule, the changes addressed in this document are technical in nature.

III. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the March 2021 final rule remain unchanged for this final rule technical correction. These determinations are set forth in the March 2021 final rule. 86 FR 16446, 16472.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), DOE finds that there is good cause to not issue a separate notice to solicit public comment on the changes contained in this document. Issuing a separate notice to solicit public comment would be impracticable, unnecessary, and contrary to the public

interest. Neither the errors nor the corrections in this document affect the substance of the March 2021 final rule or any of the conclusions reached in support of the final rule. Providing prior notice and an opportunity for public comment on correcting objective, typographical errors that do not change the substance of the test procedure serves no useful purpose.

Further, this rule correcting a regulatory text error makes non-substantive changes to the test procedure. As such, this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d) otherwise applicable to rules that make substantive changes.

List of Subjects in 10 CFR Part 430

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

Signing Authority

This document of the Department of Energy was signed on August 23, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 23, 2023.

Treena V. Garrett,
Federal Register Liaison Officer, U.S.
Department of Energy.

For the reasons stated in the preamble, DOE corrects part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations by making the following correcting amendments:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Amend Appendix F to subpart B of part 430 by:

- a. Revising section 4.2.1;
- b. In section 5.2.2, revising the definitions of “AEC_{ia/om}”;
- c. In section 5.3.6, revising the definitions of “AEC_{ia/om}”; and
- d. In section 5.3.7, revising the definitions of “AEC_{ia/om}”.

The revisions read as follows:

Appendix F to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Room Air Conditioners

* * * * *

4. * * *

4.2 * * *

4.2.1 If the unit has an inactive mode, as defined in section 2.14 of this appendix, measure and record the average inactive mode power, P_{ia} , in watts.

* * * * *

5. * * *

5.2 * * *

5.2.2 * * *

AEC_{ia/om} = annual energy consumption in inactive mode and off mode, in kWh/year, determined in section 5.1 of this appendix.

* * * * *

5.3 * * *

* * * * *

5.3.6 * * *

AEC_{ia/om} = annual energy consumption in inactive mode and off mode, in kWh/year, determined in section 5.1 of this appendix.

* * * * *

5.3.7 * * *

AEC_{ia/om} = annual energy consumption in inactive mode and off mode, in kWh/year, determined in section 5.1 of this appendix.

* * * * *

[FR Doc. 2023–18529 Filed 8–29–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 766

[Docket No. 230824–0204]

RIN 0694–AJ36

Revisions of Temporary Denial Order Provisions To Allow for Extended Renewals in Certain Circumstances

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

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to create an additional option for the renewal of temporary denial orders (TDOs) by allowing BIS, under certain circumstances, to request that the

Assistant Secretary for Export Enforcement renew an existing TDO for a period of no more than one year, rather than the current renewal period of no more than 180 days. This final rule also makes some conforming changes to remove references to the “EAA,” the Export Administration Act (EAA), and add in their place references to “ECRA,” the Export Control Reform Act (ECRA), to reflect the EAR’s current statutory authority.

DATES: This rule is effective on August 29, 2023.

FOR FURTHER INFORMATION CONTACT: John Sonderman, Director, Office of Export Enforcement, Bureau of Industry and Security, Phone: (202) 482–5079, Email: EEinquiry@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

A. Amendment of Temporary Denial Order Provisions To Allow for Extended Renewals in Certain Circumstances

This final rule amends § 766.24 of the EAR (15 CFR parts 730 through 774) by adding an additional sentence after the first sentence of paragraph (d)(1). Specifically, this final rule creates an additional option for the renewal of temporary denial orders (TDOs) by allowing BIS, under certain circumstances, to request that the Assistant Secretary for Export Enforcement renew an existing TDO for a period of no more than one year, rather than the current renewal period of no more than 180 days.

This final rule does not change the current language set forth in the first sentence of paragraph (d)(1), which allows BIS to request the renewal of a TDO for a period of 180 days by demonstrating that such a renewal is necessary in the public interest to prevent an imminent violation of the EAR. Rather, this final rule allows BIS to request the renewal of a TDO for an extended period by demonstrating that a party that is subject to an existing TDO has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR.

Under the current standard set forth in § 766.24(d)(1), a “violation may be ‘imminent’ either in time or degree of likelihood” (15 CFR 766.24(b)(3)), and BIS may show “either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.” *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge “is significant, deliberate, covert and/or likely to occur

again, rather than technical or negligent[.]” *Id.* A “lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.” *Id.*

By contrast, this new standard requires BIS to show that since the issuance of a TDO, the respondent has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR, including the terms of the TDO, and that renewal of the TDO for an extended period is appropriate to address such continued apparent violations. Such a showing should demonstrate not just the likelihood of future imminent violations of the EAR but should include specific facts demonstrating past apparent violations of the EAR.

An extended renewal is appropriate, for instance, in cases where a respondent has acted in apparent blatant disregard of the EAR, where a respondent has attempted to circumvent or has otherwise appeared to violate the restrictions of a TDO or the EAR, or has otherwise acted in a manner demonstrating a pattern of apparent noncompliance with the requirements of the EAR.

This final rule also makes conforming changes to paragraphs (a), (b)(1) and (e)(5) of § 766.24 to remove references to the ‘*EEA*’ and add in their place references to ‘*ECRA*’ to reflect the EAR’s current statutory authority.

B. Importance of TDOs To Address Entities That Have Engaged in a Pattern of Repeated, Ongoing, and/or Continuous Apparent Violations of the Russia- or Iran-Related Restrictions

Since the imposition of sanctions on Russia in response to its further invasion of Ukraine in February 2022, and the imposition of similar sanctions on Belarus for its substantial enablement of Russia’s invasion, BIS has imposed a number of TDOs on entities that have engaged in a pattern of repeated, ongoing, and/or continuous apparent violations of these Russia-related restrictions, most notably on a number of Russian and Belarusian airlines. Beginning with the issuance of a TDO against PJSC Aeroflot (“Aeroflot”) on April 7, 2022 (87 FR 21611, Apr. 12, 2022), which was subsequently renewed on October 3, 2022 (87 FR 60985, Oct. 7, 2022) and on March 29, 2023 (88 FR 19609, Apr. 3, 2023), BIS has issued a number of TDOs targeting Russian and Belarusian airlines that have repeatedly and deliberately continued to operate international and/or domestic flights

involving aircraft subject to the EAR in apparent violation of the EAR and the applicable TDOs.

Similarly, on March 17, 2008, BIS imposed a TDO (73 FR 15130) which has been repeatedly renewed, most recently on May 5, 2023 (88 FR 30078, May 10, 2023), against Mahan Airways in connection with its numerous ongoing apparent violations of the EAR. The most recent renewal of this TDO stated that according to publicly available information, Aeroflot has begun sending its aircraft to Mahan Airways for repairs and/or maintenance. *Id.* at 30085.

Cases such as these, which involve an existing TDO combined with a pattern of repeated, ongoing, and/or continuous conduct that appears to violate a TDO or the EAR, leading to the need to repeatedly renew the applicable TDOs, are emblematic of the type of conduct which this extended renewal option is intended to address.

Such extended renewals will serve as an enhanced deterrent for such actors who are engaging in such apparent violative conduct and others who may be inclined to engage in behavior to facilitate such activities. Moreover, such extended renewals will provide enhanced notice to companies and individuals in the United States and abroad that they should avoid dealing with such actors of concern in connection with export, reexport, and transfer (in-country) transactions involving items subject to the EAR and in connection with any other activity subject to the EAR, *e.g.*, the provision of services in connection with an aircraft subject to the EAR that is operated by a denied person, or with respect to an aircraft that has been exported in violation of the EAR (*see* 15 CFR 736.2(b)(10)). BIS maintains a non-exhaustive list of aircraft that have potentially been exported to Russia or Belarus in violation of the EAR, including aircraft operated by certain denied persons, which can be found on the BIS website: <https://www.bis.doc.gov/index.php/policy-guidance/country-guidance/russia-belarus>.

In the event that the Assistant Secretary determines that a request for renewal of a TDO does not satisfy this new standard for an extended renewal as described above under section A, it may nonetheless be extended for a period not exceeding 180 days, provided that BIS has demonstrated that such renewal is necessary in the public interest to prevent an imminent violation.

Export Control Reform Act of 2018

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

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves an information collection approved by OMB under control number 0694–0088, Simplified Network Application Processing System. BIS does not anticipate a change to the burden hours associated with this collection as a result of this rule. Information regarding the collection, including all supporting materials, can be accessed at <https://www.reginfo.gov/public/do/PRAMain>.

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

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

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

List of Subjects in 15 CFR Part 766

Administrative practice and procedure, Confidential business information, Exports, Law enforcement, Penalties.

Accordingly, part 766 of the Export Administration Regulations (15 CFR

parts 730 through 774) is amended as follows:

PART 766—ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

■ 1. The authority citation for 15 CFR part 766 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 2. Section 766.24 is amended by revising the third sentence of paragraph (a), paragraphs (b)(1), (d)(1), and the last sentence of paragraph (e)(5), to read as follows:

§ 766.24 Temporary denials.

(a) * * * Without limiting any other action BIS may take under the EAR with respect to any application, order, license or authorization issued under ECRA, BIS may ask the Assistant Secretary to issue a temporary denial order on an *ex parte* basis to prevent an imminent violation, as defined in this section, of the ECRA, the EAR, or any order, license or authorization issued thereunder. * * *

(b) * * * (1) The Assistant Secretary may issue an order temporarily denying to a person any or all of the export privileges described in part 764 of the EAR upon a showing by BIS that the order is necessary in the public interest to prevent an imminent violation of ECRA, the EAR, or any order, license or authorization issued thereunder.

* * * * *

(d) * * * (1) If, no later than 20 days before the expiration date of a temporary denial order, BIS believes that renewal of the denial order is necessary in the public interest to prevent an imminent violation, BIS may file a written request setting forth the basis for its belief, including any additional or changed circumstances, asking that the Assistant Secretary renew the temporary denial order, with modifications, if any are appropriate, for an additional period not exceeding 180 days. In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year. BIS's request shall be delivered to the respondent, or any agent designated for this purpose, in accordance with § 766.5(b) of this part unless exceptional circumstances exist, which will constitute notice of the renewal application.

* * * * *

(e) * * *

(5) * * * The issuance or renewal of the temporary denial order shall be

affirmed only if there is reason to believe that the temporary denial order is required in the public interest to prevent an imminent violation of ECRA, the EAR, or any order, license or other authorization issued under ECRA.

* * * * *

Thea D. Rozman Kendler,
Assistant Secretary for Export Administration.

[FR Doc. 2023–18772 Filed 8–29–23; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Oregon State Plan; Extension of Final Approval of a State Plan To Cover the Separable Portion of Temporary Labor Camps

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notification of extending final approval of a State Plan over a separable portion.

SUMMARY: This document gives notice of final approval of the Oregon State occupational safety and health plan (State Plan) over temporary labor camps under section 18(e) of the Occupational Safety and Health Act of 1970 (OSH Act). As a result of this affirmative 18(e) determination, the Federal standard and enforcement authority as derived from the OSH Act will no longer apply to temporary labor camps in Oregon. This notification does not affect or disturb any other provisions or standards enforced by the U.S. Department of Labor's Wage and Hour Division at temporary labor camps in Oregon pursuant to an authority other than the OSH Act. This notification also does not affect or disturb the previous grant of final approval in 2005 as to all other issues covered by the Oregon State Plan.

DATES: The notification of extension of final approval is effective August 30, 2023.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Contact Frank Meilinger, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999; email meilinger.francis2@dol.gov.

For general and technical information: Contact Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, U.S. Department of Labor; telephone (202)

693–2200; email: kalinowski.doug@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 18 of the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 667, provides that states which wish to assume responsibility for developing and enforcing their own occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a state plan (State Plan or Plan). State Plan approval occurs in stages, beginning with initial approval under section 18(c) of the Act. If, after a period of no less than three years following initial approval, the Assistant Secretary determines that the State Plan has satisfied and continues to meet all criteria in section 18(e) of the OSH Act, the Assistant Secretary may make an affirmative determination under section 18(e) of the Act (referred to as “final approval” of the State Plan), which results in the relinquishment of concurrent Federal authority in the state with respect to occupational safety and health issues covered by the Plan (29 U.S.C. 667(e)). Procedures for section 18(e) determinations are found in 29 CFR part 1902, subpart D. In general, to be granted final approval, actual operation of the occupational safety and health Plan by the state must be at least as effective as the Federal OSHA program in all areas covered under the State Plan.

II. State Plan History

A. Final Approval of the Oregon State Plan Except as to Temporary Labor Camps

The Oregon State Plan, administered by the Oregon Department of Consumer and Business Services, received initial approval on December 28, 1972 (37 FR 28628). On January 23, 1975, OSHA and the State of Oregon entered into an Operational Status Agreement (OSA), which suspended the exercise of concurrent Federal authority in Oregon in all except specifically identified areas (40 FR 18427). On December 16, 2004, OSHA published a notification (69 FR 75436) that the Oregon State Plan was eligible for a determination as to whether final approval of the Plan should be granted under section 18(e) of the Act for all issues covered by the Plan, with the exception of temporary labor camps in agriculture, general industry, construction, and logging. The notification stated that the issue of temporary labor camps was being excluded from final approval at that time pending resolution of OSHA's

concerns regarding the effectiveness of Oregon's temporary labor camps standards.

After allowing a period for public comment, the Assistant Secretary subsequently granted the Oregon State Plan final approval on May 12, 2005, with respect to all issues covered by the Plan except temporary labor camps (70 FR 24947). In granting final approval, the Assistant Secretary made an affirmative determination that the Oregon State Plan had applied and implemented, in actual operations, each of the criteria set forth in section 18(e) of the Act and 29 CFR 1902.37 as to all portions of the State Plan except temporary labor camps. In doing so, the Assistant Secretary considered various elements of the state Plan, including standards, variances, enforcement measures, the public employee program, staffing and resources, records and reports, voluntary compliance, and injury/illness rates, finding the State Plan had effectively applied and implemented each of those elements. Thus, the Assistant Secretary determined, the State Plan was at least as effective as the Federal program and met the statutory and regulatory requirements for final approval.

As a result of this affirmative determination under section 18(e) of the Act, OSHA's standards and enforcement authority over all worksites covered by the Oregon State Plan (except temporary labor camps) was relinquished. The OSA, effective January 23, 1975, and as amended, effective December 12, 1983 and November 27, 1991, was superseded by the grant of final approval, except that it continued to apply to temporary labor camps in agriculture, general industry, construction, and logging.

B. Oregon's Temporary Labor Camps Standards

OSHA had initially approved the Oregon State Plan's Temporary Labor Camps standard on October 1, 1976 (41 FR 43485), concluding that the standard was at least as effective as the comparable Federal standard. The standard remained substantively unchanged until 2000, when the Oregon State Plan, on its own initiative through Administrative Order 5–2000, adopted revisions to the State's Agricultural Labor Housing (ALH) and Related Facilities standard (Division 4/J, OAR 437–004–1120) and the Labor Camps standard (Division 2/J, OAR 437–002–0142). Some of the updates to the rules included regrouping subjects into more logical categories, synchronizing certain definitions to more closely match those of other state regulatory agencies such

as the Oregon Building Codes Division, and changing requirements for garbage and refuse, emergency exits, bedding, and ratios of toilet, handwashing, and bathing facilities.

OSHA responded to the Oregon State Plan on February 28, 2001, identifying instances in which OSHA had concerns that the State's standards were less effective than the comparable Federal rules. Over the next several years, OSHA, the Wage and Hour Division (WHD),¹ and the Oregon State Plan continued to engage on this matter in order to resolve the identified concerns.

While those conversations were ongoing, OSHA and the Oregon State Plan began the separate process of section 18(e) final approval with the issuance of a **Federal Register** notification on December 16, 2004 (69 FR 75436). However, as noted above, the proposed grant of final approval excluded temporary labor camps due to OSHA's then-unresolved concerns regarding the effectiveness of Oregon's temporary labor camps standards. The 2004 notification of eligibility for final approval provided that OSHA intended to work with Oregon to resolve all effectiveness issues with regard to its two temporary labor camps standards so that final approval could be extended to all covered issues (69 FR 75438).

After further informal discussions with OSHA and WHD, along with feedback from its stakeholders, the Oregon State Plan subsequently filed changes to its ALH and Related Facilities and Temporary Labor Camps standards on March 24, 2008 (Administrative Order 4–2008), to make the rules as effective as Federal OSHA's. Some of the major changes to the ALH and Related Facilities rule (OAR 437–004–1120) included updated requirements for: space and ceiling heights (with effective dates of 2018 in some cases); screens; minimum window area; shower and sink ratios; nearby livestock operations; ground clearance; heating equipment; water pressure; laundry facilities; garbage pickup; and privy distance from housing. References to tents were also removed. For the Temporary Labor Camps rule (OAR 437–002–0142), Oregon removed the entire text of the rule and added new language stating that the ALH and

Related Facilities rule at OAR 437–004–1120 applies to general industry, construction, and forest activities as well as agriculture, except for a few limited paragraphs that address certain camp registration and closure requirements. Following further communication with OSHA, Oregon subsequently made additional changes to the ALH and Related Facilities rule on January 26, 2009 (Administrative Order 1–2009), to reflect changes in heater technology, clarify effective dates, and to require enclosed, screened shelters for cooking and eating facilities.

All changes promulgated by Oregon Administrative Orders 4–2008 and 1–2009 were effective as of January 1, 2018. On August 21, 2018, at the quarterly monitoring meeting, the Oregon State Plan Administrator requested that OSHA review and consider removal of the temporary labor camps exception to the State Plan's 18(e) final approval status. WHD approved the changes on December 3, 2020, and the OSHA X regional office approved the rules and recommended removal of the temporary labor camps exception to Oregon's 18(e) final approval status on December 18, 2020.²

Subsequently, on May 9, 2022, in response to a March 10, 2020, executive order issued by Oregon Governor Kate Brown, the Oregon State Plan adopted new "Rules to Address Employee and Labor Housing Occupant Exposure to High Ambient Temperatures" (pursuant to Administrative Order 3–2022), to take effect on June 15, 2022. Specifically, Administrative Order 3–2022 established a new Heat Illness Prevention standard applicable to general industry workers (OAR 437–002–0156), established a new Heat Illness Prevention standard applicable to agricultural workers (OAR 437–004–1131), and amended Oregon's ALH and Related Facilities standard (OAR 437–004–1120) to add new provisions on heat illness prevention in labor housing. OSHA approved this state-initiated change on June 3, 2022, finding the rules to be at least as effective as and more stringent than Federal requirements.

¹ In January 1997, the Secretary of the Department of Labor issued Secretary's Orders 5–96 (62 FR 107) and 6–96 (62 FR 111), transferring some of OSHA's authority to enforce the Federal Field Sanitation standard (29 CFR 1928.110) and Temporary Labor Camps standard (29 CFR 1910.142) to what would later become WHD (see 74 FR 58836). Accordingly, WHD had an interest in the Oregon State Plan's temporary labor camps enforcement activity, and OSHA consequently sought WHD's input in evaluating the standards.

² OSHA's December 18, 2020, approval letter referenced only Oregon's ALH and Related Facilities standard, OAR 437–004–1120. However, OSHA intended to also approve the separate Temporary Labor Camps standard, OAR 437–002–0142, which is identical to the ALH and Related Facilities standard except as to certain limited provisions. Accordingly, the OSHA X regional office sent a subsequent approval letter on May 5, 2022, to clarify that the general industry provisions for temporary labor camps addressed by Administrative Order 4–2008 were also approved.

C. Solicitation of Public Comment and Summary of Comments Received

On March 13, 2023, OSHA published in the **Federal Register** a notice announcing the Oregon State Plan's eligibility for a final approval determination under section 18(e) as to temporary labor camps in agriculture, general industry, construction, and logging (88 FR 15458). The March 13, 2023, notice invited interested persons to submit, by April 17, 2023, written comments and views regarding the Oregon State Plan and whether final approval over temporary labor camps should be granted. An opportunity to request an informal public hearing by the same date was also provided. To assist and encourage public participation in the 18(e) determination, a summary of the March 13, 2023 notice, with an invitation for public comments, was published in Oregon on April 1, 2023, in the Oregon Bulletin.³

In response to the March 13, 2023 proposal, OSHA received one comment, which supported the proposal, and no requests for an informal hearing. The one comment submitted was from Chuck Stribling, Chair of the Occupational Safety and Health State Plan Association (OSHSPA). OSHSPA is an organization of twenty-nine State Plans and U.S. Territories that have OSHA-approved State Plans. OSHSPA members work together to advance occupational safety and health in their respective States and Territories. OSHSPA also partners with OSHA, as well as many others, on key issues and concerns which impact employee safety and health. The comment stated that OSHSPA strongly supports OSHA's proposal to grant final approval to the Oregon State Plan over temporary labor camp enforcement authority in agriculture, general industry, construction, and logging. The comment further noted OSHSPA's observation that the Oregon State Plan temporary labor camp requirements are more protective than OSHA's requirements.

³ After OSHA publishes a **Federal Register** notice announcing a State Plan's eligibility for an 18(e) determination, OSHA's regulations at 29 CFR 1902.39(c) require that the State publish reasonable notice containing the same information within the State no later than ten days following the **Federal Register** publication. Oregon's notice in this instance was published nine days late. However, prior to the **Federal Register** publication, Oregon had notified OSHA that it would only be able to publish notice in the Oregon Bulletin on the first of the month in the month immediately following **Federal Register** publication. Moreover, OSHA is not aware of any party that was prejudiced by this slightly delayed State publication, nor has there been any request for additional time to provide public comment or other attempt to provide public comment after the April 17, 2023 deadline.

III. Decision

In accordance with section 18(e) of the Act and the procedures in 29 CFR part 1902, and after opportunity for public comment, the Assistant Secretary has considered all of the facts and comments presented in the record. Based on that record, and for the reasons described in further detail in the proposal (88 FR 15460–61), the Assistant Secretary has determined that Oregon's occupational safety and health program pertaining to temporary labor camps in agriculture, general industry, construction, and logging is at least as effective as the Federal program in actual operations in providing safe and healthful employment and places of employment and meets the criteria for final State Plan approval in section 18(e) of the Act and implementing regulations at 29 CFR part 1902. Accordingly, under section 18(e) of the Act, the exception to the Oregon State Plan's final approval for temporary labor camps in agriculture, general industry, construction, and logging is hereby removed, effective August 30, 2023.

IV. Effect of Decision

The Assistant Secretary's determination granting final approval to the Oregon State Plan under section 18(e) of the Act for temporary labor camps in general industry, agriculture, construction, and logging terminates OSHA authority for concurrent Federal enforcement over temporary labor camps in Oregon where such authority is covered under the Oregon State Plan, as of the effective date of this determination. Section 18(e) provides that upon making this final approval determination, "the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17 . . . shall not apply with respect to any occupational safety and health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination." 29 U.S.C. 667(e). Accordingly, this determination relinquishes concurrent Federal authority as derived from the OSH Act with respect to temporary labor camps in Oregon as follows: to issue citations for violations of the relevant Federal standards under sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to evaluate the Plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically

preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Act under section 17. However, the Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 of the Act before the effective date of the 18(e) determination. Finally, this determination supersedes the OSA between OSHA and the State of Oregon, which had remained in effect as to temporary labor camps only following the State Plan's receipt of final approval as to all other issues in 2005 (70 FR 24955).

This final approval determination does not affect Federal authority under provisions of the OSH Act not listed in section 18(e), nor does it affect Federal enforcement authority over issues which are not subject to State Plan enforcement. Additionally, this determination does not affect or disturb the authority of the U.S. Department of Labor's Wage and Hour Division to enforce Federal temporary labor camp standards pursuant to an authority other than the OSH Act, such as the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and WHD's regulations governing H–2A employment.

Under this 18(e) determination, Oregon will be expected to maintain a State program that is at least as effective as operations under the Federal program in protecting employee safety and health at covered workplaces. As provided by section 18(f) of the Act, the Assistant Secretary will continue to evaluate the manner in which the State is carrying out its Plan. The right to revoke or suspend final approval and reinstate Federal enforcement authority or, if the circumstances warrant, initiate action to withdraw approval of the State Plan is reserved should continuing evaluations show that the State has failed to maintain a program which is at least as effective as the Federal program, or that the State has failed to submit program change supplements as required by 29 CFR part 1953.

V. Federalism

Executive Order 13132, "Federalism," emphasizes consultation between Federal agencies and the States and establishes specific review procedures the Federal Government must follow as it carries out policies which affect State or local governments. Although the specific consultation procedures provided in section 6 of Executive Order

13132 are not mandatory for final approval decisions under the OSH Act because they neither impose a burden upon the State nor involve preemption of any State law, OSHA has nonetheless consulted extensively with Oregon on the matter of final approval as to temporary labor camps.

VI. Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this final approval determination will not have a significant economic impact on a substantial number of small entities. Final approval of Oregon's temporary labor camps coverage does not place small employers in Oregon under any new or different requirements, nor does it add any additional burden upon the State government beyond the responsibilities already assumed as part of the approved Plan.

Authority

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this document under the authority specified by section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 8–2020 (85 FR 58393 (Sept. 18, 2020)), and 29 CFR part 1956.

Signed in Washington, DC.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–18717 Filed 8–29–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2023–0697]

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 a special local regulation for an event identified as “Triathlons in Atlantic City” on September 10, 2023, to provide for the safety of life on navigable waterways during the IRONMAN 70.3 Atlantic City Triathlon. 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 period, 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 for Atlantic City, NJ, will be enforced for the regulated areas listed in Table 1 to Paragraph (i)(1) of § 100.501 for an event identified in the table as “Triathlons in Atlantic City” from 6:30 a.m. to 11:30 a.m. on September 10, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, 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 special local regulations in 33 CFR 100.501 for the “Triathlons in Atlantic City” regulated Area from 6:30 a.m. to 11:30 a.m. on September 10, 2023. This action is being taken to provide for the safety of life on navigable waterways during the IRONMAN 70.3 Atlantic City Triathlon. Our regulation for marine events within the Fifth Coast Guard District, § 100.501, specifies the exact location of the regulated area for “Triathlons in Atlantic City” events within portions of the New Jersey Intracoastal Waterway. As reflected in § 100.501(d)(2), during the enforcement period, 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.

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

Dated: August 23, 2023.

Roberto Rivera,

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

[FR Doc. 2023–18704 Filed 8–29–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2023–0711]

Special Local Regulation; St. Petersburg P–1 Grand Prix; Waters of Tampa Bay

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation for the St. Petersburg P–1 Powerboat Grand Prix from September 2 through 3, 2023, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Seventh district identifies the regulated area for this event in St. Petersburg, FL. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the designated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

DATES: The regulations in 33 CFR 100.703, Table 1 to § 100.703, Item 5 will be enforced daily from 8 a.m. until 6 p.m., on September 2, 2023 through September 3, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Marine Science Technician First Class Mara Brown, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email Mara.J.Brown@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.703, Table 1 to § 100.703, Item No. 5, for the St. Petersburg P–1 Powerboat Grand Prix regulated area from September 2, 2023 through September 3, 2023. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for recurring marine events, Sector St. Petersburg, § 100.703, Table 1 § 100.703, Item No. 5, Specifies the location of the regulated area for the St. Petersburg Powerboat Grand Prix which encompasses portions Tampa Bay in the vicinity of the St. Petersburg Pier, in St. Peterburg, FL. During enforcement periods, as reflected in § 100.703, if you are the operator of a vessel in the regulated area you must comply with direction from the Patrol Commander or any designated representative.

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

Dated: August 22, 2023.

Michael P. Kahle,

Captain, U.S. Coast Guard, Captain of the Port St. Petersburg.

[FR Doc. 2023–18698 Filed 8–29–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2023–0717]

RIN 1625–AA08

Special Local Regulation; Find Your Way Home Swim; Detroit River, Grosse Ile, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for certain waters of the Detroit River, Grosse Ile, MI. This action is necessary to protect safety of life on navigable waters immediately prior to, during, and after the Find Your Way Home Swim. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit or a designated representative.

DATES: This temporary final rule is effective from 5 a.m. through 3:30 p.m. on September 23, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2023–0717 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9564, or email Tracy.M.Girard@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this swim event until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard’s ability to protect participants, mariners and vessels from the hazards associated with this event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would inhibit the Coast Guard’s ability to protect participants, mariners and vessels from the hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041(a). The Captain of the Port Detroit (COTP) has determined that the likely combination of recreation vessels, commercial vessels, and an unknown number of spectators in close proximity to the swim along the water poses extra and unusual hazards to public safety and property. Therefore, the COTP is establishing a special local regulation around the event location to help minimize risks to safety of life and property during this event.

IV. Discussion of the Rule

This rule establishes a temporary special local regulation from 5 a.m. through 3:30 p.m. on September 23, 2023. In light of the aforementioned hazards, the COTP has determined that a special local regulation is necessary to protect spectators, vessels, and participants. The special local regulation will encompass the following waterway: all waters of the Detroit River encompassed within the following six

points: from 42°05.376′ N, 083°09.027′ W; a line drawn south to point 42°02.459′ N, 083°08.989′ W; a line drawn south east to point 42°00.039′ N, 083°08.417′ W; a line drawn west to point 42°00.024′ N, 083°08.501′ W; a line drawn north west to point 42°02.43′ N, 083°09.308′ W; a line drawn north to point 42°05.374′ N, 083°09.085′ W.

An on-scene representative of the COTP may permit vessels to transit the area when no swim activity is occurring. The on-scene representative may be present on any Coast Guard, state, or local law enforcement vessel assigned to patrol the event. Vessel operators desiring to transit through the regulated area must contact the Coast Guard Patrol Commander to obtain permission to do so. The COTP or his designated on-scene representative may be contacted via VHF Channel 16 or via telephone at (313) 568–9560.

The COTP or his designated on-scene representative will notify the public of the enforcement of this rule by all appropriate means, including a Broadcast Notice to Mariners and Local Notice to Mariners.

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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the special local regulation. Vessel traffic will be able to safely transit around this special local regulation zone which will impact a small designated area of the Detroit River from 5 a.m. through 3:30 p.m. on September 23, 2023. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the special local

regulation and the rule allows vessels to seek permission to enter the area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this 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 special local regulation 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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting almost eleven hours that will prohibit entry into a designated area. It is categorically excluded from further review under paragraph L61 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 contact 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 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T09–0717 to read as follows:

§ 100.T09–0717 Special Local Regulation; Find Your Way Home Swim; Detroit River; Grosse Ile, MI.

(a) *Location.* A regulated area is established to encompass the following waterway: all waters of the Detroit River encompassed within the following six points: from 42°05.376′ N, 083°09.027′ W; a line drawn south to point 42°02.459′ N, 083°08.989′ W; a line drawn south east to point 42°00.039′ N, 083°08.417′ W; a line drawn west to point 42°00.024′ N, 083°08.501′ W; a line drawn north west to point 42°02.43′ N, 083°09.308′ W; a line drawn north to point 42°05.374′ N, 083°09.085′ W.

(b) *Enforcement period.* The regulated area described in paragraph (a) of this section will be enforced from 5 a.m. through 3:30 p.m. on September 23, 2023.

(c) *Special local regulations.*

(1) Vessels transiting through the regulated area are to maintain the minimum speeds for safe navigation.

(2) Vessel operators desiring to operate in the regulated area must contact the Coast Guard Patrol Commander to obtain permission to do so. The Captain of the Port Detroit (COTP) or his on-scene representative may be contacted via VHF Channel 16 or via telephone at (313) 568–9560. Vessel operators given permission to operate within the regulated area must comply with all directions given to them by the COTP or his on-scene representative.

(3) The “on-scene representative” of the COTP Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port Detroit to act on his behalf.

Dated: August 24, 2023.

Richard P. Armstrong,

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

[FR Doc. 2023-18713 Filed 8-29-23; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2022-0237]

RIN 1625-AA09

Drawbridge Operation Regulation; Keweenaw Waterway, Between Houghton and Hancock, MI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is altering the operating schedule that governs the US41 Bridge, mile 16.0, over the Keweenaw Waterway between the towns of Houghton and Hancock, Michigan. This change is being made at the request of the Michigan Department of Transportation, who owns and operates this bridge.

DATES: This rule is effective September 29, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type the docket number USCG-2022-0237 in the "SEARCH" box and click "SEARCH". In the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, email Lee.D.Soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations [Delete/Add Any Abbreviations Not Used/Used in This Document]

CFR Code of Federal Regulations

DHS Department of Homeland Security

FR Federal Register

IGLD85 International Great Lakes Datum of 1985

LWD Low Water Datum Based on IGLD85

OMB Office of Management and Budget

MDOT Michigan Department of Transportation

NPRM Notice of Proposed Rulemaking (Advance, Supplemental)

§ Section

U.S.C. United States Code

II. Background Information and Regulatory History

The US41 Bridge, mile 16.0, over the Keweenaw Waterway between the towns of Houghton and Hancock, Michigan, is owned and operated by MDOT and is the only crossing over the waterway. The US41 Bridge, mile 16.0, over the Keweenaw Waterway is a combination highway and railroad double deck lift bridge that provides a horizontal clearance of 7-feet in the down position, 103-feet in the open position, and 35-feet in the intermediate position above LWD.

The Keweenaw Waterway divides the Keweenaw Peninsula and is in the middle of the south shore of Lake Superior, a Great Lake known for hazardous weather conditions.

The Federal Government improved the Keweenaw Waterway in 1861 to accommodate interstate commerce and create a harbor of safe refuge for vessels caught in bad weather and is located halfway between Duluth, Minnesota and Sault Ste. Marie, Michigan. Commercial vessels, including some over 700-feet in length, and powered and non-powered recreational vessels utilize the waterway. The passenger vessel RANGER III operates from the east side of the US41 Bridge, mile 16.0, over the Keweenaw Waterway to Isle Royal and is operated by the National Park Service with a capacity of 128-passengers. A U.S. Coast Guard Station is located at the far west end of the waterway.

The bridge has special operating conditions listed in 33 CFR 117.635 that requires the bridge to open on signal; except that from April 15 through December 14, between midnight and 4 a.m., the draw shall be placed in the intermediate position and open on signal if at least 2 hours' notice is given. From December 15 through April 14 the draw shall open on signal if at least 12 hours' notice is given.

On May 19, 2022, we published in the **Federal Register** (87 FR 30418) a notice of temporary deviation from regulations; request for comments to test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule was needed. The Coast Guard sought comments from the public regarding the proposed changes. This deviation was effective from 7 a.m. on May 26, 2022, through 7 p.m. on September 6, 2022. Comments and related material had to reach the Coast Guard on or before November 1, 2022. In this document we provided data of three years of drawtender logs and average daily vehicle crossings provided by MDOT.

On April 12, 2023, we published in the **Federal Register** (88 FR 21940) a notice of proposed rulemaking proposing a permanent change to the bridge's operating schedule. Comments and related material were required to be received by the Coast Guard on or before June 12, 2023.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The Michigan Department of Transportation, who owns and operates the bridge, requested a change to the drawbridge operation schedule to help facilitate all modes of transportation at the bridge.

IV. Discussion of Comments

We received only two comments on the proposed rule and one was a duplication of the other. The commenter was in full support of the rule and no changes have been made as a result.

Ben Larson, Houghton County Administrator, on behalf of the residents, looked forward to the approval of the new regulation becoming.

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.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice or that the scheduled openings will provide for the reasonable needs of navigation.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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 did not receive any comments from the Small Business Administration on this rule. 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 bridge 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 contact 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 calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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.

We did not receive any comments regarding 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. We did not receive any comments regarding the Unfunded Mandates Reform Act of 1995.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has 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 promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 00170.1. Revision No. 01.3.

■ 2. Revise § 117.635 Keweenaw Waterway to read as follows:

§ 117.635 Keweenaw Waterway.

(a) The draw of the U.S. 41 Bridge, mile 16, shall open on signal, except that:

(1) From April 15 through December 14, between the hours of 7 a.m. and 7 p.m. Monday through Friday, less Federal holidays, the bridge shall open on signal from five minutes before to five minutes after the hour and half hour for vessels. Documented vessels over 300-feet shall not be held at the bridge but will be passed as soon as possible.

(2) From April 15 through December 14 between midnight and 4 a.m. daily, the draw shall be placed in the intermediate position and open on signal if at least 2 hours' notice is given.

(3) From December 15 through April 14 the draw shall open on signal if at least 12 hours' notice is given.

(b) [Reserved]

Jonathan Hickey,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2023–18739 Filed 8–29–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0639]

RIN 1625–AA00

Safety Zone; Grosse Pointe Farms Fireworks, Lake St. Clair, Grosse Pointe Farms, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters within Lake St. Clair in Grosse Pointe Farms, MI. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards during a fireworks event. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit.

DATES: This rule is effective from 9:30 p.m. through 10:30 p.m. on September 2, 2023, and in the case of inclement weather from 9:30 p.m. through 10:30 p.m. on September 3, 2023.

ADDRESSES: To view documents mentioned in this preamble as being

available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0639 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Tracy Girard, U.S. Coast Guard; (313) 475–7475, Tracy.M.Girard@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so is impracticable. The Coast Guard did not receive notice of the fireworks with sufficient time to undergo notice and comment. We must establish this safety zone by September 2, 2023 in order to protect the public from the hazards associated with a fireworks event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with a fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Detroit (COTP) has determined that potential hazards associated with fireworks starting September 2, 2023, will be a safety concern for anyone within a 250-yard radius of the fireworks location. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety

zone while fireworks show is being displayed.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:30 p.m. through 10:30 p.m. on September 2, 2023. In the case of inclement weather on September 2, 2023, this safety zone will be enforced from 9:30 p.m. through 10:30 p.m. on September 3, 2023. The safety zone will cover all navigable waters within a 250 yard radius of location 42°24.51' N 082°52.97' W (WGS 84). The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the fireworks show is being displayed. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Lake St. Clair for less than an hour during the night when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and

operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than an hour that will prohibit entry within 250-yard radius of 42°24.51' N 082°52.97' W (WGS 84). It is categorically excluded from further review under paragraph L[60] 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 record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0639 to read as follows:

§ 165.T09–0639 Safety Zones; Grosse Pointe Farms Fireworks, Lake St. Clair, Grosse Pointe, MI.

(a) *Location.* This safety zone is established to encompass all U.S. navigable waters of Lake St. Clair within a 250-yard radius of 42°24.51' N 082°52.97' W (WGS 84).

(b) *Enforcement period.* The safety zone described in paragraph (a) of this section will be enforced from 9:30 p.m. through 10:30 p.m. on September 2, 2023. In the case of inclement weather on September 2, 2023, this safety zone will be enforced from 9:30 p.m. through 10:30 p.m. on September 3, 2023.

(c) Regulations.

(1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within these safety zones is prohibited unless authorized by the COTP Detroit or a designated on-scene representative.

(2) The safety zones are closed to all vessel traffic, except as may be permitted by the COTP Detroit or a designated on-scene representative.

(3) The “on-scene representative” of the COTP Detroit is any Coast Guard commissioned, warrant or petty officer or a federal, state, or local law enforcement officer designated by the COTP Detroit to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zones must contact the COTP Detroit or an on-scene representative to obtain permission to do so. The COTP Detroit or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Detroit or an on-scene representative.

Dated: August 24, 2023.

Richard P. Armstrong,

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

[FR Doc. 2023–18711 Filed 8–29–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0696]

RIN 1625–AA00

Safety Zone; Foster Wedding Fireworks, Lake St. Clair; Grosse Pointe Park, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters on Lake St. Clair in Grosse Pointe Park, MI. The safety zone is necessary and intended to protect personnel, vessels, and the marine environment from potential hazards associated with fireworks displays created by the Foster family. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit, or his designated representative.

DATES: This rule is effective from 9 p.m. through 10 p.m. on September 9, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0696 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Tracy Girard, Waterways Department, Sector Detroit, Coast Guard; telephone (313) 568–9564, email Tracy.M.Girard@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary

to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor notified the Coast Guard with insufficient time to publish an NPRM and immediate action is necessary to protect personnel, vessels, and the marine environment on Lake St. Clair. It is impracticable and contrary to the public interest to publish a NPRM because we must establish this safety zone by September 9, 2023.

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**. For the same reasons discussed in the preceding paragraph, delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with a fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Detroit (COTP) has determined that potential hazards associated with fireworks displays will be a safety concern for anyone within a 200-yard radius of the launch site. The likely combination of recreational vessels, darkness punctuated by bright flashes of light, and fireworks debris falling into the water presents risks of collisions which could result in serious injuries or fatalities. This rule is necessary to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 9 p.m. through 10 p.m. on September 9, 2023. The safety zone will encompass all U.S. navigable waters of Lake St. Clair within a 200-yard radius of the fireworks launch site located 42°21.791' N, 082°55.147' W, near Windmill Point, MI. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. The Captain of the Port Detroit or his designated representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small, designated area of Lake St. Clair one hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM Marine Channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

\$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately 1 hour that will prohibit entry within 200-yard radius of where the fireworks display will be conducted. It is categorically excluded from further review under paragraph L[60] 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 record keeping requirements, Security measures, Waterways.

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

PART 165—Regulated Navigation Areas and Limited Access Areas

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

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

■ 2. Add § 165.T09–0696 to read as follows:

§ 165.T09–0696 Safety Zone; Foster Wedding Fireworks, Lake St. Clair; Grosse Pointe Park, MI.

(a) *Location.* The following area is a temporary safety zone: all U.S. navigable waters of Lake St. Clair within a within a 200-yard radius of the fireworks launch site located at position 42°21.791' N, 082°55.147' W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Enforcement Period.* This regulation will be enforced from 9 p.m. through 10 p.m. on September 9, 2023. The Captain of the Port Detroit, or a designated representative may suspend enforcement of the safety zone at any time.

(c) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Detroit (COTP) in the enforcement of the safety zone.

(d) Regulations.

(1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit or his designated representative. The COTP Detroit or his designated representative may be contacted via VHF Channel 16.

Dated: August 24, 2023.

Richard P. Armstrong,

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

[FR Doc. 2023–18701 Filed 8–29–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0657]

RIN 1625–AA00

Safety Zone; Grosse Pointe War Memorial Fireworks, Lake St. Clair, Grosse Pointe Farms, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters (all navigable waters within a 250 yard radius of location 42°23.13' N 082°53.74' W (WGS 84)) within Lake St. Clair in Grosse Pointe Farms, MI. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards during a fireworks event. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit.

DATES: This rule is effective from 9 p.m. through 10 p.m. on September 8, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0657 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Tracy Girard, U.S. Coast Guard; (313) 475–7475, Tracy.M.Girard@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary

to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so is impracticable. The Coast Guard did not receive notice of the fireworks with sufficient time to undergo notice and comment. We must establish this safety zone by September 8, 2023 in order to protect the public from the hazards associated with a fireworks event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with a fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Detroit (COTP) has determined that potential hazards associated with fireworks starting September 8, 2023, will be a safety concern for anyone within a 250-yard radius of the fireworks location. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while fireworks show is being displayed.

IV. Discussion of the Rule

This rule establishes a safety zone from 9 p.m. through 10 p.m. on September 8, 2023. The safety zone will cover all navigable waters within a 250-yard radius of location 42°23.13' N 082°53.74' W (WGS 84). The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the fireworks show is being displayed. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Lake St. Clair for less than an hour during the night when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by

employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human

environment. This rule involves a safety zone lasting less than an hour that will prohibit entry within 250-yard radius of 42°23.13' N 082°53.74' W (WGS 84). It is categorically excluded from further review under paragraph L[60] 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 record keeping 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: 446 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

- 2. Add § 165.T09-0657 to read as follows:

§ 165.T09-0657 Safety Zones; Grosse Pointe War Memorial Fireworks, Lake St. Clair, Grosse Pointe Farms, MI.

(a) *Location.* This safety zone is established to encompass all U.S. navigable waters of Lake St. Clair within a 250-yard radius of 42°23.13' N 082°53.74' W (WGS 84).

(b) *Enforcement period.* The safety zone described in paragraph (a) of this section will be enforced from 9 p.m. through 10 p.m. on September 8, 2023.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within these safety zones is prohibited unless

authorized by the COTP Detroit or a designated on-scene representative.

(2) The safety zones are closed to all vessel traffic, except as may be permitted by the COTP Detroit or a designated on-scene representative.

(3) The “on-scene representative” of the COTP Detroit is any Coast Guard commissioned, warrant or petty officer or a federal, state, or local law enforcement officer designated by the COTP Detroit to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zones must contact the COTP Detroit or an on-scene representative to obtain permission to do so. The COTP Detroit or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Detroit or an on-scene representative.

Dated: August 24, 2023.

Richard P. Armstrong,

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

[FR Doc. 2023-18712 Filed 8-29-23; 8:45 am]

BILLING CODE 9110-04-P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1002

[Docket No. EP 542 (Sub-No. 31)]

Fees for Services Performed in Connection With Licensing and Related Services—2023 Update

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Board updates for 2023 the fees that the public must pay to file certain cases and pleadings with the Board. Pursuant to this update, 76 of the Board’s 136 fees will increase, and 60 fees will remain at their current levels.

DATES: This final rule is effective September 29, 2023.

FOR FURTHER INFORMATION CONTACT: Laura Mizner, (202) 245-0318, or Andrea Pope-Matheson, (202) 245-0363. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: The Board’s regulations at 49 CFR 1002.3(a) provide for an annual update of the Board’s entire user-fee schedule. Fees are generally revised based on the cost

study formula set forth at 49 CFR 1002.3(d), which looks to changes in salary costs, publication costs, and Board overhead cost factors. Applying that formula, 76 of the Board’s 136 fees will be increased and 60 will remain at their current levels.

Additional information is contained in the Board’s decision. To obtain a free copy of the full decision, visit the Board’s website at www.stb.gov or call (202) 245-0245. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information.

Decided: August 24, 2023.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.
Regena Smith-Bernard,
Clearance Clerk.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

- 1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), (a)(6)(B), and 553; 31 U.S.C. 9701; and 49 U.S.C. 1321. Section 1002.1(f)(11) is also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

- 2. Section 1002.1 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(a) Certificate of the Records Officer, \$22.00.

(b) Services involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of \$51.00 per hour.

(c) Services involved in checking records to be certified to determine authenticity, including clerical work, etc. incidental thereto, at a rate of \$35.00 per hour.

* * * * *

- 3. Section 1002.2 is amended by revising paragraph (f) to read as follows:

(f) *Schedule of filing fees.*

Type of proceeding	Fee
PART I: Non-Rail Applications or Proceedings to Enter Into a Particular Financial Transaction or Joint Arrangement	
(1) An application for the pooling or division of traffic	\$5,800.

Type of proceeding	Fee
(2)(i) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303.	\$2,600.
(ii) A petition for exemption under 49 U.S.C. 13541 (other than a rulemaking) filed by a non-rail carrier not otherwise covered.	\$4,100.
(iii) A petition to revoke an exemption filed under 49 U.S.C. 13541(d)	\$3,400.
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13703	\$36,500.
(4) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	\$6,000.
(ii) Minor amendment	\$100.
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i)	\$650.
(6) A notice of exemption for transaction within a motor passenger corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family.	\$2,100.
(7)–(10) [Reserved].	

PART II: Rail Licensing Proceedings Other Than Abandonment or Discontinuance Proceedings

(11)(i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	\$9,500.
(ii) Notice of exemption under 49 CFR 1150.31 through 1150.35	\$2,200.
(iii) Petition for exemption under 49 U.S.C. 10502	\$16,600.
(12)(i) An application involving the construction of a rail line	\$98,900.
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36	\$2,200.
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line	\$98,900.
(iv) A request for determination of a dispute involving a rail construction that crosses the line of another carrier under 49 U.S.C. 10902(d).	\$350.
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii)	\$2,600.
(14)(i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902	\$8,100.
(ii) Notice of exemption under 49 CFR 1150.41 through 1150.45	\$2,200.
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902	\$8,700.
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21 through 1150.24	\$2,100.
(16) An application for a land-use-exemption permit for a facility existing as of October 16, 2008 under 49 U.S.C. 10909	\$7,900.
(17) An application for a land-use-exemption permit for a facility not existing as of October 16, 2008 under 49 U.S.C. 10909.	\$28,000.
(18)–(20) [Reserved].	

PART III: Rail Abandonment or Discontinuance of Transportation Services Proceedings

(21)(i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Sub-title E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments).	\$29,300.
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50	\$4,700.
(iii) A petition for exemption under 49 U.S.C. 10502	\$8,300.
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act.	\$600.
(23) Abandonments filed by bankrupt railroads	\$2,500.
(24) A request for waiver of filing requirements for abandonment application proceedings	\$2,400.
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment.	\$2,000.
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned	\$30,000.
(27)(i) Request for a trail use condition in an abandonment proceeding under 16 U.S.C. 1247(d)	\$350.
(ii) A request to extend the period to negotiate a trail use agreement	\$600.
(28)–(35) [Reserved].	

PART IV: Rail Applications to Enter Into a Particular Financial Transaction or Joint Arrangement

(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102	\$25,000.
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322	\$13,500.
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	\$1,975,600.
(ii) Significant transaction	\$395,100.
(iii) Minor transaction	\$9,400.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	\$2,100.
(v) Responsive application	\$9,400.
(vi) Petition for exemption under 49 U.S.C. 10502	\$12,300.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	\$7,300.
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	\$1,975,600.
(ii) Significant transaction	\$395,100.
(iii) Minor transaction	\$9,400.

Type of proceeding	Fee
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	\$1,600.
(v) Responsive application	\$9,400.
(vi) Petition for exemption under 49 U.S.C. 10502	\$12,300.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	\$7,300.
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	\$1,975,600.
(ii) Significant transaction	\$395,100.
(iii) Minor transaction	\$9,400.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	\$1,500.
(v) Responsive application	\$9,400.
(vi) Petition for exemption under 49 U.S.C. 10502	\$12,300.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	\$7,300.
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	\$1,975,600.
(ii) Significant transaction	\$395,100.
(iii) Minor transaction	9,400.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	\$1,700.
(v) Responsive application	\$9,400.
(vi) Petition for exemption under 49 U.S.C. 10502	\$8,700.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	\$7,300.
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5)	\$3,000.
(43) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	\$92,500.
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	\$17,100.
(ii) Minor amendment	\$100.
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328	\$1,000.
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered ..	\$10,500.
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562	\$350.
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under section 402(a) of the Rail Passenger Service Act.	\$350.
(49)–(55) [Reserved].	

PART V: Formal Proceedings

(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1).	\$350.
(ii) A formal complaint involving rail maximum rates filed under the Simplified-SAC methodology	\$350.
(iii) A formal complaint involving rail maximum rates filed under the Three Benchmark methodology	\$150.
(iv) A formal complaint involving rail maximum rates filed under the Final Offer Rate Review procedure	\$150.
(v) All other formal complaints (except competitive access complaints)	\$350.
(vi) Competitive access complaints	\$150.
(vii) A request for an order compelling a rail carrier to establish a common carrier rate	\$350.
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705.	\$11,700.
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding.	\$1,000.
(ii) All other petitions for declaratory order	\$1,400.
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	\$9,200.
(60) Labor arbitration proceedings	\$350.
(61)(i) An appeal of a Surface Transportation Board decision on the merits or petition to revoke an exemption pursuant to 49 U.S.C. 10502(d).	\$350.
(ii) An appeal of a Surface Transportation Board decision on procedural matters except discovery rulings	\$500.
(62) Motor carrier undercharge proceedings	\$350.
(63)(i) Expedited relief for service inadequacies: A request for expedited relief under 49 U.S.C. 11123 and 49 CFR part 1146 for service emergency.	\$350.
(ii) Expedited relief for service inadequacies: A request for temporary relief under 49 U.S.C. 10705 and 11102, and 49 CFR part 1147 for service inadequacy.	\$350.
(64) A request for waiver or clarification of regulations except one filed in an abandonment or discontinuance proceeding, or in a major financial proceeding as defined at 49 CFR 1180.2(a).	\$750.
(65)–(75) [Reserved].	

PART VI: Informal Proceedings

(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706.	\$1,600.
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements	\$150.

Type of proceeding	Fee
(78)(i) The filing of tariffs, including supplements, or contract summaries	\$1 per page (\$32 min charge).
(ii) The filing of water carrier annual certifications	\$32.
(79) Special docket applications from rail and water carriers:	
(i) Applications involving \$25,000 or less	\$75.
(ii) Applications involving over \$25,000	\$200.
(80) Informal complaint about rail rate applications	\$800.
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving \$25,000 or less	\$75.
(ii) Petitions involving over \$25,000	\$200.
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3).	\$300.
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c).	\$54 per document.
(84) Informal opinions about rate applications (all modes)	\$350.
(85) A railroad accounting interpretation	\$1,500.
(86)(i) A request for an informal opinion not otherwise covered	\$1,900.
(ii) A proposal to use on a voting trust agreement pursuant to 49 CFR part 1013 and 49 CFR 1180.4(b)(4)(iv) in connection with a major control proceeding as defined at 49 CFR 1180.2(a).	\$6,800.
(iii) A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) not otherwise covered.	\$650.
(87) Arbitration of certain disputes subject to the statutory jurisdiction of the Surface Transportation Board under 49 CFR part 1108:	
(i) Complaint	\$75.
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration	\$75.
(iii) Third Party Complaint	\$75.
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration	\$75.
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award	\$150.
(88) Basic fee for STB adjudicatory services not otherwise covered	\$350.
(89)–(95) [Reserved].	

PART VII: Services

(96) Messenger delivery of decision to a railroad carrier's Washington, DC agent	\$42 per delivery.
(97) Request for service or pleading list for proceedings	\$32 per list.
(98) Processing the paperwork related to a request for the Carload Waybill Sample to be used in an STB or State proceeding that:	
(i) Annual request does not require a FEDERAL REGISTER (FR) notice:	
(A) Set cost portion	\$200.
(B) Sliding cost portion	\$62 per party.
(ii) Annual request does require a FR notice:	
(A) Set cost portion	\$450.
(B) Sliding cost portion	\$62 per party.
(iii) Quarterly request does not require a FR notice:	
(A) Set cost portion	\$54.
(B) Sliding cost portion	\$15 per party.
(iv) Quarterly request does require a FR notice:	
(A) Set cost portion	\$236.
(B) Sliding cost portion	\$15 per party.
(v) Monthly request does not require a FR notice:	
(A) Set cost portion	\$18.
(B) Sliding cost portion	\$5 per party.
(vi) Monthly request does require a FR notice:	
(A) Set cost portion	\$179.
(B) Sliding cost portion	\$5 per party.
(99)(i) Application fee for the STB's Practitioners' Exam	\$250.
(ii) Practitioners' Exam Information Package	\$25.
(100) Carload Waybill Sample data:	
(i) Requests for Public Use File for all years prior to the most current year Carload Waybill Sample data available, provided on CD–R.	\$250 per year.
(ii) Specialized programming for Waybill requests to the Board	\$141 per hour.

* * * * *

[FR Doc. 2023–18740 Filed 8–29–23; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200124–0029]

RTID 0648–XD218

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2023 Red Snapper Private Angling Component Closure in Federal Waters Off Texas

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces a closure for the 2023 fishing season for the red snapper private angling component in the exclusive economic zone (EEZ) off Texas in the Gulf of Mexico (Gulf) through this temporary rule. The red snapper recreational private angling component in the Gulf EEZ off Texas closes on September 2, 2023 until 12:01 a.m., local time, on January 1, 2024. This closure is necessary to prevent the private angling component from exceeding the Texas regional management area annual catch limit (ACL) and to prevent overfishing of the Gulf red snapper resource.

DATES: This closure is effective from 12:01 a.m., local time, on September 2, 2023 until 12:01 a.m., local time, on January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Daniel Luers, NMFS Southeast Regional Office, telephone: 727–824–5305, email: daniel.luers@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico 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 final rule implementing Amendment 40 to the FMP established two components within the recreational sector fishing for Gulf red snapper: the private angling component, and the Federal for-hire component (80 FR 22422, April 22, 2015). Amendment 40 also allocated the red snapper recreational ACL (recreational quota) between the components and

established separate seasonal closures for the two components. On February 6, 2020, NMFS implemented Amendments 50 A–F to the FMP, which delegated authority to the Gulf states (Louisiana, Mississippi, Alabama, Florida, and Texas) to establish specific management measures for the harvest of red snapper in Federal waters of the Gulf by the private angling component of the recreational sector (85 FR 6819, February 6, 2020). These amendments allocate a portion of the private angling ACL to each state, and each state is required to constrain landings to its allocation.

As described at 50 CFR 622.23(c), a Gulf state with an active delegation may request that NMFS close all, or an area of, Federal waters off that state to the harvest and possession of red snapper by private anglers. The state is required to request the closure by letter to NMFS, providing dates and geographic coordinates for the closure. If the request is within the scope of the analysis in Amendment 50A, NMFS publishes a notice in the **Federal Register** implementing the closure for the fishing year. Based on the analysis in Amendment 50A, Texas may request a closure of all Federal waters off the state to allow a year-round fishing season in state waters. As described at 50 CFR 622.2, “off Texas” is defined as the waters in the Gulf west of a rhumb line from 29°32.1′ N lat., 93°47.7′ W long. to 26°11.4′ N lat., 92°53′ W long., which line is an extension of the boundary between Louisiana and Texas.

On November 21, 2022, NMFS received a request from the Texas Parks and Wildlife Department (TPWD) to close the EEZ off Texas to the red snapper private angling component for the first part of the 2023 fishing year. Texas requested that the closure be effective from January 1, 2023, until June 1, 2023. NMFS determined that the TPWD request was within the scope of analysis contained within Amendment 50A, and subsequently published a temporary rule in the **Federal Register** implementing that closure request (87 FR 74013, December 2, 2022). In that temporary rule, NMFS noted that TPWD would monitor private recreational landings, and if necessary, request that NMFS again close the EEZ in 2023 to ensure the Texas regional management area ACL is not exceeded.

On August 24, 2023, NMFS received a new request from the TPWD to close the EEZ off Texas to the red snapper private angling component for the remainder of the 2023 fishing year. Texas requested that the closure be effective on September 2, 2023, through the end of the 2023 fishing year. NMFS

has determined that this request is within the scope of analysis contained within Amendment 50A, which analyzed the potential impacts of a closure of all Federal waters off Texas when a portion of the Texas quota has been landed. As explained in Amendment 50A, Texas intends to maintain a year-round fishing season in state waters, during which the remaining part of Texas’ ACL could be caught.

Therefore, the red snapper recreational private angling component in the Gulf EEZ off Texas will close from 12:01 a.m., local time, on September 2, 2023, until 12:01 a.m., local time, on January 1, 2024. This closure applies to all private-anglers (those on board vessels that have not been issued a valid charter vessel/headboat permit for Gulf reef fish) regardless of which state they are from or where they intend to land.

On and after the effective dates of the closure in the EEZ off Texas, the harvest and possession of red snapper in the EEZ off Texas by the private angling component is prohibited and the bag and possession limits for the red snapper private angling component in the closed area is zero.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.23(c), 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), there is 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 implementing the area closure authority and the state-specific private angling ACLs 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 a failure to implement the closure immediately would be inconsistent with Texas’s State management plan and may result in less access to red snapper in State waters.

For the aforementioned reasons, there is 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 25, 2023.

Jennifer M. Wallace,
*Acting Director, Office of Sustainable
Fisheries, National Marine Fisheries Service.*
[FR Doc. 2023-18764 Filed 8-29-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230306-0065; RTID 0648-
XD264]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of
a closure; request for comments.

SUMMARY: NMFS is opening directed
fishing for Pacific cod by catcher vessels
less than 60 feet (18.3 meters) length
overall (LOA) using hook-and-line or
pot gear in the Bering Sea and Aleutian
Islands Management Area (BSAI). This
action is necessary to fully use the 2023
total allowable catch of Pacific cod
allocated to catcher vessels less than 60
feet (18.3 meters) LOA using hook-and-
line or pot gear in the BSAI.

DATES: Effective 1200 hours, Alaska
local time (A.l.t.), September 1, 2023,
through 2400 hours, A.l.t., December 31,
2023. Comments must be received at the
following address no later than 4:30
p.m., A.l.t., September 14, 2023.

ADDRESSES: You may submit comments
on this document, identified by docket
number NOAA-NMFS-2022-0094, by
any of the following methods:

Electronic Submission: Submit all
electronic public comments via the
Federal e-Rulemaking Portal. Go to
<https://www.regulations.gov> and enter
NOAA-NMFS-2022-0094 in the Search
box. Click on the "Comment" icon,
complete the required fields, and enter
or attach your comments.

Mail: Submit written comments to
Gretchen Harrington, Assistant Regional
Administrator, Sustainable Fisheries
Division, Alaska Region NMFS. Mail
comments to P.O. Box 21668, Juneau,
AK 99802-1668.

Instructions: Comments sent by any
other method, to any other address or
individual, or received after the end of
the comment period, may not be
considered by NMFS. All comments

received are a part of the public record
and will generally be posted for public
viewing on <https://www.regulations.gov>
without change. All personal identifying
information (e.g., name, address, etc.),
confidential business information, or
otherwise sensitive information
submitted voluntarily by the sender will
be publicly accessible. NMFS will
accept anonymous comments (enter "N/
A" in the required fields if you wish to
remain anonymous).

FOR FURTHER INFORMATION CONTACT:
Krista Milani, 907-581-2062.

SUPPLEMENTARY INFORMATION: NMFS
manages the groundfish fishery in the
BSAI exclusive economic zone
according to the Fishery Management
Plan for Groundfish of the Bering Sea
and Aleutian Islands Management Area
(FMP) prepared by the North Pacific
Fishery Management Council under
authority of the Magnuson-Stevens
Fishery Conservation and Management
Act (Magnuson-Stevens Act).
Regulations governing fishing by U.S.
vessels in accordance with the FMP
appear at subpart H of 50 CFR parts 600
and 679.

NMFS closed directed fishing for
Pacific cod by catcher vessels less than
60 feet (18.3 meters) LOA using hook-
and-line or pot gear in the BSAI under
§ 679.20(d)(1)(iii) on January 16, 2023
(88 FR 3318, January 19, 2023).

NMFS has determined that as of
August 24, 2023, approximately 1,400
metric tons of Pacific cod remain in the
2023 Pacific cod apportionment for
catcher vessels less than 60 feet (18.3
meters) LOA using hook-and-line or pot
gear in the BSAI. Therefore, in
accordance with § 679.25(a)(1)(i),
(a)(2)(i)(C), and (a)(2)(iii)(D), and to fully
use the 2023 total allowable catch (TAC)
of Pacific cod in the BSAI, NMFS is
terminating the previous closure and is
opening directed fishing for Pacific cod
by catcher vessels less than 60 feet (18.3
meters) LOA using hook-and-line or pot
gear in the BSAI. The Administrator,
Alaska Region, NMFS, (Regional
Administrator) considered the following
factors in reaching this decision: (1) the
current catch of Pacific cod by catcher
vessels less than 60 feet (18.3 meters)
LOA using hook-and-line or pot gear in
the BSAI and, (2) the harvest capacity
and stated intent on future harvesting
patterns of vessels in participating in
this fishery.

Classification

NMFS issues this action pursuant to
section 305(d) of the Magnuson-Stevens
Act. This action is required by 50 CFR
part 679, which was issued pursuant to

section 304(b), and is exempt from
review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there
is good cause to waive prior notice and
an opportunity for public comment on
this action, as notice and comment
would be impracticable and contrary to
the public interest, as it would prevent
NMFS from responding to the most
recent fisheries data in a timely fashion,
and would delay the opening of directed
fishing for Pacific cod by catcher vessels
less than 60 feet (18.3 meters) LOA
using hook-and-line or pot gear in the
BSAI. NMFS was unable to publish a
notice providing time for public
comment because the most recent,
relevant data only became available as
of August 24, 2023.

The Assistant Administrator for
Fisheries, NOAA also finds good cause
to waive the 30-day delay in the
effective date of this action under 5
U.S.C. 553(d)(3). This finding is based
upon the reasons provided above for
waiver of prior notice.

Without this inseason adjustment,
NMFS could not allow the fishery for
Pacific cod by catcher vessels less than
60 feet (18.3 meters) LOA using hook-
and-line or pot gear in the BSAI to be
harvested in an expedient manner and
in accordance with the regulatory
schedule. Under § 679.25(c)(2),
interested persons are invited to submit
written comments on this action to the
above address (see **ADDRESSES**) until
September 14, 2023.

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

Dated: August 25, 2023.

Jennifer M. Wallace,
*Acting Director, Office of Sustainable
Fisheries, National Marine Fisheries Service.*
[FR Doc. 2023-18746 Filed 8-29-23; 8:45 am]
BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230306-0065; RTID 0648-
XD250]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of
a closure; request for comments.

SUMMARY: NMFS is opening directed fishing for Pacific cod by American Fisheries Act (AFA) trawl catcher/processors (CPs) in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2023 total allowable catch of Pacific cod allocated to AFA trawl CPs in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 1, 2023, through 1200 hours, A.l.t., November 1, 2023. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 14, 2023.

ADDRESSES: You may submit comments on this document, identified by docket number NOAA-NMFS-2022-0094, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0094 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will

accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

NMFS closed directed fishing for Pacific cod by AFA trawl CPs in the BSAI under § 679.20(d)(1)(iii) on January 19, 2023 (88 FR 3318, January 19, 2023).

NMFS has determined that as of August 24, 2023, approximately 1,000 metric tons of Pacific cod remain in the 2023 Pacific cod total allowable catch (TAC) allocated to the AFA trawl CPs in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2023 TAC of Pacific cod in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by AFA trawl CPs in the BSAI. The Administrator, Alaska Region, NMFS, considered the following factors in reaching this decision: (1) the current catch of Pacific cod by AFA trawl CPs in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the opening of directed fishing for Pacific cod by AFA trawl CPs in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 24, 2023.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by AFA trawl CPs in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 14, 2023.

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

Dated: August 25, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023-18758 Filed 8-29-23; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 88, No. 167

Wednesday, August 30, 2023

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-1807; Project Identifier MCAI-2023-00394-T]

RIN 2120-AA64

Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Yborã Indústria Aeronáutica S.A.; Embraer S.A.; Empresa Brasileira de Aeronáutica S.A. (EMBRAER)) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Embraer S.A. Model EMB-135BJ airplanes. This proposed AD was prompted by reports of missing sealant on the rivets installed in the interface between rib 3 and the wing skin. This proposed AD would require applying sealant on the rivets installed in the interface between rib 3 and wing skin, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 16, 2023.

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

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

- *Fax:* 202-493-2251.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA-2023-1807; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this NPRM, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246-190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203-6600; email *pac@anac.gov.br*; website *anac.gov.br/en/*. You may find this material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp*. It is also available at *regulations.gov* under Docket No. FAA-2023-1807.

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

FOR FURTHER INFORMATION CONTACT:

Hassan Ibrahim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206-231-3653; email *hassan.m.ibrahim@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA-2023-1807; Project Identifier MCAI-2023-00394-T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing

date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Hassan Ibrahim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206-231-3653; email *hassan.m.ibrahim@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2023-03-01, effective March 6, 2023 (ANAC AD 2023-03-01) (also referred to as the MCAI), to correct an unsafe condition for certain Embraer S.A. Model EMB-135BJ airplanes. The MCAI states that missing sealant was identified on the rivets installed in the interface between rib 3 and the wing skin in some Embraer Model EMB-135BJ airplanes. The lack of sealant when a failure on the rivet installation exists may result in a potential ignition source inside the fuel tank during a lightning strike, which, combined with flammable fuel vapors, could result in a

fuel tank explosion and consequent loss of the airplane.

The FAA is proposing 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–2023–1807.

Related Service Information Under 1 CFR Part 51

ANAC AD 2023–03–01 specifies procedures for applying sealant on the rivets installed in the interface between rib 3 and wing skin.

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

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's

bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in ANAC AD 2023–03–01 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of

information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate ANAC AD 2023–03–01 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with ANAC AD 2023–03–01 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by ANAC AD 2023–03–01 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1807 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 10 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 7 work-hours × \$85 per hour = \$595	\$0	Up to \$595	Up to \$5,950.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.; Empresa Brasileira de Aeronáutica S.A. (EMBRAER)):
Docket No. FAA–2023–1807; Project Identifier MCAI–2023–00394–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 16, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Embraer S.A. Model EMB–135BJ airplanes, certificated in any category, having serial numbers 14501119 through 14501165 inclusive, 14501167 through 14501215 inclusive, and 14501217 through 14501236 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports of missing sealant on the rivets installed in the interface between rib 3 and the wing skin. The FAA is issuing this AD to address the lack of sealant on the rivets, which may result in a potential ignition source inside the fuel tank during a lightning strike when a failure on the rivet installation exists, which, combined with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Agência Nacional de Aviação Civil (ANAC) AD 2023-03-01, effective March 6, 2023 (ANAC AD 2023-03-01).

(h) Exceptions to ANAC AD 2023-03-01

(1) Where ANAC AD 2023-03-01 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt paragraph (c)(1) of ANAC AD 2023-03-01.

(i) No Reporting Requirement

Although the service information referenced in ANAC AD 2023-03-01 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 ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(k) Additional Information

For more information about this AD, contact Hassan Ibrahim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206-231-3653; email hassan.m.ibrahim@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) Agência Nacional de Aviação Civil (ANAC) AD 2023-03-01, effective March 6, 2023.

(ii) [Reserved]

(3) For ANAC AD 2023-03-01, contact ANAC, Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246-190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203-6600; email pac@anac.gov.br; website anac.gov.br/en/. You may find this ANAC AD on the ANAC website at sistemas.anac.gov.br/certificacao/DA/DAE.asp.

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

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

Issued on August 24, 2023.

Victor Wicklund,

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

[FR Doc. 2023-18691 Filed 8-29-23; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. FAA-2023-1804; Project Identifier MCAI-2023-00675-T]

RIN 2120-AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2023-04-18, which applies to all Dassault Aviation Model FALCON 2000 airplanes. AD 2023-04-18 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive

airworthiness limitations. Since the FAA issued AD 2023-04-18, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require certain actions in AD 2023-04-18 and would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 16, 2023.

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

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

- *Fax:* 202-493-2251.

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

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

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2023-1804; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this NPRM, 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. It is also available at regulations.gov under Docket No. FAA-2023-1804.

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410,

Westbury, NY 11590; telephone 206–231–3226; email tom.rodriquez@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2023–1804; Project Identifier MCAI–2023–00675–T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3226; email tom.rodriquez@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2023–04–18, Amendment 39–22365 (88 FR 15607, March 14, 2023) (AD 2023–04–18), for all Dassault Aviation Model FALCON 2000 airplanes. AD 2023–04–18 was

prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2022–0135, dated July 6, 2022 (EASA AD 2022–0135) (which corresponds to FAA AD 2023–04–18), to correct an unsafe condition.

AD 2023–04–18 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2023–04–18 to address reduced controllability of the airplane. AD 2023–04–18 specifies that accomplishing the revision required by that AD terminates certain requirements of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05) for Model FALCON 2000 airplanes only. This proposed AD would therefore continue to allow that terminating action.

Actions Since AD 2023–04–18 Was Issued

Since the FAA issued AD 2023–04–18, EASA superseded AD 2022–0135 and issued EASA AD 2023–0099, dated May 11, 2023 (EASA AD 2023–0099) (referred to after this as the MCAI), for all Dassault Aviation Model FALCON 2000 airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed.

The FAA is proposing this AD to address reduced controllability of the airplane. You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1804.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0099 specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This proposed AD would also require EASA AD 2022–0135, dated July 6, 2022, which the Director of the Federal Register approved for incorporation by reference as of April 18, 2023 (88 FR 15607, March 14, 2023).

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

FAA’s Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA

is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2023–04–18. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2023–0099 already described, as proposed for incorporation by reference. Any differences with EASA AD 2023–0099 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (n)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to retain the IBR of EASA AD 2022–0135 and incorporate EASA AD 2023–0099 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0099 and EASA AD 2022–0135 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0099 or EASA AD 2022–0135 does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s)

and Compliance Time(s)” in EASA AD 2023–0099 or EASA AD 2022–0135. Service information required by EASA AD 2023–0099 and EASA AD 2022–0135 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2023–1804 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA’s process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.*, inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under “Additional AD Provisions.” This new format includes a “New Provisions for Alternative Actions and Intervals” paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 168 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2021–03–11 to be \$7,650 (90 work-hours × \$85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or

inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be \$7,650 (90 work-hours × \$85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2023–04–18, Amendment 39–22365 (88 FR 15607, March 14, 2023); and

■ b. Adding the following new AD:

Dassault Aviation: Docket No. FAA–2023–1804; Project Identifier MCAI–2023–00675–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 16, 2023.

(b) Affected ADs

(1) This AD replaces AD 2023–04–18, Amendment 39–22365 (88 FR 15607, March 14, 2023) (AD 2023–04–18).

(2) This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05).

(c) Applicability

This AD applies to all Dassault Aviation Model FALCON 2000 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address reduced controllability of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2023–04–18, with no changes. Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0135, dated July 6, 2022 (EASA AD 2022–0135). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2022–0135, With No Changes

This paragraph restates the exceptions specified in paragraph (k) of AD 2023–04–18, with no changes.

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0135 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0135 specifies revising “the approved AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after April 18, 2023 (the effective date of AD 2023–04–18).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0135 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2022–0135, or within 90 days after April 18, 2023 (the effective date of AD 2023–04–18), whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0135 do not apply to this AD.

(5) The “Remarks” section of EASA AD 2022–0135 does not apply to this AD.

(i) Retained No Alternative Actions or Intervals With a New Exception

This paragraph restates the requirements of paragraph (l) of AD 2023–04–18, with a new exception. Except as required by paragraph (j) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2022–0135.

(j) New Maintenance or Inspection Program Revision

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0099, dated May 11, 2023 (EASA AD 2023–0099). Accomplishing the maintenance or inspection program revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2023–0099

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0099.

(2) Paragraph (3) of EASA AD 2023–0099 specifies revising “the approved AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2023–0099 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2023–0099, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2023–0099.

(5) This AD does not adopt the “Remarks” section of EASA AD 2023–0099.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (e.g., inspections), and intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2023–0099.

(m) Terminating Action for Certain Requirements in AD 2010–26–05

Accomplishing the actions required by paragraphs (g) or (j) of this AD terminates the requirements of paragraph (g) of AD 2010–26–05 for Model FALCON 2000 airplanes only.

(n) 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 (o) 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 Dassault Aviation’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(o) Additional Information

For more information about this AD, contact Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3226; email tom.rodriguez@faa.gov.

(p) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2023–0099, dated May 11, 2023.

(ii) [Reserved]

(4) The following service information was approved for IBR on April 18, 2023 (88 FR 15607, March 14, 2023).

(i) European Union Aviation Safety Agency (EASA) AD 2022–0135, dated July 6, 2022.

(ii) [Reserved]

(5) For EASA ADs 2023–0099 and 2022–0135, 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 these EASA ADs on the EASA website at ad.easa.europa.eu.

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

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

Issued on August 24, 2023.

Victor Wicklund,

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

[FR Doc. 2023–18692 Filed 8–29–23; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–6384; File No. S7–04–23]

RIN 3235–AM32

Safeguarding Advisory Client Assets; Reopening of Comment Period

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Securities and Exchange Commission (“Commission”) is reopening the comment period for its proposal, *Safeguarding Advisory Client Assets*, Release No. IA–6240 (Feb. 15, 2023) (“Proposal”), which proposed a new rule under the Investment Advisers Act of 1940 (“Advisers Act” or “Act”) that would redesignate and amend the current custody rule. In light of the adoption of the private fund adviser audit rule, which generally requires a registered investment adviser to obtain an annual financial statement audit of each private fund it advises in accordance with the audit provision of the current custody rule, reopening the comment period will allow interested persons additional time to assess the proposed amendments to the current custody rule’s audit provision in light of the private fund adviser audit rule.

DATES: The comment period for the proposed rule published in the **Federal Register** on March 9, 2023, at 88 FR

14672, is reopened. Comments should be received on or before October 30, 2023.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/submitcomments.htm>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-04-23 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-04-23. The 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 (<https://www.sec.gov/rules/proposed.shtml>). Comments also are 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.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at www.sec.gov to receive notifications by email.

FOR FURTHER INFORMATION CONTACT:

Janet Jun, Senior Counsel; Christopher Staley, Branch Chief; or Melissa Rovers Harke, Assistant Director, Investment Adviser Regulation Office, Division of Investment Management, (202) 551-6787 or IARules@sec.gov, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission proposed 17 CFR 275.223-1 under the Advisers Act ("rule 223-1" or "safeguarding rule") on February 15, 2023, to address how advisers safeguard client assets and enhance investor protections.¹ The Proposal also would renumber 17 CFR 275.206(4)-2 ("rule 206(4)-2" or "current custody rule") to redesignate it as rule 223-1 and amend certain of its provisions, including 17 CFR 275.206(4)-2(b)(4) ("rule 206(4)-2(b)(4)" or "audit provision"). The original comment period for the Proposal closed on May 8, 2023.

Title 17 section 275.206(4)-2(a)(4) of the current custody rule requires the client funds and securities of which an adviser has custody to be verified by actual examination at least once during each calendar year by an independent public accountant. An adviser is deemed to have complied with this annual surprise examination requirement with respect to the accounts of certain pooled investment vehicles,² provided that such vehicles' audited financial statements are obtained and delivered in accordance with the elements of the current custody rule's audit provision, as set forth in paragraphs (b)(4)(i) through (b)(4)(iii) of the current custody rule. Similar to the current custody rule, the proposed safeguarding rule generally would require an adviser with custody of client assets³ to obtain a similar annual surprise examination. Again, like the current custody rule, the proposed safeguarding rule also contains an audit provision that, when satisfied, would allow an adviser to be deemed in compliance with the proposed safeguarding rule's surprise examination requirement with respect to certain client accounts.⁴

While the elements of the proposed safeguarding rule's audit provision

remain largely unchanged from those of the current custody rule, the Proposal includes some key modifications; namely, (1) expanding the audit provision's availability from "pooled investment vehicle" clients to "any other entity"; (2) requiring the audited financial statements of non-U.S. clients to contain information substantially similar to statements prepared in accordance with U.S. GAAP and material differences with U.S. GAAP to be reconciled; and (3) requiring that the adviser or the entity enter into a written agreement with the auditor requiring the auditor to notify the Commission in the event of the auditor's termination or issuance of a modified opinion.⁵

On August 23, 2023, the Commission adopted new rules designed to protect investors who invest in private funds.⁶ Among them was 17 CFR 275.206(4)-10 under the Act ("rule 206(4)-10" or "private fund adviser audit rule"), which generally requires a registered investment adviser to cause each of the private funds it advises (other than a securitized asset fund, as defined in 17 CFR 275.211(h)(1)-1 ("securitized asset fund")) to undergo a financial statement audit (as defined in 17 CFR 210.1-02(d)) that satisfies the requirements set forth in paragraph (b)(4) of the current custody rule, as well as to deliver each such audited financial statement in accordance with paragraph (c) of the current custody rule.⁷

II. Reopening of Comment Period

Because compliance with the private fund adviser audit rule is predicated in part on an adviser complying with the current custody rule's audit provision, the proposed modifications to the audit provision as set forth in the proposed safeguarding rule, if adopted, would apply to advisers subject to the private fund adviser audit rule.⁸ The

⁵ Compare rule 206(4)-2(b)(4) with proposed rule 223-1(b)(4). See also Safeguarding Advisory Client Assets Release, *supra* footnote 1, at section II.G.1.a.

⁶ See Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, Investment Advisers Act Release No. 6383 (Aug. 23, 2023).

⁷ Title 17 section 275.206(4)-10(b) also references the current custody rule's audit provision, providing an exception from the requirement to obtain an audit for funds and advisers that are not in a control relationship, and instead requiring an adviser to take "all reasonable steps" to cause the private fund (other than a securitized asset fund) to undergo a financial statement audit that satisfies the requirements set forth in paragraph (b)(4) of the current custody rule and to deliver audited financial statements in accordance with paragraph (c) of the current custody rule.

⁸ If the Commission adopts the proposed safeguarding rule, the Commission could amend rule 206(4)-10 at that time to redesignate references to rule 206(4)-2 in rule 206(4)-10 as references to rule 223-1.

¹ See Safeguarding Advisory Client Assets, Investment Advisers Act Release No. 6240 (Feb. 15, 2023), [88 FR 14672 (Mar. 9, 2023)] ("Safeguarding Advisory Client Assets Release").

² As discussed below, the safeguarding rule would expand the availability of the audit provision from pooled investment vehicle clients to any advisory client entity whose financial statements are able to be audited in accordance with the rule. See proposed 17 CFR 275.223-1(b)(4) ("rule 223-1(b)(4)").

³ The safeguarding rule would expand the scope of the current custody rule's application to cover not only client funds and securities, but also client "assets", which is defined in the proposed safeguarding rule as, "funds, securities, or other positions held in the client's account." See proposed 17 CFR 275.223-1(d)(1).

⁴ See proposed rule 223-1(b)(4). See also Safeguarding Advisory Client Assets Release, *supra* footnote 1, at section II.G.1.a. (explaining the elements of the audit provision under the proposed safeguarding rule).

Commission is therefore reopening the comment period for the safeguarding rule proposal so that commenters may consider the proposed modifications to the audit provision in light of rule 206(4)–10. The Commission is reopening the comment period for Release No. IA–6240 *Safeguarding Advisory Client Assets* until October 30, 2023.

By the Commission.

Dated: August 23, 2023.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2023–18667 Filed 8–29–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2023–0007; Notice No. 225]

RIN 1513–AD03

Proposed Establishment of the San Luis Rey Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the 97,733-acre “San Luis Rey” American viticultural area (AVA) in San Diego County, California. The proposed AVA is located entirely within the existing South Coast AVA. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on these proposals.

DATES: TTB must receive your comments on or before October 30, 2023.

ADDRESSES: You may electronically submit comments to TTB on this proposal and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB–2023–0007 as posted on *Regulations.gov* (<https://www.regulations.gov>), the Federal e-rulemaking portal. Please see the “Public Participation” section of this document below for full details on how to comment on this proposal via *Regulations.gov* or U.S. mail, and for full details on how to obtain copies of this document, its supporting materials,

and any comments related to this proposal.

FOR FURTHER INFORMATION CONTACT:

Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act provisions pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain administrative and enforcement authorities to TTB through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine’s geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an

approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon;
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Petition To Establish the San Luis Rey AVA

TTB received a petition from Rebecca Wood, managing member of Premium Vintners, LLC, proposing to establish the “San Luis Rey” AVA. Premium Vintners, LLC, operates Fallbrook Winery and farms several vineyards within the proposed AVA. The petition was submitted on behalf of Fallbrook Winery and other local vineyard owners and winemakers. The proposed AVA is located in San Diego County, California, and is entirely within the existing South Coast AVA (27 CFR 9.104). Within the proposed AVA, there are approximately 44 commercial vineyards, which cover a total of approximately 256 acres, as well as an additional 29 acres of planned vineyards. There are also 23 wineries within the proposed AVA. The

distinguishing features of the proposed San Luis Rey AVA are its topography, climate, and soils.

Proposed San Luis Rey AVA

Name Evidence

The proposed San Luis Rey AVA takes its name from the San Luis Rey River watershed, which includes most of the proposed AVA. According to the petition, the topography of the San Luis Rey River valley has a major effect on the climate of the proposed AVA. The river is named for the Mission San Luis Rey de Francia, which was established by Franciscan monks on a hill overlooking the valley in 1798. The petition states that the monks established a tradition of growing wine grapes in the region, with one contemporary noting in his memoirs that the monks' "gardens produce the best olives and the best wine in all California."¹

One of the USGS quadrangle maps used to create the boundary of the proposed AVA is titled "San Luis Rey, CA." "San Luis Rey" also appears on that map as the name of a community within the proposed AVA. The petition provides a printout from a real estate website showing homes for sale within the proposed AVA under the heading "San Luis Rey Real Estate." Finally, the petition includes examples of several business within the proposed AVA that use the name "San Luis Rey," including the San Luis Rey Bakery and Restaurant, the San Luis Rey Training Center, and the San Luis Rey Equine Hospital.

Boundary Evidence

The proposed San Luis Rey AVA is located within the San Luis Rey River valley. According to the petition, Interstate Highway 5 forms the western boundary and separates the proposed AVA from a narrow strip of densely populated land that is not suitable for commercial viticulture. West of this strip of land is the Pacific Ocean. The boundary of the Marine Corps Base Camp Pendleton, which is unavailable

for commercial viticulture, forms the northwest portion of the proposed AVA boundary. The shared San Diego-Riverside County line forms the northern boundary of the proposed AVA, and Interstate Highway 15 forms the eastern boundary. Both of these boundaries exclude lands with higher mean annual temperatures than those found in the proposed AVA. The proposed southern boundary follows State Highway 78 to exclude lands with higher mean annual temperatures and different soils than are found in the proposed AVA.

Distinguishing Features

According to the petition, the distinguishing features of the proposed San Luis Rey AVA are its topography, climate, and soils. The Pacific Ocean is to the west of the proposed AVA, so distinguishing feature information was not provided for that region.

Topography

The petition states that the proposed San Luis Rey AVA is a mostly hilly region along the San Luis Rey River valley. Elevations increase from 5 feet to 1,796 feet as one moves farther from the coast. The mean elevation within the proposed AVA is 563 feet. Slope angles within the proposed AVA average 10 degrees.

According to the petition, the low elevations allow cool marine air from the Pacific Ocean to flow through the proposed AVA, moderating temperatures. Afternoon breezes also help prevent fungal diseases such as powdery mildew by reducing the moisture on the vines caused by morning low cloud cover. Finally, the petition notes that the low elevations and a terrain consisting of gently rolling hills open to marine air almost eliminate the risk of spring frosts, which can affect vine growth at the beginning of the growing season. See the following Climate section for supporting evidence.

To the north of the proposed San Luis Rey AVA, within the established

Temecula Valley AVA (27 CFR 9.50), elevations are higher, ranging from 575 to 2,831 feet with a mean elevation of 1,508 feet. The slopes are similar to those in the proposed AVA, with a mean slope angle of 10 degrees. To the south, within the established San Pasqual Valley AVA (27 CFR 9.25), the minimum elevation is higher than within the proposed AVA, at 304 feet, and the maximum elevation is lower at 725. However, the mean elevation within the San Pasqual Valley AVA is lower than that of the proposed AVA, at 408 feet. The mean slope angle within the San Pasqual Valley AVA is also shallower, at 6 degrees. To the southeast of the proposed AVA, within the established Ramona Valley AVA (27 CFR 9.191), elevations are higher, ranging from 680 to 3,133 feet, with a mean elevation of 1,766 feet. The slope angles within the Ramona Valley AVA are also steeper, with a mean of 12 degrees. The petition did not provide an exact range of elevations for the region to the east of the proposed AVA but did include a graphic showing elevations within the southern portion of California, indicating higher elevations.²

Climate

According to the petition, the proximity of the proposed San Luis Rey AVA to the Pacific Ocean moderates the temperature extremes, generally resulting in mild winters and summers with lower maximum temperatures than regions farther inland. As evidence of the milder temperatures, the petition included information on the average annual mean temperature, average annual maximum temperature, average peak ripening and harvest season maximum temperature, and growing degree day³ (GDD) for the proposed AVA and the surrounding regions. The information is set forth in the following tables and was gathered from the 1981–2010 climate normal dataset from PRISM Climate Group, Oregon State University.

TABLE 1—AVERAGE ANNUAL MEAN AND MAXIMUM TEMPERATURES IN DEGREES FAHRENHEIT (F)^{4 5}

Location (direction from proposed AVA)	Average annual mean temperature	Average annual maximum temperature
Proposed AVA	63.11	74.20
Temecula Valley AVA (north)	64.39	77.65
San Pasqual Valley AVA (south)	64.55	77.75

¹ Duhat-Cilly, A.B. *Duhat-Cilly's Account of California in the Years 1827–28*. Retrieved November 2, 2022 from American Journeys at <https://www.americanjourneys.org/aj-098>.

² See Exhibit R to the petition in Docket No. TTB–2023–0007 at <https://www.regulations.gov>.

³ See Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 1974), pages 61–64. In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual GDDs, defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is

above 50 degrees F, the minimum temperature required for grapevine growth.

⁴ See Exhibit H to the petition in Docket No. TTB–2023–0007 at <https://www.regulations.gov>.

⁵ See Exhibit I to the petition in Docket No. TTB–2023–0007 at <https://www.regulations.gov>.

TABLE 1—AVERAGE ANNUAL MEAN AND MAXIMUM TEMPERATURES IN DEGREES FAHRENHEIT (F) ^{4 5}—Continued

Location (direction from proposed AVA)	Average annual mean temperature	Average annual maximum temperature
Ramona Valley AVA (southeast)	61.91	76.76

TABLE 2—AVERAGE PEAK RIPENING AND HARVEST SEASON MAXIMUM TEMPERATURES IN DEGREES F ⁶

Location (direction from proposed AVA)	Temperature			
	July	August	September	October
Proposed AVA	82.89	84.22	82.78	78.24
Temecula Valley AVA (north)	93.46	94.50	88.18	80.53
San Pasqual Valley AVA (south)	88.25	89.62	87.42	82.39
Ramona Valley AVA (southeast)	90.66	92.02	88.90	80.72

TABLE 3—GROWING DEGREE DAYS ⁷

Location (direction from proposed AVA)	Growing degree days		
	Minimum	Maximum	Mean
Proposed AVA	3,250	4,139	3,849
Temecula Valley AVA (north)	3,844	4,537	4,218
San Pasqual Valley AVA (south)	3,946	4,234	4,122
Ramona Valley AVA (southeast)	3,570	3,938	3,740

As shown in the preceding tables, the proposed San Luis Rey AVA has a lower average annual mean temperature, lower average annual maximum temperature, lower peak ripening and growing season temperatures, and fewer GDDs than the regions to the north and south. The proposed AVA has a higher average annual mean temperature and a greater number of mean GDDs than the region to the southeast. However, the maximum and minimum GDDs for the proposed AVA are still lower than those of the region to the southeast, as are the average annual maximum temperature and average peak ripening and harvest season temperatures. The petition notes that mild temperatures, particularly

during peak ripening and harvest season, affect viticulture, as prolonged temperatures over 90 degrees F can cause loss of flavor and aroma compounds in grapes.

As noted above, the petition states that the proposed AVA experiences very little frost that occurs early in the season or late in autumn. Consequently, frost does not affect grape vine growth or ripening consistency in the proposed AVA. As evidence, the petition included the average number of days from 1981–2010 with temperatures at or below 32 degrees F for two locations within the proposed AVA, ranging from 0.8 to 4.7 days.⁸ The data were collected using the National Oceanic and

Atmospheric Administration climate normal dataset.

The petition also includes information about diurnal temperature variation, which it describes as the average monthly minimum temperature subtracted from the average monthly maximum temperature.⁹ The data, shown in the following table, provide the temperature difference for the peak growing and harvest season and show that the proposed San Luis Rey AVA has smaller temperature differences than the surrounding regions. The petition states that temperature differences help preserve the balance of sugar and natural fruit acidity in grapes.

TABLE 4—DIURNAL TEMPERATURE VARIATION IN DEGREES F ¹⁰

Location (direction from proposed AVA)	Temperature variation			
	July	August	September	October
Proposed AVA	21.9	22.5	23.0	23.4
Temecula Valley AVA (north)	32.2	32.5	28.3	26.3
San Pasqual Valley AVA (south)	27.1	27.6	27.6	28.5
Ramona Valley AVA (southeast)	33.6	33.8	33.5	31.0

⁶ See Exhibit J to the petition in Docket No. TTB–2023–0007 at <https://www.regulations.gov>.

⁷ See Exhibit L to the petition in Docket No. TTB–2023–0007 at <https://www.regulations.gov>.

⁹ See Appendix 1 to the petition in Docket No. TTB–2023–0007 at <https://www.regulations.gov>.

¹⁰ See Exhibit K to the petition in Docket No. TTB–2023–0007 at <https://www.regulations.gov>.

Finally, the petition compared annual precipitation amounts in the proposed San Luis Rey AVA to those of the surrounding regions. The proposed AVA has lower annual precipitation

amounts than the regions to the north and southeast and slightly higher amounts than the region to the southeast. According to the petition, high amounts of rainfall during the

spring and the grape ripening season can disrupt bloom formation, split fruit, and disrupt the ripening process.

TABLE 5—ANNUAL PRECIPITATION IN INCHES ¹¹

Location (direction from proposed AVA)	Inches		
	Maximum	Minimum	Mean
Proposed AVA	16.97	11.48	14.27
Temecula Valley AVA (north)	22.58	13.51	17.34
San Pasqual Valley AVA (south)	14.79	13.30	13.69
Ramona Valley AVA (southeast)	22.86	15.34	17.87

Soils

According to the petition, nearly 50 percent of the soils in the proposed San Luis Rey AVA belong to the Alfisols soil taxonomy order. Soils in this order have relatively high native fertility and high concentrations of calcium, magnesium, potassium, and sodium, which are essential plant nutrients. The soils of the proposed AVA are also relatively low in organic carbon. The petition states that soils with low levels of organic carbon decrease grapevine vigor, leading to smaller canopies, clusters and berries. The smaller clusters and berries enhance the flavor concentration in the grapes and increase the skin-to-juice ratio during fermentation, while fewer leaves on the vines lead to improved fruit color and a reduction in “green” flavors. Approximately 69 percent of the soils in the proposed AVA are sandy loams, which the petition describes as an even mixture of soil separates that can hold water while draining and aerating well, and is easily worked with agricultural tools. Sandy loams also have low cation exchange capacity, which reduces the ability of vines to absorb nutrients from the soil and prevents overly vigorous growth. The main soil series within the proposed AVA are the Las Posas, Fallbrook, and Cieneba series, and the primary parent materials of these soils are granite and granodiorite (28.85 and 19.54 percent, respectively).¹²

To the north of the proposed San Luis Rey AVA, within the established Temecula Valley AVA, the majority of soils are also within the Alfisols soil taxonomy order (48 percent). However, the region also has more soils in the Entisols and Mollisols orders than are found within the proposed AVA. The primary parent materials of the soils are granite and sandstone. To the south of

the proposed AVA, within the established San Pasqual AVA, the soils are primarily within the Alfisols order, but lower amounts than the proposed AVA (33 percent). Entisols and Mollisols also occur with greater frequency within the San Pasqual AVA. The primary parent material is granite (77.48 percent), followed by granodiorite (13.45 percent). To the southeast of the proposed AVA, in the established Ramona Valley AVA, there are slightly fewer soils in the Alfisols order (46 percent) and more soils in the Entisols order (26 percent) than are found in the proposed AVA. The primary parent materials are granite and granodiorite, which are found in greater numbers than within the proposed AVA (36.60 and 35.23 percent, respectively).¹³

Comparison of the Proposed San Luis Rey AVA to the Existing South Coast AVA

T.D. ATF–218, published in the **Federal Register** on November 21, 1985 (50 FR 48084), established the South Coast AVA. It describes the primary feature of the South Coast AVA as the “substantial coastal influence” on the climate. The proposed San Luis Rey AVA shares the marine-influenced climate of the larger South Coast AVA. For example, the petition notes that the mean average annual temperature for the proposed AVA is 63.11 degrees F, which is the same as the entire South Coast AVA.¹⁴ Additionally, the average annual maximum temperature is 74.20 degrees F for the proposed AVA and 74.99 degrees F for the South Coast AVA.¹⁵ However, due to its much smaller size, the proposed AVA is more uniform in its other distinguishing features than the large, multi-county

South Coast AVA. The petition states, for example, that the proposed AVA is hilly with a lower mean elevation and more consistent terrain than the South Coast AVA, which ranges from the Pacific Ocean to mountainous elevations northeast and southeast. Only about one third of the soil series that exist within the South Coast AVA are also present within the proposed San Luis Rey AVA. Furthermore, the three most common soil series in the proposed AVA—Las Posas, Fallbrook, and Cieneba—make up 34.9 percent of the total soils in the proposed AVA, but only comprise 20.3 percent of the South Coast AVA soils.¹⁶

TTB Determination

TTB concludes that the petition to establish the 97,733-acre “San Luis Rey” AVA merits consideration and public comment, as invited in this document.

Boundary Description

See the narrative boundary descriptions of the petitioned-for AVA in the proposed regulatory text published at the end of this document.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text. You may also view the proposed San Luis Rey AVA boundary on the AVA Map Explorer on the TTB website, at <https://www.ttb.gov/wine/ava-map-explorer>.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine’s true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes

¹¹ See Exhibit M to the petition in Docket No. TTB–2023–0007 at <https://www.regulations.gov>.

¹² See Exhibit Q to the petition in Docket No. TTB–2023–0007 at <https://www.regulations.gov>.

¹³ See id.

¹⁴ See Exhibit H to the petition in Docket No. TTB–2023–0007 at <https://www.regulations.gov>.

¹⁵ See Exhibit I to the petition in Docket No. TTB–2023–0007 at <https://www.regulations.gov>.

¹⁶ See Exhibit Q to the petition in Docket No. TTB–2023–0007 at <https://www.regulations.gov>.

grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

If TTB establishes this proposed AVA, its name, “San Luis Rey,” will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using “San Luis Rey” in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the viticultural area’s name, “San Luis Rey.” The approval of the proposed San Luis Rey AVA would not affect any existing AVA, and any bottlers using “South Coast” as an appellation of origin or in a brand name for wines made from grapes grown within the San Luis Rey AVA would not be affected by the establishment of this new AVA. If approved, the establishment of the proposed San Luis Rey AVA would allow vintners to use “San Luis Rey”, “South Coast”, or both AVA names as appellations of origin for wines made from grapes grown within the proposed AVA, if the wines meet the eligibility requirements for the appellation.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether TTB should establish the proposed San Luis Rey AVA. TTB is interested in receiving comments on the sufficiency and accuracy of the name, boundary, topography, and other required information submitted in support of the AVA petition. In addition, because the proposed San Luis Rey AVA would be within the existing South Coast AVA, TTB is interested in comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the existing AVA. TTB is also interested in comments on whether the geographic

features of the proposed AVA are so distinguishable from the South Coast AVA that the proposed San Luis Rey AVA should not be part of the established AVA. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed San Luis Rey AVA on wine labels that include the term “San Luis Rey,” as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area names and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed AVA.

Submitting Comments

You may submit comments on this notice by using one of the following methods:

- **Federal e-Rulemaking Portal:** You may send comments via the online comment form posted with this notice within Docket No. TTB–2023–0007 on “*Regulations.gov*,” the Federal e-rulemaking portal, at <https://www.regulations.gov>. A direct link to that docket is available under Notice No. 225 on the TTB website at <https://www.ttb.gov/wine/notices-of-proposed-rulemaking>. Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov*, visit the site and click on the “FAQ” link at the bottom of the page.
- **U.S. Mail:** You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 225 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or

other entity. If you are commenting on behalf of an entity, your comment must include the entity’s name, as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity’s name in the “Organization” blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity’s comment on letterhead.

You may also write to the TTB Administrator before the comment closing date to ask for a public hearing. The TTB Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality and Disclosure of Comments

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, the related petition and selected supporting materials, and any comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB’s Regulations and Rulings division by email using the web form available at <https://www.ttb.gov/contact-rrd>, or by telephone at 202–453–2265, if you have any questions about commenting on this proposal or to request copies of this document, the related petition and its supporting materials, or any comments received.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor’s efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Add § 9.____ to read as follows:

§ 9.____ San Luis Rey.

(a) *Name*. The name of the viticultural area described in this section is “San Luis Rey”. For purposes of part 4 of this chapter, “San Luis Rey” is a term of viticultural significance.

(b) *Approved maps*. The 8 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the viticultural area are as follows:

- (1) Oceanside, CA, 2018;
- (2) San Luis Rey, CA, 2018;
- (3) San Marcos, CA, 2018;
- (4) Valley Center, CA, 2018;
- (5) Bonsall, CA, 2018;
- (6) Temecula, CA, 2018;
- (7) Fallbrook, CA, 2018; and
- (8) Morro Hill, CA, 2018.

(c) *Boundary*. The San Luis Rey viticultural area is located in San Diego County, California. The boundary of the San Luis Rey viticultural area is described as follows:

(1) The beginning point is on the Oceanside map at the intersection of Interstate 5 and the Marine Corps Base (MCB) Camp Pendleton boundary. From the beginning point, proceed northeast for a total of 11.21 miles along the MCB Camp Pendleton boundary, crossing over the San Luis Rey map and onto the Morro Hill map, and continuing along the MCB Camp Pendleton boundary to its intersection with the Naval Weapons Station (NWS) Seal Beach Fallbrook California boundary; then

(2) Proceed east along the NWS Seal Beach Fallbrook California boundary for a total of 6.85 miles, crossing onto the Bonsall map and continuing north, then west along the boundary, and crossing back onto the Morro Hill map and continuing northerly along the boundary, crossing onto the Fallbrook map, and continuing along the boundary as it becomes concurrent with the MCB Camp Pendleton boundary,

and continuing along the boundary to its intersection with De Luz Road; then

(3) Proceed east along De Luz Road for 0.38 mile to its intersection with Sandia Creek Drive; then

(4) Proceed northerly along Sandia Creek Drive for a total of 3.98 miles, crossing onto the Temecula map and continuing along Sandia Creek Drive to its intersection with an unnamed road known locally as Rock Mountain Road; then

(5) Proceed east along Rock Mountain Road for 0.21 mile to its intersection with the San Diego County line; then

(6) Proceed south then east along the San Diego County line for 6.72 miles to its intersection with an unnamed road known locally as Old Highway 395; then

(7) Proceed south along Old Highway 395 for a total of 14.9 miles, crossing onto the Bonsall map and continuing south along Old Highway 395 to its intersection with an unnamed road known locally as Old Castle Road; then

(8) Proceed east on Old Castle Road for a total of 0.59 mile, crossing onto the San Marcos map and continuing east along Old Castle Road to its intersection with Gordon Hill Road; then

(9) Proceed southeasterly along Gordon Hill Road for 0.92 mile to its intersection with the 800-foot elevation contour; then

(10) Proceed east along the 800-foot elevation contour for a total of 2.5 miles, crossing onto the Valley Center map and continuing east along the 800-foot elevation contour to its intersection with Canyon Country Lane; then

(11) Proceed northwest and then south along Canyon Country Lane for 0.83 mile to its intersection with the 1,240-foot elevation contour; then

(12) Proceed east along the 1,240-foot elevation contour for 2.90 miles to its intersection with Cougar Pass Road; then

(13) Proceed west then south along Cougar Pass Road for 0.4 mile to its intersection with Meadow Glen Way East; then

(14) Proceed south along Meadow Glen Way East for 0.46 mile to its intersection with Hidden Meadows Road; then

(15) Proceed southwest along Hidden Meadows Road for 0.73 mile to its intersection with Mountain Meadow Road; then

(16) Proceed southwest along Mountain Meadow Road for a total of 1.44 miles, crossing onto the San Marcos map and continuing along Mountain Meadow Road to the point where Mountain Meadow Road becomes known as Deer Springs Road just west of Interstate 15; then

(17) Proceed southwest along Deer Springs Road for 2.42 miles to its intersection with an unnamed road known locally as North Twin Oaks Valley Road; then

(18) Proceed south along North Twin Oaks Valley Road for 3.01 miles to its intersection with an unnamed road known locally as West Mission Road; then

(19) Proceed northwest along West Mission Road (which becomes South Santa Fe Avenue) for a total of 3.9 miles to its intersection with Robelini Drive; then

(20) Proceed southwest along Robelini Drive (which becomes Sycamore Avenue) for a total of 0.55 mile to its intersection with State Highway 78; then

(21) Proceed northwest, then westerly along State Highway 78 for a total of 9.09 miles, crossing onto the San Luis Rey map and continuing westerly along State Highway 78 to its intersection with Interstate 5; then

(22) Proceed northwest along Interstate 5 for a total of 3.14 miles, crossing onto the Oceanside map and returning to the beginning point.

Signed: August 21, 2023.

Mary G. Ryan,
Administrator.

Approved: August 22, 2023.

Thomas C. West, Jr.,
Deputy Assistant Secretary (Tax Policy).
[FR Doc. 2023–18587 Filed 8–29–23; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****29 CFR Part 1903**

[Docket No. OSHA–2023–0008]

RIN 1218–AD45

Worker Walkaround Representative Designation Process

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: OSHA is proposing to amend its Representatives of Employers and Employees regulation to clarify that the representative(s) authorized by employees may be an employee of the employer or a third party; such third-party employee representative(s) may accompany the OSHA Compliance Safety and Health Officer (CSHO) when they are reasonably necessary to aid in

the inspection. OSHA is also proposing clarifications of the relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language skills of third-party representative(s) authorized by employees who may be reasonably necessary to the conduct of a CSHO's physical inspection of the workplace. OSHA has preliminarily determined that the proposed changes will aid OSHA's workplace inspections by better enabling employees to select a representative of their choice to accompany the CSHO during a physical workplace inspection. Employee representation during the inspection is critically important to ensuring OSHA obtains the necessary information about worksite conditions and hazards. The agency requests comments regarding the proposed revisions.

DATES: Submit comments by October 30, 2023. All submissions must provide evidence of the submission date. (See the following section titled **ADDRESSES** for instructions on making submissions.)

ADDRESSES: Comments may be submitted as follows:

Written comments: You may submit comments and attachments electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and docket number for this rulemaking (Docket No. OSHA–2023–0008). 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 interested parties about submitting information that 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 information in the docket, go to Docket No. OSHA–2023–0008 at <https://www.regulations.gov>. All comments and submissions are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through that website. All comments and submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2500 (TDY number 877–889–5627)

for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Frank Meilinger, Director, OSHA Office of Communications, telephone: (202) 693–1999; email: meilinger.francis2@dol.gov.

General and technical inquiries: Donald Klienback, OSHA Directorate of Construction, telephone: (202) 693–2020; email: klienback.donald.w@dol.gov.

Copies of this Federal Register notice and news releases: Electronic copies of these documents are available at OSHA's web page at <https://www.osha.gov>.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Executive Summary
- II. Background
 - A. The OSH Act and OSHA's Inspection Authority
 - B. Regulatory History and Interpretive Guidance
 - C. Litigation and Subsequent Agency Enforcement Actions
- III. Legal Authority
- IV. Summary and Explanation of Proposed Changes
- V. Preliminary Economic Analysis and Regulatory Flexibility Act Certification
 - A. Cost
 - B. Benefits
 - C. Certification of No Significant Impact on a Substantial Number of Small Entities
- VI. Office of Management and Budget (OMB) Review Under the Paperwork Reduction Act
- VII. Federalism
- VIII. State Plans
- IX. Unfunded Mandates Reform Act
- X. Consultation and Coordination With Indian Tribal Governments
- XI. Environmental Impact Assessment
- XII. Questions and Options
- XIII. Public Participation
 - A. Public Submissions
- XIV. List of Subjects
- XV. Authority and Signature

I. Executive Summary

Section 8(e) of the OSH Act grants a representative of the employer and a representative authorized by employees the opportunity to accompany OSHA during the physical inspection of the workplace for the purpose of aiding the inspection. While OSHA long interpreted one of section 8(e)'s implementing regulations, 29 CFR 1903.8(c), to permit third-party representatives authorized by employees to accompany OSHA on the walkaround inspection when reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, a district court concluded that interpretation was not consistent with the regulation. OSHA is therefore

proposing to revise 29 CFR 1903.8(c) to clarify the types of individuals who can be a representative(s) authorized by employees during OSHA's physical inspections of the workplace (also referred to as the "walkaround inspection"). This revision will more clearly align with section 8(e) of the OSH Act, 29 U.S.C. 657(e), and with OSHA's longstanding interpretation of the OSH Act.

OSHA is proposing two revisions of 29 CFR 1903.8(c). First, OSHA is proposing to clarify that the representative(s) authorized by employees may be an employee of the employer or a third party. Second, OSHA is proposing to clarify that a third-party representative authorized by employees may be reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace by virtue of their knowledge, skills, or experience. This proposed revision clarifies that the employees' options for third-party representation during OSHA inspections are not limited to only those individuals with skills and knowledge similar to that of the two examples provided in existing regulatory text: Industrial Hygienist or Safety Engineer.

The proposed revisions to 1903.8(c) do not change the CSHO's authority to determine whether an individual is a representative authorized by employees (29 CFR 1903.8(b)). Also, the proposed revisions do not affect other provisions of section 1903 that limit participation in walkaround inspections, such as the CSHO's authority to prevent an individual from participating in the walkaround inspection if their conduct interferes with a fair and orderly inspection (29 CFR 1903.8(d)) or the employer's right to limit entry of employee authorized representatives into areas of the workplace that contain trade secrets (29 CFR 1903.9(d)).

The agency preliminarily concludes that these changes would not increase costs or compliance burdens for employers.

II. Background

A. The OSH Act and OSHA's Inspection Authority

The Occupational Safety and Health Act of 1970 (OSH Act or Act) was enacted "to assure so far as possible every working [person] in the Nation safe and healthful working conditions and to preserve our human resources." 29 U.S.C. 651 (b). To effectuate the Act's purpose, Congress authorized the Secretary of Labor to promulgate occupational safety and health standards. See 29 U.S.C. 655. The Act

also grants broad authority to the Secretary to promulgate rules and regulations related to inspections, investigations, and recordkeeping. See 29 U.S.C. 657.

Section 8 of the OSH Act states that OSHA's inspection authority is essential to carrying out the Act's purposes and provides that employers must give OSHA access to inspect worksites "without delay." 29 U.S.C. 657(a). Section 8(e) of the Act provides specifically that "[s]ubject to regulations issued by the Secretary, a representative of the employer and a representative authorized by [its] employees shall be given an opportunity to accompany [the CSHO] for the purpose of aiding such inspection." 29 U.S.C. 657(e). Section 8(g) further authorizes the Secretary to promulgate such rules and regulations as the agency deems necessary to carry out the agency's responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment. 29 U.S.C. 657(g).

B. Regulatory History and Interpretive Guidance

On May 5, 1971, OSHA proposed rules and general policies for the enforcement of the inspection, citation, and penalty provisions of the OSH Act. (36 FR 8376, May 5, 1971). OSHA subsequently issued regulations for inspections, citations, and proposed penalties at 29 CFR part 1903. (36 FR 17850, Sept. 4, 1971).

The OSH Act and 29 CFR part 1903 provide OSHA CSHOs with significant authority to conduct workplace inspections. Part 1903 contains specific provisions that describe the CSHO's authority and role in carrying out inspections under the OSH Act. For example, the CSHO is in charge of conducting inspections and interviewing individuals, and has authority to permit additional employer representatives and representative(s) authorized by employees to participate in the physical inspection of the workplace. See 29 CFR 1903.8(a). In addition, the CSHO has the authority to resolve any disputes about who the employer and employee representatives are and to deny any person from participating in the inspection whose conduct interferes with a fair and orderly inspection. See 29 CFR 1903.8(b), (d). The CSHO also has authority to use various reasonable investigative methods and techniques, such as taking photographs, obtaining environmental samples, and questioning individuals while carrying out their inspection. 29 CFR 1903.7(b); see also 1903.3(a).

Section 1903.8(c), the subject of this proposed rulemaking, grants additional authority to the CSHO to determine whether third-party representatives would aid in the physical workplace inspection. This paragraph provides: "The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Compliance Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Compliance Safety and Health Officer during the inspection." 29 CFR 1903.8(c). Section 1903.8, which primarily addresses employer and employee representatives during inspections, has not been revised since 1971.

Since issuing its inspection-related regulations, OSHA has provided guidance on its interpretation of section 1903.8(c) and the meaning of representative authorized by employees for purposes of the OSHA walkaround inspection. For example, on March 7, 2003, OSHA issued a letter of interpretation to Mr. Milan Racic (Racic letter), a health and safety specialist with the International Brotherhood of Boilermakers. (Docket ID OSHA–2023–0008–0002). Mr. Racic asked whether a union representative who files a complaint on behalf of a single worker could then also act as a walkaround inspection representative in a workplace that has no labor agreement or certified bargaining agent. In its response letter, OSHA stated that there was no "provision for a walkaround representative who has filed a complaint on behalf of an employee of the workplace." (Docket ID OSHA–2023–0008–0002).

On February 21, 2013, OSHA issued a letter of interpretation to Mr. Steve Sallman (Sallman letter) of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union. (Docket ID OSHA–2023–0008–0003). Mr. Sallman asked whether workers at a worksite without a collective bargaining agreement could designate a person affiliated with a union or a community organization to act on their behalf as a walkaround representative. OSHA responded in the affirmative, explaining that such person could act on behalf of employees as long as they had been authorized by employees to serve as their representative.

OSHA further explained that the right is qualified by 29 CFR 1903.8, which gives CSHOs the authority to determine who can participate in an inspection. OSHA noted that while 1903.8(c) acknowledged that most employee representatives will be employees of the employer being inspected, the regulation also explicitly allowed walkaround participation by an employee representative who is not an employee of the employer when, in the judgment of the CSHO, such representative is reasonably necessary to the conduct of an effective and thorough physical inspection. OSHA explained that such representatives are reasonably necessary when they will make a positive contribution to a thorough and effective inspection.

OSHA gave several examples of how an authorized employee representative who was not an employee of the employer could make an important contribution to the inspection, noting that the representative might have a particular skillset or experience evaluating similar working conditions in a different facility. OSHA also highlighted the usefulness to workers and to the CSHO of an employee representative who is bilingual or multilingual to better facilitate communication between employees and the CSHO.

Additionally, OSHA noted that the 2003 Racic letter had inadvertently created confusion among the regulated community regarding OSHA's interpretation of an authorized employee representative for walkaround inspection purposes. OSHA explained that the Racic letter merely stated that a non-employee who files a complaint does not necessarily have a right to participate in an inspection arising out of that complaint, but that it did not address the rights of workers without a certified or recognized collective bargaining agent to have a representative of their own choosing participate in an inspection. OSHA withdrew the Racic letter to eliminate any confusion and then included its interpretation of 29 CFR 1903.8(c) as to who could serve as an authorized employee representative when it updated its Field Operations Manual (FOM) CPL 02–00–159 on October 1, 2015. (Docket ID OSHA–2023–0008–0004). The FOM explained that "[i]t is OSHA's view that representatives are 'reasonably necessary', when they make a positive contribution to a thorough and effective inspection" and recognized that there may be cases in which workers without a certified or recognized bargaining agent would authorize a third party to represent the

workers on the inspection. *Id.* OSHA noted that “[t]he purpose of a walkaround representative is to assist the inspection by helping the compliance officer receive valuable health and safety information from workers who may not be able or willing to provide such information absent the third-party participants.” *Id.*

C. Litigation and Subsequent Agency Action

In September 2016, several years after OSHA issued the Sallman letter, the National Federation of Independent Business (NFIB) filed a suit in the district court for the Northern District of Texas challenging the Sallman letter, arguing it should have been subject to notice and comment rulemaking and that it conflicted with OSHA’s regulations and exceeded OSHA’s statutory authority. *Nat’l Fed’n of Indep. Bus. v. Dougherty*, No. 3:16–CV–2568–D, 2017 WL 1194666 (N.D. Tex. Feb. 3, 2017). On February 3, 2017, the district court concluded that OSHA’s interpretation as stated in the Sallman letter was not consistent with 29 CFR 1903.8(c) and such a change to a regulation could not be made without notice and comment rulemaking. *Id.* at *11. The district court held that the letter “plainly contradicts § 1903.8(c)’s requirement that the employee representative be an employee himself.” *Id.*

Nevertheless, the court rejected NFIB’s claim that the Sallman letter conflicted with the OSH Act, finding that OSHA’s Sallman letter of interpretation was “a persuasive and valid construction of the Act.” *Id.* at *12. The court concluded that “the Act merely provides that the employee’s representative must be authorized by the employees, not that the representative must also be an employee of the employer.” *Id.*

Following this decision, on April 25, 2017, OSHA rescinded the Sallman letter. (Docket ID OSHA–2023–0008–0005). OSHA also revised the FOM to remove language that incorporated the Sallman letter. OSHA is now engaging in notice and comment rulemaking to clarify who may serve as a representative authorized by employees for the purpose of walkaround inspections.

III. Legal Authority

The OSH Act authorizes the Secretary of Labor to issue safety and health “standards” and other “regulations.” See, e.g., 29 U.S.C. 655, 657. An occupational safety and health standard, issued pursuant to section 6 of the Act, prescribes measures to be taken to

remedy an identified occupational hazard. Other regulations issued pursuant to general rulemaking authority found, *inter alia*, in section 8 of the Act, establish enforcement or detection procedures designed to further the goals of the Act generally. See 29 U.S.C. 657(c); *Workplace Health and Safety Council v. Reich*, 56 F. 3d 1465, 1468 (D.C. Cir. 1995). The proposed amendments in this notice are to a regulation issued pursuant to authority expressly granted by section 8 of the Act. 29 U.S.C. 657(e) (authority to promulgate regulations related to employer and employee representation during an inspection) and (g) (authority to promulgate rules and regulations dealing with workplace inspections). These proposed revisions clarify employees’ statutory right to a walkaround representative under section 8 of the OSH Act and do not impose any new substantive inspection-related requirements.

Numerous provisions of the OSH Act underscore Congress’ understanding that OSHA’s ability to conduct comprehensive inspections is essential to fulfilling the purposes of the OSH Act to protect working people from occupational safety and health hazards. Congress provided OSHA with broad authority to conduct inspections of workplaces and records, to require the attendance and testimony of witnesses, and to require the production of evidence. 29 U.S.C. 657(b). OSHA’s ability to carry out these workplace inspections is critical to the OSH Act’s entire enforcement scheme. 29 U.S.C. 658 (authorizing OSHA to issue citations for violations following an inspection or investigation); 659 (citations shall be issued within a reasonable time after inspection or investigation). Moreover, any approved State occupational safety and health plan must provide for an OSHA inspector’s right of entry and inspection that is at least as effective as the OSH Act. 29 U.S.C. 667(c)(3).

To enable OSHA to conduct robust inspections, the OSH Act grants the Secretary broad authority to enact inspection-related regulations. Section 8(g)(2) of the Act generally empowers the Secretary to prescribe such rules and regulations as the Secretary may deem necessary for carrying out inspection activity. See 29 U.S.C. 657(g)(2). Section 8(e) also specifically contemplates regulations related to employee and employer representation during OSHA’s inspection of the workplace. 29 U.S.C. 657(e).

In addition to granting OSHA broad authority to conduct comprehensive workplace inspections and promulgate

regulations to effectuate those inspections, Congress also recognized the importance of ensuring employee participation and representation in the inspection process. The legislative history of section 8 of the OSH Act shows Congress’ intent to provide representatives authorized by employees with an opportunity to accompany the inspector in order to benefit the inspection process and “provide an appropriate degree of involvement of employees.” S. Rep. No. 91–1282 91st Cong., 2nd Sess. (1970), reprinted in *Legislative History of the Occupational Safety and Health Act of 1970* at 151 (Comm. Print 1971). Senator Harrison A. Williams of New Jersey, who was a sponsor of the bill that became the OSH Act, explained that the opportunity for workers themselves and a representative of their choosing to accompany OSHA inspectors was “manifestly wise and fair” and “one of the key provisions of the bill.” Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 92d Cong. 1st Sess., reprinted in *Legislative History of the Occupational Safety and Health Act of 1970*, at 430 (Comm. Print. 1971).

The OSH Act’s legislative history further indicates that Congress considered potential concerns related to the presence of a representative authorized by employees at the inspection and ultimately decided to expressly include this right in section 8(e) of the Act. Congressional debate around this issue included concern from some members of Congress that a representative authorized by employees’ presence in the inspection would cause an undue burden on employers or be used as “an effort to ferment labor unrest.” See Comments of Congressperson William J. Scherle of Iowa, 92d Cong. 1st Sess., reprinted in *Legislative History of the Occupational Safety and Health Act of 1970*, at 1224 (Comm. Print 1971); see also Comments of Congressperson Michel of Illinois, *id.* at 1057. Similarly, Senator Peter Dominick of Colorado proposed an amendment to the Senate bill that would have removed the right of a representative authorized by the employees to accompany the CSHO and instead would have only required that the CSHO consult with employees or their representative at “a reasonable time.” Proposed Amendment No. 1056., 92d Cong. 1st Sess., reprinted in *Legislative History of the Occupational Safety and Health Act of 1970*, at 370 (Comm. Print 1971). One of the stated reasons for the proposed amendment was a concern that “[t]he mandatory

‘walk-around’ provisions now in the bill could . . . lead to ‘collective bargaining’ sessions during the course of the inspection and could therefore interfere both with the inspection and the employer’s operations.” *Id.* at 372.

This proposed amendment was rejected, and Section 8(e) of the OSH Act reflects Congress’ considered judgment of the best way to strike the balance between employers’ concerns about workplace disruptions and the critical importance of employee representation in the inspection process. And while section 8(e) underscores the importance of employee representation in OSHA’s workplace inspection, the Act itself does not place restrictions on who can be a representative authorized by employees. See 29 U.S.C. 657(e); see also *Matter of Establishment Inspection of Caterpillar Inc.*, 55 F.3d 334, 338 (7th Cir. 1995) (“[T]he plain language of § 8(e) permits private parties to accompany OSHA inspectors.”); *Nat’l Fed’n of Indep. Bus.*, 2017 WL 1194666, at *12 (“[T]he Act merely provides that the employee’s representative must be authorized by the employee, not that the representative must also be an employee of the employer.”).

Instead, the Act authorizes the Secretary of Labor (via OSHA) to issue regulations and determine who may be an authorized employee representative for purposes of the OSHA inspection. 29 U.S.C. 657(e). Congress intended to give the Secretary of Labor the authority to issue regulations related to determining the specifics and resolving the question of who could be an authorized employee representatives for purposes of the walkaround inspection. See Legislative History of the Occupational Safety and Health Act of 1970, at 151 (Comm. Print 1971) (“Although questions may arise as to who shall be considered a duly authorized representative of employees, the bill provides the Secretary of Labor with authority to promulgate regulations for resolving this question.”).

While the OSH Act grants the Secretary of Labor broad authority to inspect workplaces “without delay” to find and remedy safety and health violations, 29 U.S.C. 657(a)(1)–(2), these inspections must be carried out in a manner consistent with the Fourth Amendment of the U.S. Constitution regarding reasonable searches. See *Marshall v. Barlow’s Inc.*, 436 U.S. 307 (1978). If an employer refuses entry, OSHA seeks a warrant, as required by the Fourth Amendment. *Id.* at 313; see also 29 CFR 1903.4. At times OSHA might seek an anticipatory warrant to inspect a worksite, such as if OSHA has been refused entry to inspect a

workplace in the past and anticipates that the employer might refuse again without proof of a warrant. See 29 CFR 1903.4(b). Because OSHA’s inspections are conducted in accordance with the Fourth Amendment, they do not constitute a “physical taking” under the Takings Clause of the Fifth Amendment. See *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2079 (2021) (“Because a property owner traditionally had no right to exclude an official engaged in a reasonable search, government searches that are consistent with the Fourth Amendment and state law cannot be said to take any property right from landowners.”) (internal citations omitted); *Matter of Establishment Inspection of Caterpillar Inc.*, 55 F.3d at 339–41 (upholding warrant that authorized participation of employee representatives as consistent with the Fourth Amendment).

Based on the foregoing, OSHA has determined that section 8(e) of the OSH Act, as well as the Act’s history and purpose, support OSHA’s longstanding interpretation that the representative(s) authorized by employees may be employees of the employer or a third party and the agency’s proposed revisions to 29 CFR 1903.8(c).

III. Summary and Explanation of Proposed Changes

Section 8(e) of the OSH Act, 29 U.S.C. 657(e), Inspections, Investigations, and Recordkeeping, states that “[s]ubject to regulations issued by the Secretary” a representative authorized by employees “shall be given an opportunity to accompany the [CSHO] during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection.” The first sentence of existing section 1903.8(c) states that an authorized employee representative(s) shall be an employee(s) of the employer being inspected. However, the second sentence of paragraph (c) provides an exception for the presence of a third party if the CSHO determines there is good cause shown why their presence is reasonably necessary to conduct an effective and thorough physical inspection of the workplace. Paragraph (c) provides industrial hygienists and safety engineers as two examples of helpful non-employees who a CSHO might determine are reasonably necessary to include in the inspection.

Since its promulgation in 1971, OSHA has interpreted section 1903.8(c) to allow third parties to serve as authorized employee representatives on the walkaround inspection when reasonably necessary. However, as described in Background, Section II.C of

this preamble, a district court held that OSHA’s interpretation of paragraph (c) was inconsistent with the regulatory text as written. See *Nat’l Fed’n of Indep. Bus.*, 2017 WL 1194666, at *11. In OSHA’s experience, representatives authorized by employees are usually employed by the employer. However, under the OSH Act, they need not be. *Id.* at *12. OSHA is therefore proposing to amend 29 CFR 1903.8(c) to clarify that, for the purpose of the walkaround inspection, the representative(s) authorized by employees may be an employee of the employer or, when they are reasonably necessary to aid in the inspection, a third party.

These changes will ensure employees are able to select trusted and knowledgeable representatives of their choice, leading to more effective inspections. The OSH Act gives employees in all workplaces—whether they have a collective bargaining agreement or not—the right to have a representative authorized by them to accompany OSHA during a workplace inspection for purposes of aiding the inspection. See 29 U.S.C. 657(e). The criteria outlined in paragraph (c) therefore applies to all worksites that OSHA inspects.

When the representative(s) authorized by employees are not employed by the employer, they may accompany the CSHO during the inspection if in the judgment of the CSHO, good cause has been shown why they are reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace. OSHA proposes to revise paragraph (c) to clarify that third-party representatives authorized by employees may have a variety of skills, knowledge, or experience that could aid the CSHO’s inspection. This includes knowledge, skills, or experience with particular hazards or conditions in the workplace or similar workplaces, as well as any relevant language skills a representative may have to facilitate better communication between workers and the CSHO. Therefore, OSHA proposes to delete the examples of industrial hygienists and safety engineers currently in paragraph (c) so that the focus is properly on the knowledge, skills, or experience of the individual rather than their professional discipline. This proposed deletion does not signal that an industrial hygienist or safety engineer cannot be a representative authorized by employees.

In OSHA’s experience, there are a multitude of third parties who might serve as representatives authorized by employees for purposes of the OSHA walkaround inspection. The examples discussed in this proposal are not

exhaustive and OSHA seeks comment, including any data or anecdotal examples, of individuals who might be selected by employees to serve as their authorized employee representative in an OSHA walkaround inspection.

One scenario where OSHA has encountered third-party employee representatives is in union workplaces where employees have designated a union representative, such as an elected local union leader, business agent, or safety and health specialist, to be their representative for the walkaround inspection. These representatives are often employees of the union rather than the employer being inspected. Third-party representation may also arise in workplaces without collective bargaining agreements where employees have designated a representative from a worker advocacy group, community organization, or labor union to serve as their representative in an OSHA inspection.

Relatedly, there may be safety organizations, such as local safety councils, with safety professionals or technical representatives for the equipment used and operations performed at the employee's worksite. Section 1903.8(c) as proposed would more explicitly permit employees to designate such a safety professional or technical representative as their authorized employee representative.

Another scenario where employees may wish to designate a third-party representative is on multi-employer worksites or joint-employer worksites where it is not always clear at the time of the walkaround inspection which employees are employed by which employer. On many worksites, employees with different employers may work near each other and may have knowledge of the workplace conditions, work practices, and hazards; in some cases, they may even perform the same or similar work. On worksites like these, it is foreseeable that employees may choose to designate a third party as their representative for the walkaround inspection. Likewise, on worksites where non-union employees work in proximity to union employees, employees may wish to designate the union representative to speak of worksite conditions and operations on their behalf.

There may also be circumstances where employees are not fluent in English (or another language spoken by the CSHO) and want a trusted representative to allow for open and effective communication with the CSHO regarding workplace conditions. For example, employees might determine that a bilingual representative or an

interpreter should represent them on the inspection and the CSHO might find such a representative is useful to ensure the CSHO receives an accurate account of workers' knowledge and experience with safety and health conditions in the workplace.

In other situations, employees may be reluctant to speak directly or candidly with government officials for a number of reasons. For example, some workers, such as immigrants, refugees, or other vulnerable workers, may be unfamiliar with OSHA and the agency's inspection process, face cultural barriers, or fear that their employer will retaliate against them for speaking to OSHA. In these situations, employees may not feel comfortable participating in OSHA's inspection without a trusted presence, which would negatively affect the CSHO's ability to obtain important information about workplace hazards and conditions. Worker advocacy organizations, labor organization representatives, consultants, or attorneys who are experienced in interacting with government officials or have relevant cultural competencies may be authorized by employees to represent them on walkaround inspections. The CSHO may determine such third-party representatives are reasonably necessary to the conduct of an effective and thorough physical workplace inspection if their presence during the walkaround inspection would enable more open and candid communication with employees who may not otherwise be willing to participate in the inspection.

In general, OSHA seeks comment on why employees may wish to be represented by a third-party representative. Additionally, OSHA seeks comment and examples of third-party representatives who have been or could be reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace.

Once the CSHO is notified that the employees have authorized a third party to represent them during a walkaround inspection, the CSHO would allow the third party to participate in the inspection so long as the CSHO determines that they would be reasonably necessary to aid in the inspection. The third party should have relevant skills, knowledge, or experience that would be helpful to OSHA's inspection despite not being directly employed by the employer.

OSHA has found that third-party representatives can help ensure that OSHA's walkaround inspection is comprehensive. In one example from 2012, a worker for a company removing asbestos at a worksite reported safety

concerns to OSHA and a third party. The third party contacted OSHA and a community organization on behalf of the workers to ensure their safety and health concerns were fully communicated to and understood by the CSHO. The community organization's attorney and a former employee of the workplace were chosen as the employees' representatives to participate in the walkaround inspection. OSHA found the presence of both individuals to be very beneficial to the inspection because the representatives were able to clearly identify and communicate safety concerns to the CSHO during the walkaround. Many of the exposed workers on this worksite were not fluent in English, and having representatives who the workers trusted and facilitated communication with the CSHO enabled OSHA to conduct numerous worker interviews and better investigate the workplace conditions. OSHA seeks comment providing examples or information regarding any other unique skills of representatives authorized by employees that have been helpful or added safety and health value to the CSHO's physical inspection of the workplace.

The proposed revisions to paragraph (c) do not change the existing precondition that the CSHO must determine that any third-party employee representative's participation is reasonably necessary to the conduct of an effective and thorough inspection. These proposed revisions also do not implicate any other limitations found elsewhere in part 1903.

For example, paragraph 1903.8(a) explains that the CSHO is in charge of the inspection process. 29 CFR 1903.8(a). Paragraph 1903.8(b) authorizes the CSHO to resolve any disputes as to who the authorized representatives are, and if the CSHO is unable to determine who is the representative authorized by employees, the CSHO will then consult a reasonable number of employees concerning matters of safety and health in the workplace. 29 CFR 1903.8(b). Paragraph 1903.8(d) authorizes the CSHO to deny individuals from participating in the inspection if their conduct interferes with a fair and orderly inspection process. 29 CFR 1903.8(d). Therefore, the CSHO considers a range of factors when determining who can participate in the walkaround inspection as a representative authorized by employees.

In addition to the limitations in 29 CFR 1903.8, employers also maintain the right to request that areas of the facility containing trade secrets be off-limits to the representatives authorized

by employee(s) who do not work in that particular part of the facility. 29 CFR 1903.9(d). As explained in Background, Section II. of this preamble, the proposed revisions to 1903.8(c) do not alter or limit any of these other provisions related to the CSHO's determinations or the inspection process.

Finally, OSHA notes that paragraph 1903.8(c) addresses representatives authorized by employees for purposes of OSHA's physical inspections of workplaces. While OSHA proposes changes to this paragraph to clarify the relevant knowledge, skills, experience with hazards or conditions in the workplace or similar workplaces, or language skills of third-party representatives authorized by employees who may be reasonably necessary to aid in the CSHO's inspection, these proposed revisions are not intended to narrow or otherwise limit OSHA's authority to conduct effective and thorough workplace inspections, including its authority to be accompanied by other types of third parties or experts who may be needed to properly conduct the inspection. See generally, 29 U.S.C. 657(a), (b); see also 29 CFR 1903.4(b)(3).

OSHA seeks comment on whether the proposed changes to paragraph (c) are clear regarding representatives authorized by employees for purposes of walkaround inspections. Why or why not? OSHA also seeks comment on how to best communicate the right of all employees to employee representation on a physical inspection of the workplace.

V. Preliminary Economic Analysis and Regulatory Flexibility Act Certification

Executive Orders 12866 and 13563 require OSHA estimate the benefits, costs, and net benefits of regulations. Executive Orders 12866 and 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a)) also require OSHA to estimate the costs, assess the benefits, and analyze the impacts of certain rules that the agency promulgates. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This proposal is not significant under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094, nor is it a major rule under the Unfunded Mandates Reform Act or Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*).

OSHA is proposing to revise and clarify its requirements for employee authorized representation during OSHA's physical inspections of the workplace to clarify that the representative(s) authorized by employees may be an employee of the employer or a third party. Additionally, OSHA is proposing to further clarify the relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language skills of third-party representative(s) authorized by employees who may accompany an OSHA Compliance Safety and Health Officer (CSHO) when they are reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace. The proposed revisions will also clarify that the employees' options for third-party representation during OSHA inspections are not limited to the two examples provided in existing regulatory text: Industrial Hygienist or Safety Engineer. OSHA has preliminarily determined that these clarifications do not introduce a new or expanded burden on employers.

As discussed earlier in Background, Section II. of this preamble, OSHA published rules and general policies for the enforcement of the inspection, citation, and penalty provisions of the OSH Act on September 4, 1971. These include Section 1903.8(c), the subject of this proposed rulemaking, which grants authority to the CSHO to determine whether a third-party representative would aid the physical workplace inspection and to have that representative accompany the CSHO on the inspection.

A. Costs

This proposed rule imposes no new burden on employers and does not require them to take any action to comply. The proposed rule clarifies who can be an authorized employee representative during OSHA's walkaround inspection. Regulatory impact analysis is meant to estimate the costs of a change from the current situation without the proposed or final rule to a world where the proposed or final rule exists. This proposed rule simply clarifies employee rights and OSHA's authority with regard to inspection procedures. The proposed clarification does not impose any costs on employers.

In evaluating potential costs, OSHA considered that employers may have policies and rules for third parties, such as visitors must wear PPE on site or participate in a safety briefing before entering as well as procedures in place

to protect confidential business information from third parties who may be on site. However, such policies are not required by this regulation, and therefore any associated costs are therefore not attributable to this proposed rule. Moreover, OSHA believes there would be no real cost to an employer to have an additional visitor on site. PPE could be supplied from extra PPE that might be available on site for visitors or could be supplied by the third party. There is no cost to have one more individual present during any potential safety briefing since any potential briefing would be given regardless of the number of individual present.

In addition, this proposed rule does not require the employer make a third party available nor does it require the employer to pay for that third party's time. While there is an opportunity cost to the third party inasmuch as their time is being spent on an inspection versus other activities they could be engaged in, that time is not compensated by the employer whose worksite is being inspected and is not a burden on that employer. OSHA has preliminarily determined that this proposed rule does not impose costs on employers. The agency welcomes comment on this determination and information on costs the public believes OSHA should consider.

B. Benefits

While there are no new costs borne by employers associated with this proposal, clarifying Section 1903.8(c) will reinforce the benefits of the OSH Act. Third-party employee representatives—given their knowledge, expertise, or skills with hazardous workplace conditions—can increase employee participation and help ensure that CSHOs conduct comprehensive workplace inspections, leading to safer workplaces. OSHA welcomes information, data, and comments on anticipated cost savings and benefits.

C. Certification of No Significant Impact on a Substantial Number of Small Entities

The proposed rule does not impose costs of compliance on employers. Therefore, OSHA certifies that, if promulgated, the proposed rule will not have a significant economic impact on a substantial number of small entities.

VI. OMB Review Under the Paperwork Reduction Act

This proposed rule for Worker Walkaround Representative Designation Process contains no information collection requirements subject to OMB

approval under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320. The PRA defines a collection of information as “the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format.” 44 U.S.C. 3502(3)(A). Under the PRA, a Federal agency cannot conduct or sponsor a collection of information unless OMB approves it, and the agency displays a currently valid OMB control number (44 U.S.C. 3507). Also, notwithstanding any other provision of law, no employer shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

VII. Federalism

OSHA reviewed this proposed rule in accordance with the Executive Order on Federalism (E.O. 13132, 64 FR 43255, August 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when clear constitutional and statutory authority exists, and the problem is national in scope. This proposal merely clarifies requirements related to employee representation during workplace safety and health inspections conducted by OSHA under the OSH Act. Because these inspections are conducted by OSHA, not States, and occur under the authority of federal law, OSHA does not believe that the proposal would restrict any State policy options.

Section 18(a) of the OSH Act states that “[n]othing in this Act shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 6” (see 29 U.S.C. 667(a)). Because this rulemaking action involves a “regulation” issued under Section 8 of the OSH Act (29 U.S.C. 657), and not an occupational safety and health standard under section 6 of the OSH Act (29 U.S.C. 655), it does not preempt State law under section 18(a). See 29 U.S.C. 667(a). The effect of a rule on states and territories with OSHA-approved occupational safety and health State Plans is discussed in Section VIII, State Plans.

VIII. State Plans

As discussed in the Summary and Explanation section of this preamble,

this proposed rule would revise the language in OSHA’s Representatives of employers and employees regulation, found at 29 CFR 1903.8(c), to explicitly clarify that the representative(s) authorized by employees may be an employee of the employer or a third party for purposes of an OSHA walkaround inspection. Additionally, OSHA is proposing to further clarify that when the CSHO has good cause to find that a representative authorized by employees who is not an employee of the employer would aid in the inspection, for example because they have knowledge or experience with hazards in the workplace, or other skills that would aid the inspection, the CSHO may allow the employee representative to accompany the CSHO on the inspection.

Among other requirements, section 18 of the OSH Act requires OSHA-approved State Plans to enforce occupational safety and health standards in a manner that is at least as effective as Federal OSHA’s standards and enforcement program, and to provide for a right of entry and inspection of all workplaces subject to the Act that is at least as effective as that provided in section 8 (29 U.S.C. 667(c)(2)–(3)). As described above and in the Summary and Explanation of this preamble, OSHA believes that these proposed clarifying revisions would enhance the effectiveness of OSHA’s inspections and enforcement of occupational safety and health standards. Therefore, OSHA has preliminarily determined that, within six months of the promulgation of a final rule, State Plans would be required to adopt regulations that are identical or “at least as effective” as this rule, unless they demonstrate that such amendments are not necessary because their existing requirements are already “at least as effective” in protecting workers as the Federal rule. See 29 CFR 1953.4(b)(3).

Of the 29 States and Territories with OSHA-approved State Plans, 22 cover both public and private-sector employees: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. The remaining seven States and Territories cover only state and local government employees: Connecticut, Illinois, Maine, Massachusetts, New Jersey, New York, and the Virgin Islands.

IX. Unfunded Mandates Reform Act

OSHA reviewed this proposal according to the Unfunded Mandates

Reform Act of 1995 (“UMRA”; 2 U.S.C. 1501 *et seq.*). As discussed above in Section V of this preamble, the agency preliminarily determined that this proposal would not impose costs on any private- or public-sector entity. Accordingly, this proposal would not require additional expenditures by either public or private employers.

As noted above, the agency’s regulations and standards do not apply to State and local governments except in States that have elected voluntarily to adopt a State Plan approved by the agency. Consequently, this proposal does not meet the definition of a “Federal intergovernmental mandate.” See Section 421(5) of the UMRA (2 U.S.C. 658(5)). Therefore, for the purposes of the UMRA, the agency certifies that this proposal would not mandate that State, local, or Tribal governments adopt new, unfunded regulatory obligations. Further, OSHA concludes that the rule would not impose a Federal mandate on the private sector in excess of \$100 million (adjusted annually for inflation) in expenditures in any one year.

X. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this proposed rule in accordance with Executive Order 13175 (65 FR 67249) and has preliminarily determined that it would not have “tribal implications” as defined in that order. The proposed clarifications to 29 CFR 1903.8(c), if promulgated, would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. OSHA seeks comment on its preliminary determination. Additionally, OSHA plans to consult with the appropriate tribal entities regarding its preliminary determination.

XI. Environmental Impact Assessment

OSHA reviewed the proposed rule in accordance with the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR parts 1500 through 1508), and the Department of Labor’s NEPA procedures (29 CFR part 11). The agency finds that the revisions included in this proposal would have no major negative impact on air, water, or soil quality, plant or animal life, the use of land or other aspects of the environment.

XII. Questions and Options

OSHA invites stakeholders to comment on all aspects of this proposal. In addition, OSHA is soliciting stakeholder input on regulatory options to allow for potential regulatory flexibility regarding the content of any final rule resulting from this rulemaking. In particular, OSHA seeks input on whether to maintain the existing requirement in 29 CFR 1903.8(c) for a third-party employee representative to be “reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace” given that Section 8(e) of the OSH Act more generally provides that employee representatives “shall be given an opportunity to accompany” the CSHO “during the physical inspection of any workplace . . . for the purpose of aiding such inspection.” 29 U.S.C. 657(e).

Under OSHA’s implementing regulations, OSHA defers to the employer’s determination regarding which employer representative would aid the inspection. See 29 CFR 1903.8(a). On the other hand, currently, OSHA defers to the employees’ determination regarding which representative would aid the inspection only if that representative is employed by the employer. See 29 CFR 1903.8(c). When the representative authorized by employees is a third party, the CSHO must determine that there is good cause why the third-party representative is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace. See 29 CFR 1903.8(c). If the CSHO makes that determination, the third-party employee representative may accompany the CSHO during the physical inspection of the worksite. Note that the CSHO is authorized to resolve any dispute as to who the employer’s and employees’ authorized representatives are and deny the right of accompaniment to any person whose conduct would interfere with a fair and orderly inspection. See 29 CFR 1903.8(b), (d).

OSHA solicits feedback regarding the “reasonably necessary” requirement in paragraph (c); the below questions do not affect CSHOs’ authority under paragraphs (b) and (d).

1. Should OSHA defer to the employees’ selection of a representative to aid the inspection when the representative is a third party (*i.e.*, remove the requirement for third-party representatives to be reasonably necessary to the inspection)? Why or why not? Please provide any relevant information, examples, considerations, and/or data to support your position.

2. Should OSHA retain the language as proposed, but add a presumption that a third-party representative authorized by employees is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace? Why or why not? Please provide any relevant information, examples, considerations and/or data to support your position.

3. Should OSHA expand the criteria for an employees’ representative that is a third party to participate in the inspection to include circumstances when the CSHO determines that such participation would aid employees in effectively exercising their rights under the OSH Act? Why or why not? If so, should OSHA defer to employees’ selection of a representative who would aid them in effectively exercising their rights?

XIII. Public Participation

Inspection-related requirements promulgated under the Occupational Safety and Health Act of 1970 (OSH Act) are regulations, not standards. Therefore, this rulemaking is governed by the notice and comment requirements in the Administrative Procedure Act (APA), 5 U.S.C. 553, rather than by section 6(b) of the OSH Act (29 U.S.C. 655(b)) and 29 CFR part 1911 (both of which apply only to promulgating, modifying or revoking occupational safety or health standards). The OSH Act requirement for the agency to hold an informal public hearing on a proposed rule, when requested, does not apply to this rulemaking. See 29 U.S.C. 655(b)(3).

The APA, which governs this rulemaking, does not require a public hearing; instead, it states that the agency must “give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation.” 5 U.S.C. 553(c). To promulgate a proposed regulation, the APA requires the agency to provide the terms of the proposed rule (or a description of those terms) and specify the time, place, and manner of rulemaking proceedings. See 5 U.S.C. 553(b). The APA does not specify a minimum period for submitting comments.

In accordance with the goals of Executive Order 12866, OSHA is providing 60 days for public comment (see section 6(a)(1) of Executive Order 12866).

A. Public Submissions

OSHA invites comments on all aspects of the proposed rule. OSHA will

carefully review and evaluate any comments, information, or data received, as well as all other information in the rulemaking record, to determine how to proceed. When submitting comments, please follow the procedures specified in the sections titled **DATES** and **ADDRESSES** of this document. The comments should clearly identify the provision of the proposal being addressed, the position taken with respect to each issue, and the basis for that position. Comments, along with supporting data and references, submitted by the end of the specified comment period will become part of the rulemaking record, and will be available for public inspection at the Federal eRulemaking Portal (<http://www.regulations.gov>) and at the OSHA Docket Office, 200 Constitution Avenue NW—Room N-2625, Washington, DC 20210. (See the section titled **ADDRESSES** of this document for additional information on how to access these documents.)

XIV. List of Subjects in 29 CFR Part 1903

Occupational safety and health, health, administrative practice and procedures, law enforcement.

XV. Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this document pursuant to 29 U.S.C. 657; 5 U.S.C. 553; Secretary of Labor’s Order 8–2020, 85 FR 58393 (2020).

Signed at Washington, DC.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

For the reasons stated in the preamble, OSHA proposes to amend 29 CFR part 1903 to read as follows:

PART 1903—INSPECTIONS, CITATIONS AND PROPOSED PENALTIES [AMENDED]

■ 1. The authority citation for part 1903 is revised to read as follows:

Authority: 29 U.S.C. 657; Secretary of Labor’s Order No. 8–2020 (85 FR 58393); and 5 U.S.C. 553.

■ 2. In § 1903.8 revise paragraph (c) to read as follows:

§ 1903.8 Representatives of employers and employees.

* * * * *

(c) The representative(s) authorized by employees may be an employee of the employer or a third party. When the representative(s) authorized by

employees is not an employee of the employer, they may accompany the Compliance Safety and Health Officer during the inspection if, in the judgment of the Compliance Safety and Health Officer, good cause has been shown why their participation is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace (e.g., because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language skills).

* * * * *

[FR Doc. 2023-18695 Filed 8-29-23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2021-0477; FRL-9848-01-R5]

Air Plan Approval; Indiana; Volatile Organic Compounds; Cold Cleaner Degreasing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the volatile organic compound (VOC) rules contained in the Indiana State Implementation Plan (SIP). Indiana modified its rules to provide an additional option for compliance with the volatile organic compound (VOC) vapor pressure limit for solvents used in cold cleaning degreasing operations. In addition, rule language was updated for clarity and consistency.

DATES: Comments must be received on or before September 29, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2021-0477 at <https://www.regulations.gov>, or via email to blakley.pamela@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, 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. 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6524, rau.matthew@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

I. Background

On July 14, 2021, Indiana submitted a request to revise the VOC rules in its SIP. The revisions are to the 326 Indiana Administrative Code (IAC) Article 8 Volatile Organic Compound rules. Indiana submitted revisions to the following: 326 IAC 8-3-1, “Applicability and exemptions”; 326 IAC 8-3-2, “Cold cleaner degreaser control equipment and operating requirements”; 326 IAC 8-3-3, “Open top vapor degreaser operation”; 326 IAC 8-3-4, “Conveyorized degreaser control equipment and operating requirements”; and 326 IAC 8-3-8, “Material requirements for cold cleaner degreasers”.

Indiana’s July 14, 2021, submission, included a previous version of 326 IAC 8-3-1, effective on June 9, 2021. EPA found concerns with that version of 326 IAC 8-3-1(a)(1) as it added qualifying language so that the rules would only apply to sources “with the potential to emit VOC emissions of greater than or equal to fifteen (15) pounds per day.” This would constitute a relaxation of the Clean Air Act (CAA) requirement for VOC reasonably available control technology.¹

¹ EPA has made it clear that general exemptions for small cold cleaner degreasing operations are not allowed. See Memorandum from Richard Rhoads, EPA OAQPS, to Director, Air and Hazardous

On January 23, 2023, Indiana submitted a revised version of 326 IAC 8-3-1, effective January 4, 2023, which removed the exemption language from 326 IAC 8-3-1(a)(1).

Indiana’s current SIP VOC rules require sources operating cold cleaning degreasers to, among other things, use low vapor pressure solvent, not to exceed 1 millimeter of mercury (mm Hg) at 20 degrees Celsius, for cleaning or degreasing machine parts. These low vapor pressure solvents do not work well for some industries. These rules also allow sources to operate control systems that demonstrate equivalent or better emissions control with approval from both Indiana and EPA.

Indiana revised the control requirements for sources that use a solvent with a vapor pressure exceeding 1 mm Hg in 326 IAC 8-3-3, 326 IAC 8-3-4, and 326 IAC 8-3-8. The revised rules require VOC emission control with a capture efficiency of at least 90 percent. The control device must also either have at least a 90 percent destruction efficiency or have a VOC emission outlet concentration of less than 50 parts per million by volume. Indiana’s rules also require compliance procedures. The changes replace the previously approved provision allowing an alternate VOC emission control system with approval of both Indiana and EPA in 326 IAC 8-3-3 and 326 IAC 8-3-4. This VOC control system requirement is an additional option in 326 IAC 8-3-8.

Indiana noted that, for some companies, the use of low vapor pressure solvents under 1 mm Hg results in poor performance and solvent contamination. Such sources cannot recycle the solvent because of the potential contamination. Such sources will thus often hand-clean machine parts, which results in all the solvent evaporating and thus being emitted into the air. Indiana further noted that hand-cleaning also produces a large amount of material that usually must be managed as hazardous waste, as the rags are contaminated with solvent and ink. Instead, the revised rules set parameters for control systems that specify standard VOC capture and control requirements for all users, which are expected to reduce the amount of solvent used and the amount of hazardous waste generated.

Materials Division, Regions I to X, Clarification of Degreasing Regulation Requirements, September 7, 1978. See 2-24, Solvent Metal Cleaning, in the “Issues Relating to VOC Regulation Cut Points, Deficiencies, And Deviations” guidance, as revised on January 11, 1990.

II. What is EPA's analysis of the VOC rule revisions?

EPA considered the revisions in the latest version of 326 IAC 8-3-1 along with previously submitted revisions to 326 IAC 8-3-2, 326 IAC 8-3-3, 326 IAC 8-3-4, and 326 IAC 8-3-8 for approval into the Indiana SIP.

EPA finds it reasonable to replace the provision that allows sources to submit a source-specific alternate for SIP approval with the VOC control requirements added to 326 IAC 8-3-3, 326 IAC 8-3-4, and 326 IAC 8-3-8. The result is that cold cleaner degreasing operations electing to use solvents with a vapor pressure exceeding 1 mm Hg will all have the same VOC control requirement. EPA finds that Indiana's revisions to 326 IAC 8-3-2, 326 IAC 8-3-3, 326 IAC 8-3-4, and 326 IAC 8-3-8 are consistent with EPA guidance. Therefore, EPA is proposing to approve these VOC rule revisions.

Indiana revised several portions of 326 IAC 8-3-2, which provides the general requirements for its "Cold cleaner degreaser control equipment and operating requirements." Indiana revised 326 IAC 8-3-2(b)(1)(E) to allow a control system that is approved by Indiana and EPA to use the VOC emission control equipment required by 326 IAC 8-3-8(b)(3). Indiana also added the requirement that solvent spray must be performed in an enclosed chamber to 326 IAC 8-3-2(b)(3). The addition of an enclosed chamber is expected to capture more VOC emissions that can be exhausted to the control device.

Indiana made administrative changes to 326 IAC 8-3-1² after removing the qualifying language that caused a concern. Further, Indiana made administrative revisions to 326 IAC 8-3-2, such as changing "ensure" to "comply with," "could" to "would," and renumbering subsections. Indiana made additional administrative revisions to the following, to make them consistent with its revised control requirements: 326 IAC 8-3-3, "Open top vapor degreaser operation", 326 IAC 8-3-4, "Conveyorized degreaser control equipment and operating requirements", and 326 IAC 8-3-8, "Material requirements for cold cleaner degreasers." These administrative revisions do not change the intent or stringency of the rule.

EPA evaluated the revisions under CAA 110(l) to determine whether the revisions would be expected to interfere with attainment and reasonable further progress of air quality standards. Indiana added control requirements for

cold cleaning degreasing operations that use a solvent with a vapor pressure exceeding 1 mm Hg. As Indiana noted, many such sources would have additional VOC emissions from solvent contamination and hand cleaning of parts if required to instead use a solvent with a vapor pressure not exceeding 1 mm Hg. Indiana also removed the 15 pounds VOC per day exemption. Thus, under the revised rules all sources are now required to limit VOC emissions and a control device is now also required for certain sources. EPA expects the same or better VOC control from cold cleaning degreasing operations under the revised rules. The emission limits of criteria pollutants remain unchanged. EPA does not find any reason to expect interference with attainment of any air quality standard.

III. What action is EPA taking?

EPA is proposing to approve Indiana's VOC control rule sections 326 IAC 8-3-1, 326 IAC 8-3-2, 326 IAC 8-3-3, 326 IAC 8-3-4, and 326 IAC 8-3-8 as revisions to the Indiana SIP.

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Title 326 of the Indiana Administrative Code Article 8, Rule 3, Section 1 Applicability and exemptions, effective January 4, 2023; Section 2 Cold cleaner degreaser control equipment and operating requirements, effective June 9, 2021; Section 3 Open top vapor degreaser operation, effective June 9, 2021; Section 4 Conveyorized degreaser control equipment and operating requirements, effective June 9, 2021; and Section 8 Material requirements for cold cleaner degreasers, effective June 9, 2021, discussed in section II. of this preamble. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), 13563 (76 FR 3821, January 21, 2011), 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 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 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,

² The version of 326 IAC 8-3-1 effective on January 4, 2023.

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.”

Indiana did not evaluate EJ 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.

List of Subjects in 40 CFR Part 52

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

Dated: August 24, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023–18705 Filed 8–29–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23–286; RM–11960; DA 23–749; FR ID 166837]

Television Broadcasting Services Winnemucca, Nevada

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Gray Television Licensee, LLC (Petitioner), the permittee of unbuilt station KWNV(DT), channel 7, Winnemucca, Nevada. The Petitioner requests the substitution of channel 16 for channel 7 at Winnemucca in the Table of Allotments.

DATES: Comments must be filed on or before September 29, 2023 and reply comments on or before October 16, 2023.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Joan Stewart, Esq., Wiley Rein LLP, 2050 M Street NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647; or Joyce Bernstein, Media Bureau, at Joyce.Bernstein@fcc.gov.

SUPPLEMENTARY INFORMATION: In support, the Petitioner states its proposed channel substitution would serve the public interest by allowing Gray to build out this new station to avoid well-documented issues with indoor digital VHF reception since the 2009 digital transition. Petitioner states that the Commission has recognized the deleterious effects manmade noise has on the reception of VHF signals, finding that the propagation characteristics of these channels allow undesired signals and noise to be receivable at relatively farther distances, nearby electrical devices tend to emit noise in this band that can cause interference, and reception of VHF signals require physically larger antennas, relative to UHF channels. Additionally, the Commission has observed the large variability in the performance (especially intrinsic gain) of indoor antennas available to consumers, with most antennas receiving fairly well at UHF and the substantial majority not so well to very poor at high-VHF.

This is a synopsis of the Commission’s *Notice of Proposed Rulemaking*, MB Docket No. 23–286; RM–11960; DA 23–749, adopted August 23, 2023, and released August 23, 2023. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to FCC504@fcc.gov or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of

2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in Section 1.1204(a) of the Commission’s rules, 47 CFR 1.1204(a).

See Sections 1.415 and 1.420 of the Commission’s rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622, in the table in paragraph (j), under Nevada, revise the entry for Winnemucca to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community				Channel No.
*	*	*	*	*
Nevada				
*	*	*	*	*
Winnemucca				16
*	*	*	*	*

[FR Doc. 2023–18659 Filed 8–29–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R2-ES-2022-0162;
FF09E21000 FXES1111090FEDR 234]

RIN 1018-BG22

**Endangered and Threatened Wildlife
and Plants; Endangered Species
Status for the Dunes Sagebrush Lizard**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Proposed rule; extension of
comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are extending the comment period on our July 3, 2023, proposed rule to list the dunes sagebrush lizard (*Sceloporus arenicolus*), a species found only in southeastern New Mexico and west Texas, as an endangered species under the Endangered Species Act of 1973, as amended (Act). We are extending the proposed rule's comment period for 30 days to give all interested parties an additional opportunity to comment on the proposed rule. Comments previously submitted need not be resubmitted as they are already incorporated into the public record and will be fully considered in the final rule.

DATES: The comment period on the proposed rule that published July 3, 2023, at 88 FR 42661, is extended. We will accept comments received or postmarked on or before October 2, 2023.

ADDRESSES:

Comment submission: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R2-ES-2022-0162, which is the docket number for the July 3, 2023, proposed rule. Then click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate the correct document. You may submit a comment by clicking on "Comment."

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R2-ES-2022-0162, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on [https://](https://www.regulations.gov)

www.regulations.gov. This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT:

Shawn Sartorius, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, NM 87113; telephone 505-346-2525. 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

On July 3, 2023, we published a proposed rule (88 FR 42661) to list the dunes sagebrush lizard as an endangered species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The proposed rule opened a 60-day comment period, ending September 1, 2023, and announced a public hearing on July 31, 2023. We have received multiple requests to extend the public comment period. With this document, we extend the public comment period for an additional 30 days, as specified above in **DATES**.

Public Comments

We will accept written comments and information during the extended comment period on our proposed rule to list the dunes sagebrush lizard. We will consider information from all interested parties. We intend that any final action resulting from the proposal will be based on the best scientific and commercial data available and will be as accurate and as effective as possible. Our final determination will take into consideration all comments and any additional information we receive during the open comment period on the proposed rule.

Because we will consider all comments and information we receive during the open comment period, our final determination may differ from our July 3, 2023, proposed rule (88 FR 42661). Based on the new information we receive (and any comments on that new information), we may conclude that the dunes sagebrush lizard may warrant a different listing status compared to the original proposed rule.

If you already submitted comments or information on the July 3, 2023, proposed rule, please do not resubmit them. Any such comments are incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in the preparation of our final determination.

Comments should be as specific as possible. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you assert. Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered species or a threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. If you submit information via <https://www.regulations.gov>, your entire submission—including your personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>. Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on <https://www.regulations.gov> at FWS-R2-ES-2022-0162.

Authors

The primary authors of this document are the staff members of the Fish and Wildlife Service's Species Assessment Team and the New Mexico Ecological Services Field Office.

Authority

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), is the authority for this action.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023-18657 Filed 8-29-23; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 300 and 660****[Docket No. 230822–0203]****RIN 0648–BM28****Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Pacific Coast Groundfish Fishery Management Plan; Amendment 32**

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

ACTION: Proposed rule; notice of availability of a draft environmental assessment; request for comments.

SUMMARY: This action proposes regulations that would implement Amendment 32 to the Pacific Coast Groundfish Fishery Management Plan. The proposed regulations include a suite of changes to non-trawl area management measures seaward of California and Oregon. Specifically, NMFS proposes to: allow increased fishing access with specific gear types to the Non-Trawl Rockfish Conservation Area for the commercial groundfish limited entry fixed gear sector and vessels that gear switch under the Trawl Individual Fishing Quota program; modify gear restrictions in the Non-Trawl Rockfish Conservation Area for all non-trawl commercial groundfish sectors; move the seaward boundary of the Non-Trawl Rockfish Conservation Area to 75 fathoms (137 meters) for all non-trawl commercial groundfish sectors and the directed commercial Pacific halibut fishery; create new Groundfish Conservation Areas, including new Yelloweye Rockfish Conservation Areas seaward of Oregon and Groundfish Exclusion Areas seaward of Southern California; create new Essential Fish Habitat Conservation Areas off Oregon; remove the Cowcod Conservation Area seaward of Southern California for all groundfish commercial and recreational non-trawl sectors, and enable the use of Block Area Closures to control the catch of groundfish for all commercial non-trawl sectors. The purpose of Amendment 32 is to provide fishing access to healthy groundfish stocks for non-trawl groundfish fisheries and the directed commercial halibut fishery while still meeting the conservation objectives of the Pacific Coast Groundfish Fishery Management Plan. NMFS also announces the

availability of a draft Environmental Assessment that analyzes the potential effects of the associated proposed rule. In addition, this action proposes minor administrative regulatory revisions which would correct the name of the Cordell Bank Groundfish Conservation Area, amend the description of the Cordell Bank Groundfish Conservation Area, add new regulatory definitions for different types of fishing bait, and add new exemptions to Vessel Monitoring System reporting requirements.

DATES: Comments on this proposed rule and draft Environmental Assessment must be received on or before September 29, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0051, by the following method:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2023–0051 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 www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic Access

Information relevant to Amendment 32, which includes a draft Environmental Assessment, a Regulatory Impact Review, a Regulatory Flexibility Act analysis and a Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) analysis (all referred to hereafter as Analysis), are accessible via the internet at the NMFS West Coast Region website at: <https://www.fisheries.noaa.gov/west-coast/laws-and-policies/west-coast-region-national-environmental-policy-act-documents>.

FOR FURTHER INFORMATION CONTACT: Lynn Massey, phone: 562–900–2060, or email: Lynn.Massey@noaa.gov

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish fishery in the U.S. exclusive economic zone (EEZ)

seaward of Washington, Oregon, and California is managed under the Pacific Coast Groundfish Fishery Management Plan (FMP). The Pacific Fishery Management Council (Council) developed the Pacific Coast Groundfish FMP pursuant to the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* The Secretary of Commerce approved the Pacific Coast Groundfish FMP and implemented the provisions of the plan through federal regulations at 50 CFR part 660, subparts C through G. Species managed under the Pacific Coast Groundfish FMP include more than 90 species of roundfish, flatfish, rockfish, sharks, and skates.

This rule would implement regulations for Amendment 32 to the Pacific Coast Groundfish FMP (also referred to interchangeably as “this action”). Consistent with MSA Section 303(c)(1), the Council deemed the proposed regulations consistent with and necessary to implement Amendment 32 in a July 21, 2023 letter from Council Chairman Merrick Burden to Regional Administrator Jennifer Quan. The Notice of Availability for Amendment 32 that published on August 2, 2023 (88 FR 50830) describes FMP changes in, and requests comments on, Amendment 32.

In addition to proposing changes to the regulations at 50 CFR part 300 and part 660 to implement Amendment 32, this proposed rule also proposes minor, clarifying and administrative revisions to the regulations in part 660. These administrative changes would correct the name of the Cordell Bank Groundfish Conservation Area (Cordell Bank GCA), amend the description of the Cordell Bank GCA, add new regulatory definitions for different types of fishing bait, and add new exemptions to Vessel Monitoring System (VMS) reporting requirements.

Background

In the early 2000s, several types of groundfish conservation areas (GCAs), defined at § 660.11, were implemented (as part of FMP Amendment 16–3) to protect overfished groundfish species off the U.S. West Coast; this includes the coastwide Non-Trawl Rockfish Conservation Area (Non-Trawl RCA) (68 FR 907, January 7, 2003), and the Cowcod Conservation Areas (CCAs) (66 FR 2338, January 11, 2001) in the Southern California Bight. With the rebuilt status of almost all of these groundfish species (the exception being yelloweye rockfish, which is projected to rebuild by 2029), the Council has been prioritizing increased fishing access to these areas for groundfish non-trawl fisheries (*i.e.*, the directed open

access sector, the California recreational sector, the limited entry fixed gear (LEFG) sector, and vessels that use non-trawl gear under the Trawl Individual Fishing Quota (IFQ) Program). In November 2019, the Council directed the Groundfish Advisory Subpanel (GAP) to develop the scope of action and draft a purpose and need statement for non-trawl area management modifications during the GAP's March and April 2020 meetings. The GAP then submitted an informational report (see Informational Report 4 in the June 2020 briefing book at [pcouncil.org](https://www.pcouncil.org)) for Council consideration and scheduling of further scoping of the issues. In April 2021, the Council initiated a scoping process to address modifying Non-Trawl RCA catch restrictions and boundaries (see Agenda Item F.3, Attachment 2 in the April 2021 briefing book at [pcouncil.org](https://www.pcouncil.org)). In November 2021 and April 2022, the Council further refined the range of alternatives, which included expanding the action to include changes to the CCA (both the Eastern CCA and the Western CCA) seaward of California, consideration of new closed areas (*i.e.*, Groundfish Exclusion Areas (GEAs) and Yelloweye Rockfish Conservation Areas (YRCAs)), and changes to Essential Fish Habitat Conservation Areas (EFHCAs) that would be partially exposed to fishing activity under the alternatives. The Council selected a preliminary preferred range of alternatives at their September 2022 meeting and selected a final range of alternatives at their March 2023 meeting. More details on how the range of alternatives evolved through this process is provided in the Analysis (see **ADDRESSES**). The Council's resulting final preferred alternative constitutes Amendment 32 to the Pacific Coast Groundfish FMP. Amendment 32 and its implementing regulations included in this proposed rule would provide additional fishing opportunity in these closures through a suite of modifications to GCA boundaries, gear specifications, and catch restrictions, while continuing to rebuild yelloweye rockfish and mitigate fishing impacts to sensitive habitats.

Revisions to Non-Trawl Rockfish Conservation Area Management Measures

Boundary Modifications

The Non-Trawl RCA is a coastwide, contiguous area bounded by specific latitude and longitude coordinates that approximate depth contours along the West Coast continental shelf and around select islands off Southern California. Non-Trawl RCA boundaries are not

consistent along the coast; they vary by management area (*i.e.*, the shoreward and seaward boundaries are shallower or deeper, depending on latitude). The Non-Trawl RCA prohibits almost all commercial non-tribal directed groundfish fishing with non-trawl gear, and also applies to the non-tribal directed commercial halibut fishery (see 50 CFR 300.63(e)(1)).

The seaward boundary of the Non-Trawl RCA approximates the 100 fathom (fm, 183 meters (m)) depth contour seaward of Oregon and the 100 (183 m) or 125 fm (229 m) depth contour seaward of California, depending on latitude (see Tables 2 North and South of subpart E and Tables 3 North and South to subpart F). The implementing regulations for Amendment 32 as included in this proposed rule would move the seaward boundary of the Non-Trawl RCA in to the depth contour that approximates 75 fm (137 m) seaward off both Oregon and California, which would open up approximately 2,411 square miles (sq mi, 6,244 square kilometers (sq km)) to all non-trawl commercial groundfish sectors and the non-tribal directed commercial Pacific halibut fishery. Adjusting the Non-Trawl RCA boundary for both the commercial non-tribal directed groundfish and halibut fisheries would reduce enforcement complexity and provide additional fishing opportunity. The Non-Trawl RCA boundaries in the Southern California Bight (south of 34°27' N lat.) would not change, as the 75–100 fm (137–183 m) depth range is already open in this area.

Catch Restriction Modifications

The final rule for the 2023–24 Groundfish Harvest Specification and Management Measures action (87 FR 77007, December 16, 2022) authorized the use of two new hook-and-line gear configurations for use inside the Non-Trawl RCA by the directed open access sector as defined at § 660.11. These two new gear configurations included stationary vertical jig gear (see § 660.330(b)(3)(i)) and groundfish troll gear (see § 660.330(b)(3)(ii)). The implementing regulations for Amendment 32 as included in this proposed rule would allow vessels participating in the LEFG sector and vessels that use non-trawl gear under the Trawl IFQ program (*i.e.*, “IFQ gear switchers”) to fish with these gear types under their respective catch limits rather than under open access trip limits. In other words, LEFG vessels could fish inside the Non-Trawl RCA pursuant to their higher trip limits listed in subpart E Tables 1 North and South,

and IFQ gear switchers could fish inside the Non-Trawl RCA under their quota pounds. Vessels would be required to make an appropriate declaration (specified at § 660.13(d)) that corresponds to their respective sector and the chosen gear type (*i.e.*, either stationary vertical jig gear or groundfish troll gear). On a fishing trip where any fishing would occur inside the Non-Trawl RCA, only one type of non-bottom contact gear would be permitted to be carried on board, and no other fishing gear of any type could be carried on board or stowed during that trip. The vessel would be allowed to fish inside and outside the Non-Trawl RCA on the same fishing trip, provided a valid declaration report as required at § 660.13(d) is filed with NMFS' Office of Law Enforcement (OLE). Crossover provisions at § 660.60(h)(7)(ii) would not apply for the two Non-Trawl RCA gear types (*i.e.*, stationary vertical jig gear and groundfish troll gear). Access to these higher trip limits would increase fishing opportunity and provide operational flexibility for these vessels.

Gear Modifications

The two new hook-and-line gear configurations authorized as part of the 2023–24 Groundfish Harvest Specification and Management Measures action (87 FR 77007, December 16, 2022) were implemented along with a suite of gear specifications intended to minimize yelloweye rockfish bycatch and seabird interactions. For the stationary vertical jig gear, currently fishermen must have a minimum of 50 feet (15 m) between the bottom weight and the lowest fishing hook to ensure that fishing activity is occurring off the bottom (see § 660.330(b)(3)(i)(A)). In addition, currently only artificial bait is permitted; natural bait is prohibited (see § 660.330(b)(3)(i)(D)). The proposed regulations for Amendment 32 would modify these gear restrictions to instead allow a minimum of 30 feet (9 m) between the bottom weight and the lowest fishing hook, and allow the use of natural bait. These changes are expected to increase catch of underutilized stocks, while continuing to mitigate catch of rebuilding stocks. No changes in gear modifications are being proposed for the groundfish troll gear configuration. Fishermen must continue to have a minimum of 50 feet (15 m) between the bottom weight and the lowest fishing hook, and are still required to use artificial bait with groundfish troll gear.

Revisions to Cowcod Conservation Area Management Measures

The CCA was implemented in 2001 to reduce the bycatch of overfished cowcod (66 FR 2338, January 11, 2001), which was declared rebuilt in 2019.

Within the CCA, which is comprised of the Western and Eastern CCAs, groundfish fishing by all commercial and recreational groundfish fisheries, including those that use both trawl and non-trawl gear, is prohibited.

Amendment 32 and its implementing regulations included in this proposed rule would remove the CCA restrictions for all groundfish non-trawl fisheries, which would open up approximately 4,663 sq mi (12,077 sq km) to all non-trawl commercial groundfish sectors. The CCA would remain in place for groundfish trawl fisheries, as the scope of the Council's action only considered non-trawl sectors. The purpose of this change is to provide fishing opportunity in this area given the cowcod fishery has been declared rebuilt. Non-trawl fishing is currently allowed shoreward of the 40 fm (73 m) lines around the islands and banks within the current boundaries of the CCA. With the removal of the CCA restrictions, the 40 fm (73 m) restriction would no longer be in place (*i.e.*, vessels could operate anywhere in the area, subject to pre-existing area closures). Eight new closures would be enacted in the former boundaries of the CCAs for non-trawl groundfish commercial and recreational fisheries (see the next section on Groundfish Exclusion Areas).

The Council recommended defining new fathom lines around islands and banks that reside inside the current CCA. Specifically, the Council recommended that coordinates be defined in the regulations for the 50, 60, 75, 125, and 150 fm (91 m, 110 m, 137 m, 229 m, and 274 m) lines around Santa Barbara Island, San Nicolas Island, Cortes Bank, and Tanner Bank, and the 150 fm (274 m) line around Osborn Bank and the Eastern CCA. The purpose of defining these fathom lines around the islands and banks is to provide flexible management tools to restrict fishing seaward or shoreward of the new lines as needed, which would prevent interactions with certain nearshore species and control catch of groundfish. If Amendment 32 is approved and implemented in a final rule, these boundaries would be defined in the regulations and would be available for use in the future should the Council wish to recommend activating depth-based closures. The Council may also recommend modifying the status of these closures via an inseason action

consistent with § 660.60(c) or via a rulemaking action for groundfish fisheries management.

New Conservation Areas

Groundfish Exclusion Areas

Amendment 32 and its implementing regulations included in this proposed rule would create a new type of GCA called a GEA, which is intended to mitigate the impacts to sensitive environments from certain groundfish fishing activity. Specifically, eight GEAs would be established in this action: (1) Hidden Reef; (2) West of Santa Barbara Island; (3) Potato Bank; (4) 107/118 Bank; (5) Cherry Bank; (6) Seamount 109; (7) Northeast Bank; and (8) The 43-Fathom Spot. All of these GEAs would be located in the Southern California Bight within the area in which non-trawl CCA restrictions would be removed. These GEAs would keep approximately 428 square miles (1,100 sq km) closed to non-trawl fishing effort. The purpose of this change is to create a type of GCA that can be used to protect sensitive areas and that can be separate and distinct from groundfish essential fish habitat (EFH). These GEAs would prohibit all commercial and recreational groundfish fishing. Commercial fishing vessels would be allowed to continually transit through GEAs provided that all gear is stowed. Recreational vessels would be allowed to continually transit through GEAs provided that no gear is deployed. Vessels fishing for non-groundfish species, including highly migratory species, would be permitted within GEAs, provided that no groundfish is on board the vessel.

Yelloweye Rockfish Conservation Areas (YRCAs)

A YRCA is a type of GCA used to mitigate bycatch of yelloweye rockfish in groundfish fisheries. Given that yelloweye rockfish is still rebuilding, the Council considered establishing new YRCAs in the event that yelloweye rockfish bycatch increases with increased fishing access to the Non-Trawl RCA. Amendment 32 would establish four new YRCAs seaward of Oregon: (1) Tillamook YRCA; (2) Newport YRCA; (3) Florence YRCA; and (4) Heceta Bank YRCA. Within the YRCAs, restrictions would apply to both commercial groundfish non-trawl fisheries and the non-tribal directed commercial halibut fishery. In recommending Amendment 32, the Council proposed that only one of the YCRAs would be "active" at the time of implementation. The other three closures would be "inactive" until the

Council recommends and NMFS implements those closures. Thus, in this proposed rule only the Heceta Bank YRCA is proposed to be active. The Tillamook, Newport, and Florence YRCAs would be defined and established in federal regulations at § 660.11, but would remain inactive until the Council recommends modifying their inactive status and NMFS implements such changes via an inseason action consistent with § 660.60(c) or a future rulemaking action on groundfish fisheries. NMFS would need to modify the status of these YRCAs for the non-tribal directed commercial halibut fishery via the rulemaking process, as the current regulations on the non-tribal directed halibut fishery do not include a regulatory mechanism for modifying closed areas inseason.

Essential Fish Habitat Conservation Areas

The Magnuson-Stevens Act requires that FMPs describe and identify EFH and minimize to the extent practicable adverse effects on EFH caused by fishing. The Pacific Coast Groundfish FMP authorizes the use of EFHCAs to protect groundfish EFH from specific types of fishing activity. Federal regulations at §§ 660.75 through 660.79 provide the coordinates for all current EFHCAs off the U.S. West Coast. At present, there are two types of EFHCAs: bottom trawl and bottom contact. Both bottom trawl and bottom contact EFHCAs apply to all fisheries and are not limited in application to groundfish fisheries. Amendment 32 would create a new type of EFHCA that prohibits using non-trawl bottom contact gear (*e.g.*, pot/longline) for all non-tribal groundfish fisheries and the non-tribal directed commercial Pacific halibut fishery. The purpose of this new type of EFHCA is to protect groundfish EFH that would be newly exposed to non-trawl bottom contact gear from moving the seaward boundary of the Non-Trawl RCA to 75 fm (137 m) seaward of Oregon. Specifically, this proposed rule would establish five new EFHCAs: (1) Nehalem Bank East; (2) Bandon High Spot East; (3) Arago Reef West; (4) Garibaldi Reef North; and (5) Garibaldi Reef South. All of these new EFHCAs overlap partially or entirely with existing bottom trawl EFHCAs (*i.e.*, bottom trawl gear is already prohibited in these areas), which is why the specified gear prohibition only includes non-trawl bottom contact gear. Taking, retaining, or possessing (except for the purpose of continuous transit) groundfish or halibut in these new EFHCAs would be prohibited.

Block Area Closures

The Pacific Coast Groundfish FMP and its implementing regulations currently authorize the use of Block Area Closures (BACs) as a routine management measure to control bycatch of groundfish in trawl fisheries. BACs are size variable spatial closures in the EEZ bounded by latitude lines, defined at § 660.11, with depth contour approximations defined at §§ 660.71 through 660.74 ((10 fm (18 m) through 250 fm (457 m)), and § 660.76 (700 fm (1280 m)). Amendment 28 to the FMP (84 FR 63966, November 19, 2019) first established BACs as a management tool. The salmon bycatch minimization measures final rule (86 FR 10857, February 23, 2021) expanded BACs as a tool to minimize salmon bycatch. Amendment 32 and its implementing regulations included in this proposed rule would expand the use of BACs for groundfish non-trawl fisheries. The purpose of this change is to create a mechanism to control bycatch of groundfish and bycatch of protected or prohibited species from non-trawl fisheries given the new flexibilities (*e.g.*, newly opened fishing grounds) that would result from the implementation of this action. Thus, under this proposed rule, BACs could be implemented in the EEZ coastwide. BACs also could be implemented within tribal Usual and Accustomed (U&A) fishing areas but would only apply to non-tribal vessels.

This proposed rule would not implement specific individual BACs. This proposed rule would allow NMFS to close or reopen BACs preseason or inseason. The approach would be consistent with existing routine management measures in framework amendments to the FMP that have already been implemented and incorporated into the regulations. Most trip, bag, and size limits, and some GCA closures in the groundfish fishery, including Bycatch Reduction Areas and BACs, have been designated routine management measures in the Pacific Coast Groundfish FMP and in § 660.60(c). The Council can recommend to NMFS implementation or modification of these routine management measures through an expedited process involving a single Council meeting. Inseason changes are announced in the **Federal Register** pursuant to the requirements of the Administrative Procedure Act. If good cause exists under the Administrative Procedure Act to waive notice and comment, a single **Federal Register** notice will announce routine inseason BACs implemented by NMFS.

When deciding whether to recommend BACs for NMFS to implement, consistent with the Pacific Coast Groundfish FMP, the Council considers environmental impacts, economic impacts, and public comments that are received via the Council process. Depending on the circumstances, NMFS may close areas for a defined period of time, for example, a few months or the remainder of the fishing year, or NMFS may maintain a closure for an indefinite period of time, for example, until reopened by a subsequent action. NMFS may close one or more BACs and the size of the BACs can vary. A **Federal Register** notice will announce the geographic boundaries of one or more BACs, the effective dates, applicable gear/fishery restrictions, as well as the purpose and rationale. NMFS would also disseminate this information on BACs through public notices and by posting on the West Coast Region website (see **ADDRESSES** for electronic access information).

Expected Effects of This Action

The Council prepared a detailed Analysis (see Electronic Access section of **ADDRESSES**) that analyzed the effects of Amendment 32 on various resources. A brief summary of expected effects from the Analysis is provided below.

Target and Non-Target Species

The Council and NMFS expect that impacts to target and non-target species would be within those described in the 2023–2024 Biennial Harvest Specifications and Management Measures Environmental Assessment (EA), as this action would not change harvest specifications from those implemented in the 2023–2024 harvest specifications action (87 FR 77007, December 16, 2022). That analysis assumes that full annual catch limits (ACLs) are harvested for each stock within the fishery and NMFS issued a Finding of No Significant Impact for that action (see page 64 of 2023–2024 EA, available at: <https://www.fisheries.noaa.gov/west-coast/laws-and-policies/west-coast-regional-environmental-policy-act-documents>).

Prohibited Species

Prohibited species include those species and species groups whose retention is prohibited in the Pacific Coast groundfish fishery. Prohibited species include any species of salmonid, Pacific halibut, Dungeness crab caught seaward of Washington or Oregon, and groundfish species or species groups under the Pacific Coast Groundfish FMP

for which quotas have been achieved and/or the fishery closed (see § 660.11). The Council and NMFS do not expect significant impacts to prohibited species including salmon, Dungeness crab, eulachon, and green sturgeon given the limited encounters and mortality associated with non-trawl fisheries. Non-trawl gear types have historically had little or no mortality of these species, and even with the expansion of opportunities for non-trawl fisheries through this action, mortality is expected to still be negligible.

Protected Species

Protected species include species other than prohibited species, that are protected under Federal law, including species listed under the Endangered Species Act (ESA), marine mammals protected under the Marine Mammal Protection Act (MMPA), and bird species protected under the Migratory Bird Treaty Act (MBTA). Protected species that may be affected by opening portions of the Non-Trawl RCA include humpback whales (listed under the ESA and MMPA), leatherback sea turtles (ESA), and short-tailed albatross (ESA and MBTA).

The portion of the Non-Trawl RCA being opened seaward of Oregon and California between 75 and 100/125 fm (137 and 183/229 m) overlaps with ESA-designated critical habitat for the Mexican distinct population segment (DPS) of humpback whales (see Figure 27 of the Analysis). NMFS evaluated the effects of the groundfish fishery on ESA-listed humpback whales and their critical habitat in the 2020 Biological Opinion for the Pacific Coast Groundfish Fishery (WCRO–2018–01378). Under the MMPA, the sablefish pot fishery, which is a sector within the LEFG fishery, is listed as a Category II fishery, which means there is occasional incidental mortality and serious injury of marine mammals. Although there would likely be an effort shift from the sablefish pot fishery as well as other non-trawl fisheries into the newly opened area, the Council and NMFS do not anticipate an overall increase in the number of participants in any non-trawl fishery sector. As explained in the Analysis, it is the amount of gear in the water rather than the amount of area or habitat designation that affects potential entanglement risk for whales. This action does not change the overall amount of sablefish that can be caught by the fishery, which was analyzed as part of the 2023–2024 Biennial Harvest Specifications and Management Measures EA (available at <https://www.fisheries.noaa.gov/west-coast/laws-and-policies/groundfish-actions->

nepa-documents). The density of pot gear and other non-trawl gear in the EEZ both shoreward and seaward of the Non-Trawl RCA will likely lessen, as some vessels will likely shift some of their effort to the newly opened depth bin. This will increase the spatial distribution of pot gear, but will not change the overall amount of effort nor will it concentrate effort in a particular area. In addition, there is no evidence to suggest that vessels fishing in 75–100 or 75–125 fm (137–183 or 137–229 m) would create more potential for whale interactions compared to fishing in 100–125 fm (183–229 m) or greater, depths at which fishing is already opened. Therefore, NMFS does not anticipate impacts to the Mexican DPS or the Central American DPS of humpback whales from Amendment 32 beyond those impacts already considered in the 2020 Biological Opinion.

The portion of the Non-Trawl RCA being opened seaward of Oregon and California between 75 and 100/125 fm (137 and 183/229 m) overlaps with ESA-designated critical habitat for leatherback sea turtles (see Figure 27 of the Analysis). The effects of the groundfish fishery on ESA-listed leatherback sea turtles was evaluated in the 2012 Biological Opinion (NWR–2012–876) for the Pacific Coast Groundfish Fishery. There have been no observed takes of leatherback turtles in any groundfish fishery from 2015–2019 (Agenda Item G.4.a, NMFS Report 5, June 2021). The only observed take in the groundfish fishery was in the Open Access pot fishery in 2008. Although there would likely be an effort shift from the LEFG sablefish pot fishery as well as other non-trawl fisheries into the newly opened area, the Council and NMFS do not anticipate an overall increase in the number of participants in any non-trawl fishery sector. As explained in the Analysis, it is the amount of gear in the water rather than the amount of area or habitat designation that affects potential entanglement risk for leatherback sea turtles. This action does not change the overall amount of sablefish that can be caught by the fishery, which was analyzed as part of the 2023–2024 Biennial Harvest Specifications and Management Measures EA. The density of pot gear and other non-trawl gear in the EEZ both shoreward and seaward of the Non-Trawl RCA will likely lessen, as some vessels will likely shift some of their effort to the newly opened depth bin. This will increase the spatial distribution of pot gear, but will not change the overall amount of effort nor will it concentrate effort in a particular area. Therefore, the Council and NMFS

do not anticipate significant impacts to this species.

The portion of the Non-Trawl RCA being opened seaward of Oregon and California between 75 and 100/125 fm (137 and 183/229 m) could potentially increase interactions with ESA-listed short-tailed albatross. Longline gear, which is fished in all non-trawl sectors, is the primary gear evaluated in the 2017 Biological Opinion (O1EOFWOO–2017–F–03 16) for the Pacific Coast Groundfish Fishery. All vessels over 26 feet (8 m) in length and fishing with longline gear in the area North of 36° N lat. (*i.e.*, in the primary area of overlap with short-tailed albatross habitat) are subject to existing mitigation requirements for seabirds, including night setting and the mandatory use of streamer lines (see Seabird Avoidance Program requirements at § 660.21). There have been no known takes of short-tailed albatross in the groundfish fishery since these required mitigation measures were implemented, and the same mitigation measures would still apply in the newly opened areas. Therefore, the Council and NMFS do not anticipate impacts to this species beyond those considered in the 2017 Biological Opinion.

Habitat

The portion of the Non-Trawl RCA being opened seaward of Oregon and California between 75 and 100/125 fm (137 and 183/229 m), as well as the area being opened by removing the CCA in Southern California could adversely affect bottom habitat that could be newly exposed to bottom contact groundfish gear, including pot and longline gear. The majority of the area to be opened in the Non-Trawl RCA is soft substrate with some areas that include mixed/hard substrate with habitat-forming invertebrates (such as corals, basketstars, brittlestars, demosponges, gooseneck barnacles, sea anemones, sea lilies, sea urchins, sea whips, tube worms, and vase sponges). These mixed/hard areas largely fall within currently identified EFHCAs for bottom trawl. As described above under the heading, “New Conservation Areas,” the Council recommended additional protection from groundfish non-trawl bottom contact gear (*i.e.*, pot and longline gear) for the portions of bottom trawl EFHCAs that would be newly exposed off Oregon. The newly exposed bottom trawl EFHCAs seaward of California will be evaluated in the Council’s next EFH review; this evaluation will include the question of whether to also prohibit non-trawl bottom contact gear, which is scheduled to begin in 2025. The Council also

recommended the eight GEAs in the Southern California Bight to protect sensitive environments of concern in the area of the current CCA. Therefore, the Council and NMFS do not anticipate significant impacts to habitat from this action.

Economic Benefits

The Council and NMFS anticipate that this action would increase the overall economic value of the groundfish and directed commercial halibut fisheries by providing access to almost three thousand square miles of fishing grounds that have been closed to non-trawl groundfish and halibut fishing for over two decades. In addition, relaxed gear and catch restrictions would allow for diversified fishing strategies and access to higher trip limits/quotas within the remaining Non-Trawl RCA boundaries. As detailed in the Analysis, fishing ports with lower attainment of sablefish are likely to benefit most from the new opportunities; however, ports with high attainment of sablefish could potentially also benefit from access to larger, higher value sablefish and reduced fuel costs from vessels not having to travel beyond 100 or 125 fm (183 or 229 m) to access larger sablefish.

Administrative Regulatory Changes

In addition to the actions recommended by the Council above, NMFS is also proposing to make three minor regulatory changes in this final rule. These changes, which are necessary to improve clarity of existing regulations, are administrative in nature.

Groundfish Conservation Area Nomenclature Corrections

NMFS proposes to universally correct all instances of “Cordell Banks” to its correct name of “Cordell Bank.” NMFS also proposes to modify the description of the Cordell Bank GCA at § 660.70(q) to clarify that fishing is not permitted “within” its boundaries as opposed to “around” its boundaries, as currently specified in the regulations. The purpose of this change is to clarify the intended meaning of these regulations for fishermen and to support enforcement efforts, but this change would not constitute a material change to the GCA.

Bait Definitions

NMFS proposes to add regulatory definitions for artificial lure, bait (both natural and artificial), and weighted gear under § 660.11. This rule proposes to allow for the use of natural bait on non-bottom contact stationary vertical

jig gear in the Non-Trawl RCA, and to continue to prohibit its use on groundfish troll gear in the Non-Trawl RCA. However, natural bait is not defined in the regulations. The purpose of adding these definitions (which are based on common usage) is to clarify the types of bait that are permitted for use within the Non-Trawl RCA. This will aid fishermen and support enforcement efforts.

Vessel Monitoring System Exemptions

Vessels participating in the limited entry groundfish fishery, open access vessels using non-groundfish trawl gear (vessels fishing for ridgeback prawn, California halibut, and sea cucumber trawl), and any vessels that use open access gear targeting groundfish or that have groundfish bycatch (salmon troll, prawn trap, Dungeness crab, halibut longline, California halibut line gear, and sheephead trap), are required to install a NMFS OLE type-approved mobile transceiver unit and to arrange for a NMFS OLE type-approved communications service provider to receive and relay transmissions to NMFS OLE prior to fishing. These units automatically record a vessel's position (*i.e.*, the vessel's geographic location in latitude and longitude coordinates), and transmit those coordinates to a communications service provider.

Under current regulation, exemptions from the VMS requirement for specific reasons are allowed (50 CFR 660.14(d)(4)). VMS users must follow the requirements at § 660.14(d)(4)(vi) to submit exemption reports. Current exemptions include a haul out exemption, an outside areas exemption, a permit exemption, and a long-term departure exemption. This proposed rule would create two new exemptions: one for maintenance that does not require a haulout, and one for sale of a vessel. Like the existing haulout exemption, the new maintenance exemption would allow VMS units to temporarily be inoperable and would allow transmissions to be discontinued while work is being done on the vessel. However, the new maintenance exemption would not be limited to maintenance that is conducted while a vessel is hauled out.

The new exemption for sale of a vessel would be an extension of the current long-term departure exemption. This new exemption for sale of a vessel is proposed as a response to situations in which new owners purchase vessels and discontinue use of VMS units used by the previous owners. If the previous owners do not submit a Long-Term Departure exemption prior to the sale, the requirement for the VMS units to

operate continues to exist on the sold vessels, even when the new owners do not participate in an activity requiring VMS.

Both of these proposed new exemptions would create flexibilities in the vessel owners' VMS requirements when vessels are not participating in an activity requiring VMS. If these new exemptions are not added to the regulations, fishermen would continue to be in violation of VMS requirements while their vessels undergo long-term maintenance or when prior owners of newly purchased vessels did not submit a long-term departure exemption prior to selling the vessel.

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act and Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c), the NMFS Assistant Administrator has determined that this proposed rule to implement Amendment 32 is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. For rulemaking efficiency, NMFS is also proposing minor administrative regulatory changes. These changes include corrections to all references to "Cordell Bank," and, in the description of the Cordell Bank GCA at § 660.70(q), clarifying that fishing is not permitted "within" its boundaries as opposed to "around" its boundaries; adding new regulatory definitions for different types of fishing bait, and adding new exemptions to the Vessel Monitoring System reporting requirements.

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

There are no relevant federal rules that may duplicate, overlap, or conflict with this action.

Certification Under the Regulatory Flexibility Act

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

For purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing

is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. This standard applies to all businesses classified under North American Industry Classification System (NAICS) code 11411 for commercial fishing, including all businesses classified as commercial finfish fishing (NAICS 114111), commercial shellfish fishing (NAICS 114112), and other commercial marine fishing (NAICS 114119) businesses (50 CFR 200.2; 13 CFR 121.201).

This proposed rule would directly affect groundfish vessels fishing in the directed Open Access, LEFG, IFQ gear switching, and California recreational fishery sectors. The proposed rule would also directly affect vessels participating in the non-tribal directed commercial Pacific halibut fishery. The table below shows the possible ranges and average numbers of vessels that participated in these fishery sectors from 2019–2022.

TABLE 1—VESSEL PARTICIPATION IN AFFECTED GROUNDFISH NON-TRAWL SECTORS, 2019–2022

Fishery	Vessels (n)	
	Range	Average
Open Access	573–681	614
Limited Entry Fixed Gear	113–138	123
IFQ- Gear Switching	9–16	12
Directed Halibut	81–99	88
CA Recreational (CPFV)	178–195	97

Of those participants, all open access, directed commercial halibut, and commercial passenger fishing vessels (CPFV) are considered small entities. In 2022, 197 of the 218 LEFG reported themselves as small entities. For those that reported themselves as large entities, there were some that owned multiple permits with one entity owning four permits, one owning three permits, and three owning two permits. Of the 9–16 vessels fishing in the IFQ gear switching sector from 2019–2022, these vessels used 20 trawl endorsed permits. In 2022, only one of those permit owners reported as a large entity. In addition, this proposed rule is not expected to place small entities at a significant competitive disadvantage to large entities.

The economic impact of the proposed action would be mostly positive for the affected small entities, as Amendment 32 and its proposed regulations would expand fishing opportunity (and therefore increase potential profitability) for all affected small entities through

opening of closed areas and relaxing gear/catch restrictions in the remaining closed areas. The development of new closed areas (*i.e.*, GEAs, YRCAs, and EFHCAs) restricts a smaller overall area in comparison to the area being opened for fishing. The development of BACs would have a neutral impact on small entities as this action is creating the management tool and is not implementing any BAC upon implementation of the final rule for this action. In addition, none of the administrative regulatory changes would have an economic impact on fishery participants.

For these reasons, NMFS believes that this proposed rule would not have a significant adverse economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared. Information Collection Requirements

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This rule would revise the existing requirements under OMB control # 0648–0573, “VMS and Declarations,” by adding and modifying declaration codes for the purpose of monitoring and enforcing the new provisions in the Non-Trawl RCA for limited fixed gear vessels and IFQ gear switchers. These new declaration codes are not anticipated to alter the number of respondents, anticipated responses, burden hours, or burden costs, as the affected vessels are already required to declare their fishing activities. The new declaration codes would allow NOAA’s OLE to track those vessels that are declaring to fish inside the Non-Trawl RCA and identify what catch limits they should adhere to. Public reporting burden for submitting a declaration report is estimated to average 4 minutes per individual report, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of

information technology. Submit comments on these or any other aspects of the collection of information at www.reginfo.gov/public/do/PRAMain.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects

50 CFR Part 300

Fish, Fisheries, Fishing, Fishing vessels.

50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 22, 2023.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 300 and 660 as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

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

Authority: 16 U.S.C. 773–773k

■ 2. Amend § 300.63 by revising paragraph (f) to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

* * * * *

(f) *Area 2A Non-Treaty Commercial Fishery Closed Areas.*

(1) *Nontrawl Rockfish Conservation Area (RCA).* Non-tribal commercial vessels operating in the directed commercial fishery for halibut in Area 2A are prohibited from fishing within a groundfish closed area known as the nontrawl RCA. Nontrawl RCA boundaries are defined by specific latitude and longitude coordinates that approximate depth contours. Between the U.S./Canada border and 46°16′ N lat., the shoreward boundary of the nontrawl RCA is the EEZ. Between 46°16′ N lat. and 40°10′ N lat., the shoreward boundary of the nontrawl RCA is a line approximating the 30-fm (55-m) depth contour, or the shoreward boundary of the EEZ, whichever is more seaward. Coordinates for the 30-fm (55-m) boundary are listed at 50 CFR 660.71(e). Between the U.S./Canada border and 46°16′ N lat., the seaward

boundary of the nontrawl RCA is a line approximating the 100-fm (183-m) depth contour. Coordinates for the 100-fm (183-m) boundary are listed at 50 CFR 660.73(a). Between 46°16′ N lat. and 40°10′ N lat., the seaward boundary of the nontrawl RCA is a line approximating the 75-fm (137-m) depth contour. Coordinates for the 75-fm (137-m) boundary are listed at 50 CFR 660.72(j).

(2) *North Coast Commercial Yelloweye Rockfish Conservation Area (YRCA).* YRCAs are defined in the groundfish regulations at 50 CFR 660.70. Vessels that incidentally catch halibut while fishing in the sablefish primary fishery are required to follow area closures and gear restrictions defined in the groundfish regulations. It is unlawful to take and retain, possess (except for the purpose of continuous transit) or land halibut with limited entry longline gear within the North Coast Commercial Yelloweye Rockfish Conservation Area. All fishing gear for targeting halibut must be stowed while transiting through the North Coast Commercial YRCA when the closure is in effect.

(3) *Salmon Troll YRCA.* YRCAs are defined in the groundfish regulations at 50 CFR 660.70 and in the salmon regulations at 50 CFR 660.405(c). Non-tribal commercial vessels that incidentally catch halibut while fishing in the salmon troll fishery are prohibited from fishing within a closed area known as the Salmon Troll YRCA. It is unlawful for commercial salmon troll vessels to take and retain, possess (except for the purpose of continuous transit) or land halibut within the Salmon Troll YRCA. All fishing gear for targeting halibut must be stowed while transiting through the Salmon Troll YRCA when the closure is in effect.

(4) *Tillamook YRCA.* YRCAs are defined in the groundfish regulations at 50 CFR 660.70. It is unlawful for non-tribal commercial vessels operating in the directed halibut fishery in Area 2A to take and retain, possess (except for the purpose of continuous transit) or land halibut within the Tillamook YRCA. All fishing gear for targeting halibut must be stowed while transiting through the Tillamook YRCA when the closure is in effect. The closure is not in effect at this time.

(5) *Newport YRCA.* YRCAs are defined in the groundfish regulations at 50 CFR 660.70. It is unlawful for non-tribal commercial vessels operating in the directed halibut fishery in Area 2A to take and retain, or possess (except for the purpose of continuous transit) or land halibut within the Newport YRCA. All fishing gear for targeting halibut

must be stowed while transiting through the Newport YRCA when the closure is in effect. The closure is not in effect at this time.

(6) *Florence YRCA*. YRCAs are defined in the groundfish regulations at 50 CFR 660.70. It is unlawful for non-tribal commercial vessels operating in the directed halibut fishery in Area 2A to take and retain, possess (except for the purpose of continuous transit) or land halibut within the Florence YRCA. All fishing gear for targeting halibut must be stowed while transiting through the Florence YRCA when the closure is in effect. The closure is not in effect at this time.

(7) *Heceta Bank YRCA*. YRCAs are defined in the groundfish regulations at 50 CFR 660.70. It is unlawful for non-tribal commercial vessels operating in the directed halibut fishery in Area 2A to take and retain, possess (except for the purpose of continuous transit) or land halibut within the Heceta Bank YRCA. All fishing gear for targeting halibut must be stowed while transiting through the Heceta Bank YRCA when the closure is in effect.

(8) *Nehalem Bank East Essential Fish Habitat Conservation Area (EFHCA)*. EFHCAs are defined in the groundfish regulations at 50 CFR 660.70. It is unlawful for non-tribal commercial vessels operating in the directed halibut fishery in Area 2A to take and retain, possess (except for the purpose of continuous transit) or land halibut within the Nehalem Bank East EFHCA. All fishing gear for targeting halibut must be stowed while transiting through the Nehalem Bank East EFHCA.

(9) *Garibaldi Reef North EFHCA*. EFHCAs are defined in the groundfish regulations at 50 CFR 660.70. It is unlawful for non-tribal commercial vessels operating in the directed halibut fishery in Area 2A to take and retain, possess (except for the purpose of continuous transit) or land halibut within the Garibaldi Reef North EFHCA. All fishing gear for targeting halibut must be stowed while transiting through the Garibaldi Reef North EFHCA.

(10) *Garibaldi Reef South EFHCA*. EFHCAs are defined in the groundfish regulations at 50 CFR 660.70. It is unlawful for non-tribal commercial vessels operating in the directed halibut fishery in Area 2A to take and retain, possess (except for the purpose of continuous transit) or land halibut within the Garibaldi Reef South EFHCA. All fishing gear for targeting halibut must be stowed while transiting through the Garibaldi Reef South EFHCA.

(11) *Arago Reef West EFHCA*. EFHCAs are defined in the groundfish regulations at 50 CFR 660.70. It is

unlawful for non-tribal commercial vessels operating in the directed halibut fishery in Area 2A take and retain, possess (except for the purpose of continuous transit) or land halibut within the Arago Reef EFHCA. All fishing gear for targeting halibut must be stowed while transiting through the Arago Reef West EFHCA.

(12) *Bandon High Spot East EFHCA*. EFHCAs are defined in the groundfish regulations at 50 CFR 660.70. It is unlawful for non-tribal commercial vessels operating in the directed halibut fishery in Area 2A to take and retain, possess (except for the purpose of continuous transit) or land halibut within the Bandon High Spot East EFHCA. All fishing gear for targeting halibut must be stowed while transiting through the Bandon High Spot East EFHCA.

PART 660—FISHERIES OFF WEST COAST STATES

■ 3. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

Subpart C [Amended]

■ 4. In subpart C of part 660, revise all references to “Cordell Banks” to read “Cordell Bank”.

■ 5. Amend § 660.11 by:

■ a. Adding in alphabetical order, the definitions for “Artificial lure” and “Bait”;

■ b. In the definition for “Conservation area(s)”:

■ i. Revising paragraph (1) introductory text and paragraph (1)(i);

■ ii. Redesignating paragraphs (1)(vi) and (1)(vii) as (1)(vii) and (1)(viii);

■ iii. Adding new paragraph (1)(vi); and

■ c. Adding in alphabetical order the definition for “Weighted gear”.

The additions and revisions read as follows:

§ 660.11 General definitions.

* * * * *

Artificial lure means any manufactured or man-made non-scented/non-flavored (regardless if scent or flavor is added in the manufacturing process or added afterwards) device complete with hooks, intended to attract fish. Artificial lures include, but are not limited to: spoons, spinners, artificial flies, and plugs. Artificial lures are made of metal, plastic, wood, or other non-edible materials.

Bait (natural or artificial) means any substance which attracts fish. Natural bait includes any natural biological substance used to attract or catch fish (e.g., herring/fish eggs). Artificial bait

includes any manufactured device used to attract or catch fish.

* * * * *

Conservation area(s) * * *

(1) *Groundfish Conservation Area* or *GCA* means a conservation area created or modified and enforced to control catch of groundfish or protected species. Regulations at § 660.60(c)(3) describe the various purposes for which NMFS may implement certain types of GCAs through routine management measures. Regulations at § 660.70 further describe and define coordinates for certain GCAs, including: Yelloweye Rockfish Conservation Areas; Cowcod Conservation Areas; Groundfish Exclusion Areas; waters encircling the Farallon Islands; and waters encircling the Cordell Bank. GCAs also include depth-based closures bounded by lines approximating depth contours, including Bycatch Reduction Areas or BRAs, or bounded by depth contours and lines of latitude, including Block Area Closures, or BACs, and Rockfish Conservation Areas, or RCAs, which may be closed to fishing with particular gear types. BRA, BAC, and RCA boundaries may change seasonally according to conservation needs. Regulations at §§ 660.71 through 660.74, and § 660.76 define depth-based boundary lines with latitude/longitude coordinates that may be used to enact depth-based closures. Regulations in this section describe commonly used geographic coordinates that define lines of latitude. Fishing prohibitions associated with GCAs are in addition to those associated with other conservation areas.

(i) *Block Area Closures* or *BACs* are bounded on the north and south by commonly used geographic coordinates defined in this section, and on the east and west by the EEZ, and boundary lines approximating depth contours, defined with latitude and longitude coordinates at §§ 660.71 through 660.74 (10 fm (18 m) through 250 fm (457 m)), and § 660.76 (700 fm (1,280 m)). BACs may be implemented or modified as routine management measures, per the provisions of § 660.60(c). BACs may be implemented to control catch of groundfish by vessels taking and retaining groundfish in the EEZ seaward of Washington, Oregon and California for vessels using any gear type (trawl or non-trawl). BACs may be implemented to minimize bycatch of Chinook salmon and coho salmon by bottom trawl or midwater trawl vessels in the EEZ seaward of Oregon and California, and by midwater trawl vessels in the EEZ seaward of Washington, but shoreward of the boundary line approximating the

250 fm (457 m) depth contour as defined in § 660.74. BACs may vary in their geographic boundaries, duration, and the gears to which they apply. Their geographic boundaries, applicable gear type(s) and/or specific fishery program, and effective dates will be announced in the **Federal Register**. BACs may be implemented within tribal Usual and Accustomed fishing areas but may only apply to non-tribal vessels. BACs may have a specific termination date as described in the **Federal Register**, or may be in effect until modified. BACs that are in effect until modified by NMFS are set out in the trip limit tables of subparts D through F of this part.

* * * * *

(vi) *Groundfish Exclusion Areas or GEAs* are defined at § 660.70.

* * * * *

Weighted gear means any fishing gear that is combined with an object intended to make the bait, lure or hook sink (e.g. lead or steel sinkers).

■ 6. Amend § 660.12 by:

■ a. Redesignating paragraph (a)(19) as (20);

■ b. Adding new paragraph (a)(19); and

■ c. Adding new paragraph (a)(21).

The additions read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(a) * * *

(19) Fish for, take and retain, possess (except for the purpose of continuous transiting) or land any species of groundfish with groundfish non-trawl bottom contact gear (defined at § 660.11) in the following EFHCAs: Arago Reef West, Bandon High Spot East, Garibaldi Reef North, Garibaldi Reef South, and Nehalem Bank East.

* * * * *

(21) Fish for, take and retain, possess (except for the purpose of continuous transiting) or land any species of groundfish in a Block Area Closure enacted under subparts C through F of this part.

* * * * *

■ 7. Amend § 660.13 by redesignating paragraphs (d)(4)(iv)(A)(30) through (37) as d)(4)(iv)(A)(34) through (41) and adding new paragraphs (d)(4)(iv)(A)(30) through (33) to read as follows:

§ 660.13 Recordkeeping and reporting.

* * * * *

(d) * * *

(4) * * *

(iv) * * *

(A) * * *

(30) Limited entry fixed gear non-bottom contact stationary vertical jig gear (allowed inside or outside the nontrawl RCA) (declaration code 12);

(31) Limited entry fixed gear non-bottom contact groundfish troll gear (allowed inside or outside the nontrawl RCA) (declaration code 13);

(32) Limited entry groundfish non-trawl, shorebased IFQ, non-bottom contact stationary vertical jig gear (allowed inside or outside the nontrawl RCA) (declaration code 14);

(33) Limited entry groundfish non-trawl, shorebased IFQ, non-bottom contact groundfish troll gear (allowed inside or outside the nontrawl RCA) (declaration code 15);

* * * * *

■ 8. Amend § 660.14 by:

■ a. Revising paragraph (d)(4)

introductory paragraph, and paragraphs (d)(4)(iii) through (vii); and

■ b. Adding paragraphs (d)(4)(viii) through (ix).

The revisions and additions read as follows:

§ 660.14 Vessel Monitoring System (VMS) Requirements.

* * * * *

(d) * * *

(4) *VMS exemptions.* A vessel that is required to operate and maintain the mobile transceiver unit continuously 24 hours a day throughout the fishing year may be exempted from this requirement if a valid exemption report, as described at paragraph (d)(4)(ix) of this section, is received by NMFS OLE and the vessel is in compliance with all conditions and requirements of the VMS exemption identified in this section and specified in the exemption report.

* * * * *

(iii) *Permit exemption.* If the limited entry permit had a change in vessel registration so that it is no longer registered to the vessel (for the purposes of this section, this includes permits placed into “unidentified” status), the vessel may be exempted from VMS requirements providing the vessel is not used in a fishery requiring VMS off the States of Washington, Oregon or California (0–200 nm offshore) for the remainder of the fishing year. If the vessel is used to fish in this area for any species of fish at any time during the remaining portion of the fishing year without being registered to a limited entry permit, the vessel is required to have and use VMS.

(iv) *Long-term departure exemption.* A vessel participating in the open access fishery that is required to have VMS under paragraph (b)(2) of this section may be exempted from VMS provisions after the end of the fishing year in which it used non-groundfish trawl gear, providing the vessel submits a completed exemption report signed by the vessel owner that includes a

statement signed by the vessel owner indicating that the vessel will not use non-groundfish trawl gear to fish in the EEZ during the new fishing year/A vessel participating in the open access fishery that is required to have VMS under paragraph (b)(3) of this section also may be exempted from VMS provisions after the end of the fishing year in which it fished in the open access fishery, providing the vessel submits a completed exemption report signed by the vessel owner that includes a statement signed by the vessel owner indicating that the vessel will not be used to take and retain or possess groundfish in the EEZ or land groundfish taken in the EEZ during the new fishing year.

(v) *Maintenance Exemption.* When it is anticipated that a vessel will be without power or in a maintenance condition for more than 4 consecutive hours, preventing operation of the vessel’s VMS unit, and if a valid exemption report has been received by NMFS OLE, electrical power to the VMS mobile transceiver unit may be removed and transmissions may be discontinued. Under this exemption, VMS transmissions can be discontinued from the time the vessel is in the maintenance condition until the time the maintenance is completed.

(vi) *Sale of Vessel Exemption.* When a new vessel owner purchases a vessel with VMS and does not intend to participate in an activity requiring VMS, but the previous vessel owner had not received a VMS exemption prior to the sale, VMS transmissions may be discontinued by the new vessel owner. Under this exemption, VMS transmissions can be discontinued indefinitely, upon purchase of the vessel, and no subsequent VMS transmissions will be required unless the new vessel owner engages in an activity requiring VMS.

(vii) *Emergency exemption.* Vessels required to have VMS under paragraph (b) of this section may be exempted from VMS provisions in emergency situations that are beyond the vessel owner’s control, including but not limited to: Fire, flooding, or extensive physical damage to critical areas of the vessel. A vessel owner may apply for an emergency exemption from the VMS requirements specified in paragraph (b) of this section for his/her vessel by sending a written request to NMFS OLE specifying the following information: The reasons for seeking an exemption, including any supporting documents (e.g., repair invoices, photographs showing damage to the vessel, insurance claim forms, etc.); the time period for which the exemption is requested; and

the location of the vessel while the exemption is in effect. NMFS OLE will issue a written determination granting or denying the emergency exemption request. A vessel will not be covered by the emergency exemption until NMFS OLE issues a determination granting the exemption. If an exemption is granted, the duration of the exemption will be specified in the NMFS OLE determination.

(viii) *Submission of exemption reports.* Signed long-term departure exemption reports must be submitted by fax or by emailing an electronic copy of the actual report. In the event of an emergency in which an emergency exemption request will be submitted, initial contact with NMFS OLE must be made by telephone, fax or email within 24 hours from when the incident occurred. Emergency exemption requests must be requested in writing within 72 hours from when the incident occurred. Maintenance exemption requests must include signed written documentation of the work being done and the name of the company doing the work, if applicable. Sale of Vessel exemption requests must include documentation of purchase of the vessel by the new owner. Other exemption reports must be submitted through the VMS or another method that is approved by NMFS OLE and announced in the **Federal Register**. Submission methods for exemption requests, except maintenance, sale of vessel, long-term departures and emergency exemption requests, may include email, facsimile, or telephone. NMFS OLE will provide, through appropriate media, instructions to the public on submitting exemption reports. Instructions and other information needed to make exemption reports may be mailed to the vessel owner's address of record. NMFS will bear no responsibility if a notification is sent to the address of record for the vessel owner and is not received because the vessel owner's actual address has changed without notification to NMFS. Owners of vessels required to use VMS who do not receive instructions by mail are responsible for contacting NMFS OLE during business hours at least 3 days before the exemption is required to be submitted to obtain information needed to make exemption reports. NMFS OLE must be contacted during business hours (Monday through Friday between 0800 and 1700 Pacific Time).

(ix) *Valid exemption reports.* For an exemption report to be valid, it must be received by NMFS at least 2 hours and not more than 24 hours before the exempted activities defined at paragraphs (d)(4)(i) through (vi) of this

section occur. An exemption report is valid until NMFS receives a report canceling the exemption. An exemption cancellation must be received at least 2 hours before the vessel re-enters the EEZ following an outside areas exemption; at least 2 hours before the vessel is placed back in the water following a haul out exemption; at least 2 hours before the vessel operates following a maintenance exemption; at least 2 hours before the vessel resumes fishing for a species of fish or with gear requiring VMS in state or Federal waters off the States of Washington, Oregon, or California after it has received a permit exemption; or at least 2 hours before a vessel resumes fishing in the open access fishery after a long-term departure exemption. If a vessel is required to submit an activation report under paragraph (d)(2)(i) of this section before returning to fish, that report may substitute for the exemption cancellation. Initial contact must be made with NMFS OLE not more than 24 hours after the time that an emergency situation occurred in which VMS transmissions were disrupted and followed by a written emergency exemption request within 72 hours from when the incident occurred. If the emergency situation upon which an emergency exemption is based is resolved before the exemption expires, an exemption cancellation must be received by NMFS at least 2 hours before the vessel resumes fishing.

* * * * *

■ 9. Amend § 660.60 by revising paragraphs (c)(3)(i)(C) and (h)(7)(ii)(A) to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(C) *Block Area Closures.* BACs, as defined at § 660.11, may be closed or reopened, in the EEZ off Washington, Oregon and California, for vessels taking and retaining groundfish using any gear (trawl or non-trawl) in the EEZ consistent with the purposes described in this paragraph (c)(3)(i).

* * * * *

(h) * * *

(7) * * *

(ii) * * *

(A) *Fishing in limited entry and open access fisheries with different trip limits.* Open access trip limits apply to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that fishes in both the open access and limited entry fisheries is not

entitled to two separate trip limits for the same species. If a vessel has a limited entry permit registered to it at any time during the trip limit period and uses open access gear, but the open access limit is smaller than the limited entry limit, the open access limit may not be exceeded and counts toward the limited entry allocation as established under the biennial groundfish harvest specifications. If a vessel has a limited entry permit registered to it at any time during the trip limit period and uses open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear. These provisions do not apply to:

(1) IFQ species (defined at § 660.140(c)) for vessels that are declared into the Shorebased IFQ Program (see § 660.13(d)(4)(iv)(A)) for valid Shorebased IFQ Program declarations).

(2) Vessels with a valid limited entry permit endorsed for longline and/or pot gear fishing inside the nontrawl RCA with stationary vertical jig gear or groundfish troll gear as defined at § 660.320(b)(6). Vessels fishing with one of these two approved hook-and-line gear configurations may fish up to the limited entry fixed gear trip limits in Table 2 (North) and Table 2 (South) of subpart E, either inside or outside the nontrawl RCA. This provision only applies on fishing trips where the vessel made the appropriate declaration (specified at § 660.13(d)(4)(iv)(A)).

* * * * *

■ 10. Amend § 660.70 by revising paragraphs (g) through (q) and adding paragraphs (r) through (v) to read as follows:

§ 660.70 Groundfish Conservation areas.

* * * * *

(g) *Tillamook YRCA.* The Tillamook YRCA is an area off northern Oregon intended to protect yelloweye rockfish. The Tillamook YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 45°40.96' N lat.; 124°27.52' W long.;

(2) 45°40.96' N lat.; 124°19.99' W long.;

(3) 45°34.44' N lat.; 124°14.48' W long.;

(4) 45°31.93' N lat.; 124°14.05' W long.;

(5) 45°32.93' N lat.; 124°22.54' W long.;

(6) 45°36.95' N lat.; 124°24.45' W long.;

(7) 45°38.89' N lat.; 124°25.92' W long.; and connecting back to 45°40.96' N lat.; 124°27.52' W long.

(h) *Newport YRCA*. The Newport YRCA is an area off central Oregon intended to protect yelloweye rockfish. The Newport YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 44°46.00' N lat.; 124°32.57' W long.;

(2) 44°46.00' N lat.; 124°32.00' W long.;

(3) 44°42.00' N lat.; 124°30.00' W long.;

(4) 44°39.00' N lat.; 124°30.00' W long.;

(5) 44°39.00' N lat.; 124°34.00' W long.;

(6) 44°43.16' N lat.; 124°34.00' W long.;

(7) 44°44.54' N lat.; 124°33.58' W long.; and connecting back to 44°46.00' N lat.; 124°32.57' W long.

(i) *Stonewall Bank Yelloweye Rockfish Conservation Area*. The Stonewall Bank YRCA is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 44°37.46' N lat.; 124°24.92' W long.;

(2) 44°37.46' N lat.; 124°23.63' W long.;

(3) 44°28.71' N lat.; 124°21.80' W long.;

(4) 44°28.71' N lat.; 124°24.10' W long.;

(5) 44°31.42' N lat.; 124°25.47' W long.; and connecting back to 44°37.46' N lat.; 124°24.92' W long.

(j) *Stonewall Bank Yelloweye Rockfish Conservation Area, Expansion 1*. The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) Expansion 1 is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA Expansion 1 is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 44°41.76' N lat.; 124°30.02' W long.;

(2) 44°41.73' N lat.; 124°21.60' W long.;

(3) 44°25.25' N lat.; 124°16.94' W long.;

(4) 44°25.29' N lat.; 124°30.14' W long.;

(5) 44°41.76' N lat.; 124°30.02' W long.; and connecting back to 44°41.76' N lat.; 124°30.02' W long.

(k) *Stonewall Bank Yelloweye Rockfish Conservation Area, Expansion*

2. The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) Expansion 2 is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA Expansion 2 is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 44°38.54' N lat.; 124°27.41' W long.;

(2) 44°38.54' N lat.; 124°23.86' W long.;

(3) 44°27.13' N lat.; 124°21.50' W long.;

(4) 44°27.13' N lat.; 124°26.89' W long.;

(5) 44°31.30' N lat.; 124°28.35' W long.; and connecting back to 44°38.54' N lat.; 124°27.41' W long.

(l) *Florence YRCA*. The Florence YRCA is an area off central Oregon intended to protect yelloweye rockfish. The Florence YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 44°30.04' N lat.; 124°42.31' W long.;

(2) 44°30.19' N lat.; 124°40.46' W long.;

(3) 44°25.00' N lat.; 124°37.00' W long.;

(4) 44°25.00' N lat.; 124°45.00' W long.;

(5) 44°26.71' N lat.; 124°45.00' W long.; and connecting back to 44°30.04' N lat.; 124°42.31' W long.

(m) *Heceta Bank YRCA*. The Heceta Bank YRCA is an area off central Oregon intended to protect yelloweye rockfish. The Heceta Bank YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 44°16.28' N lat.; 124°47.86' W long.;

(2) 44°15.38' N lat.; 124°49.86' W long.;

(3) 44°14.49' N lat.; 124°51.82' W long.;

(4) 44°14.01' N lat.; 124°52.88' W long.;

(5) 44°13.47' N lat.; 124°54.08' W long.;

(6) 44°12.72' N lat.; 124°54.07' W long.;

(7) 44°11.53' N lat.; 124°54.06' W long.;

(8) 44°08.72' N lat.; 124°54.02' W long.;

(9) 44°06.68' N lat.; 124°54.00' W long.;

(10) 44°05.34' N lat.; 124°53.10' W long.;

(11) 44°02.88' N lat.; 124°53.96' W long.;

(12) 44°02.18' N lat.; 124°54.29' W long.;

(13) 44°00.14' N lat.; 124°55.25' W long.;

(14) 43°58.36' N lat.; 124°55.42' W long.;

(15) 43°57.68' N lat.; 124°55.48' W long.;

(16) 43°56.66' N lat.; 124°55.45' W long.;

(17) 43°56.65' N lat.; 124°55.49' W long.;

(18) 43°56.64' N lat.; 124°56.53' W long.;

(19) 43°56.74' N lat.; 124°56.74' W long.;

(20) 43°59.18' N lat.; 124°56.94' W long.;

(21) 44°00.45' N lat.; 124°56.35' W long.;

(22) 44°02.34' N lat.; 124°55.49' W long.;

(23) 44°04.81' N lat.; 124°55.65' W long.;

(24) 44°06.45' N lat.; 124°55.78' W long.;

(25) 44°08.47' N lat.; 124°55.93' W long.;

(26) 44°09.85' N lat.; 124°56.04' W long.;

(27) 44°11.34' N lat.; 124°56.16' W long.;

(28) 44°12.92' N lat.; 124°56.28' W long.;

(29) 44°14.06' N lat.; 124°55.10' W long.;

(30) 44°15.32' N lat.; 124°53.79' W long.;

(31) 44°16.90' N lat.; 124°52.16' W long.;

(32) 44°16.96' N lat.; 124°52.11' W long.;

(33) 44°16.96' N lat.; 124°51.95' W long.;

(34) 44°17.02' N lat.; 124°48.02' W long.;

(35) 44°17.02' N lat.; 124°47.47' W long.; and connecting back to 44°16.28' N lat.; 124°47.86' W long.

(n) *Point St. George YRCA*. The Point St. George YRCA is an area off the northern California coast, northwest of Point St. George, intended to protect yelloweye rockfish. The Point St. George YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 41°51.00' N lat.; 124°23.75' W long.;

(2) 41°51.00' N lat.; 124°20.75' W long.;

(3) 41°48.00' N lat.; 124°20.75' W long.;

(4) 41°48.00' N lat.; 124°23.75' W long.; and connecting back to 41°51.00' N lat.; 124°23.75' W long.

(o) *South Reef YRCA*. The South Reef YRCA is an area off the northern California coast, southwest of Crescent City, intended to protect yelloweye

rockfish. The South Reef YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

- (1) 41°42.20' N lat., 124°16.00' W long.;
- (2) 41°42.20' N lat., 124°13.80' W long.;
- (3) 41°40.50' N lat., 124°13.80' W long.;
- (4) 41°40.50' N lat., 124°16.00' W long.; and connecting back to 41°42.20' N lat., 124°16.00' W long.

(p) *Reading Rock YRCA*. The Reading Rock YRCA is an area off the northern California coast, between Crescent City and Eureka, intended to protect yelloweye rockfish. The Reading Rock YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

- (1) 41°21.50' N lat., 124°12.00' W long.;
- (2) 41°21.50' N lat., 124°10.00' W long.;
- (3) 41°20.00' N lat., 124°10.00' W long.;
- (4) 41°20.00' N lat., 124°12.00' W long.; and connecting back to 41°21.50' N lat., 124°12.00' W long.

(q) *Point Delgada YRCAs*. The Point Delgada YRCAs are two areas off the northern California coast, south of Point Delgada and Shelter Cove, intended to protect yelloweye rockfish. The Northern Point Delgada YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

- (1) 39°59.00' N lat., 124°05.00' W long.;
- (2) 39°59.00' N lat., 124°03.00' W long.;
- (3) 39°57.00' N lat., 124°03.00' W long.;
- (4) 39°57.00' N lat., 124°05.00' W long.; and connecting back to 39°59.00' N lat., 124°05.00' W long.

(r) *Southern Point Delgada YRCA*. The Southern Point Delgada YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

- (1) 39°57.00' N lat., 124°05.00' W long.;
- (2) 39°57.00' N lat., 124°02.00' W long.;
- (3) 39°54.00' N lat., 124°02.00' W long.;
- (4) 39°54.00' N lat., 124°05.00' W long.; and connecting back to 39°57.00' N lat., 124°05.00' W long.

(s) *Cowcod Conservation Areas*. The Cowcod Conservation Areas (CCAs) are two areas off the southern California coast intended to protect cowcod.

(1) *Western CCA*. The Western CCA is an area south of Point Conception defined by the straight lines connecting the following specific latitude and longitude coordinates in the order listed and connecting back to 33°50.00' N lat., 119°30.00' W long.:

- (i) 33°50.00' N lat., 119°30.00' W long.;
- (ii) 33°50.00' N lat., 118°50.00' W long.;
- (iii) 32°20.00' N lat., 118°50.00' W long.;
- (iv) 32°20.00' N lat., 119°37.00' W long.;
- (v) 33°00.00' N lat., 119°37.00' W long.;
- (vi) 33°00.00' N lat., 119°53.00' W long.;
- (vii) 33°33.00' N lat., 119°53.00' W long.; and
- (viii) 33°33.00' N lat., 119°30.00' W long.

(2) *Transit corridor*. The Western CCA transit corridor is bounded on the north by the latitude line at 33°00.50' N lat., and bounded on the south by the latitude line at 32°59.50' N lat.

(3) *Eastern CCA*. The Eastern CCA is an area west of San Diego defined by the straight lines connecting the following specific latitude and longitude coordinates in the order listed and connecting back to 32°42.00' N lat., 118°02.00' W long.:

- (i) 32°42.00' N lat., 118°02.00' W long.;
- (ii) 32°42.00' N lat., 117°50.00' W long.;
- (iii) 32°36.70' N lat., 117°50.00' W long.;
- (iv) 32°30.00' N lat., 117°53.50' W long.; and
- (v) 32°30.00' N lat., 118°02.00' W long.

(t) *Groundfish Exclusion Areas*. The Groundfish Exclusion Areas (GEAs) are eight areas south of Point Conception intended to protect sensitive areas, including areas with coral and sea pens.

(1) *Hidden Reef*. The Hidden Reef GEA is defined by the straight lines connecting the following specific latitude and longitude coordinates in the order listed and connecting back to 33°46.14' N lat., 119°10.45' W long.:

- (i) 33°46.14' N lat., 119°10.45' W long.;
- (ii) 33°46.14' N lat., 119°05.96' W long.;
- (iii) 33°41.40' N lat., 119°05.96' W long.; and
- (iv) 33°41.40' N lat., 119°10.45' W long.

(2) *West of Santa Barbara Island*. The West of Santa Barbara Island GEA is defined by the straight lines connecting the following specific latitude and longitude coordinates in the order listed

and connecting back to 33°33.64' N lat., 119°18.54' W long.:

- (i) 33°33.64' N lat., 119°18.54' W long.;
- (ii) 33°33.64' N lat., 119°07.57' W long.;
- (iii) 33°27.90' N lat., 119°07.57' W long.; and
- (iv) 33°27.90' N lat., 119°18.54' W long.

(3) *Potato Bank*. The Potato Bank GEA is defined by the straight lines connecting the following specific latitude and longitude coordinates in the order listed and connecting back to 33°21.00' N lat., 119°52.10' W long.:

- (i) 33°21.00' N lat., 119°52.10' W long.;
- (ii) 33°21.00' N lat., 119°45.67' W long.;
- (iii) 33°10.10' N lat., 119°45.67' W long.; and
- (iv) 33°10.10' N lat., 119°52.10' W long.

(4) *107/118 Bank*. The 107/118 Bank GEA is defined by the straight lines connecting the following specific latitude and longitude coordinates in the order listed and connecting back to 33°05.51' N lat., 119°41.29' W long.:

- (i) 33°05.51' N lat., 119°41.29' W long.;
- (ii) 33°08.64' N lat., 119°36.71' W long.;
- (iii) 33°03.50' N lat., 119°31.69' W long.; and
- (iv) 33°00.36' N lat., 119°36.27' W long.

(5) *Cherry Bank*. The Cherry Bank GEA is defined by the straight lines connecting the following specific latitude and longitude coordinates in the order listed and connecting back to 32°50.86' N lat., 119°29.40' W long.:

- (i) 32°50.86' N lat., 119°29.40' W long.;
- (ii) 32°56.96' N lat., 119°19.82' W long.;
- (iii) 32°54.69' N lat., 119°17.78' W long.; and
- (iv) 32°48.59' N lat., 119°27.35' W long.

(6) *Seamount 109*. The Seamount 109 GEA is defined by the straight lines connecting the following specific latitude and longitude coordinates in the order listed and connecting back to 32°43.75' N lat., 119°37.00' W long.:

- (i) 32°43.75' N lat., 119°37.00' W long.;
- (ii) 32°43.75' N lat., 119°34.29' W long.;
- (iii) 32°31.95' N lat., 119°26.94' W long.;
- (iv) 32°30.47' N lat., 119°29.71' W long.; and
- (v) 32°39.54' N lat., 119°37.00' W long.

(7) *43-Fathom Spot*. The 43-Fathom Spot GEA is defined by the straight lines

connecting the following specific latitude and longitude coordinates in the order listed and connecting back to 32°42.00' N lat., 118°00.05' W long.:

(i) 32°42.00' N lat., 118°00.05' W long.;

(ii) 32°42.00' N lat., 117°50.00' W long.;

(iii) 32°36.70' N lat., 117°50.00' W long.;

(iv) 32°36.18' N lat., 117°50.23' W long.; and

(v) 32°36.18' N lat., 118°00.05' W long.

(8) *Northeast Bank*. The Northeast Bank GEA is defined by the straight lines connecting the following specific latitude and longitude coordinates in the order listed and connecting back to 32°27.39' N lat., 119°37.00' W long.:

(i) 32°27.39' N lat., 119°37.00' W long.;

(ii) 32°27.39' N lat., 119°31.60' W long.;

(iii) 32°19.91' N lat., 119°31.60' W long.; and

(iv) 32°19.91' N lat., 119°37.00' W long.

(u) *Farallon Islands*. The Farallon Islands, off San Francisco and San Mateo Counties, include Southeast Farallon Island, Middle Farallon Island, North Farallon Island and Noon Day Rock. Generally, the State of California prohibits fishing for groundfish between the shoreline and the 10-fm (18-m) depth contour around the Farallon Islands.

(v) *Cordell Bank*. Cordell Bank is located offshore of California's Marin County. Generally, fishing for groundfish is prohibited within Cordell Bank as defined by specific latitude and longitude coordinates. The Cordell Bank closed area is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

■ 11. Amend § 660.72 by:

■ a. Redesignating paragraphs (j) through (m) as (r) through (u);

■ b. Redesignating paragraphs (f) through (i) as (j) through (m);

■ c. Adding new paragraphs (f) through (i);

■ d. Adding paragraphs (n) through (q);

■ e. Revising newly redesignated paragraphs (r)(139) through (142) and (186);

■ f. Adding new paragraphs (v) through (y).

The revisions and additions read as follows:

§ 660.72 Latitude/longitude coordinates defining the 50 fm (91 m) through 75 fm (137 m) depth contours.

* * * * *

(f) The 50 fm (91 m) depth contour around Santa Barbara Island off the state

of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°31.77' N lat., 119°3.41' W long.;

(2) 33°29.66' N lat., 119°5.86' W long.;

(3) 33°26.94' N lat., 119°2.95' W long.;

(4) 33°27.08' N lat., 119°0.51' W long.;

(5) 33°28.82' N lat., 118°59.42' W

long.;

(6) 33°30.67' N lat., 119°0.88' W long.;

and

(7) 33°31.77' N lat., 119°3.41' W long.

(g) The 50 fm (91 m) depth contour around Tanner Bank off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 32°45.53' N lat., 119°13.28' W

long.;

(2) 32°43.98' N lat., 119°15.05' W

long.;

(3) 32°38.45' N lat., 119°4.92' W long.;

(4) 32°41.44' N lat., 119°3.71' W long.;

(5) 32°45.02' N lat., 119°11.08' W

long.; and

(6) 32°45.53' N lat., 119°13.28' W

long.

(h) The 50 fm (91 m) depth contour around San Nicholas Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°22.14' N lat., 119°42.12' W

long.;

(2) 33°17.68' N lat., 119°43.24' W

long.;

(3) 33°15.29' N lat., 119°39.32' W

long.;

(4) 33°11.98' N lat., 119°29.64' W

long.;

(5) 33°11.6' N lat., 119°27.26' W long.;

(6) 33°12.99' N lat., 119°16.36' W

long.;

(7) 33°14.43' N lat., 119°17.42' W

long.;

(8) 33°17.2' N lat., 119°23.16' W long.;

(9) 33°20.73' N lat., 119°27.33' W

long.; and

(10) 33°22.14' N lat., 119°42.12' W

long.

(i) The 50 fm (91 m) depth contour around Cortes Bank off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 32°35.89' N lat., 119°18.39' W

long.;

(2) 32°31.93' N lat., 119°20.54' W

long.;

(3) 32°29.47' N lat., 119°14.81' W

long.;

(4) 32°28.14' N lat., 119°14.94' W

long.;

(5) 32°24.37' N lat., 119°3.69' W long.;

(6) 32°24.5' N lat., 119°0.52' W long.;

(7) 32°26.04' N lat., 119°0.46' W long.;

and

(8) 32°35.89' N lat., 119°18.39' W

long.

* * * * *

(n) The 60 fm (110 m) depth contour around Santa Barbara Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°32.34' N lat., 119°3.85' W long.;

(2) 33°28.79' N lat., 119°6.76' W long.;

(3) 33°26.46' N lat., 119°3.12' W long.;

(4) 33°27.08' N lat., 119°0.37' W long.;

(5) 33°28.86' N lat., 118°59.31' W

long.;

(6) 33°30.82' N lat., 119°0.97' W long.;

and

(7) 33°32.34' N lat., 119°3.85' W long.

(o) The 60 fm (91 m) depth contour around Tanner Bank off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 32°45.65' N lat., 119°13.29' W

long.;

(2) 32°44.21' N lat., 119°15.68' W

long.;

(3) 32°37.4' N lat., 119°4.89' W long.;

(4) 32°41.42' N lat., 119°3.32' W long.;

(5) 32°45.66' N lat., 119°12.1' W long.;

and

(6) 32°45.65' N lat., 119°13.29' W

long.

(p) The 60 fm (110 m) depth contour around San Nicholas Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°26.41' N lat., 119°39.84' W

long.;

(2) 33°22.94' N lat., 119°47.34' W

long.;

(3) 33°16.39' N lat., 119°42.64' W

long.;

(4) 33°11.86' N lat., 119°29.61' W

long.;

(5) 33°11.52' N lat., 119°27.25' W

long.;

(6) 33°12.97' N lat., 119°16.3' W long.;

(7) 33°14.48' N lat., 119°17.42' W

long.;

(8) 33°17.23' N lat., 119°23.14' W

long.;

(9) 33°21.21' N lat., 119°27.84' W

long.;

(10) 33°22.65' N lat., 119°34.31' W

long.; and

(11) 33°26.41' N lat., 119°39.84' W

long.

(q) The 60 fm (110 m) depth contour around Cortes Bank off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 32°36.79' N lat., 119°18.81' W

long.;

(2) 32°31.94' N lat., 119°20.75' W

long.;

(3) 32°29.5' N lat., 119°15' W long.;

(4) 32°27.95' N lat., 119°15.12' W

long.;

(5) 32°24.03' N lat., 119°3.72' W long.;

(6) 32°24.46' N lat., 118°59.56' W

long.;

(7) 32°25.42' N lat., 118°59.42' W long.;
(8) 32°27.41' N lat., 119°1.99' W long.;
and

(9) 32°36.79' N lat., 119°18.81' W long.

(r) * * *

(139) 38°04.16' N lat., 123°19.05' W long.;

(140) 38°03.18' N lat., 123°20.77' W long.;

(141) 38°00.00' N lat., 123°23.08' W long.;

(142) 37°55.07' N lat., 123°26.81' W long.;

* * * * *

(186) 36°10.28' N lat., 121°43.06' W long.;

* * * * *

(v) The 75 fm (137 m) depth contour around Santa Barbara Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°33.58' N lat., 119°4.84' W long.;
(2) 33°33.2' N lat., 119°5.37' W long.;
(3) 33°31.75' N lat., 119°4.61' W long.;
(4) 33°28.67' N lat., 119°7.06' W long.;
(5) 33°26.38' N lat., 119°3.24' W long.;
(6) 33°27.08' N lat., 119°0.26' W long.;
(7) 33°28.85' N lat., 118°59.21' W long.;

(8) 33°30.85' N lat., 119°0.94' W long.;

(9) 33°31.91' N lat., 119°2.98' W long.;

and
(10) 33°33.58' N lat., 119°4.84' W long.

(w) The 75 fm (137 m) depth contour around Tanner Bank off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 32°45.66' N lat., 119°14.45' W long.;

(2) 32°44.19' N lat., 119°15.9' W long.;

(3) 32°37.02' N lat., 119°4.65' W long.;

(4) 32°41.45' N lat., 119°3.14' W long.;

(5) 32°45.77' N lat., 119°11.93' W long.;

and
(6) 32°45.66' N lat., 119°14.45' W long.

(x) The 75 fm (137 m) depth contour around San Nicholas Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°30.94' N lat., 119°45.06' W long.;

(2) 33°28.59' N lat., 119°52.02' W long.;

(3) 33°16.05' N lat., 119°43.86' W long.;

(4) 33°15.2' N lat., 119°39.36' W long.;

(5) 33°11.71' N lat., 119°29.48' W long.;

(6) 33°11.39' N lat., 119°26.58' W long.;

(7) 33°12.96' N lat., 119°16.23' W long.;

(8) 33°14.52' N lat., 119°17.42' W long.;

(9) 33°17.24' N lat., 119°23.09' W long.;

(10) 33°21.24' N lat., 119°27.83' W long.;

(11) 33°22.71' N lat., 119°33.54' W long.;

and
(12) 33°30.94' N lat., 119°45.06' W long.

(y) The 75 fm (137 m) depth contour around Cortes Bank off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 32°37.38' N lat., 119°19.45' W long.;

(2) 32°31.9' N lat., 119°20.9' W long.;

(3) 32°29.52' N lat., 119°15.94' W long.;

(4) 32°29.64' N lat., 119°15.4' W long.;

(5) 32°29.24' N lat., 119°15.09' W long.;

(6) 32°27.82' N lat., 119°15.3' W long.;

(7) 32°23.85' N lat., 119°3.95' W long.;

(8) 32°24.53' N lat., 118°58.2' W long.;

(9) 32°27.1' N lat., 119°1.2' W long.;

and
(10) 32°37.38' N lat., 119°19.45' W long.

* * * * *

■ 12. Amend § 660.73 by:

■ a. Redesignating paragraphs (i) through (m) as (p) through (t);

■ b. Redesignating paragraphs (e) through (h) as (i) through (l);

■ c. Adding new paragraphs (e) through (h);

■ d. Adding new paragraphs (m) through (o); and

■ e. Adding new paragraphs (u) through (y).

The revisions and additions read as follows:

■ 12. Amend § 660.73 by:

■ a. Redesignating paragraphs (i) through (m) as (p) through (t);

■ b. Redesignating paragraphs (e) through (h) as (i) through (l);

■ c. Adding new paragraphs (e) through (h);

■ d. Adding new paragraphs (m) through (o); and

■ e. Adding new paragraphs (u) through (y).

The revisions and additions read as follows:

■ 12. Amend § 660.73 by:

■ a. Redesignating paragraphs (i) through (m) as (p) through (t);

■ b. Redesignating paragraphs (e) through (h) as (i) through (l);

■ c. Adding new paragraphs (e) through (h);

■ d. Adding new paragraphs (m) through (o); and

■ e. Adding new paragraphs (u) through (y).

California is defined by straight lines connecting all of the following points in the order stated:

(1) 32°45.92' N lat., 119°14.6' W long.;

(2) 32°44.34' N lat., 119°16.43' W long.;

(3) 32°36.75' N lat., 119°4.51' W long.;

(4) 32°41.41' N lat., 119°2.93' W long.;

(5) 32°45.85' N lat., 119°10.62' W long.;

and
(6) 32°45.92' N lat., 119°14.6' W long.

(g) The 100 fm (183 m) depth contour around San Nicholas Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°31.37' N lat., 119°44.84' W long.;

(2) 33°28.82' N lat., 119°52.19' W long.;

(3) 33°25.43' N lat., 119°51.27' W long.;

(4) 33°18.01' N lat., 119°47.18' W long.;

(5) 33°15.8' N lat., 119°43.64' W long.;

(6) 33°14.22' N lat., 119°37' W long.;

(7) 33°11.56' N lat., 119°29.58' W long.;

(8) 33°11.28' N lat., 119°26.54' W long.;

(9) 33°12.94' N lat., 119°15.86' W long.;

(10) 33°14.48' N lat., 119°16.97' W long.;

(11) 33°17.33' N lat., 119°22.93' W long.;

(12) 33°21.28' N lat., 119°27.66' W long.;

(13) 33°23.38' N lat., 119°33.29' W long.;

and
(14) 33°31.37' N lat., 119°44.84' W long.

(h) The 100 fm (183 m) depth contour around Cortes Bank off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 32°37.79' N lat., 119°19.68' W long.;

(2) 32°36.19' N lat., 119°21.84' W long.;

(3) 32°33.16' N lat., 119°21.76' W long.;

(4) 32°30.92' N lat., 119°20.46' W long.;

(5) 32°29.25' N lat., 119°15.93' W long.;

(6) 32°29.44' N lat., 119°15.44' W long.;

(7) 32°29.23' N lat., 119°15.23' W long.;

(8) 32°27.48' N lat., 119°15.56' W long.;

(9) 32°23.19' N lat., 119°3.23' W long.;

(10) 32°22.94' N lat., 118°57.58' W long.;

(11) 32°24.47' N lat., 118°57.61' W long.;

(12) 32°27.3' N lat., 119°1.06' W long.;

and

(13) 32°37.79' N lat., 119°19.68' W long.

* * * * *

(m) The 125 fm (229 m) depth contour around Santa Barbara Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°33.96' N lat., 119°4.88' W long.;
 (2) 33°33.28' N lat., 119°5.88' W long.;
 (3) 33°30.98' N lat., 119°6.32' W long.;
 (4) 33°28.52' N lat., 119°7.7' W long.;
 (5) 33°26.93' N lat., 119°5.94' W long.;
 (6) 33°25.96' N lat., 119°3.34' W long.;
 (7) 33°27.01' N lat., 118°59.73' W

long.;

(8) 33°28.68' N lat., 118°58.43' W

long.;

(9) 33°31.2' N lat., 119°1.09' W long.;

(10) 33°32.04' N lat., 119°2.77' W

long.; and

(11) 33°33.96' N lat., 119°4.88' W

long.

(n) The 125 fm (229 m) depth contour around Tanner Bank and Cortes Bank off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 32°46.01' N lat., 119°14.63' W

long.;

(2) 32°44.35' N lat., 119°16.58' W

long.;

(3) 32°40.85' N lat., 119°11.61' W

long.;

(4) 32°38.93' N lat., 119°11.9' W long.;

(5) 32°41.32' N lat., 119°18.11' W

long.;

(6) 32°36.16' N lat., 119°22.16' W

long.;

(7) 32°33.09' N lat., 119°21.89' W

long.;

(8) 32°30.73' N lat., 119°20.43' W

long.;

(9) 32°28.94' N lat., 119°15.4' W long.;

(10) 32°27.46' N lat., 119°15.62' W

long.;

(11) 32°24.58' N lat., 119°9.83' W

long.;

(12) 32°22.97' N lat., 119°3' W long.;

(13) 32°22.03' N lat., 118°56.26' W

long.;

(14) 32°24.63' N lat., 118°57.54' W

long.;

(15) 32°34.72' N lat., 119°10.24' W

long.;

(16) 32°37.93' N lat., 119°7.88' W

long.;

(17) 32°36.55' N lat., 119°4.42' W

long.;

(18) 32°41.5' N lat., 119°2.65' W long.;

(19) 32°45.98' N lat., 119°10.71' W

long.; and

(20) 32°46.01' N lat., 119°14.63' W

long.

(o) The 125 fm (229 m) depth contour around San Nicholas Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°31.65' N lat., 119°44.84' W long.;

(2) 33°28.91' N lat., 119°52.35' W

long.;

(3) 33°25.39' N lat., 119°51.44' W

long.;

(4) 33°17.94' N lat., 119°47.31' W

long.;

(5) 33°15.33' N lat., 119°43.4' W long.;

(6) 33°14.03' N lat., 119°37.02' W

long.;

(7) 33°11.49' N lat., 119°29.58' W

long.;

(8) 33°11.21' N lat., 119°26.46' W

long.;

(9) 33°12.9' N lat., 119°15.74' W long.;

(10) 33°14.51' N lat., 119°14.92' W

long.;

(11) 33°14.76' N lat., 119°17.07' W

long.;

(12) 33°17.44' N lat., 119°22.82' W

long.;

(13) 33°21.37' N lat., 119°27.53' W

long.;

(14) 33°23.44' N lat., 119°33.11' W

long.; and

(15) 33°31.65' N lat., 119°44.84' W

long.

* * * * *

(u) The 150 fm (274 m) depth contour around Santa Barbara Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°34.6' N lat., 119°4.57' W long.;

(2) 33°33.13' N lat., 119°6.65' W long.;

(3) 33°28.13' N lat., 119°8.17' W long.;

(4) 33°25.55' N lat., 119°3.64' W long.;

(5) 33°26.96' N lat., 118°59.58' W

long.;

(6) 33°28.68' N lat., 118°58.24' W

long.; and

(7) 33°34.6' N lat., 119°4.57' W long.;

(v) The 150 fm (274 m) depth contour around Tanner Bank and Cortes Bank off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 32°46.12' N lat., 119°14.73' W

long.;

(2) 32°44.37' N lat., 119°16.82' W

long.;

(3) 32°41.02' N lat., 119°12.01' W

long.;

(4) 32°39.28' N lat., 119°12.18' W

long.;

(5) 32°41.46' N lat., 119°18.28' W

long.;

(6) 32°36.17' N lat., 119°22.31' W

long.;

(7) 32°32.97' N lat., 119°22' W long.;

(8) 32°30.57' N lat., 119°20.54' W

long.;

(9) 32°28.94' N lat., 119°15.53' W

long.;

(10) 32°27.45' N lat., 119°15.79' W

long.;

(11) 32°24.86' N lat., 119°12.93' W

long.;

(12) 32°21.43' N lat., 118°55.1' W long.;

(13) 32°24.67' N lat., 118°57.37' W

long.;

(14) 32°34.34' N lat., 119°9.28' W

long.;

(15) 32°37.39' N lat., 119°7.54' W

long.;

(16) 32°36.38' N lat., 119°4.32' W

long.;

(17) 32°41.59' N lat., 119°2.46' W

long.;

(18) 32°46.07' N lat., 119°10.68' W

long.; and

(19) 32°46.12' N lat., 119°14.73' W

long.

(w) The 150 fm (274 m) depth contour around San Nicholas Island off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°33.22' N lat., 119°46.7' W long.;

(2) 33°28.97' N lat., 119°53.04' W

long.;

(3) 33°24.67' N lat., 119°51.27' W

long.;

(4) 33°19.95' N lat., 119°50.23' W

long.;

(5) 33°13.07' N lat., 119°41.99' W

long.;

(6) 33°13.1' N lat., 119°34.66' W long.;

(7) 33°11.45' N lat., 119°29.57' W

long.;

(8) 33°11.13' N lat., 119°26.22' W

long.;

(9) 33°11.8' N lat., 119°20.64' W long.;

(10) 33°12.91' N lat., 119°15.53' W

long.;

(11) 33°14.52' N lat., 119°14.72' W

long.;

(12) 33°15.32' N lat., 119°16.01' W

long.;

(13) 33°14.78' N lat., 119°16.97' W

long.;

(14) 33°15.73' N lat., 119°19.02' W

long.;

(15) 33°16.73' N lat., 119°18.97' W

long.;

(16) 33°19.37' N lat., 119°24.95' W

long.;

(17) 33°21.69' N lat., 119°27.44' W

long.;

(18) 33°23.82' N lat., 119°32.87' W

long.; and

(19) 33°33.22' N lat., 119°46.7' W

long.

(x) The 150 fm (274 m) depth contour around Osborn Bank off the state of California is defined by straight lines connecting all of the following points in the order stated:

(1) 33°23.53' N lat., 119°3.73' W long.;

(2) 33°23.57' N lat., 119°6.66' W long.;

(3) 33°23.12' N lat., 119°7.25' W long.;

(4) 33°20.51' N lat., 119°2.15' W long.;

(5) 33°20.58' N lat., 119°0.48' W long.;

(6) 33°21.32' N lat., 118°59.89' W

long.; and

(7) 33°23.53' N lat., 119°3.73' W long.

(y) The 150 fm (274 m) depth contour around the Eastern CCA area off the state of California is defined by straight lines connecting all of the following points in the order stated:

- (1) 32°41.41' N lat., 117°59.05' W long.;
- (2) 32°40.57' N lat., 118°1.97' W long.;
- (3) 32°40.04' N lat., 118°1.23' W long.;
- (4) 32°39.82' N lat., 118°0.03' W long.;
- (5) 32°38.02' N lat., 117°57.86' W long.;
- (6) 32°35.38' N lat., 117°56.23' W long.;
- (7) 32°36.68' N lat., 117°55.02' W long.;
- (8) 32°40.42' N lat., 117°57.15' W long.; and
- (9) 32°41.41' N lat., 117°59.05' W long.

■ 13. Amend § 660.78 by:

- a. Redesignating paragraphs (p) through (r) as paragraphs (s) through (u);
- b. Redesignating paragraph (o) as paragraph (q);
- c. Redesignating paragraphs (f) through (n) as paragraphs (g) through (o);
- d. Adding new paragraph (f);
- e. Adding new paragraph (p); and
- f. Adding new paragraph (r).

The revisions and additions read as follows:

§ 660.78 EFHCAs off the Coast of Oregon.

* * * * *

(f) *Nehalem Bank East*. The boundary of the Nehalem Bank East EFHCA is defined by straight lines connecting all of the following points in the order stated and connecting back to 45°47.95' N lat., 124°31.70' W long.:

- (1) 45°47.95' N lat., 124°31.70' W long.;
- (2) 45°52.28' N lat., 124°38.46' W long.;
- (3) 45°56.45' N lat., 124°38.00' W long.;
- (4) 45°58.33' N lat., 124°38.75' W long.;
- (5) 46°00.83' N lat., 124°36.78' W long.;
- (6) 45°59.94' N lat., 124°34.63' W long.;
- (7) 45°58.90' N lat., 124°33.47' W long.;
- (8) 45°54.27' N lat., 124°30.73' W long.;
- (9) 45°53.62' N lat., 124°30.83' W long.;
- (10) 45°52.90' N lat., 124°30.67' W long.;
- (11) 45°52.03' N lat., 124°30.60' W long.;
- (12) 45°51.75' N lat., 124°30.85' W long.; and
- (13) 45°51.53' N lat., 124°31.15' W long.

* * * * *

(p) *Arago Reef West*. The boundary of the Arago Reef West EFHCA is defined by straight lines connecting all of the following points in the order stated and connecting back to 43°16.24' N lat., 124°27.66' W long.:

- (1) 43°16.24' N lat., 124°27.66' W long.;
- (2) 43°14.23' N lat., 124°29.28' W long.;
- (3) 43°14.03' N lat., 124°28.31' W long.;
- (4) 43°11.92' N lat., 124°28.26' W long.;
- (5) 43°11.02' N lat., 124°29.11' W long.;
- (6) 43°10.13' N lat., 124°29.15' W long.;
- (7) 43°09.26' N lat., 124°31.03' W long.;
- (8) 43°08.60' N lat., 124°30.98' W long.;
- (9) 43°10.22' N lat., 124°37.82' W long.;
- (10) 43°16.91' N lat., 124°37.50' W long.;
- (11) 43°16.51' N lat., 124°28.97' W long.;
- (12) 43°16.88' N lat., 124°28.16' W long.; and
- (13) 43°16.24' N lat., 124°27.66' W long.

* * * * *

(r) *Bandon High Spot East*. The boundary of the Bandon High Spot East EFHCA is defined by straight lines connecting all of the following points in the order stated and connecting back to 42°57.18' N lat., 124°46.01' W long.:

- (1) 42°57.18' N lat., 124°46.01' W long.;
- (2) 42°56.10' N lat., 124°47.48' W long.;
- (3) 42°56.66' N lat., 124°48.79' W long.;
- (4) 42°55.02' N lat., 124°50.45' W long.;
- (5) 42°55.70' N lat., 124°52.79' W long.;
- (6) 43°03.91' N lat., 124°50.81' W long.;
- (7) 43°03.70' N lat., 124°47.91' W long.;
- (8) 43°03.20' N lat., 124°47.52' W long.;
- (9) 43°00.94' N lat., 124°46.57' W long.; and
- (10) 42°57.18' N lat., 124°46.01' W long.

* * * * *

■ 14. In § 660.79, revise paragraphs (yy) introductory text and (zz) introductory text to read as follows:

§ 660.79 EHFCAs off the Coast of California.

* * * * *

(yy) *Potato Bank*. The boundary of the Potato Bank EFHCA is defined by

straight lines connecting all of the following points in the order stated and connecting back to 33°11.00' N lat., 119°55.67' W long.:

* * * * *

(zz) *Cherry Bank*. The Cherry Bank EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated and connecting back to 32°59.00' N lat., 119°32.05' W long.:

* * * * *

Subpart D [Amended]

■ 15. In subpart D of part 660, revise all references to “Cordell Banks” to read “Cordell Bank”.

Subpart E [Amended]

■ 16. In subpart E of part 660, revise all references to “Cordell Banks” to read “Cordell Bank”.

■ 17. In § 660.212, add paragraph (c)(3) to read as follows:

§ 660.212 Fixed gear fishery—prohibitions.

* * * * *

(c) * * *

(3) Fish inside the nontrawl RCA with any gear type other than those specified at § 660.230(b)(6). In addition, a vessel may not carry more than one gear type as specified at § 660.230(b)(6) on board while declared to fish inside the nontrawl RCA (see § 660.13(d)(4)(iv)(A) for valid declarations for use inside the nontrawl RCA).

* * * * *

■ 18. Amend § 660.230 by:

- a. Revising paragraph (a);
- b. Adding paragraph (b)(6);
- c. Revising paragraphs (d)(5) through (13); and
- d. Adding new paragraphs (d)(14) through (17).

The additions and revisions read as follows:

§ 660.230 Fixed gear fishery—management measures.

(a) *General*. Most species taken in limited entry fixed gear (longline and pot/trap) fisheries will be managed with cumulative trip limits (see trip limits in Tables 2 (North) and 2 (South) of this subpart), size limits (see § 660.60(h)(5)), seasons (see trip limits in Tables 2 (North) and 2 (South) of this subpart and sablefish primary season details in § 660.231), gear restrictions (see paragraph (b) of this section), and closed areas (see paragraph (d) of this section and §§ 660.70 through 660.79). Cowcod retention is prohibited in all fisheries, and groundfish vessels operating south of Point Conception must adhere to GEA restrictions (see paragraph (d)(17) of this section and § 660.70). Yelloweye

rockfish retention is prohibited in the limited entry fixed gear fisheries. Regulations governing tier limits for the limited entry, fixed gear sablefish primary season north of 36° N lat. are found in § 660.231. Vessels not participating in the sablefish primary season are subject to daily or weekly sablefish limits in addition to cumulative limits for each cumulative limit period. Only one sablefish landing per week may be made in excess of the daily trip limit and, if the vessel chooses to make a landing in excess of that daily trip limit, then that is the only sablefish landing permitted for that week. The trip limit for black rockfish caught with hook-and-line gear also applies, see § 660.230(e). The trip limits in Table 2 (North) and Table 2 (South) of this subpart apply to vessels participating in the limited entry groundfish fixed gear fishery and may not be exceeded.

(b) * * *

(6) Gear for use in the Nontrawl RCA. Inside the nontrawl RCA, only legal non-bottom contact hook-and-line gear configurations may be used for target fishing for groundfish by vessels that participate in the limited entry fixed gear sector as defined at § 660.11. On a fishing trip where any fishing will occur inside the nontrawl RCA, only one type of legal non-bottom contact gear may be carried on board, and no other fishing gear of any type may be carried on board or stowed during that trip. The vessel may fish inside and outside the nontrawl RCA on the same fishing trip, provided a valid declaration report as required at § 660.13(d) has been filed with NMFS OLE. Legal non-bottom contact hook-and-line gear means stationary vertical jig gear not anchored to the bottom and groundfish troll gear, subject to the specifications in paragraphs (b)(6)(i) and (ii) of this section.

(i) *Stationary vertical jig gear.* The following requirements apply to stationary vertical jig gear:

(A) Must be a minimum of 30 feet between the bottom weight and the lowest fishing hook;

(B) No more than 4 vertical mainlines attached to or fished from the vessel (e.g., rod and reel) may be used in the water at one time with no more than 25 hooks on each mainline;

(C) No more than 100 hooks may be in the water at one time, with no more than 25 extra hooks on board the vessel.

(ii) *Groundfish troll gear.* The following requirements apply to groundfish troll gear:

(A) Must be a minimum of 50 feet between the bottom weight and the troll wire's connection to the horizontal mainline;

(B) No more than one mainline attached to or fished from the vessel may be used in the water at one time;

(C) No more than 500 hooks may be in the water at one time, with no more than 25 extra hooks on board the vessel;

(D) Hooks must be spaced apart by a visible maker (e.g., floats, line wraps, colored line splices), with no more than 25 hooks between each marker and no more than 20 markers on the mainline; and

(E) Natural bait or weighted hooks may not be used nor be on board the vessel. Artificial lures and bait are permitted.

* * * * *

(d) * * *

(5) *Tillamook YRCA.* The latitude and longitude coordinates that define the Tillamook YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Tillamook YRCA on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Tillamook YRCA on dates when the closure is in effect. The closure is not in effect at this time. This closure may be implemented through inseason adjustment. Limited entry fixed gear vessels may transit through the Tillamook YRCA at any time, with or without groundfish on board.

(6) *Newport YRCA.* The latitude and longitude coordinates that define the Newport YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Newport YRCA on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Newport YRCA on dates when the closure is in effect. The closure is not in effect at this time. This closure may be implemented through inseason adjustment. Limited entry fixed gear vessels may transit through the Newport YRCA at any time, with or without groundfish on board.

(7) *Florence YRCA.* The latitude and longitude coordinates that define the Florence YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Florence YRCA on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Florence YRCA on dates when the closure is in effect. The closure is not in effect at this time. This closure may be implemented through inseason adjustment. Limited entry fixed gear vessels may transit

through the Florence YRCA at any time, with or without groundfish on board.

(8) *Heceta Bank YRCA.* The latitude and longitude coordinates that define the Heceta Bank YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Heceta Bank YRCA on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Heceta Bank YRCA on dates when the closure is in effect. The closure is currently in effect. This closure may be modified through inseason adjustment. Limited entry fixed gear vessels may transit through the Heceta Bank YRCA at any time, with or without groundfish on board.

(9) *Point St. George YRCA.* The latitude and longitude coordinates of the Point St. George YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Point St. George YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point St. George YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Point St. George YRCA, at any time, with or without groundfish on board.

(10) *South Reef YRCA.* The latitude and longitude coordinates of the South Reef YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the South Reef YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the South Reef YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the South Reef YRCA, at any time, with or without groundfish on board.

(11) *Reading Rock YRCA.* The latitude and longitude coordinates of the Reading Rock YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Reading Rock YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Reading Rock YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be

imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Reading Rock YRCA, at any time, with or without groundfish on board.

(12) *Point Delgada (North) YRCA*. The latitude and longitude coordinates of the Point Delgada (North) YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Point Delgada (North) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point Delgada (North) YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Point Delgada (North) YRCA, at any time, with or without groundfish on board.

(13) *Point Delgada (South) YRCA*. The latitude and longitude coordinates of the Point Delgada (South) YRCA boundaries are specified at § 660.70, subpart C. Fishing with limited entry fixed gear is prohibited within the Point Delgada (South) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the Point Delgada (South) YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Limited entry fixed gear vessels may transit through the Point Delgada (South) YRCA, at any time, with or without groundfish on board.

(14) *Nontrawl Rockfish Conservation Area (RCA)*. The nontrawl RCA is defined at § 660.11 and with latitude and longitude coordinates, at §§ 660.71 through 660.74, where fishing for groundfish with nontrawl gear is prohibited. Boundaries for the nontrawl RCA throughout the year are provided in the header to Table 2 (North) and

Table 2 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.60(c).

(i) It is unlawful to operate a vessel with limited entry nontrawl gear in the nontrawl RCA, except for the purpose of continuous transit, or when the use of limited entry nontrawl gear is authorized in this section. It is unlawful to take and retain, possess, or land groundfish taken with limited entry nontrawl gear within the nontrawl RCA, unless otherwise authorized in this section.

(ii) Limited entry nontrawl vessels may transit through the nontrawl RCA, with or without groundfish on board, provided all groundfish nontrawl gear is stowed either: Below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all lines, so that it is rendered unusable for fishing.

(iii) The nontrawl RCA restrictions in this section apply to vessels registered to limited entry fixed gear permits fishing for species other than groundfish with nontrawl gear on trips where groundfish species are retained. Unless otherwise authorized in this section, a vessel may not retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the nontrawl RCA. If a vessel fishes in a non-groundfish fishery in the nontrawl RCA, it may not participate in any fishing for groundfish on that trip that is prohibited within the nontrawl RCA. [For example, if a vessel fishes in the salmon troll fishery within the RCA, the vessel cannot on the same trip fish in the sablefish fishery outside of the RCA.]

(iv) It is lawful to fish within the nontrawl RCA with limited entry fixed gear using hook and line gear only when trip limits authorize such fishing, and provided a valid declaration report as required at § 660.13(d), subpart C, has been filed with NMFS OLE.

(v) It is lawful to fish within the nontrawl RCA under the limited entry fixed gear trip limits specified in Table

2 (North) and Table 2 (South) of this subpart only when using the non-bottom contact hook-and-line gear types described at § 660.230(b)(6), and provided a valid declaration report as required at § 660.13(d), subpart C, has been filed with NMFS OLE.

(15) *Farallon Islands*. Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10 fm (18 m) depth contour around the Farallon Islands. An exception to this prohibition is that commercial fishing for “other flatfish” is allowed around the Farallon Islands using hook and line gear only. (See Table 2 (South) of this subpart.) For a definition of the Farallon Islands, see § 660.70, subpart C.

(16) *Cordell Bank*. Commercial fishing for groundfish is prohibited in waters of depths less than 100 fm (183 m) around Cordell Bank, as defined by specific latitude and longitude coordinates at § 660.70, subpart C. An exception to this prohibition is that commercial fishing for “other flatfish” is allowed around Cordell Bank using hook and line gear only.

(17) *Groundfish exclusion areas (GEAs)*. The GEAs are closed areas in the Southern California Bight, defined by specific latitude and longitude coordinates (specified at § 660.70) where commercial and recreational fishing for groundfish is prohibited. It is unlawful to fish for, take and retain, possess (except for the purpose of continuous transit) or land groundfish within the GEAs. All fishing gear for targeting groundfish must be stowed while transiting through a GEA. If fishing for non-groundfish species within a GEA, then no groundfish may be on board the vessel.

* * * * *

■ 19. In § 660 Subpart E, revise Table 2 North and Table 2 South to read as follows:

Section 660 Subpart E Table 2 North and Table 2 South

Table 2 (North) to Part 660, Subpart E – Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.

Other limits and requirements apply – Read §§660.10 through 660.399 before using this table

1/1/2024

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)^{1/}:							
1	North of 46°16' N. lat.	EEZ - 100 fm line ^{1/}					
2	46°16' N. lat. - 40°10' N. lat.	30 fm line ^{1/} - 75 fm line ^{1/}					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Bank, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
3	Minor Slope Rockfish ^{2/} & Darkblotched rockfish	8,000 lb/ 2 months					
4	Pacific ocean perch	3,600 lb/ 2 months					
5	Sablefish	2,400 lb/ week, not to exceed 4,800 lb /2 months					
6	Longspine thornyhead	10,000 lb/ 2 months					
7	Shortspine thornyhead	2,000 lb/ 2 months			2,500 lb/ 2 months		
8	Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish ^{3/ 7/}	10,000 lb/ month					
11	Whiting	10,000 lb/ trip					
12	Minor Shelf Rockfish ^{2/}	800 lb/ month					
13	Widow rockfish	4,000 lb/ 2 months					
14	Yellowtail rockfish	3,000 lb/ month					
15	Canary rockfish	3,000 lb/ 2 months					
16	Yelloweye rockfish	CLOSED					
17	Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish, & black rockfish ^{4/}	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish ^{3/}					
18	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish ^{3/}					
19	42°00' N. lat. - 40°10' N. lat. Minor Nearshore Rockfish	2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
20	42°00' N. lat. - 40°10' N. lat. Black Rockfish	7,000 lb/ 2 months					
21	Lingcod ^{5/}						
22	North of 42°00' N. lat.	5,000 lb/ 2 months					
23	42°00' N. lat. - 40°10' N. lat.	2,000 lb/ 2 months					
24	Pacific cod	1,000 lb/ 2 months					
25	Spiny dogfish	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months			
26	Longnose skate	Unlimited					
27	Other Fish ^{6/} & Cabezon in California	Unlimited					
28	Oregon Cabezon/Kelp Greenling	Unlimited					
29	Big skate	Unlimited					

TABLE 2 (North)

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting. LEFG vessels may be allowed to fish inside groundfish conservation areas using non-bottom contact hook and line only. See § 660.230 (d) of the regulations for more information.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 22 inches (56 cm) total length South of 42° N. lat.

6/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 2 (South) to Part 660, Subpart E – Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N.
Other limits and requirements apply – Read §§660.10 through 660.399 before using this table 1/1/2024

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)^{1/}:						
1 40°10' N. lat. - 38°57.5' N. lat.	40 fm line ^{1/} - 75 fm line ^{1/}					
2 38°57.5' N. lat. - 34°27' N. lat.	50 fm line ^{1/} - 75 fm line ^{1/}					
3 South of 34°27' N. lat.	100 fm line ^{1/} - 150 fm line ^{1/} (also applies around islands)					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Bank, and EFHCAs).						
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4 Minor Slope rockfish^{2/} & Darkblotched rockfish	40,000 lb/ 2 months, of which no more than 6,000 lb may be blackgill rockfish					
5 Splitnose rockfish	40,000 lb/ 2 months					
6 Sablefish						
7 40°10' N. lat. - 36°00' N. lat.	2,400 lb/ week, not to exceed 4,800 lb/ 2 months					
8 South of 36°00' N. lat.	2,500 lb/ week					
9 Longspine thornyhead	10,000 lb/ 2 months					
10 Shortspine thornyhead						
11 40°10' N. lat. - 34°27' N. lat.	2,000 lb/ 2 months			2,500 lb/ 2 months		
12 South of 34°27' N. lat.	3,000 lb/ 2 months					
13 Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish^{3/4/}	10,000 lb/ month					
16 Whiting	10,000 lb/ trip					
17 Minor Shelf Rockfish^{2/}						
18 40°10' N. lat. - 34°27' N. lat.	8,000 lb/ 2 months, of which no more than 500 lb may be vermilion					
19 South of 34°27' N. lat.	5,000 lb/ 2 months, of which no more than 3,000 lb may be vermilion					
20 Widow						
21 40°10' N. lat. - 34°27' N. lat.	10,000 lb/ 2 months					
22 South of 34°27' N. lat.	8,000 lb/ 2 months					
23 Chilipepper						
24 40°10' N. lat. - 34°27' N. lat.	10,000 lb. / 2 months					
25 South of 34°27' N. lat.	8,000 lb. / 2 months					
26 Canary rockfish	3,500 lb/ 2 months					
27 Yelloweye rockfish	CLOSED					
28 Cowcod	CLOSED					
29 Bronzespotted rockfish	CLOSED					
30 Bocaccio	8,000 lb/ 2 months					
31 Minor Nearshore Rockfish						
32 Shallow nearshore ^{4/}	2,000 lb/ 2 months					
33 Deeper nearshore ^{5/}	2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
34 California Scorpionfish	3,500 lb/ 2 months					
35 Lingcod^{6/}	1,600 lb / 2 months					
36 Pacific cod	1,000 lb/ 2 months					
37 Spiny dogfish	200,000 lb/ 2 months	150,000 lb/ 2 months		100,000 lb/ 2 months		
38 Longnose skate	Unlimited					
39 Other Fish^{7/} & Cabezon in California	Unlimited					
40 Big Skate	Unlimited					

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting. LEFG vessels may be allowed to fish inside groundfish conservation areas using non-bottom contact hook and line only. See § 660.230 (d) of the regulations for more information.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Pacific ocean perch is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(1).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(2).

6/ The commercial minimum size limit for lingcod is 22 inches (56 cm) total length South of 42° N. lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Subpart F [Amended]

■ 20. In subpart F of part 660, revise all references to "Cordell Banks" to read "Cordell Bank".

■ 21. In § 660.312, revise paragraph (d)(7) and add paragraph (d)(8) to read as follows:

§ 660.31 2 Open access fishery—prohibitions.

* * * * *

(d) * * *

(7) Fish with bottom trawl gear (defined at § 660.11), other than demersal seine, unless otherwise specified in this section or § 660.330, within the EEZ in the following EFHCAs (defined at § 660.79): Brush Patch, Trinidad Canyon, Mad River

Rough Patch, Samoa Deepwater, Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Navarro Canyon, Point Arena North, Point Arena South Biogenic Area, the Football, Gobbler's Knob, Point Reyes Reef, Cordell Bank/Biogenic Area, Rittenburg Bank, Farallon Islands/Fanny Shoal/Cochrane Bank, Farallon Escarpment, Half Moon Bay, Pescadero Reef, Pigeon Point Reef, Ascension

Canyonhead, South of Davenport, Monterey Bay/Canyon, West of Sobranes Point, Point Sur Deep, Big Sur Coast/Port San Luis, La Cruz Canyon, West of Piedras Blancas State Marine Conservation Area, East San Lucia Bank, Point Conception, Hidden Reef/Kidney Bank, Catalina Island, Potato Bank, Cherry Bank, Cowcod EFHCA East, and Southern California EFT.

(8) Fish inside the nontrawl RCA with any gear type other than those specified at § 660.330(b)(3). In addition, a vessel may not carry more than one gear type as specified at § 660.330(b)(3) on board while declared to fish inside the nontrawl RCA (see § 660.13(d)(4)(iv)(A) for valid declarations for use inside the nontrawl RCA).

■ 22. Amend § 660.330 by:

■ a. Revising paragraph (a);

■ b. Revising paragraph (b)(3) introductory text;

■ c. Revising paragraph (b)(3)(i)(A) and (B);

■ d. Removing paragraph (b)(3)(i)(D);

■ e. Revising paragraph (b)(3)(ii)(B);

■ f. Revising paragraphs (d)(5) through (15); and

■ g. Adding new paragraphs (d)(16) through (19).

The revisions and additions read as follows:

§ 660.330 Open access fishery—management measures.

(a) *General.* Groundfish species taken in open access fisheries will be managed with cumulative trip limits (see trip limits in Tables 3 (North) and 3 (South) of this subpart), size limits (see § 660.60(h)(5)), seasons (see seasons in Tables 3 (North) and 3 (South) of this subpart), gear restrictions (see paragraph (b) of this section), and closed areas (see paragraph (d) of this section and §§ 660.70 through 660.79). Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery. Cowcod retention is prohibited in all fisheries, and groundfish vessels operating south of Point Conception must adhere to GEA restrictions (see paragraph (d)(15) of this section and § 660.70). Retention of yelloweye rockfish is prohibited in all open access fisheries. For information on the open access daily/weekly trip limit fishery for sablefish, see § 660.332 of this subpart and the trip limits in Tables 3 (North) and 3 (South) of this subpart. Open access vessels are subject to daily or weekly sablefish limits in addition to cumulative limits for each cumulative limit period. Only one sablefish landing per week may be made in excess of the daily trip limit and, if

the vessel chooses to make a landing in excess of that daily trip limit, then that is the only sablefish landing permitted for that week. The trip limit for black rockfish caught with hook-and-line gear also applies (see paragraph (e) of this section). Open access vessels that fish with non-groundfish trawl gear or in the salmon troll fishery north of 40°10' N lat. are subject to the cumulative limits and closed areas (except the pink shrimp fishery which is not subject to RCA restrictions) listed in Tables 3 (North) and 3 (South) of this subpart.

(b) * * *

(3) *Gear for use inside the Nontrawl RCA.* Inside the nontrawl RCA, only legal non-bottom contact hook-and-line gear configurations may be used for target fishing for groundfish by vessels that participate in the open access sector as defined at § 660.11. On a fishing trip where any fishing will occur inside the nontrawl RCA, only one type of legal non-bottom contact gear may be carried on board, and no other fishing gear of any type may be carried on board or stowed during that trip. The vessel may fish inside and outside the nontrawl RCA on the same fishing trip, provided a valid declaration report as required at § 660.13(d) has been filed with NMFS OLE. Legal non-bottom contact hook-and-line gear means stationary vertical jig gear not anchored to the bottom and groundfish troll gear, subject to the specifications in paragraphs (b)(6)(i) and (ii) of this section.

(i) * * *

(A) Must be a minimum of 30 feet between the bottom weight and the lowest fishing hook;

(B) No more than 4 vertical mainlines attached to or fished from the vessel (e.g., rod & reel) may be used in the water at one time with no more than 25 hooks on each mainline;

* * * * *

(ii) * * *

(B) No more than one mainline attached to or fished from the vessel may be used in the water at one time;

* * * * *

(d) * * *

(5) *Tillamook YRCA.* The latitude and longitude coordinates of the Tillamook YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Tillamook YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Tillamook YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Open access vessels may transit through

the Tillamook YRCA, at any time, with or without groundfish on board.

(6) *Newport YRCA.* The latitude and longitude coordinates of the Newport YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Newport YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Newport YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Open access vessels may transit through the Newport YRCA, at any time, with or without groundfish on board.

(7) *Florence YRCA.* The latitude and longitude coordinates of the Florence YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Florence YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Florence YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Open access vessels may transit through the Florence YRCA, at any time, with or without groundfish on board.

(8) *Heceta Bank YRCA.* The latitude and longitude coordinates of the Heceta Bank YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Heceta Bank YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Heceta Bank YRCA, on dates when the closure is in effect. The closure is in effect at this time. This closure may be imposed through inseason adjustment. Open access vessels may transit through the Heceta Bank YRCA, at any time, with or without groundfish on board.

(9) *Point St. George YRCA.* The latitude and longitude coordinates of the Point St. George YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point St. George YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point St. George YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Open access vessels may transit through the Point St. George YRCA, at any time, with or without groundfish on board.

(10) *South Reef YRCA.* The latitude and longitude coordinates of the South

Reef YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the South Reef YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the South Reef YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the South Reef YRCA, at any time, with or without groundfish on board.

(11) *Reading Rock YRCA*. The latitude and longitude coordinates of the Reading Rock YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Reading Rock YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Reading Rock YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the Reading Rock YRCA, at any time, with or without groundfish on board.

(12) *Point Delgada (North) YRCA*. The latitude and longitude coordinates of the Point Delgada (North) YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point Delgada (North) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point Delgada (North) YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the Point Delgada (North) YRCA, at any time, with or without groundfish on board.

(13) *Point Delgada (South) YRCA*. The latitude and longitude coordinates of the Point Delgada (South) YRCA boundaries are specified at § 660.70, subpart C. Fishing with open access gear is prohibited within the Point Delgada (South) YRCA, on dates when the closure is in effect. It is unlawful to take and retain, possess, or land groundfish taken with open access gear within the Point Delgada (South) YRCA, on dates when the closure is in effect. The closure is not in effect at this time. This closure may be imposed through inseason adjustment. Open access gear vessels may transit through the Point Delgada (South) YRCA, at any time, with or without groundfish on board.

(14) *Salmon Troll Yelloweye Rockfish Conservation Area (YRCA)*. The latitude and longitude coordinates of the Salmon Troll YRCA boundaries are specified in the groundfish regulations at § 660.70, subpart C, and in the salmon regulations at § 660.405. Fishing with salmon troll gear is prohibited within the Salmon Troll YRCA. It is unlawful for commercial salmon troll vessels to take and retain, possess, or land fish taken with salmon troll gear within the Salmon Troll YRCA. Open access vessels may transit through the Salmon Troll YRCA with or without fish on board.

(15) *Nontrawl rockfish conservation area for the open access fisheries*. The nontrawl RCAs are closed areas, defined by specific latitude and longitude coordinates (specified at §§ 660.70 through 660.73, subpart C) designed to approximate specific depth contours, where fishing for groundfish with nontrawl gear is prohibited. Boundaries for the nontrawl RCA throughout the year are provided in the open access trip limit tables, Table 3 (North) and Table 3 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.60(c).

(i) It is unlawful to operate a vessel in the nontrawl RCA that has nontrawl gear onboard and is not registered to a limited entry permit on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ, or land groundfish taken in the EEZ, except for the purpose of continuous transiting, or when the use of nontrawl gear is authorized in part 660.

(ii) On any trip on which a groundfish species is taken with nontrawl open access gear and retained, the open access nontrawl vessel may transit through the nontrawl RCA only if all groundfish nontrawl gear is stowed either: Below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all lines, so that it is rendered unusable for fishing.

(iii) The nontrawl RCA restrictions in this section apply to vessels taking and retaining or possessing groundfish in the EEZ, or landing groundfish taken in the EEZ. Unless otherwise authorized by part 660, a vessel may not retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the nontrawl RCA. If a vessel fishes in a non-groundfish fishery in the nontrawl RCA, it may not participate in any fishing for groundfish on that trip that is prohibited within the nontrawl RCA. [For example, if a vessel fishes in the salmon troll fishery within the RCA, the vessel cannot on the same

trip fish in the sablefish fishery outside of the RCA.]

(iv) Fishing for “other flatfish” off California (between 42° N lat. south to the U.S./Mexico border) is allowed within the nontrawl RCA with hook and line gear only; and provided a valid declaration report as required at § 660.13(d), has been filed with NMFS OLE.

(v) Target fishing for groundfish off Oregon and California (between 46°16' N lat. and the U.S./Mexico border) is allowed within the nontrawl RCA for vessels participating in the directed open access sector as defined at § 660.11, subject to the gear restrictions at § 660.330(b)(3)(i-ii), and provided a valid declaration report as required at § 660.13(d) has been filed with NMFS OLE.

(16) *Non-groundfish trawl rockfish conservation areas for the open access non-groundfish trawl fisheries*. The non-groundfish trawl RCAs are closed areas, defined by specific latitude and longitude coordinates (specified at §§ 660.70 through 660.74, subpart C) designed to approximate specific depth contours, where fishing for groundfish with nontrawl gear is prohibited. Boundaries for the nontrawl RCA throughout the year are provided in the open access trip limit tables, Table 3 (North) and Table 3 (South) of this subpart and may be modified by NMFS in season pursuant to § 660.60(c).

(i) It is unlawful to operate a vessel in the non-groundfish trawl RCA with non-groundfish trawl gear onboard, except for the purpose of continuous transiting, or when the use of trawl gear is authorized in part 660. It is unlawful to take and retain, possess, or land groundfish taken with non-groundfish trawl gear within the nontrawl RCA, unless otherwise authorized in part 660.

(ii) Non-groundfish trawl vessels may transit through the non-groundfish trawl RCA, with or without groundfish on board, provided all non-groundfish trawl gear is stowed either: Below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors.

(iii) The non-groundfish trawl RCA restrictions in this section apply to vessels taking and retaining or possessing groundfish in the EEZ, or landing groundfish taken in the EEZ. Unless otherwise authorized by Part 660, it is unlawful for a vessel to retain any groundfish taken on a fishing trip for species other than groundfish that

occurs within the non-groundfish trawl RCA. If a vessel fishes in a non-groundfish fishery in the non-groundfish trawl RCA, it may not participate in any fishing on that trip that is prohibited within the non-groundfish trawl RCA. Nothing in these Federal regulations supersedes any state regulations that may prohibit trawling shoreward of the fishery management area (3–200 nm).

(iv) It is lawful to fish with non-groundfish trawl gear within the non-groundfish trawl RCA only under the following conditions:

(A) Pink shrimp trawling is permitted in the non-groundfish trawl RCA when a valid declaration report as required at § 660.12(d), subpart C, has been filed with NMFS OLE. Groundfish caught with pink shrimp trawl gear may be retained anywhere in the EEZ and are subject to the limits in Table 3 (North) and Table 3 (South) of this subpart.

(B) When the shoreward line of the trawl RCA is shallower than 100 fm (183 m), vessels using ridgeback prawn trawl

gear south of 34°27.00' N lat. may operate out to the 100 fm (183 m) boundary line specified at § 660.73, when a valid declaration report as required at § 660.13(d), has been filed with NMFS OLE. Groundfish caught with ridgeback prawn trawl gear are subject to the limits in Table 3 (North) and Table 3 (South) of this subpart.

(17) *Farallon Islands*. Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10 fm (18 m) depth contour around the Farallon Islands. An exception to this prohibition is that commercial fishing for “other flatfish” is allowed around the Farallon Islands using hook and line gear only. (See Table 2 (South) of this subpart.) For a definition of the Farallon Islands, see § 660.70, subpart C.

(18) *Cordell Bank*. Commercial fishing for groundfish is prohibited in waters of depths less than 100-fm (183-m) around Cordell Bank, as defined by specific latitude and longitude coordinates at § 660.70, subpart C. An exception to this

prohibition is that commercial fishing for “other flatfish” is allowed around Cordell Bank using hook and line gear only.

(19) *Groundfish exclusion areas (GEAs)*. The GEAs are closed areas in the Southern California Bight, defined by specific latitude and longitude coordinates (specified at § 660.70) where commercial and recreational fishing for groundfish is prohibited. It is unlawful to fish for, take and retain, possess (except for the purpose of continuous transit) or land groundfish within the GEAs. All fishing gear for targeting groundfish must be stowed while transiting through a GEA. If fishing for non-groundfish species within a GEA, then no groundfish may be on board the vessel.

* * * * *

■ 23. In § 660 Subpart E, revise Table 3 North and Table 3 South to read as follows:

Section 660 Subpart F Table 3 North and Table 3 South

Table 3 (North) to Part 660, Subpart F – Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40° 10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

1/1/2024

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)^{1/}:						
1	North of 46° 16' N. lat.		EEZ - 100 fm line ^{1/}			
2	46° 16' N. lat. - 40° 10' N. lat.		30 fm line ^{1/} - 75 fm line ^{1/}			
See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Bank, and EFHCAs).						
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
3	Minor Slope Rockfish ^{2/} & Darkblotched rockfish		2,000 lb/ month			
4	Pacific ocean perch		100 lb/ month			
5	Sablefish		2,000 lb/ week, not to exceed 4,000 lb/ 2 months			
6	Shortpine thornyheads		50 lb/ month			
7	Longspine thornyheads		50 lb/ month			
8	Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish ^{3/ 7/}		5,000 lb/ month			
11	Whiting		300 lb/ month			
12	Minor Shelf Rockfish ^{2/}		800 lb/ month			
13	Widow rockfish		2,000 lb/ 2 months			
14	Yellowtail rockfish		1,500 lb/ month			
15	Canary rockfish		1,000 lb/ 2 months			
16	Yelloweye rockfish		CLOSED			
17	Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish, & black rockfish					
18	North of 42° 00' N. lat.		5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish ^{4/}			
19	42° 00' N. lat. - 40° 10' N. lat. Minor Nearshore Rockfish		2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish			
20	42° 00' N. lat. - 40° 10' N. lat. Black rockfish		7,000 lb/ 2 months			
21	Lingcod ^{5/}					
22	North of 42° 00' N. lat.		2,500 lb/ month			
23	42° 00' N. lat. - 40° 10' N. lat.		1,000 lb/ month			
24	Pacific cod		1,000 lb/ 2 months			
25	Spiny dogfish		200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months	
26	Longnose skate		Unlimited			
27	Big skate		Unlimited			
28	Other Fish ^{6/} & Cabezon in California		Unlimited			
29	Oregon Cabezon/Kelp Greenling		Unlimited			
30	SALMON TROLL (subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)					
31	North		Salmon trollers may retain and land up to 500 lb of yellowtail rockfish per month as long as salmon is on board, both within and outside of the RCA. Salmon trollers may retain and land up to 1 lingcod per 2 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. The lingcod limit only applies during times when lingcod retention is allowed, and is not "CLOSED." These limits are within the per month limits described in the table above, and not in addition to those limits. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above unless otherwise stated here			
32	PINK SHRIMP NON-GROUNDFISH TRAWL (not subject to RCAs)					
33	North		Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.			

TABLE 3 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting. Open access vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.330 (d) of the regulations for more information.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 22 inches (56 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.
Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)^{1/}:						
1 40°10' N. lat. - 38°57.5' N. lat.			40 fm line ^V - 75 fm line ^V			
2 38°57.5' N. lat. - 34°27' N. lat.			50 fm line ^V - 75 fm line ^V			
3 South of 34°27' N. lat.			100 fm line ^V - 150 fm line ^V (also applies around islands)			
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4 Minor Slope Rockfish^{2/} & Darkblotched rockfish			10,000 lb/2 months, of which no more than 2,500 lb may be blackgill rockfish			
5 Splitnose rockfish			200 lb/month			
6 Sablefish						
7 40°10' N. lat. - 36°00' N. lat.			2,000 lb/week, not to exceed 4,000 lb/2 months			
8 South of 36°00' N. lat.			2,000 lb/week, not to exceed 6,000 lb/2 months			
9 Shortspine thornyheads						
10 40°10' N. lat. - 34°27' N. lat.			50 lb/month			
11 Longspine thornyheads						
12 40°10' N. lat. - 34°27' N. lat.			50 lb/month			
13 Shortspine thornyheads and longspine thornyheads						
14 South of 34°27' N. lat.			100 lb/day, no more than 1,000 lb/2 months			
15 Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish^{3/4/}			5,000 lb/month			
16 Whiting^{5/}			300 lb/month			
17 Minor Shelf Rockfish^{6/}						
18 40°10' N. lat. - 34°27' N. lat.			4,000 lb/2 months, of which no more than 400 lb may be vermillion			
19 South of 34°27' N. lat.			3,000 lb/2 months, of which no more than 1,200 lb may be vermillion			
20 Widow rockfish						
21 40°10' N. lat. - 34°27' N. lat.			6,000 lb/2 months			
22 South of 34°27' N. lat.			4,000 lb/2 months			
23 Chilipepper						
24 40°10' N. lat. - 34°27' N. lat.			6,000 lb/2 months			
25 South of 34°27' N. lat.			4,000 lb/2 months			
26 Canary rockfish			1,500 lb/2 months			
27 Yelloweye rockfish			CLOSED			
28 Cowcod			CLOSED			
29 Bronzespotted rockfish			CLOSED			
30 Bocaccio			6,000 lb/2 months			
31 Minor Nearshore Rockfish						
32 Shallow nearshore ^{7/}			2,000 lb/2 months			
33 Deeper nearshore ^{8/}			2,000 lb/2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish			
34 California Scorpionfish			3,500 lb/2 months			
35 Lingcod^{9/}			700 lb/month			
36 Pacific cod			1,000 lb/2 months			
37 Spiny dogfish		200,000 lb/2 months	150,000 lb/2 months		100,000 lb/2 months	
38 Longnose skate			Unlimited			
39 Big skate			Unlimited			
40 Other Fish^{10/} & Cabezon in California			Unlimited			

TABLE 3 (South)

Table 3 (South) Continued

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)^{1/}:						
41 40°10' N. lat. - 38°57.5' N. lat.			40 fm line ^V - 75 fm line ^V			
42 38°57.5' N. lat. - 34°27' N. lat.			50 fm line ^V - 75 fm line ^V			
43 South of 34°27' N. lat.			100 fm line ^V - 150 fm line ^V (also applies around islands)			
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
44 SALMON TROLL (subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish, as described below)						
45 South of 40°10' N. lat.			Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lb of Chinook salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 4,000 lb per 2 month limit for minor shelf rockfish between 40°10' and 34°27' N. lat., and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.			
46 RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUND FISH TRAWL						
47 NON-GROUND FISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:						
48 40°10' N. lat. - 38°00' N. lat.		100 fm line ^V - 200 fm line ^V	100 fm line ^V - 150 fm line ^V		100 fm line ^V - 200 fm line ^V	
49 38°00' N. lat. - 34°27' N. lat.			100 fm line ^V - 150 fm line ^V			
50 South of 34°27' N. lat.			100 fm line ^V - 150 fm line ^V			
51 PINK SHRIMP NON-GROUND FISH TRAWL GEAR (not subject to RCAs)						
52 South			Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary rockfish, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.			

Table 3 (South) Continued

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 23-ft depth contour to and south of 47° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting. Open access vessels may be allowed to fish inside groundfish conservation areas using non-bottom contact hook and line only. See § 660.230 (a)(2) for the regulations for more information.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Pacific ocean perch is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Dorsal-finned rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, cunner sole, flathead sole, Pacific sanddab, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (1)(B)(i).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (1)(B)(ii).

6/ The commercial minimum size limit for lingcod is 22 inches (56 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Subpart G [Amended]

■ 24. In subpart G of part 660, revise all references to “Cordell Banks” to read “Cordell Bank”.

■ 25. Amend § 660.360 by revising paragraphs (c)(3)(i)(B) and (c)(3)(iv)(A) to read as follows:

**§ 660.360 Recreational fishery—
management measures.**

* * * * *

(c) * * *

(3) * * *

(i) * * *

(B) *Groundfish exclusion areas*
(*GEAs*). The *GEAs* are closed areas in

the Southern California Bight, defined by specific latitude and longitude coordinates (specified at § 660.70) where commercial and recreational fishing for groundfish is prohibited. It is unlawful to fish for, take and retain, possess (except for the purpose of continuous transit) or land groundfish within the *GEAs*. Recreational fishing gear for targeting groundfish may not be deployed while transiting through a *GEA*. If fishing for non-groundfish species within a *GEA*, then no groundfish may be on board the vessel.

* * * * *

(iv) * * *

(A) *Seasons*. Recreational fishing for “Other Flatfish,” petrale sole, and starry flounder is open from January 1 through December 31. When recreational fishing for “Other Flatfish,” petrale sole, and starry flounder is open, it is permitted both outside and within the recreational *RCAs* described in paragraph (c)(3)(i) of this section.

* * * * *

[FR Doc. 2023–18411 Filed 8–29–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 88, No. 167

Wednesday, August 30, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Contractor Form for Contract With an Individual for Personal Services

AGENCY: Bureau for Management, Office of Acquisition and Assistance, PSC Rules and Policy Division (M/OAA/PSC), Agency for International Development (USAID).

ACTION: Notice of information collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, M/OAA/PSC has proposed revisions to form AID 309-1 Contract With An Individual For Personal Services. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: Interested persons are invited to submit comments within 60 days of this notice.

ADDRESSES: You may submit comments by any of the following methods:

- *Email:* pscpolicymailbox@usa.gov.
- *Web:* *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Richard E. Spencer, Acting Division Chief, Management Bureau, Office of Acquisition and Assistance, PSC Rules and Policy Division (M/OAA/PSC), telephone (202) 916-2629, or via email at rspencer@usaid.gov.

SUPPLEMENTARY INFORMATION: A proposed update to the existing form is available for public comment before M/OAA/PSC will decide to publish the revised form. The authorities for the collection of information are: Foreign Assistance Act, Public Law 87-165, as amended; 48 CFR 37.104, Personal

services contracts; and 48 CFR ch. 7, App. D, Direct USAID Contracts with a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad; and 48 CFR ch. 7, App. J, Direct USAID Contracts with a Cooperating Country National and with a Third Country National for Personal Services Abroad.

Richard E. Spencer,

Acting Division Chief, M/OAA/PSC.

[FR Doc. 2023-18763 Filed 8-29-23; 8:45 am]

BILLING CODE 6116-01-P

AGENCY FOR INTERNATIONAL DEVELOPMENT

USAID/MEXICO—RFI 2023-003, Local Partner and Sub-Partner Outreach

AGENCY: United States Agency for International Development/Mexico Mission (USAID/Mexico).

ACTION: Notice of information collection; request for comment.

SUMMARY: USAID/Mexico is seeking to increase understanding of the organizational landscape throughout the country to enhance USAID's development approach and understand local organizations' priority topic areas and capacities. USAID is issuing this Request for Information (RFI) to solicit information and potential interest from organizations to diversify USAID's partner and sub-partner base. The goal of the RFI is to better understand the organizational landscape in Mexico; diversify USAID/Mexico's partner and sub-partner base by creating avenues for new and underutilized partners and sub-partners to work with USAID; and brainstorm methods to support partners and sub-partners to become self-reliant and capable of achieving their development goals. The research data will be aggregated and not provide PII or other privacy-related information. USAID/Mexico invites the general public and other Federal agencies to take this opportunity to comment on the following new information collection, as required by the Paperwork Reduction Act of 1995.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please access the survey questionnaire at

https://docs.google.com/forms/d/e/1FAIpQLSc8c7OMyjoEGV_Rpr8M7q1K9cYUnqz_zYKFCdq-Luz00nbifA/viewform?usp=sharing. Comments submitted in response to this notice should be submitted electronically through the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Written requests for information or comments should be addressed to Andrea Capellan, Director, Office of Acquisition and Assistance, USAID/Mexico via email at Acapellan@usaid.gov. Verbal requests for information or comments submitted can contact +1 571-277-0121.

SUPPLEMENTARY INFORMATION:

Title of information collection: USAID/MEXICO—RFI 2023-003, Local Partner and Sub-Partner Outreach.

Type of request: Notice for public comment; generic clearance.

Originating office: USAID/Mexico.

Respondents: Members of Mexican public, members of Mexican civil society organizations, members of Mexican for-profit organizations.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 300.

Average Time per Response: 20 minutes for survey respondents.

Frequency of response:

Approximately every year.

Total estimated burden: 90 hours.

Total estimated cost: \$3,000.

We are soliciting public comments to permit USAID to:

- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record.

Andrea Capellan,

Director, Office of Acquisition and Assistance, USAID/Mexico.

[FR Doc. 2023-18762 Filed 8-29-23; 8:45 am]

BILLING CODE 6116-01-P

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****[Doc. No. AMS-LP-23-0042]****Notice of Request for Extension of a Currently Approved Information Collection****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB) for an extension of the currently approved information collection, "Livestock, Poultry, and Grain Market News" (OMB 0581-0033).

DATES: Comments on this notice must be received by October 30, 2023 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this notice by using the electronic process available at <https://www.regulations.gov>. All comments should reference the document number and the date and the page number of this issue of the **Federal Register**. Written comments may be submitted via mail to Russell Avalos, Assistant to the Director; Livestock, Poultry, and Grain Market News Division; Livestock and Poultry Program; Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 2619-S, STOP 0252; Washington, DC 20250-0252; Telephone (202) 738-2112; or Email Russell.Avalos@usda.gov. All comments received will be posted without change, including any personal information provided, at <https://www.regulations.gov> and will be included in the record and made available to the public. Please do not include personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Comments may be submitted anonymously.

FOR FURTHER INFORMATION CONTACT:

Russell Avalos, Assistant to the Director; Livestock, Poultry, and Grain Market News Division; Livestock and Poultry Program; Telephone (202) 738-2112; or Email Russell.Avalos@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Livestock, Poultry, and Grain Market News.

OMB Number: 0581-0033.*Expiration Date of Approval:* October 31, 2023.*Type of Request:* Request for extension of a currently approved information collection.

Abstract: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627), as amended, authorizes the Secretary of Agriculture to provide timely nationwide coverage of prices, supply, demands, trends, movement, and other pertinent information affecting the trading of livestock, poultry, meat, eggs, grain, and their related products, as well as locally produced and marketed products. The market reports compiled and disseminated by the Livestock, Poultry, and Grain Market News (LPGMN) Division provide current, unbiased, and factual information to all stakeholders in the U.S. agricultural industry. Market News reports assist producers, processors, wholesalers, retailers, and others to make informed production, purchasing, and sales decisions. LPGMN reports also promote orderly marketing by placing buyers and sellers on a more equal negotiation basis.

LPGMN reporters communicate with buyers and sellers of livestock, poultry, meat, eggs, grain, local products, and their respective commodities on a daily basis to accomplish the Division's mission. This communication and information gathering is accomplished through the use of telephone conversations, facsimile transmissions, face-to-face meetings, and email messages. The information provided by respondents initiates Market News reporting, which must be timely, accurate, unbiased, and continuous if it is to be meaningful to the industry. AMS collects information on price, supply, demand, trends, movement, and other information of livestock, poultry, meat, grain, eggs, local products, and their respective commodities.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .058 hours per response.

Respondents: Business or other for-profit and farms.

Estimated Number of Respondents: 3,220.

Estimated Total Annual Responses: 299,800.

Estimated Number of Responses per Respondent: 93.

Estimated Total Annual Burden on Respondents: 17,970.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have

practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Melissa Bailey,*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2023-18715 Filed 8-29-23; 8:45 am]

BILLING CODE P**DEPARTMENT OF AGRICULTURE****Natural Resources Conservation Service****[Docket No. NRCS-2023-0011]****Notice of Intent To Prepare an Environmental Impact Statement for the Lower Little Tallapoosa River Watershed Carroll County, Georgia****AGENCY:** Natural Resources Conservation Service, USDA.**ACTION:** Notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: The Natural Resources Conservation Service (NRCS) Georgia State Office, announces its intent to prepare a watershed plan and EIS for the Lower Little Tallapoosa River 25A (also commonly known as Indian River), located in Carroll County on Indian Creek approximately 5 miles upstream of its confluence with Turkey Creek and approximately 14 miles northwest of Carrollton in the proximity of Bowdon, Georgia. The proposed watershed plan will examine alternative solutions to flood prevention and agricultural water management measures for the Carroll County Water Authority (CCWA) service area. NRCS is requesting comments to identify significant issues, potential alternatives, information, and analysis relevant to the proposed action from all interested individuals, Federal and State, agencies, and Tribes.

DATES: We will consider comments that we receive by October 16, 2023. Comments received after close of the

comment period will be considered to the extent possible.

ADDRESSES: We invite you to submit comments in response to this notice. You may submit your comments through one of the methods below:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and search for docket ID NRCS–2023–0011. Follow the online instructions for submitting comments; or

- *Mail or Hand Delivery:* J. Tyler Coats, P.E., Associate, Schnabel Engineering, LLC, 6445 Shiloh Road, Suite A, Alpharetta, GA 30005. In your comment, specify the docket ID NRCS–2023–0011.

All comments received will be posted without change and made publicly available on www.regulation.gov.

FOR FURTHER INFORMATION CONTACT:

Diane A. Guthrie; telephone: (706) 546–2310; email: diane.guthrie@usda.gov; or Andrea P. Gray; telephone (678) 364–2384; email: andrea@andreapgray.com.

Individuals who require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Purpose and Need

The primary purpose of the watershed plan is to provide flood protection and damage reduction to meet current and future water demands in CCWA's service area and a rural water supply for 180,000 acres, providing 15,662 acre-feet of surface water. Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954 (Pub. L. 83–566), as amended, and the Flood Control Act of 1944 (Pub. L. 78–534).

The dominant land use of the watershed for the CCWA structure was historically a combination of agriculture and woodlands which generally remains unchanged today after more than 50 years, although some development has occurred downstream of the structure. The proposed Lower Little Tallapoosa River 25A project will address evaluating alternatives that will maintain or improve the currently provided level of flood protection and increase and maintain safe and reliable supplies of water for agriculture management and the local community. It will also increase water conservation and improve water delivery efficiency in the Lower Little Tallapoosa

Watershed, which has been in use for nearly 50 years.

Development within the downstream breach zone has resulted in a change in classification for the Lower Little Tallapoosa River 25A to a high hazard structure. Due to changes in evaluation criteria, the dam does not meet current safety and performance standards for the integrity, stability, or capacity of a high hazard structure. Additionally, the current watershed structure will reach the end of its original 50-year design life in 2024 and needs to be brought into compliance with modern dam safety criteria including the regulations under the Georgia Rules for Safe Dams and NRCS TR–60 design criteria.

To meet the purpose of flood protection for the Lower Little Tallapoosa Watershed, the existing structures will be replaced with a new multipurpose structure to provide flood control and agriculture water management. A Draft Supplemental Watershed Plan and Environmental Assessment (EA) was prepared in 2021, which investigated and studied possible solutions to address flood protection and agricultural water management in the Lower Little Tallapoosa Watershed. As a result of the new information obtained during the EA process, the level of analysis this watershed project requires is more extensive than initially anticipated. Estimated Federal funds required for the construction of the proposed action may exceed \$25 million and the proposed action will, therefore, require congressional approval per the 2018 Agriculture Appropriations Act amended funding threshold. In accordance with 7 CFR 650.7(a)(2), an EIS is required for projects requiring congressional approval.

Preliminary Proposed Action and Alternatives

The objective of the EIS is to formulate and evaluate alternatives for flood prevention and agricultural water management in the Carroll County Water Authority service area. The EIS is expected to evaluate two alternatives: one action alternative and one no action alternative. The alternatives that may be considered for detailed analysis include:

Alternative 1—Proposed Action—Construction of a new watershed dam: The Lower Little Tallapoosa Watershed Structure No. 25A will be replaced with a new multipurpose structure to maintain or improve the currently provided levels of flood control and provide agricultural water management. This alternative would construct a new earthen embankment with a maximum height of approximately 120 ft. The reservoir area at normal pool will be 401

acres with a total storage volume of 5.1 billion gallons (at the top of dam). The structure will supply up to 6 million gallons per day (MGD) of raw water to the Carroll County Water Authority's service area. Inflows to the dam and reservoir will be supplemented by pumping water from the Little Tallapoosa River. Water will be withdrawn from the Little Tallapoosa River (in compliance with the CCWA withdrawal permits) 0.5 miles downstream of its crossing at Reavesville Road and pumped to the reservoir via a raw water pipeline. The pipeline goes over approximately 9 miles primarily along road right of ways to the reservoir. Raw water will be pumped to a new water treatment plant adjacent to the reservoir.

Alternative 2—No Action: Taking no action would consist of measures carried out if no Federal action or funding were provided. If the existing structure continues to operate in its current condition, it would be limited in its withdrawal capacity and will not be capable of meeting the average daily water supply demand for the CCWA's service area. The dam and spillway do not meet current requirements for high hazard potential dams, and as such pose a threat to downstream life and property if a significant hydrologic event occurs. The current auxiliary spillway does not meet the current criteria for capacity and does not have the required erosion resistance and integrity and could experience significant damage or failure and breach in a storm event. The No Action Alternative will not meet the Lower Little Tallapoosa River 25A project's purpose and will serve as the baseline for comparison with the action alternatives.

Summary of Expected Impacts

As mentioned above, the estimated Federal contribution to construction cost will exceed \$25 million. This EIS will be prepared as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and NRCS regulations that implement NEPA in 7 CFR part 650.

Resource concerns for scoping were identified and categorized as relevant or not relevant to the proposed action. CCWA and NRCS evaluated the current Lower Little Tallapoosa Watershed Structure No. 25A infrastructure along with relevant resource concerns for each proposed solution.

Environmental resources in the Lower Little Tallapoosa River 25A project area consist of the natural and human-made environment. Resource concerns to be

identified and addressed in the Watershed Plan-EIS include Cultural and Historic Resources; Land Resources and Prime Farmland; Geology and Soils; Public Safety; Socioeconomics and Environmental Justice; Water Resources; Vegetation and Invasive and Non-native Plant Species; Wetlands and Riparian Areas; Fish and Wildlife and Fish Habitat; and Special Status Species and Migratory Bird Treaty Act Species.

Anticipated Permits and Authorizations

The following permits and authorizations are anticipated to be required:

- *Clean Water Act (CWA) Section 404 Permit.* Implementation of the proposed Federal action would require a CWA section 404 permit from the U.S. Army Corps of Engineers. CCWA received a section 404 permit for the construction of the Indian Creek Reservoir on June 17, 2021.

- *CWA Section 401 Permit.* The Lower Little Tallapoosa River 25A project would also require water quality certification under CWA section 401 and permitting under CWA section 402 (National Pollutant Discharge Elimination System Permit). CCWA received a section 401 certification on August 5, 2020.

- *Dam Safety and Floodplain Permit.* Local dam safety and floodplain permits will be required for construction and operation of the dam.

- *Surface Water Withdrawal Permit.* CCWA received the required surface water withdrawal permits on November 2, 2021.

- *Georgia Department of Transportation Right of Way Encroachment Permit.* The proposed action will require a raw water pipeline that may impact State Highway 100 and 166.

- *NHPA Section 106 consultation.* Consultation with the Georgia Historic Preservation Division, Tribal Nations, and interested parties will be conducted as required by the National Historic Preservation Act of 1966 (as amended) (16 U.S.C. 470f).

Schedule of Decision-Making Process

A Draft EIS (DEIS) will be prepared and circulated for review and comment by agencies, Tribes, consulting parties, and the public for at least 45 days as required by 40 CFR 1503.1, 1502.20, 1506.11, and 1502.17, and 7 CFR 650.13. The DEIS is anticipated to be published in the **Federal Register**, approximately 6 months after publication of this NOI. A Final EIS is anticipated to be published within 6 months of completion of the public comment period for the DEIS.

NRCS will decide whether to implement one of the alternatives as evaluated in the EIS. A Record of Decision will be completed after the required 30-day waiting period and will be publicly available. The responsible Federal official and decision maker for the NRCS is the Georgie NRCS State Conservationist.

Public Scoping Process

CCWA held 7 public meetings between 2007 and 2017 as part of the EA process for its section 404 permit and 5 additional meetings with NRCS as part of the scoping process on May 23, 2018; July 16, 2018; March 28, 2019; August 1, 2019, and January 13, 2023. An additional public scoping meeting was held on May 1, 2023. Comments received, including the names and addresses of those who comment, will be part of the public record. Comments submitted anonymously will be accepted and considered. Scoping meeting presentation materials are available on the watershed project website: www.indiancreekreservoir.com. The date, time, and location for any future meetings will be announced on the Lower Little Tallapoosa River 25A project website.

Federal, State, Tribal, local agencies and representatives, and the public were invited to take part in this watershed plan scoping period through which coordination, sought input on issues of economic, environmental, cultural, and social importance in the watershed. CCWA and NRCS organized the public scoping meeting to provide an opportunity to review and evaluate the Lower Little Tallapoosa River 25A project alternatives, express concern or support, and gain further information regarding the Lower Little Tallapoosa River 25A project. To determine the most viable alternatives to carry forward to the EIS, CCWA used input obtained during public scoping discussions to focus on relevant resource concerns and issues and eliminated those that were not relevant from further detailed study.

Identification of Potential Alternatives, Information, and Analyses

NRCS invites agencies, Tribes, consulting parties, and individuals that have special expertise, legal jurisdiction, or interest in the Lower Little Tallapoosa River 25A project to provide comments concerning the scope of the analysis and identification of potential alternatives, information, and analyses relevant to the Proposed Action in writing.

NRCS will coordinate the scoping process to correspond with any required NHPA processes, as allowed in 36 CFR

800.2(d)(3) and 800.8 (54 U.S.C. 306108). The information about historic and cultural resources within the area potentially affected by the proposed Lower Little Tallapoosa River 25A project will assist NRCS in identifying and evaluating impacts to such resources in the context of both NEPA and NHPA.

NRCS will consult with Native American tribes on a government-to-government basis in accordance with 36 CFR 800.2 and 800.3, Executive Order 13175, and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources and historic properties, will be given due consideration.

Authorities

This document is published pursuant to the NEPA regulations regarding publication of a NOI to issue an EIS (40 CFR 1501.9(d)). Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954, as amended, and the Flood Control Act of 1944.

Federal Assistance Programs

The title and number of the Federal Assistance Program as found in the Assistance Listing¹ to which this document applies is 10.904, Watershed Protection and Flood Prevention.

Executive Order 12372

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This Lower Little Tallapoosa River 25A project is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex,

¹ See <https://sam.gov/content/assistance-listings>.

gender identity (including gender expression), sexual orientation, disability, age, marital status, family or 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.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 (voice and text telephone) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at: <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410 or email: OAC@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Terrance Rudolph,

Georgia State Conservationist, Natural Resources Conservation Service.

[FR Doc. 2023-18688 Filed 8-29-23; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-840]

Certain Frozen Warmwater Shrimp From India: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is initiating a changed circumstances review (CCR) to

determine if Highland Agro Food Private Limited (HA Food) is the successor-in-interest to Highland Agro in the context of the antidumping duty (AD) order on certain frozen warmwater shrimp (shrimp) from India. We preliminarily determine that HA Food is the successor-in-interest to Highland Agro.

DATES: Applicable August 30, 2023.

FOR FURTHER INFORMATION CONTACT:

Terre Keaton Stefanova or Christopher Viers, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1280 or (202) 482-0519, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, Commerce published in the **Federal Register** an AD order on shrimp from India.¹ On July 6, 2023, HA Food requested that, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216, and 19 CFR 351.221(c)(3), Commerce conduct an expedited CCR of the *Order* to determine that HA Food is the successor-in-interest to Highland Agro and, accordingly, to assign it the cash deposit rate of Highland Agro.² In its submission, HA Food stated that in 2022, Highland Agro undertook a name change to HA Food and changed its corporate structure to become a limited liability company.³

Scope of the Order

The merchandise subject to the *Order* is certain frozen warmwater shrimp. The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 0306.17.00.04, 0306.17.00.05, 0306.17.00.07, 0306.17.00.08, 0306.17.00.10, 0306.17.00.11, 0306.17.00.13, 0306.17.00.14, 0306.17.00.16, 0306.17.00.17, 0306.17.00.19, 0306.17.00.20, 0306.17.00.22,

0306.17.00.23, 0306.17.00.25, 0306.17.00.26, 0306.17.00.28, 0306.17.00.29, 0306.17.00.41, 0306.17.00.42, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description remains dispositive. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.⁴

Initiation and Preliminary Results of CCR

Pursuant to section 751(b)(1)(A) of the Act and 19 CFR 351.216(d), Commerce will conduct a CCR upon receipt of information concerning, or a request from, an interested party for a review of an AD order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by HA Food supporting its claim that it is the successor-in-interest to Highland Agro demonstrates changed circumstances sufficient to warrant such a review.⁵ Therefore, in accordance with section 751(b)(1)(A) of the Act and 19 CFR 351.216(d), we are initiating a CCR based upon the information contained in HA Food's submission.

Section 351.221(c)(3)(ii) of Commerce's regulations permits Commerce to combine the notice of initiation of a CCR and the notice of preliminary results if Commerce concludes that expedited action is warranted.⁶ In this instance, because the record contains information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.⁷

In this CCR, pursuant to section 751(b) of the Act, Commerce conducted a successor-in-interest analysis. In making a successor-in-interest determination, Commerce examines several factors, including, but not limited to, changes in the following: (1) management; (2) production facilities; (3) supplier relationships; and (4)

¹ See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India*, 70 FR 5147 (February 1, 2005) (*Order*).

² In the 2021–2022 administrative review, Commerce preliminarily assigned Highland Agro a cash deposit rate of 3.76 percent, the preliminary review-specific average rate for companies not selected for individual review. See *Certain Frozen Warmwater Shrimp from India: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022*, 88 FR 13430 (March 3, 2023). The deadline for the final results of this administrative review is currently no later than August 30, 2023.

³ See HA Food's Letter, "Request for an Expedited Changed Circumstances Review," dated July 6, 2023 (HA Food CCR Request).

⁴ See Memorandum, "Certain Frozen Warmwater Shrimp from India: Initiation and Preliminary Results of Changed Circumstances Review," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ See 19 CFR 351.216(d).

⁶ See 19 CFR 351.221(c)(3)(ii); see also *Certain Pasta from Italy: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 80 FR 33480, 33480–41 (June 12, 2015) (*Pasta from Italy Preliminary Results*), unchanged in *Certain Pasta from Italy: Final Results of Changed Circumstances Review*, 80 FR 48807 (August 14, 2015) (*Pasta from Italy Final Results*).

⁷ See, e.g., *Pasta from Italy Preliminary Results*, 80 FR at 33480–41, unchanged in *Pasta from Italy Final Results*, 80 FR at 48807.

customer base.⁸ While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, generally, Commerce will consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.⁹ Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, Commerce may assign the new company the cash deposit rate of its predecessor.¹⁰

In accordance with 19 CFR 351.216, we preliminarily determine that HA Food is the successor-in-interest to Highland Agro. Record evidence, as submitted by HA Food, indicates that HA Food operates as essentially the same business entity as Highland Agro with respect to the subject merchandise.¹¹

For the complete successor-in-interest analysis, including discussion of business proprietary information, see the accompanying Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and available via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision

Memorandum is available at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Public Comment

In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the case briefs, in accordance with 19 CFR 351.309(d). Parties who submit case or rebuttal briefs are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹² All comments are to be filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.¹³ Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹⁴

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request via ACCESS within 30 days of publication of this notice. Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing, in accordance with 19 CFR 351.310(d).

Consistent with 19 CFR 351.216(e), we will issue the final results of this CCR no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding.

Notification to Interested Parties

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216(b), 351.221(b) and 351.221(c)(3).

⁸ See, e.g., *Certain Frozen Warmwater Shrimp from India: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 81 FR 75376 (October 31, 2016) (*Shrimp from India Preliminary Results*), unchanged in *Certain Frozen Warmwater Shrimp from India: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 81 FR 90774 (December 15, 2016) (*Shrimp from India Final Results*).

⁹ See, e.g., *Shrimp from India Preliminary Results*, 81 FR at 75377, unchanged in *Shrimp from India Final Results*, 81 FR at 90774.

¹⁰ *Id.*; see also *Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan*, 67 FR 58, 59 (January 2, 2002); *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review*, 75 FR 34688, 34689 (June 18, 2010); and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Antidumping Duty Changed Circumstances Review*, 63 FR 14679 (March 26, 1998), unchanged in *Circular Welded Non-Alloy Steel Pipe from Korea; Final Results of Antidumping Duty Changed Circumstances Review*, 63 FR 20572 (April 27, 1998), in which Commerce found that a company which only changed its name and did not change its operations is a successor-in-interest to the company before it changed its name.

¹¹ See HA Food CCR Request.

¹² See 19 CFR 351.309(c)(2).

¹³ See 19 CFR 351.303(b).

¹⁴ See *Temporary Rule Modifying AD/CVD Service Requirements Due to Covid-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

Dated: August 18, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Initiation and Preliminary Results of the Changed Circumstances Review
- V. Successor-in-Interest Determination
- VI. Recommendation

[FR Doc. 2023–18721 Filed 8–29–23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–836]

Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request for a changed circumstances review (CCR), the U.S. Department of Commerce (Commerce) is initiating a CCR of the antidumping duty (AD) order on certain cut-to-length carbon-quality steel plate products (CTL plate) from the Republic of Korea (Korea). Additionally, Commerce preliminarily determines that the post-corporate reorganization Dongkuk Steel Mill Co., Ltd. (Dongkuk Steel) is the successor-in-interest to the pre-reorganization Dongkuk Steel. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 30, 2023.

FOR FURTHER INFORMATION CONTACT: Christopher Williams, 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) 482–4243.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 2000, Commerce published the AD order on CTL plate from Korea in the **Federal Register**.¹ On

¹ See *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, Japan and the*

Continued

July 14, 2023, the new Dongkuk Steel requested that Commerce conduct an expedited CCR of the *Order*, in accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216(d), and 19 CFR 351.221(c)(3)(ii), to determine that the new Dongkuk Steel is the successor-in-interest to the former Dongkuk Steel and is entitled to the cash deposit rate currently in effect for the former Dongkuk Steel.²

The new Dongkuk Steel explained that it requested a CCR because the former Dongkuk Steel spun-off its two business units in a reorganization in which new Dongkuk Steel, and a new operating entity, Dongkuk Coated Metal Co., Ltd. (Dongkuk CM) now operate as subsidiaries of Dongkuk Holdings Co., Ltd. (Dongkuk Holdings).³ Pursuant to the reorganization, all assets, liabilities, rights, and obligations as well as any intangible rights of proprietary nature (including, but not limited to, licenses and permits, employment and contractual relationships, and litigations) of former Dongkuk Steel, were transferred to, and assumed by, post-spin-off Dongkuk Steel, Dongkuk CM, and Dongkuk Holdings.⁴ In addition, after the spin-off and reorganization, CTL plate operations conducted by the former Dongkuk Steel continued to be performed by the company under the same legal name.⁵ As a result, the new Dongkuk Steel explained that the spin-off and reorganization did not affect the management or internal organization structure, production, supplier relationships, or customer base of the CTL plate business.⁶

We did not receive comments from other interested parties concerning this request.

Scope of the Order

The merchandise covered by this *Order* is CTL plate. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.⁷

Republic of Korea, 65 FR 6585 (February 10, 2000) (*Order*).

² See Dongkuk Steel's Letter, "Request for Changed Circumstances Review and Successor-in-Interest Determination," dated July 14, 2023 (CCR Request).

³ *Id.* at 2.

⁴ *Id.* at 3.

⁵ *Id.* at 7.

⁶ *Id.*

⁷ See Memorandum, "Decision Memorandum for Initiation and Preliminary Results of Changed Circumstances Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Initiation of CCR

Pursuant to section 751(b)(1) of the Act, and 19 CFR 351.216, Commerce will conduct a CCR of an order upon receipt of information or a review request from an interested party for a review of an AD order which shows changed circumstances sufficient to warrant a review of the order. In the past, Commerce has used CCRs to address the applicability of cash deposit rates after there have been changes in the name or structure of a respondent, such as a merger or spinoff ("successor-in-interest" or "successorship" determinations).⁸ The information submitted by the new Dongkuk Steel supporting its claim to be the successor-in-interest to the former Dongkuk Steel demonstrates changed circumstances sufficient to warrant such a review.⁹ Therefore, in accordance with section 751(b)(1)(A) of the Act and 19 CFR 351.216(d) and (e), we are initiating a CCR based upon the information contained in the new Dongkuk Steel's request for a CCR.

Preliminary Results of Review

Section 351.221(c)(3)(ii) of Commerce's regulations permits Commerce to combine the notice of initiation of a CCR and the notice of preliminary results if Commerce concludes that expedited action is warranted.¹⁰ In this instance, because the record contains information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.¹¹

In this CCR, pursuant to section 751(b) of the Act, Commerce conducted a successor-in-interest analysis. In making a successor-in-interest determination, Commerce examines several factors, including, but not limited to, changes in the following: (1) ownership and management; (2)

production facilities; (3) supplier relationships; and (4) customer base.¹² While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, generally, Commerce will consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.¹³ If Commerce determines the new company's operation is not materially dissimilar to that of its predecessor, Commerce may assign the new company the predecessor's cash deposit rate.¹⁴

In accordance with 19 CFR 351.216, we preliminarily determine that the new Dongkuk Steel is the successor-in-interest to the former Dongkuk Steel. Record evidence, as submitted by the new Dongkuk Steel, indicates that the new Dongkuk Steel operates as essentially the same business entity as the former Dongkuk Steel with respect to the subject merchandise.¹⁵

For the complete successor-in-interest analysis, see the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum is available at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

¹² See, e.g., *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: Notice of Initiation and Preliminary Results of Changed Circumstances Review*, 86 FR 70444 (December 10, 2021), unchanged in *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Changed Circumstances Review*, 87 FR 3763 (January 25, 2022).

¹³ *Id.*

¹⁴ *Id.*; see also *Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan*, 67 FR 58, 59 (January 2, 2002); *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review*, 75 FR 34688, 34689 (June 18, 2010); and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Antidumping Duty Changed Circumstances Review*, 63 FR 14679 (March 26, 1998), unchanged in *Circular Welded Non-Alloy Steel Pipe from Korea; Final Results of Antidumping Duty Changed Circumstances Review*, 63 FR 20572 (April 27, 1998) (in which Commerce found that a company which only changed its name and did not change its operations is a successor-in-interest to the company before it changed its name).

¹⁵ See CCR Request.

Public Comment

In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 14 days after the date of publication of this notice.¹⁶ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the case briefs, in accordance with 19 CFR 351.309(d). Parties who submit case or rebuttal briefs are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁷

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request via ACCESS within 14 days of publication of this notice.¹⁸ Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing, in accordance with 19 CFR 351.310(d).

All submissions are to be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.¹⁹ Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.²⁰

Final Results of Review

Should our final results remain unchanged from these preliminary results, we will instruct U.S. Customs and Border Protection to assign entries of subject merchandise produced or exported by new Dongkuk Steel the AD cash deposit rate applicable to former Dongkuk Steel.

Consistent with 19 CFR 351.216(e), we will issue the final results of this CCR no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding.

¹⁶ Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs.

¹⁷ See 19 CFR 351.309(c)(2).

¹⁸ Commerce is exercising its discretion under 19 CFR 351.310(c) to alter the time limit for requesting a hearing.

¹⁹ See 19 CFR 351.303(b).

²⁰ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19: Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

Notification to Interested Parties

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216(b), 351.221(b) and 351.221(c)(3).

Dated: August 23, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Initiation and Preliminary Results of Changed Circumstances Review
- V. Successor-in-Interest Determination
- VI. Recommendation

[FR Doc. 2023-18706 Filed 8-29-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Narragansett Bay National Estuarine Research Reserve; Public Meeting; Request for Comments

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management, will hold a virtual public meeting to solicit input on the performance evaluation of the Narragansett Bay National Estuarine Research Reserve. NOAA also invites the public to submit written comments.

DATES: NOAA will hold a virtual public meeting on Wednesday, October 11, 2023, at 12:30 p.m. Eastern Time (ET). NOAA will close the meeting 15 minutes after the conclusion of public comments and after responding to any clarifying questions from meeting participants. NOAA will consider all relevant written comments received by Friday, October 20, 2023.

ADDRESSES: Comments may be submitted by one of the following methods:

- **Virtual Public Meeting:** Register at <https://forms.gle/xKDXoiqVTqxK2huZA> to participate in the virtual public meeting on Wednesday, October 11, 2023, at 12:30 p.m. ET. We request that participants register by Wednesday, October 11, 2023, at 10:30 a.m. ET. Please indicate on the registration form

whether you intend to provide oral comments during the virtual public meeting by clicking “Yes” or “No” in the box that reads, “Do you plan to make oral comments during this meeting?” The order of the public oral comments will be based on the date and time of registration. Upon registration, NOAA will send a confirmation email. One hour prior to the start of the virtual public meeting on October 11, 2023, NOAA will send an email to all registrants with a link to the public meeting and information about participating. While advance registration is requested, registration will remain open until the meeting closes and any participant may provide oral comment after the registered speakers conclude. Meeting registrants may remain anonymous by typing “Anonymous” in the “First Name” and “Last Name” fields on the registration form.

- **Email:** Send written comments to Pam Kylstra, Evaluator, NOAA Office for Coastal Management, at Pam.Kylstra@noaa.gov. Include “Comments on Performance Evaluation of the Narragansett Bay National Estuarine Research Reserve” in the subject line of the message. NOAA will accept anonymous written comments; however, the written comments NOAA receives are considered part of the public record, and the entirety of the comment, including the name of the commenter, email address, attachments, and other supporting materials, will be publicly accessible. Sensitive personally identifiable information, such as account numbers and Social Security numbers, should not be included with the comment. Comments that are not related to the performance evaluation of the Narragansett Bay National Estuarine Research Reserve or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT: Pam Kylstra, Evaluator, NOAA Office for Coastal Management, by email at Pam.Kylstra@noaa.gov or by phone at (843) 439-5568. Copies of the previous evaluation findings, reserve management plan, and reserve site profile may be viewed and downloaded on the internet at <http://coast.noaa.gov/czm/evaluations/>. A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting Pam Kylstra.

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved national estuarine research

reserves. The process includes one or more public meetings, consideration of written public comments, and consultations with interested Federal, State, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the State of Rhode Island has met the national objectives, adhered to the reserve's management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the final evaluation findings.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023-18738 Filed 8-29-23; 8:45 am]

BILLING CODE 3510-JE-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD289]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of hybrid meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Crab Plan Team will meet. See

SUPPLEMENTARY INFORMATION for agenda and details.

DATES: The meeting will be held on Tuesday, September 12, 2023, through Thursday, September 14, 2023, from 9 a.m. to 4:30 p.m., Pacific Standard time.

ADDRESSES: The meetings will be a hybrid meeting. The in-person component of the meeting will be held at the Alaska Fishery Science Center in the Traynor Room 2076, 7600 Sand Point Way NE, Building 4, Seattle, WA 98115. If you plan to attend in-person you need to notify Sarah Rheinsmith (sarah.rheinsmith@noaa.gov) at least two days prior to the meeting (or two weeks prior if you are a foreign national). You will also need a valid U.S. Identification Card. If you are attending virtually, join the meeting online through the link at <https://meetings.npfmc.org/Meeting/Details/3012>.

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501-2252; telephone: (907) 271-2809. Instructions for attending the meeting via video conference are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Sarah Rheinsmith, Council staff; phone: (907) 271-2809; email: sarah.rheinsmith@noaa.gov. For technical support, please contact our admin Council staff, email: npfmc.admin@noaa.gov.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday September 12, 2023, Through Thursday, September 14, 2023

The agenda will include: (a) summer trawl survey results; (b) Fishery summary 2022/2023; (c) Ecosystem Status report; (d) Economic status of fisheries update; (e) PIBKC (Pribilof Island Blue King Crab) SAFE (Stock Assessment and Fishery Evaluation) report; (f) BBRKC (Bristol Bay Red King Crab) SAFE report; (g) Snow crab SAFE report; (h) BBRKC and snow crab report cards; (i) Tanner crab SAFE report; (j) NSRKC (Norton Sound Red King Crab) proposed models; (k) Overfishing status updates; (l) BSFRF (Bering Sea Fisheries Research Foundation) update; and (m) additional topics. The agenda is subject to change, and the latest version will be posted at <https://meetings.npfmc.org/Meeting/Details/3012> prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone, or by phone only. Connection information will be posted online at: <https://meetings.npfmc.org/Meeting/Details/3012>.

Public Comment

Public comment letters will be accepted and should be submitted electronically to <https://meetings.npfmc.org/Meeting/Details/3012>.

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

Dated: August 23, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023-18558 Filed 8-29-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD290]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Office of Naval Research's Arctic Research Activities in the Beaufort and Chukchi Seas (Year 6)

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

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization.

SUMMARY: NMFS received a request from the Office of Naval Research (ONR) for the renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to Arctic Research Activities (ARA) in the Beaufort Sea and eastern Chukchi Sea. These activities identical to those covered in the current authorization. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than September 14, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to ITP.pauline@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under->

marine-mammal-protection-act without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

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

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

SUPPLEMENTARY INFORMATION:

Background

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

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

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate

that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned, or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

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

2. The request for renewal must include the following:

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

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

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

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal

service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals>. Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

The NDAA (Pub. L. 108–136) removed the “small numbers” and “specified geographical region” limitations indicated above and amended the definition of “harassment” as it applies to a “military readiness activity.” The activity for which incidental take of marine mammals is being requested addressed here qualifies as a military readiness activity.

National Environmental Policy Act (NEPA)

In August 2022, the U.S. Navy prepared an Overseas Environmental Assessment (OEA) analyzing the project. Prior to issuing the IHA for the project, we reviewed the 2022 OEA and the public comments received, determined that a separate NEPA analysis was not necessary, and subsequently adopted the document and issued our own Finding of No Significant Impact in support of the issuance of an IHA (87 FR 57458; September 20, 2022).

We have reviewed ONR’s application for a renewed IHA for ongoing Arctic Research Activities from September 2023 to September 2024 and the 2022 IHA monitoring report. Based on that review, we have determined that the proposed action is identical to that considered in the previous IHA. In addition, no significant new circumstances or information relevant to environmental concerns have been identified. Thus, we have preliminarily determined that the preparation of a new or supplemental NEPA document is not necessary.

History of Request

On September 14, 2022, NMFS issued an IHA to ONR to take marine mammals incidental to Arctic Research Activities in the Beaufort and Chukchi Seas (87 FR 57458; September 20, 2022), effective

from September 14, 2022 through September 13, 2023. On July 17, 2023, NMFS received an application for the renewal of that initial IHA. As described in the application for Renewal IHA, the activities for which incidental take is requested are identical to those covered in the initial 2022 authorization. As required, the applicant also provided a preliminary monitoring report (available at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-office-naval-research-arctic-research-activities-beaufort-2>) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

This proposed Renewal IHA would cover the sixth year of a larger project for which ONR obtained prior IHAs (83 FR 48799, September 27, 2018; 84 FR 50007, September 24, 2019; 85 FR 53333, August 28, 2020; 86 FR 54931, October 5, 2021; 87 FR 57458, September 20, 2022). The larger project supports the development of an under-ice navigation system under the ONR Arctic Mobile Observing System (AMOS) project.

Description of the Specified Activities and Anticipated Impacts

ONR's ARA includes the AMOS experiments in the Beaufort and Chukchi Seas. Project activities involve acoustic testing and a multi-frequency navigation system concept test using left-behind active acoustic sources. More specifically, these experiments involve the deployment of moored, drifting, and ice-tethered active acoustic sources from the Research Vessel Sikuliaq. Another vessel will be used to retrieve the acoustic sources. The activities proposed under the Renewal

IHA are identical to those in the initial 2022 IHA.

Anticipated impacts, which would consist of Level B harassment of marine mammals, would also be identical to those analyzed and authorized in the initial 2022 IHA (87 FR 57458, September 20, 2022). ONR's request is for take of a small number of ringed seals (*Pusa hispida hispida*), and two stocks of beluga whales (*Delphinapterus leucas*) by Level B harassment only. The proposed authorized take numbers are identical to those in the initial 2022 IHA. Neither ONR nor NMFS expects serious injury or mortality to result from ONR's Arctic Research Activities. Additional information on the proposed activities may be found in the notice of proposed IHA (87 FR 44339, July 26, 2022) for the initial 2022 authorization and notice of Final IHA (87 FR 57458, September 20, 2022).

Detailed Description of the Activity

A detailed description of ARA activities for which take is proposed here may be found in the Notices of the Proposed and Final IHA for the initial 2022 authorization (87 FR 44339, July 26, 2022; 87 FR 57458, September 20, 2022). The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. The proposed renewal would be effective for a period not exceeding 1 year from the date of expiration of the initial IHA.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the Notices of the Proposed IHA (87 FR 44339, July 26, 2022) for the initial 2022 authorization. NMFS has

reviewed the monitoring data from the initial IHA, Stock Assessment Reports, information on relevant Unusual Mortality Events (UMEs), unusual and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial 2022 IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which the authorization of take is proposed here may be found in the Notices of the Proposed and Final IHAs for the initial 2022 authorization (87 FR 44339, July 26, 2022; 87 FR 57458, September 20, 2022). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant UMEs, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the Notices of the Proposed and Final IHAs for the initial 2022 authorization (87 FR 44339, July 26, 2022; 87 FR 57458, September 20, 2022). The activities applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA, as do the number of takes, which are indicated below in table 1.

TABLE 1—PROPOSED TAKE BY LEVEL B HARASSMENT

Species	Non-impulsive active acoustics (behavioral)	Icebreaking (behavioral)	Icebreaking (TTS)	Total proposed authorized take	Percentage of stock requested for take ¹
				Behavioral/ TTS	
Beluga whale—Beaufort Sea Stock	134	11	0	145/0	0.369
Beluga whale—Eastern Chukchi Sea Stock	134	11	0	145/0	1.09
Ringed seal	2,839	538	1	3,377/1	1.97

¹ Percentage of stock taken calculated based on proportion of number of Level B takes per the stock population estimate provided in Table 3–1 in the application.

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (87 FR 57458, September 20, 2022) and the discussion of the least practicable adverse impact included in that document and the Notice of the proposed IHA (87 FR 44339, July 26, 2022) remain accurate. The following measures are proposed for this renewal:

- All ships operated by or for the Navy must have personnel assigned to stand watch at all times while underway.
- During moored and drifting acoustic source deployment, ONR must implement a mitigation zone of 180 feet (55 meters) around the deployed source. Deployment must cease if a marine mammal is visually detected within the mitigation zone.
- Ships must avoid approaching marine mammals head-on and must maneuver to maintain a mitigation zone of 500 yards (457 meters) around all observed cetaceans and 200 yards (183 meters) around all other observed marine mammals, provided it is safe to do so.
- Ship captains and subsistence whalers will maintain at-sea communication to avoid conflict of ship transit with hunting activity.
- Activities must cease if a marine mammal species for which take was not authorized, or a species for which authorization was granted but the authorized number of takes have been met, is observed approaching or within the Level A or Level B harassment zones. Activities must not resume until the animal is confirmed to have left the area.
- While underway, all ships must have at least one person trained through the U.S. Navy Marine Species Awareness Training Program on watch during all activities.
- Watch personnel must use standardized data collection forms, whether hard copy or electronic. Watch personnel must distinguish between sightings that occur on transit or during deployment of acoustic sources. Data will be recorded on all days of activities even if marine mammals are not sighted.
- During deployment of acoustic sources or unmanned underwater vehicles (UUVs), visual observation must begin 30 minutes prior to deployment and continue through 30 minutes following the source deployment.

- The ONR will submit a draft report to NMFS Office of Protected Resources (OPR) and Alaska Regional (AKR) on all monitoring conducted under the IHA within 90 calendar days of the completion of each research cruise, or 60 days prior to the issuance of any subsequent IHA for this project, whichever comes first. The report must include data regarding acoustic source use, the number of shutdowns during monitoring, any marine mammal sightings (including the marine mammal's location (latitude and longitude)), and the number of individuals of each species observed during source deployment and operation, and their behavior and distance from the project activities. A final report must be prepared and submitted to NMFS OPR and AKR within 30 days following resolution of comments on the draft report from NMFS.

- If no comments are received from NMFS within 30 days of submission of the draft final report, the draft final report will constitute the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

- In the event that personnel involved in the survey activities discover an injured or dead marine mammal, the ONR must report the incident to the OPR NMFS and to the AKR Stranding Coordinator as soon as feasible. The report must include time, date, and location of discovery, species identification, animal condition, observed behaviors, photographs and/or video footage, if available, and circumstances under which the animal was discovered.

- In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, the ONR must report the incident to OPR, NMFS and to the AKR Stranding Coordinator as soon as feasible. The report must include time, date, and location of the incident, species identification, vessel speed, vessel course/heading and operations, sound source status, avoidance measures taken, environmental conditions, animal's estimated size, length, and behavior, presence and behavior of other marine mammals in the area, estimated fate of the animal, and photos/video footage of the animal, if available.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (87 FR 44339, July 26, 2022) and solicited public comments on both our proposal to issue the initial IHA and on the

potential for a Renewal IHA, should certain requirements be met.

There were no substantive comments received that needed to be addressed in the notice announcing the issuance of the initial 2022 IHA (87 FR 57458, September 20, 2022).

Preliminary Determinations

The proposed action of this Renewal IHA, ONR's Arctic Research Activities, would be identical to the activities analyzed in the initial 2022 IHA. Based on the analysis detailed in the notices of the initial authorization of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS found that the total marine mammal take from the activity would have a negligible impact on all affected marine mammal species and stocks. Furthermore, the mitigation measures and monitoring and reporting requirements are identical to those in the initial 2022 IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial 2022 IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) ONR's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and, (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the Alaska Regional Office.

There is one marine mammal species (Arctic ringed seal) with confirmed occurrence in the study area that is listed as threatened under the ESA. The NMFS Alaska Regional Office of Protected Resources Division issued a Biological Opinion on September 13, 2022 under section 7 of the ESA, on the issuance of an IHA to ONR under section 101(a)(5)(D) of the MMPA by the NMFS Permits and Conservation Division. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of Arctic ringed seals, and is not likely to destroy or adversely modify Arctic ringed seal critical habitat.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a Renewal IHA to ONR for conducting Arctic Research Activities in the Beaufort and Chukchi Seas from September 14, 2023 to September 13, 2024, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. We request comment on our analyses, the proposed Renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: August 24, 2023.

Catherine Marzin,

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

[FR Doc. 2023-18683 Filed 8-29-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information and the National Telecommunications and

Information Administration (NTIA) on spectrum management policy matters.

DATES: The meeting will be held September 21, 2023, from 1:00 p.m. to 4:00 p.m., Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held at the Verizon Technology and Policy Center, 1300 I St. NW, Suite 500 East, Washington, DC 20005. Public comments may be emailed to arichardson@ntia.gov or mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW, Room 4600, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Antonio Richardson, Designated Federal Officer, at (202) 482-4156 or arichardson@ntia.gov; and/or visit NTIA's website at <https://www.ntia.gov/category/csmac>.

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: license radio frequencies in a way that maximizes public benefits; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans. See Charter at <https://www.ntia.doc.gov/files/ntia/publications/csmac-charter-2021.pdf>.

This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: <http://www.ntia.gov/category/csmac>.

Matters to Be Considered: The planned meeting for Thursday, September 21, 2023, will include updates on the progress CSMAC subcommittees are making in addressing topics they are addressing, specifically the Citizens Broadband Radio Service, 6G wireless systems, and Electromagnetic Compatibility (EMC) improvements. NTIA will post a detailed agenda on its website, <http://www.ntia.gov/category/csmac>, prior to the meeting. To the extent that the meeting time and agenda permit, any member of the public may address the Committee regarding the agenda items. See *Open Meeting and Public Participation Policy*, available at <http://www.ntia.gov/category/csmac>.

Time and Date: The meeting will be held on September 21, 2023, from 1:00 p.m. to 4:00 p.m., Eastern Daylight Time (EDT). The meeting time and the agenda topics are subject to change. Please refer to NTIA's website, <http://www.ntia.gov/category/csmac>, for the most up-to-date meeting agenda and access information.

Place: The meeting will be held at the Verizon Technology and Policy Center, 1300 I St. NW, Suite 500 East, Washington, DC 20005. Individuals requiring accommodations are asked to notify Mr. Richardson at (202) 482-4156 or arichardson@ntia.gov at least ten (10) business days before the meeting.

Status: Interested parties are invited to join the teleconference and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of the meeting are strongly encouraged to submit their comments in Microsoft Word and/or PDF format via electronic mail to arichardson@ntia.gov. Comments may also be sent via postal mail to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW, Room 4600, Washington, DC 20230. It would be helpful if paper submissions also include a compact disc (CD) that contains the comments in one or both of the file formats specified above. CDs should be labeled with the name and organizational affiliation of the filer. Comments must be received five (5) business days before the scheduled meeting date in order to provide sufficient time for review. Comments received after this date will be distributed to the Committee but may not be reviewed prior to the meeting. Additionally, please note that there may be a delay in the distribution of comments submitted via postal mail to Committee members.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, member list, agendas, minutes, and reports are available on NTIA's website at <http://www.ntia.gov/category/csmac>.

Stephanie Weiner,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2023-18761 Filed 8-29-23; 8:45 am]

BILLING CODE 3510-60-P

COMMODITY FUTURES TRADING COMMISSION**Agency Information Collection Activities: Notice of Intent to Renew Collection 3038–0103, Ownership and Control Reports, Forms 102/102S, 40/40S, and 71 (Trader and Account Identification Reports)****AGENCY:** Commodity Futures Trading Commission.**ACTION:** Notice.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) is announcing an opportunity for public comment on the proposed renewal of the collection of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. This notice solicits comments in connection with information collection requirements under certain rules and related forms (the “final rules”) that the Commission adopted to enhance its identification of futures and swap market participants.

DATES: Comments must be submitted on or before October 30, 2023.

ADDRESSES: You may submit comments, identified by OMB Control No. 3038–0103, by any of the following methods:

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

Please submit your comments using only one of these methods and identify that it is for the renewal of Collection Number 3038–0103.

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

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.*, Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined

in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Title: Ownership and Control Reports, Forms 102/102S, 40/40S, and 71 (Trader and Account Identification Reports) (OMB Control No. 3038–0103). This is a request for extension of a currently approved information collection.

Abstract: The final rules¹ created new information collection requirements via §§ 17.01, 18.04, 18.05, and 20.5.

Specifically, § 17.01 provides for the filing of Form 102A, Form 102B and Form 71, as follows:

- Pursuant to § 17.01(a), futures commission merchants (“FCMs”), clearing members, and foreign brokers shall identify new special accounts to the Commission on Form 102A;
- Pursuant to § 17.01(b), clearing members shall identify volume threshold accounts to the Commission on Form 102B; and
- Pursuant to § 17.01(c), omnibus volume threshold account originators and omnibus reportable sub-account originators shall identify reportable subaccounts to the Commission on Form 71 when requested via a special call by the Commission or its designee.

Additional reporting requirements arise from § 18.04, which results in the collection of information via Form 40 from and regarding traders who own, hold, or control reportable positions; volume threshold account controllers; persons who own volume threshold accounts; reportable sub-account controllers; and persons who own reportable sub-accounts.

Reporting requirements also arise from § 20.5(a), which requires all reporting entities to submit Form 102S for swap counterparty or customer consolidated accounts with reportable

positions. In addition, § 20.5(b) requires every person subject to books or records under current § 20.6 to complete a 40S filing after a special call upon such person by the Commission.

In addition to the reporting requirements summarized above, § 18.05 imposes recordkeeping requirements upon: (1) Traders who own, hold, or control a reportable futures or options on futures position; (2) volume threshold account controllers; (3) persons who own volume threshold accounts; (4) reportable sub-account controllers; and (5) persons who own reportable subaccounts.

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

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

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations.²

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public

¹ See Final Rule, *Ownership and Control Reports, Forms 102/102S, 40/40S, and 71*, 78 FR 69178 (Nov. 18, 2013). Terms used herein and not otherwise defined herein shall have the meaning assigned to such terms in the final rules or in the Commission’s regulations.

² 17 CFR 145.9.

comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission estimates the burden of this collection of information as follows:

Estimated Number of Respondents: 1,779.

Estimated Average Burden Hours per Respondent: 102.

Estimated Total Annual Burden Hours: 188,980.

Frequency of Collection: On occasion.
(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: August 25, 2023.

Christopher Kirkpatrick,
Secretary of the Commission.

[FR Doc. 2023-18710 Filed 8-29-23; 8:45 am]

BILLING CODE 6351-01-P

CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No. CFPB-2023-0043]

Agency Information Collection Activities: Comment Request

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (CFPB) requests the extension of the Office of Management and Budget's (OMB's) approval for an existing information collection titled "Real Estate Settlement Procedures Act (Regulation X)" approved under OMB Number 3170-0016.

DATES: Written comments are encouraged and must be received on or before September 29, 2023 to be assured of consideration.

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. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Anthony May,

Paperwork Reduction Act Officer, at (202) 435-7278, or email: CFPB_PRA@cfpb.gov. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov. Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Real Estate Settlement Procedures Act (Regulation X).

OMB Control Number: 3170-0016.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Private sector: business or other for-profits, not-for-profit institutions.

Estimated Number of Respondents: 12,506.

Estimated Total Annual Burden Hours: 1,087,981.

Abstract: Regulation X¹ implements the Real Estate Settlement Procedures Act (RESPA).² Regulation X contains information collections in the form of various disclosure and recordkeeping requirements. The disclosures in this collection are required by the statute and implementing regulations. Consumers use the disclosures required by RESPA and Regulation X to inform their choice of settlement service providers, review the final terms of a settlement, understand whom to contact about questions concerning their mortgage loan, and identify/protect themselves against inaccurate or questionable loan servicing practices.

Regulation X requires these information collections. However, to the extent that compliance with requirements in Regulation Z³ provides an exemption from compliance with similar requirements in Regulation X, any relevant information collection burden is accounted for in OMB Control Number 3170-0015.

Request for Comments: The CFPB published a 60-day **Federal Register** notice on February 8, 2023, (88 FR 8262) under Docket Number: CFPB-2023-0013. The CFPB is publishing this notice and soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CFPB, including whether the information will have practical utility; (b) The accuracy of the CFPB's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d)

¹ 12 CFR parts 1024.1-41.

² 12 U.S.C. 2601 *et seq.*

³ 12 CFR 1026.

Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2023-18760 Filed 8-29-23; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket No. ARH-221221A-PL]

Notice of Intent To Grant a Partially Exclusive Patent License

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant a partially exclusive (the field to include outdoor recreation) patent license agreement to Bowerbags, LLC, a corporation of the State of Ohio, having a place of business at 601 East 3rd St., Dayton, Ohio 45402.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

ADDRESSES: Submit written objections to Jaclyn Lauren Williams, Technology Business Specialist, 2510 Fifth Street, Bldg. 840, Room 413.30, Wright-Patterson AFB, OH 45433; Phone: (702) 715-4402; or Email: jaclyn.williams.2@us.af.mil. Include Docket No. ARH-221221A-PL in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Jaclyn Lauren Williams, Technology Business Specialist, 2510 Fifth Street, Bldg. 840, Room 413.30, Wright-Patterson AFB, OH 45433; Phone: (702) 715-4402; or Email: jaclyn.williams.2@us.af.mil.

SUPPLEMENTARY INFORMATION: The Department of the Air Force intends to grant the partially exclusive patent license agreement for the invention described in: U.S. Patent No. 8,857,681 B2, entitled, "Load Carriage Connector and System," filed March 8, 2013, and issued October 14, 2014.

Abstract of Patent

A load carriage connector and system for rapid mounting and demounting of a user-carried load. The connector utilizes two mating halves comprising a male connector half and a female connector half. The connector is configured to allow mating under various angles of approach, allowing the user to reliably couple the system even under conditions in which the user is unable to view the orientation of the connectors. Additionally, the configuration of the connector system allows the user to quickly and efficiently decouple the connector halves, even while under tensile or shear load.

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2023-18678 Filed 8-29-23; 8:45 am]

BILLING CODE 5001-10-P

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System**

[Docket DARS-2023-0020; OMB Control Number 0750-0002]

Information Collection; Covered Defense Telecommunications Equipment or Services

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for extension of a collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 29, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

You may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT:

Angela Duncan, 571-372-7574, or whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS); DFARS Part 204, Covered Defense Telecommunications Equipment or Services; OMB Control Number 0750-0002.

Affected Public: Businesses or other for-profit and not-for-profit entities.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 3,446.

Annual Responses: 172,320.

Annual Response Burden Hours: 62,085.

Needs and Uses: The collection of information is necessary to protect against foreign interference with DoD telecommunications, which could jeopardize our military communications, the lives of our warfighters, and our national security. The collection of information is essential to the mission of the agencies to ensure DoD does not purchase prohibited equipment, systems, and services, and can respond appropriately if any such purchases are not identified until after delivery or use.

This requirement supports implementation of section 1656(b) of the National Defense Authorization Act for fiscal year 2018. Section 1656 prohibits DoD from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service to carry out the nuclear deterrence mission and homeland defense mission that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as a part of any system.

This requirement is implemented in the Defense Federal Acquisition Regulation Supplement (DFARS) through the provision at 252.204-7017, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation, and the clause at 252.204-7018,

Prohibition on Acquisition of Covered Defense Telecommunications Equipment or Services.

This clearance covers the following requirements:

- DFARS 252.204-7017 requires that if an offeror provides an affirmative representation under the provision at 252.204-7016, Covered Defense Telecommunications Equipment or Services—Representation, that offeror is required to represent whether it will or will not provide under the contract covered defense telecommunications equipment or services.

- DFARS 252.204-7018 requires contractors to report covered telecommunications equipment, systems, and services identified during performance of a contract.

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.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023-18633 Filed 8-29-23; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Office of the Secretary****Renewal of Department of Defense Federal Advisory Committees—Defense Policy Board**

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the Defense Policy Board (DPB).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Advisory Committee Management Officer, 703-692-5952.

SUPPLEMENTARY INFORMATION: The DoD is renewing the DPB in accordance with chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the “Federal Advisory Committee Act” or “FACA”) and 41 CFR 102-3.50(d). The charter and contact information for the DPB’s Designated Federal Officer (DFO) are found at <https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation>.

The DPB provides the Secretary of Defense and the Deputy Secretary of Defense (“the DoD Appointing Authority”) independent advice and recommendations on matters concerning defense policy and national security issues. Specifically, the DPB

will focus on: (a) issues central to strategic DoD planning; (b) policy implications of U.S. force structure and modernization on DoD's ability to execute U.S. defense strategy; (c) U.S. regional defense policies; and (d) other defense policy and national security issues of special interest to the DoD raised by the DoD Appointing Authority, or the Under Secretary of Defense for Policy as the DPB's Sponsor.

The DPB shall be composed of not more than 20 members who have distinguished backgrounds in defense and national security affairs. These members will come from varied backgrounds including prior government or military service, multinational corporations, academia, or other non-government organizations. Individual members will be appointed according to DoD policy and procedures, and serve a term of service of one-to-four years with annual renewals. One member will be appointed as Chair of the DPB. No member, unless approved according to DoD policy and procedures, may serve more than two consecutive terms of service on the DPB, or serve on more than two DoD Federal advisory committees at one time.

Individual members are appointed according to DoD policy and procedures, and serve a term of service of one-to-four years with annual renewals. One member will be appointed as Chair of the DPB. No member, unless approved according to DoD policy and procedures, may serve more than two consecutive terms of service on the DPB, or serve on more than two DoD Federal advisory committees at one time.

DPB members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, are appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. DPB members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services are appointed pursuant to 41 CFR 102–3.130(a), to serve as regular government employee members.

All DPB members are appointed to provide advice based on their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official DPB-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements about the DPB's mission and functions.

Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the DPB. All written statements shall be submitted to the DFO for the DPB using the link provided in this **SUPPLEMENTARY INFORMATION** section, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: August 24, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–18770 Filed 8–29–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Certificate of Alternate Compliance for USS Kingsville (LCS 36)

AGENCY: Department of the Navy (DoN), Department of Defense (DoD).

ACTION: Notice of issuance of Certificate of Alternate Compliance.

SUMMARY: The U.S. Navy hereby announces that a Certificate of Alternate Compliance has been issued for USS *Kingsville* (LCS 36). Due to the special construction and purpose of this vessel, the Admiralty Counsel of the Navy has determined it is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the navigation lights provisions of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) without interfering with its special function as a naval ship. The intended effect of this notice is to warn mariners in waters where 72 COLREGS apply.

DATES: This Certificate of Alternate Compliance is effective August 30, 2023 and is applicable beginning August 23, 2023.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Ryan Feingold, JAGC, U.S. Navy, Admiralty Attorney, Office of the Judge Advocate General, Admiralty and Claims Division (Code 15), 1322 Patterson Ave SE, Suite 3000, Washington Navy Yard, DC 20374–5066, 202–685–5075, or admiralty@navy.mil.

SUPPLEMENTARY INFORMATION:

Background and Purpose.

Executive Order (E.O.) 11964 of January 19, 1977 and 33 U.S.C. 1605 provide that the requirements of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), as to the number, position, range, or arc of visibility of lights or shapes, as well

as to the disposition and characteristics of sound-signaling appliances, shall not apply to a vessel or class of vessels of the Navy where the Secretary of the Navy shall find and certify that, by reason of special construction or purpose, it is not possible for such vessel(s) to comply fully with the provisions without interfering with the special function of the vessel(s). Notice of issuance of a Certificate of Alternate Compliance must be made in the **Federal Register**.

In accordance with 33 U.S.C. 1605, the Admiralty Counsel of the Navy, under authority delegated by the Secretary of the Navy, hereby finds and certifies that USS *Kingsville* (LCS 36) is a vessel of special construction or purpose, and that, with respect to the position of the following navigational lights, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS without interfering with the special function of the vessel: Annex I, paragraph 2(a)(i) pertaining to the height of the forward masthead light; Annex I, paragraph 3(a) pertaining to the location of the forward quarter of the ship; Annex I, paragraph 2(f)(i) pertaining to obstructions of the aft masthead light; Annex I, paragraph 3(a) pertaining to the horizontal separation of the masthead lights; Annex I, Paragraph 2(f)(ii) and Annex I, Paragraph 3(c) pertaining to the vertical and horizontal position of the task lights in relation to the masthead lights; Annex I, Paragraph 9(b) pertaining to the degree of obstruction of the task lights.

The Admiralty Counsel of the Navy further finds and certifies that these navigational lights are in closest possible compliance with the applicable provision of the 72 COLREGS.

Authority: 33 U.S.C. 1605(c), E.O. 11964.

Dated: August 25, 2023.

K.K. Ramsey,

Federal Register Liaison Officer, Office of the Judge Advocate General, U. S. Navy.

[FR Doc. 2023–18732 Filed 8–29–23; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION**[Docket No.: ED–2023–SCC–0154]****Agency Information Collection Activities; Comment Request; Charter Online Management and Performance System (COMPS) Developer Grant Profiles****AGENCY:** Office of Elementary and Secondary Education (OESE), Department of Education (ED).**ACTION:** Notice.**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).**DATES:** Interested persons are invited to submit comments on or before October 30, 2023.**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use <https://www.regulations.gov> by searching the Docket ID number ED–2023–SCC–0154. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](https://www.regulations.gov) site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Stephanie Jones, 202–453–7835.**SUPPLEMENTARY INFORMATION:** The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden.

It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Charter Online Management and Performance System (COMPS) Developer Grant Profiles.

OMB Control Number: 1810–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 40.

Total Estimated Number of Annual Burden Hours: 320.

Abstract: This request is for a new OMB approval to collect the Grant Profile data from Charter School Programs (CSP) Developer grantees.

The Charter School Programs (CSP) was originally authorized under Title V, Part B, Subpart 1, Sections 5201 through 5211 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind (NCLB) Act of 2001. For fiscal year 2017 and thereafter, ESEA has been amended by the Every Student Succeeds Act (ESSA), (20USC 7221–7221i), which reserves funds to improve education by supporting innovation in public education and to: (2) provide financial assistance for the planning, program design, and initial implementation of charter schools; (3) increase the number of high-quality charter schools available to students across the United States; (4) evaluate the impact of charter schools on student achievement, families, and communities, and share best practices between charter schools and other public schools; (5) encourage States to provide support to charter schools for facilities financing in an amount more nearly commensurate to the amount States typically provide for traditional public schools; (6) expand opportunities for children with disabilities, English learners, and other traditionally

underserved students to attend charter schools and meet the challenging State academic standards; (7) support efforts to strengthen the charter school authorizing process to improve performance management, including transparency, oversight and monitoring (including financial audits), and evaluation of such schools; and (8) support quality, accountability, and transparency in the operational performance of all authorized public chartering agencies, including State educational agencies, local educational agencies, and other authorizing entities.

The U.S. Department of Education (ED) is requesting authorization to collect data from CSP grantees within the Developer program through a new online platform. In 2022, ED began development of a new data collection system, the Charter Online Management and Performance System (COMPS), designed specifically to reduce the burden of reporting for users and increase validity of the overall data. This new collection consists of questions responsive to the actions established in the program's final rule published in the **Federal Register** on July 6, 2022, as well as the Developer program Notice Inviting Applications (NIA). This collection request is a consolidation of all previously established program data collection efforts and provides a more comprehensive representation of grantee performance.

Dated: August 24, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–18674 Filed 8–29–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION**[Docket No.: ED–2023–SCC–0153]****Agency Information Collection Activities; Comment Request; Charter Online Management and Performance System (COMPS) State Entity Annual Performance Report****AGENCY:** Office of Elementary and Secondary Education (OESE), Department of Education (ED).**ACTION:** Notice.**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before October 30, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <https://www.regulations.gov> by searching the Docket ID number ED–2023–SCC–0153. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](https://www.regulations.gov) site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Adrienne Hawkins, (202) 987–1248.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the

respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Charter Online Management and Performance System (COMPS) State Entity Annual Performance Report.

OMB Control Number: 1810–NEW.

Type of Review: New ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 80.

Total Estimated Number of Annual Burden Hours: 3,040.

Abstract: This request is for a new OMB approval to collect the Annual Performance Report (APR) data from Charter School Programs (CSP) State Entity (SE) grantees. The Charter School Programs (CSP) was originally authorized under Title V, Part B, Subpart 1, Sections 5201 through 5211 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind (NCLB) Act of 2001. For fiscal year 2017 and thereafter, ESEA has been amended by the Every Student Succeeds Act (ESSA), (20USC 7221–7221i), which reserves funds to improve education by supporting innovation in public education and to: (2) provide financial assistance for the planning, program design, and initial implementation of charter schools; (3) increase the number of high-quality charter schools available to students across the United States; (4) evaluate the impact of charter schools on student achievement, families, and communities, and share best practices between charter schools and other public schools; (5) encourage States to provide support to charter schools for facilities financing in an amount more nearly commensurate to the amount States typically provide for traditional public schools; (6) expand opportunities for children with disabilities, English learners, and other traditionally underserved students to attend charter schools and meet the challenging State academic standards; (7) support efforts to strengthen the charter school authorizing process to improve performance management, including transparency, oversight and monitoring (including financial audits), and evaluation of such schools; and (8) support quality, accountability, and transparency in the operational performance of all authorized public chartering agencies, including State educational agencies, local educational agencies, and other authorizing entities.

The U.S. Department of Education (ED) is requesting authorization to

collect data from CSP grantees within the SE program through a new online platform. In 2022, ED began development of a new data collection system, the Charter Online Management and Performance System (COMPS), designed specifically to reduce the burden of reporting for users and increase validity of the overall data. This new collection consists of questions responsive to the actions established in the program's final rule published in the **Federal Register** on July 6, 2022, as well as the SE program Notice Inviting Applications (NIA). This collection request is a consolidation of all previously established program data collection efforts and provides a more comprehensive representation of grantee performance.

Dated: August 24, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–18671 Filed 8–29–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–502]

Application for Authorization To Export Electric Energy; In Commodities US LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: In Commodities US LLC (the Applicant or In Commodities) has applied for authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before September 29, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to Electricity.Exports@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, Electricity.Exports@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b)

and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1-DEL-S3-2023 and Redelegation Order No. S3-DEL-GD1-2023.

On June 21, 2023, In Commodities filed an application with DOE (Application or App.) for authorization to transmit electric energy to Canada for a five-year term. App at 1.

In its Application, In Commodities states that it is a Delaware limited liability company with its headquarters in Denmark, and that "is also registered as a foreign limited liability company in the states of New Jersey, New York, and Texas." *Id.* at 2. The Applicant states it "is a direct, wholly owned subsidiary of In Commodities US ApS, a corporation organized under the laws of Denmark. In Commodities US ApS is wholly owned by Incomas Global ApS, also organized under the laws of Denmark. In Commodities Global ApS is wholly owned by Incomas Holdings ApS, also organized under the laws of Denmark." *Id.* The Applicant represents that it "has no electric power supply system on which the proposed exports could have a reliability, fuel use system, or stability impact. In Commodities also has no obligation to serve native load usually associated with a franchised service area, and, thus, the exports proposed by In Commodities will not impair its ability to meet current and prospective power supply obligations." *Id.* at 3-4. The Applicant further states, "In Commodities will purchase power to be exported from a variety of sources such as power marketers, independent power producers, or U.S. electric utilities and federal power marketing entities as those terms are defined in Sections 3(22) and 3(19) of the FPA. By definition, such power is surplus to the system of the generator and, therefore, the electric power that In Commodities will export on either a firm or interruptible basis will not impair the sufficiency of the electric power supply within the U.S." *Id.* at 4.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate

for open access transmission by third parties. *Id.* at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at Electricity.Exports@hq.doe.gov. Protests should be filed in accordance with Rule 211 of Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at Electricity.Exports@hq.doe.gov in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning In Commodities' Application should be clearly marked with GDO Docket No. EA-502. Additional copies are to be provided directly to Divna Gavric, In Commodities US LLC, 251 Little Falls Drive, Wilmington, DE 19808, marketsetup@in-commodities.com and Valerie L. Green, Pierce Atwood LLP, 1875 K St. NW, Suite 700, Washington, DC 20006, Vgreen@pierceatwood.com.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at <https://www.energy.gov/gdo/pending-applications-0> or by emailing Electricity.Exports@hq.doe.gov.

Signing Authority: This document of the Department of Energy was signed on August 24, 2023, by Maria 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 25, 2023.

Treena V. Garrett,
*Federal Register Liaison Officer, U.S.
Department of Energy.*

[FR Doc. 2023-18728 Filed 8-29-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[GDO Docket No. EA-342-C]

Application for Renewal of Authorization To Export Electric Energy; Royal Bank of Canada

AGENCY: Grid Deployment Office,
Department of Energy.

ACTION: Notice of application.

SUMMARY: Royal Bank of Canada (the Applicant or RBC) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before September 29, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to Electricity.Exports@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474-2403, Electricity.Exports@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1-DEL-S3-2023 and Redelegation Order No. S3-DEL-GD1-2023.

On September 4, 2008, DOE issued Order No. EA-342, authorizing RBC to transmit electric energy from the United States to Canada as a power marketer. Such authority was renewed in 2013 (EA-342-A) and 2018 (EA-342-B). On June 12, 2023, RBC filed an application

with DOE (Application or App.) for renewal of its export authority for an additional five-year term. App. at 1.

In its Application, RBC states that “[n]either RBC nor any of its affiliates (collectively, the ‘RBC Companies’) owns, operates or controls any electric power transmission or distribution facilities in the United States.” *Id.* at 2. RBC also states that “the RBC Companies also do not own, operate or control any electric generation assets.” *Id.* RBC represents that it “will purchase the power to be exported from electric facilities, federal power marketing agencies, qualifying cogeneration, small power production facilities and exempt wholesale generators, as those terms are defined in the FPA, and other public utilities.” *Id.* at 4. RBC contends that “[a]ny power purchased by RBC for export will be surplus to the needs of those entities selling power to RBC” and thus, “RBC’s exports will not impair the sufficiency of electric supply within the United States, nor will the transmissions impede or tend to impede the coordination in the public interest of U.S. transmission facilities.” *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See id.* at Exhibit D.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov*. Protests should be filed in accordance with Rule 211 of Federal Energy Regulatory Commission’s (FERC’s) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at *Electricity.Exports@hq.doe.gov* in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning RBC’s Application should be clearly marked with GDO Docket No. EA-342-C. Additional copies are to be provided directly to Laura Mul, RBC Capital Markets, LLC, 200 Vesey Street, 9th Floor, New York, NY 10281, *Laura.Mul@rbc.com*.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE’s National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of

the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at <https://www.energy.gov/gdo/pending-applications> or by emailing *Electricity.Exports@hq.doe.gov*.

Signing Authority: This document of the Department of Energy was signed on August 24, 2023, by Maria 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 25, 2023.

Treena V. Garrett,

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

[FR Doc. 2023-18727 Filed 8-29-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[GDO Docket No. PP-501]

Application for Presidential Permit; Eastern Maine Electric Cooperative, Inc.

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Eastern Maine Electric Cooperative, Inc. (the Applicant or EMEC) has applied for a Presidential permit to acquire, operate, and maintain facilities for the distribution of electric energy at the international border between the United States and Canada.

DATES: Comments, protests, or motions to intervene must be submitted on or before September 29, 2023.

ADDRESSES: Comments, protests, motions to intervene, or request for more information should be addressed by electronic email to *Electricity.Exports@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474-2403, *Electricity.Exports@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) issues permits for the construction, operation,

maintenance, or connection of electric transmission facilities at the United States international border, pursuant to E.O. 10485, as amended by E.O. 12038. On April 10, 2023, the authority to issue such orders was delegated to the DOE’s Grid Deployment Office (GDO) by Delegation Order No. S1-DEL-S3-2023 and Redellegation Order No. S3-DEL-GD1-2023.

On June 2, 2022, EMEC filed an application (Application or App.) with the DOE “to import a small amount of energy from New Brunswick, Canada to serve two small seasonal camps that are in EMEC’s service territory near the Canadian border.” App. at 1. EMEC “is a nonprofit utility built by and belonging to the communities it serves in Aroostook County, Penobscot County, and Washington County, Maine, which are located on Maine’s Eastern Border with Canada.” *Id.* at 2. The Applicant states “the two camps have been served by New Brunswick Power Corporation (NB Power)”, *Id.* at 1, via the existing Loon Bay Distribution Line. *See Id.* at Exhibit 1. NB Power “is a vertically-integrated Crown Corporation wholly owned by the Government of New Brunswick, Canada”, *Id.* at 2, and it “would like to cease retail service to the camps.” *Id.* at 4. The Applicant further represents that, “To facilitate EMEC’s acquisition and operation of the distribution assets, NB Power has applied to the Canadian Energy Regulator for a border accommodation export permit.” *Id.* at 5. Additionally, EMEC has an agreement with NB Power “for the purchase of electric energy,” effective from November 1, 2020, through October 31, 2025. *Id.* at 3.

The facilities for which EMEC seeks a permit “consists of one single phase overhead circuit, which is a 7200-volt distribution line, 60Hz. The conductor size is either #6 or #4 wire. It is a single-phase line with a neutral.” *Id.* at 4. The total length of the line is approximately 940 feet. *Id.* The line serves two seasonal dwellings and the annual kilowatt hours transmitted are estimated at less than 10,000 kilowatt hours. *Id.* at 5.

DOE Evaluation: Before a Presidential permit may be issued or amended, DOE must determine that the proposed action is in the public interest. In making that determination, DOE considers the environmental impacts of the proposed project, determines the project’s impact on reliability of the United States electric grid, and weighs any other factors that it may also deem relevant to the public interest. DOE must also obtain favorable recommendations of the Secretary of State and the Secretary

of Defense before taking final action on a Presidential permit application.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov*. Protests should be filed in accordance with Rule 211 of Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at *Electricity.Exports@hq.doe.gov* in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning EMEC's Application should be clearly marked with GDO Docket No. PP-501. Additional copies are to be provided directly to Scott Hallowell, PO Box 425, Calais, ME 04619, *scotth@emec.com*; and Michael Postar and Ellen Hill, Duncan, Weinberg, Genzer & Pembroke, P.C., 1667 K Street NW, Suite 700, Washington, DC 20006, *mvp@dwgp.com* and *elh@dwgp.com*.

Copies of this Application will be made available, upon request, on the program website at <https://www.energy.gov/gdo/pending-applications-0> or by emailing *Electricity.Exports@hq.doe.gov*.

Signing Authority: This document of the Department of Energy was signed on August 24, 2023, by Maria 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 25, 2023.

Treena V. Garrett,

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

[FR Doc. 2023-18734 Filed 8-29-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[GDO Docket No. EA-455-A]

Application for Renewal of Authorization To Export Electric Energy; NS Power Energy Marketing Incorporated

AGENCY: Grid Deployment Office,
Department of Energy.

ACTION: Notice of application.

SUMMARY: NS Power Energy Marketing Incorporated (the Applicant or NSP Marketing) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before September 29, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474-2403, *Electricity.Exports@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1-DEL-S3-2023 and Redellegation Order No. S3-DEL-GD1-2023.

On August 30, 2018, DOE issued Order No. EA-455 authorizing NSP Marketing to transmit electric energy from the United States to Canada as a power marketer. On June 30, 2023, NSP Marketing filed an application with DOE (Application or App.) for renewal of its export authority for an additional five-year term. App. at 1.

In its Application, NSP Marketing states it is a wholly-owned subsidiary of Nova Scotia Power Inc. ('NSPI') and that NSPI "is a wholly-owned subsidiary of Emera Incorporated (Emera). *Id.* Although Emera, the Applicant's parent

company, owns and controls electric power generation and transmission facilities, the Applicant asserts "NSP Marketing does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area. NSP Marketing operates as a marketing company involved in, among other things, the purchase and sale of electricity in the United States as a power marketer." *Id.* at 6. NSP Marketing represents that it "will purchase surplus electric energy from electric utilities and other suppliers within the United States[.]" *Id.* at 7. NSP Marketing also states its "export of power will not impair the sufficiency of electric power supply in the U.S." *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *Id.* at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov*. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at *Electricity.Exports@hq.doe.gov* in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning NSP Marketing's Application should be clearly marked with GDO Docket No. EA-455-A. Additional copies are to be provided directly to Matt Clarke, Nova Scotia Power, 1223 Lower Water St., Halifax, NS B3J 3S8 Canada, *matt.clarke@nspower.ca*; Jeffrey J. Jakubiak, Vinson & Elkins LLP, 1114 Avenue of the Americas, 32nd Floor, New York, NY 10036, *Jjakubiak@velaw.com*; and Jennifer C. Mansh, Vinson & Elkins LLP, 2200 Pennsylvania Avenue NW, Suite 500 West, Washington, DC 20037, *JMansh@velaw.com*.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, on the program website at <https://www.energy.gov/gdo/pending-applications-0> or by emailing Electricity.Exports@hq.doe.gov.

Signing Authority: This document of the Department of Energy was signed on August 24, 2023, by Maria 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 25, 2023.

Trenea V. Garrett,

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

[FR Doc. 2023-18719 Filed 8-29-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting: cancellation.

SUMMARY: On August 9, 2023, the Department of Energy published a notice of open meeting announcing a meeting on September 7, 2023, of the Environmental Management Site-Specific Advisory Board, Portsmouth. This notice announces the cancellation of this meeting.

DATES: The meeting scheduled for September 7, 2023, announced in the August 9, 2023, issue of the **Federal Register** (FR Doc. 2023-17039, 85 FR 53872), is cancelled.

FOR FURTHER INFORMATION CONTACT: Eric Roberts, Board Support Manager, by Phone: (270) 554-3004 or Email: eric@pgdpcab.org.

Signed in Washington, DC, on August 24, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023-18722 Filed 8-29-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[GDO Docket No. EA-500]

Application for Authorization To Export Electric Energy; MFT Energy US Power LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: MFT Energy US Power LLC (the Applicant) has applied for authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before September 29, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to Electricity.Exports@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT:

Christina Gomer, (240) 474-2403, Electricity.Exports@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1-DEL-S3-2023 and Redesignation Order No. S3-DEL-GD1-2023.

On May 15, 2023, MFT Energy US Power LLC filed an application with DOE (Application or App.) for authorization to transmit electric energy to Canada for a ten-year term. App. at 1.

In its Application, MFT Energy US Power LLC states that it is "wholly owned by MFT Energy US, Inc., a Delaware corporation" which the Applicant states is "wholly owned by MFT Energy A/S, registered in Denmark." *Id.* The Applicant states it "owns a 75% interest in MFT Energy US 1 LLC" and further states that "MFT Energy US 1 LLC does not own any franchised service territory, and does

not control any physical electric generation or transmission facilities in the United States." *Id.* at 1-2. The Applicant represents that it "has no other affiliates or upstream owners that own any franchised service territory, or control any physical electric generation or transmission facilities in the United States." *Id.* at 2. MFT Energy US Power LLC also states it "will purchase surplus electric energy from entities within the United States to be exported to Canada. Because Applicant has no franchised service territory and therefore no native load obligations, and the power it proposes to purchase and export is surplus to the needs of those entities selling electric power to Applicant, the proposed export of electricity will not impair the sufficiency of electric supply within the United States and meets the first statutory criterion of Section 202(e)." *Id.* at 3.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See id.* at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at Electricity.Exports@hq.doe.gov. Protests should be filed in accordance with Rule 211 of Federal Energy Regulatory Commission's (FERC's) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at Electricity.Exports@hq.doe.gov in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning MFT Energy US Power LLC's Application should be clearly marked with GDO Docket No. EA-500. Additional copies are to be provided directly to Simon Fisker Rathjen, MFT Energy US Power LLC, 70 W. Madison Street, Chicago, IL 60602, sr@mft-energy.com and uspower@mft-energy.com.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at

<https://www.energy.gov/gdo/pending-applications> or by emailing Electricity.Exports@hq.doe.gov.

Signing Authority: This document of the Department of Energy was signed on August 24, 2023, by Maria 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 25, 2023.

Treena V. Garrett,

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

[FR Doc. 2023-18720 Filed 8-29-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection; Proposed New Survey

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: DOE requests a three-year extension, with changes, to Form DOE-417 *Electric Emergency Incident and Disturbance Report*, OMB Control Number 1901-0288, as required under the Paperwork Reduction Act of 1995. Form DOE-417 collects information for DOE to monitor electric emergency incidents and disturbances in the United States (including all 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the U.S. Territories). The information collected allows DOE to conduct post-incident reviews examining significant interruptions of electric power or threats to the national electric system.

DATES: DOE must receive all comments on this proposed information collection no later than October 30, 2023. If you anticipate any difficulties in submitting your comments by the deadline, contact the person listed in the **ADDRESSES** section of this notice as soon as possible.

ADDRESSES: Written comments may be sent to DOE-417 Recertification, C/O Matthew Tarduogno, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or by email at OE417@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Matthew Tarduogno, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, matthew.tardugono@hq.doe.gov, (202) 586-2892. The forms and instructions are available online at: <https://www.oe.netl.doe.gov/oe417.aspx>. You can view DOE-417 *Electric Emergency Incident and Disturbance Report* online at <https://www.oe.netl.doe.gov/oe417.aspx>.

SUPPLEMENTARY INFORMATION: This information collection request contains:

- (1) *OMB No.:* 1901-0288.
- (2) *Information Collection Request Title:* Electric Emergency Incident and Disturbance Report.
- (3) *Type of Request:* Renewal with changes.
- (4) *Purpose:* DOE uses Form DOE-417 *Emergency Incident and Disturbance Report* to monitor electric emergency incidents and disturbances in the United States (including all 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the U.S. Territories) and to investigate significant interruptions of electric power or threats to the electric system reliability. Form DOE-417 also enables DOE to meet the Department's national security responsibilities as the coordinating agency for Emergency Support Function (ESF) #12—Energy, under the National Response Framework, and the Sector-Specific Agency for the energy sector, pursuant to Presidential Policy Directive 21—*Critical Infrastructure Security and Resilience*, Presidential Policy Directive 41—*United States Cyber Incident Coordination*, and the Fixing Americas Surface Transportation (FAST) Act, Public Law 114-94. The information may also be shared with other non-regulatory federal agencies assisting in emergency response and recovery operations or investigating the causes of an incident or disturbance to the national electric system. Public summaries are published on Form DOE-417 web page at <https://www.oe.netl.doe.gov/oe417.aspx> on a monthly basis to keep the public informed.

(4a) *Proposed Changes to Information Collection:* Proposed changes to Form DOE-417 continue to ensure future alignment with the North American Electric Reliability Corporation (NERC) CIP-008-6 Reliability Standard, as well as the NERC EOP-004-6 Reliability Standard, and potential future changes.

The continued alignment between Form OE-417 and NERC reporting requirements helps minimize confusion among industry stakeholders about where and how to file reports and enable industry stakeholders to train personnel to report using a single form. Additional changes to Form DOE-417 clarify reporting criteria and updates types of entities that are required to submit certain criteria. A summary of these and other changes to Form DOE-417 is provided below:

- Minor edit to alert criteria 2 to add “as defined in the NERC Glossary of Terms”

- Under “Criteria for Filing” section, added alert criteria 27, “Uncontrolled loss of a total of 500 MW of more from inverter-based resource(s) for greater than 30 minutes at a common point of interconnection to the bulk electric system.”

- Under “Cause” in the “Type of Emergency” section, added the following subcategories to physical attack:

- Ballistic
- Arson
- Explosive device
- Other

- Under “Cause” in the “Type of Emergency” section, added the following subcategories to suspicious activity:

- Aircraft or Unmanned Aerial System (UAS)
- Trespassing or non-destructive intrusion
- Surveillance
- Vandalism
- Other

- Under “Cause” in the “Type of Emergency”, combined “Cyber event information technology” and “Cyber Event (operational technology)” and added the following subcategories:

- Information Technology
- Operational Technology

- Updated Instructions: Replaced “Office of Electricity” with “Office of Cybersecurity, Energy Security, and Emergency Response.”

- Updated Instructions: Replaced “Assistant Secretary” with “Director.”
- Update Instructions: Appendix A.

Replace “What is Excluded” text for generating entities with “For entities who have 300 MW or more of generation there are no exclusions allowed. All items need to be addressed.”

(5) *Annual Estimated Number of Respondents:* 1,749.

(6) *Annual Estimated Number of Total Responses:* 400.

(7) *Annual Estimated Number of Burden Hours:* 4,175.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* \$364,728.

Comments are invited on whether or not: (a) The proposed collection of information is necessary for the proper performance of agency functions, including whether the information will have a practical utility; (b) DOE's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate; (c) DOE can improve the quality, utility, and clarity of the information it will collect; and (d) DOE can minimize the burden of the collection of information on respondents, such as automated collection techniques or other forms of information technology.

Statutory Authority: 15 U.S.C. 772(b), 764(b); 764(a); and 790a and 42 U.S.C. 7101 *et seq.* and the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601, Pub. L. 93–275).

Signed in Washington, DC, on August 24, 2023.

Samson A. Adeshiyan,

Director, Office of Statistical Methods & Research, U. S. Energy Information Administration.

[FR Doc. 2023–18729 Filed 8–29–23; 8:45 am]

BILLING CODE 6450–01–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: RP23–977–000.

Applicants: Texas Eastern

Transmission, LP.

Description: Compliance filing: Termination of Rate Schedules X–6, X–57, and X–75 Compliance Filing to be effective 9/2/2023.

Filed Date: 8/24/23.

Accession Number: 20230824–5016.

Comment Date: 5 pm ET 9/5/23.

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.

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 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–18741 Filed 8–29–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–531–00]

Transcontinental Gas Pipe Line Company, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on August 18, 2023, Transcontinental Gas Pipe Line Company, LLC (Transco), P.O. Box 1396, Houston, Texas 77251, filed an application under section 7(b) of the Natural Gas Act (NGA), and part 157 of the Commission's regulations requesting authorization for its Abandonment of South Marsh Island 147 to South Marsh Island 130 Project (Project). The Project consists of the abandonment of its offshore transmission lateral extending from South Marsh Island Block 147 to a subsea tie-in in South Marsh Island Block 130 and auxiliary facilities, Offshore, Louisiana. Transco states that the Project will permit it to eliminate costs and risks associated with retention of the SMI 147 to SMI 130 Lateral. Transco estimates the total cost of the Project to be \$2.56 million, all as more fully set forth in the application which is on file with the Commission and open for 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 regarding the proposed project should be directed to Andre Pereira, Regulatory Analyst, Lead; P.O. Box 1396, Houston, Texas 77251; by phone at: 713–215–4362; or by email at: Andre.S.Pereira@Williams.com.

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,¹ within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on September 13, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and

¹ 18 CFR (Code of Federal Regulations) 157.9.

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.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)² and 385.211³ of the Commission's regulations under the NGA, any person⁴ may file a protest to the application. Protests must comply with the requirements specified in section 385.2001⁵ of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before September 13, 2023.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP23-531-000 in your submission.

(1) 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;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Comment on a Filing"; or

(3) You can file a paper copy of your comments or protests by mailing them

to the following address below. Your written comments must reference the Project docket number CP23-531-000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, 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. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,⁶ 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 Procedure⁷ and the regulations under the NGA⁸ by the intervention deadline for the project, which is September 13, 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>.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP23-531-000 in your submission.

(1) You may file your motion to intervene 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 "Intervention." The eFiling feature includes a document-less intervention option; for more information, visit <https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf>; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP23-531-000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of motions to intervene (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 at: Andre Pereira, Regulatory Analyst, Lead; P.O. Box 1396, Houston, Texas 77251; or by email at: Andre.S.Pereira@Williams.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed⁹ motions to intervene are automatically granted by operation of Rule 214(c)(1).¹⁰ 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

² 18 CFR 157.10(a)(4).

³ 18 CFR 385.211.

⁴ Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

⁵ 18 CFR 385.2001.

⁶ 18 CFR 385.102(d).

⁷ 18 CFR 385.214.

⁸ 18 CFR 157.10.

⁹ The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

¹⁰ 18 CFR 385.214(c)(1).

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.¹¹ 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.

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/subscription.asp.

Intervention Deadline: 5:00 p.m. Eastern Time on September 13, 2023.

Dated: August 23, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-18639 Filed 8-29-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2333-094]

Rumford Falls Hydro LLC; Notice of Waiver Period for Water Quality Certification Application

On August 22, 2023, Rumford Falls Hydro LLC submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act Section 401(a)(1) water quality certification filed with the Maine Department of Environmental Protection (Maine DEP), in conjunction with the above captioned project. Pursuant to Section 401 of the Clean Water Act¹ and section 5.23(b) of the

Commission's regulations,² a state certifying agency is deemed to have waived its certifying authority if it fails or refuses to act on a certification request within a reasonable period of time, which is one year after the date the certification request was received. Accordingly, we hereby notify Maine DEP of the following:

Date Maine DEP received the certification request: August 22, 2023.

If Maine DEP fails or refuses to act on the water quality certification request on or before August 22, 2024, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: August 23, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-18637 Filed 8-29-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23-529-000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on August 17, 2023, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 1300, Houston, Texas 77002-2700, filed in the above referenced docket, a prior notice request for authorization, in accordance with section 7 of the Natural Gas Act, and part 157 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. Columbia seeks authorization to abandon two injection/withdrawal well, connecting pipeline, and appurtenances located in the Victory B Storage Field in Marshall County, West Virginia, all as more fully set forth in the application which is on file with the Commission and open for 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 (<http://ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the

last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this prior notice request should be directed to David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002-2700, at (832) 320-5477 or 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 23, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,¹ any person² 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.

¹ 18 CFR 157.205.

² Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

¹¹ 18 CFR 385.214(b)(3) and (d).

¹³ 33 U.S.C. 1341(a)(1).

² 18 CFR 5.23(b) (2022).

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,³ and must be submitted by the protest deadline, which is October 23, 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 Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is October 23, 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 23, 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 CP23–529–000 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"; or⁶

(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 CP23–529–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To send via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has *eFiling* staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov. Protests and motions to intervene must be served on the applicant either by mail at: David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas, 77002–2700, at 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.

⁶ Additionally, you may file your comments electronically by using the *eComment* feature, which is located on the Commission's website at www.ferc.gov under the link to *Documents and Filings*. Using *eComment* is an easy method for interested persons to submit brief, text-only comments on a project.

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 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 24, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023–18752 Filed 8–29–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–31–001]

Texas Eastern Transmission, LP; Notice of Request for Extension of Time

Take notice that on August 22, 2023, Texas Eastern Transmission, LP (Texas Eastern), requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time until December 23, 2023, to complete construction of the Perulack Compressor Units Replacement Project (Project) and place the Project facilities into service, as authorized in the September 23, 2021 Order Issuing Certificate and Approving Abandonment (Certificate Order),¹ under section 7 of the Natural Gas Act (NGA).

Texas Eastern states it has completed abandonment activities as of June 30, 2023, and since that time has installed major foundations, set prefabricated buildings, installed major equipment, erected the compressor building, set the turbines, installed a portion of the main gas and utility pipeline, and installed electrical raceways and wiring. The remaining Project activities include the

¹ *Texas Eastern Transmission, LP*, 176 FERC ¶ 61,206 (2021).

³ 18 CFR 157.205(e).

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

installation of turbine air ducting and exhaust, main gas and utility piping to the turbines and ancillary equipment, installation of electrical panels and terminations, and site development.

Texas Eastern explains that its original construction schedule contemplated construction activities commencing in August 2021, running for approximately 16 months, and included construction windows based on meeting customer firm service requirements during peak demand season. Texas Eastern began construction in October 2021 shortly after receiving the Certificate Order, however, modifications to the schedule and construction phases were required to meet Texas Eastern's obligations for the upcoming winter heating season, resulting in a 24-month construction timeline. To avoid service disruption during the winter heating season, Texas Eastern states it planned for construction activities not to occur during the winter when there is a high demand for gas. Accordingly, the remaining Project activities are scheduled to be completed before the start of the 2023–2024 winter heating season. Texas Eastern avers its request for a three-month extension is consistent with Commission precedent and will not result in any additional environmental impacts not already examined on the record.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Texas Eastern's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for NGA facilities when such requests are contested before order issuance. For those extension requests that are contested,² the Commission will aim to issue an order acting on the request within 45 days.³ The Commission will address all arguments relating to whether the

applicant has demonstrated there is good cause to grant the extension.⁴ The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act (NEPA).⁵ At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.⁶ The Director of the Office of Energy Projects, or his or her designee, will act on all of those extension requests that are uncontested.

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. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments in lieu of paper using the "eFile" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available

information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Comment Date: 5:00 p.m. Eastern Time on September 8, 2023.

Dated: August 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–18743 Filed 8–29–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2459–279]

Lake Lynn Generation, LLC; Notice of Scoping Meetings and Environmental Site Review, and Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2459–279.

c. *Date Filed:* November 30, 2022.

d. *Applicant:* Lake Lynn Generation, LLC.

e. *Name of Project:* Lake Lynn Hydroelectric Project.

f. *Location:* On the Cheat River, near the City of Morgantown, in Monongalia County, West Virginia, and near the Borough of Point Marion, in Fayette County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Joyce Foster, Director, Licensing and Compliance, Lake Lynn Generation, LLC, 7315 Wisconsin Ave., Suite 1100W, Bethesda, MD 20814; Phone at (804) 338–5110, or email at joyce.foster@eaglecreekre.com.

i. *FERC Contact:* Allan Creamer at (202) 502–8365, or email at allan.creamer@ferc.gov.

j. *Deadline for filing scoping comments:* October 25, 2023.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at <https://ferconline.ferc.gov/FEROnline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. You must include

⁴ *Id.* at P 40.

⁵ Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

⁶ *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 40 (2020).

² Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2022).

³ *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 40 (2020).

your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, 1-866-208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. All filings must clearly identify the following on the first page: Lake Lynn Hydroelectric Project No. 2459-279.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The application is not ready for environmental analysis at this time.

l. *Project Description*: (1) a 13-mile-long, 1,729-acre impoundment (Cheat Lake or Lake Lynn) with a maximum storage capacity of 72,300 acre-feet at a normal water surface elevation of 870 feet National Geodetic Vertical Datum of 1929 (NGVD 29) and a minimum storage capacity of 51,100 acre-feet at 857 feet NGVD 29; (2) a 1,000-foot-long, 125-foot-high, concrete gravity dam with a 624-foot-long spillway section controlled by 26, 21-foot-wide by 17-foot-high, Tainter gates; (3) a concrete intake structure equipped with a log boom and eight trash racks with 4-inch clear bar spacing; (4) eight 12-foot-wide by 18-foot-deep gated reinforced concrete penstocks; (5) a 160-foot-long by 94.5-foot-wide powerhouse containing four Francis generating units with a combined capacity of 51.2 megawatts; and (6) two 800-foot-long transmission lines that run from the powerhouse to a substation within the project boundary.

The Lake Lynn Project is currently operated as a dispatchable peaking facility, with storage. The current license requires Lake Lynn Generation, LLC to maintain Cheat Lake between 868 feet and 870 feet NGVD 29 from May 1 through October 31, 857 feet and 870 feet NGVD 29 from November 1 through March 31, and 863 feet and 870 feet NGVD 29 from April 1 through

April 30 each year. The current license also requires Lake Lynn Generation, LLC to release a downstream minimum flow of 212 cubic-feet-per-second (cfs), or inflow, from the dam when not generating, with an absolute minimum flow of 100 cfs regardless of inflow, when not generating. The project generates about 144,741 megawatt-hours annually. Lake Lynn Generation, LLC proposes no modifications to its existing facilities or operations. Lake Lynn Generation, LLC proposes new environmental measures and to remove approximately 307 acres of land from the existing project boundary.

m. Copies of the application can be viewed on the Commission's website at <https://www.ferc.gov>, using the "eLibrary" link. Enter the project's docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support.

You may also register at <https://ferconline.ferc.gov/FEROnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov.

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 at OPP@ferc.gov.

n. Scoping Process

Pursuant to the National Environmental Policy Act (NEPA), Commission staff intends to prepare either an environmental assessment (EA) or an environmental impact statement (EIS) (collectively referred to as the "NEPA document") that describes and evaluates the probable effects, including an assessment of the site-specific and cumulative effects, if any, of the proposed action and alternatives. The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission issues an EA or an EIS.

Scoping Meetings

Commission staff will hold two scoping meetings for the project to receive input on the scope of the NEPA document. A daytime meeting will be

held at 2:00 p.m. on September 25, 2023, at the Cranberry Hotel in Morgantown, West Virginia, and will focus on the concerns of resource agencies, Native American Tribes, and non-governmental organizations (NGOs). An evening meeting will be held at 6:00 p.m. on September 25, 2023, at the same location, and will focus on receiving input from the public. We invite all interested agencies, Native American Tribes, NGOs, and individuals to attend one or both of these meetings. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Monday, September 25, 2023
Time: 2:00 p.m. (EDT)
Place: Cranberry Hotel
Address: 2700 Cranberry Square,
Morgantown, WV 26508

Evening Scoping Meeting

Date: Monday, September 25, 2023
Time: 6:00 p.m. (EDT)
Place: Cranberry Hotel
Address: 2700 Cranberry Square,
Morgantown, WV 26508

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the NEPA document were distributed to the parties on the Commission's mailing list and Lake Lynn Generation LLC's distribution list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the web at <http://www.ferc.gov>, using the "eLibrary" link (see item m above).

Environmental Site Review

The applicant and Commission staff will conduct an environmental site review of the project on September 26, 2023, beginning at 9:30 a.m. All interested agencies, Native American Tribes, NGOs, and individuals are invited to attend. All participants are responsible for their own transportation to the site and during the environmental site review. Please RSVP via email to joyce.foster@eaglecreekre.com, or notify Joyce Foster at (804) 338-5110 on or before September 19, 2023, if you plan to attend the environmental site review. The time and location of the environmental site review are as follows:

Lake Lynn Hydroelectric Project

Date: Tuesday, September 26, 2023
Time: 9:30 a.m. (EDT)
Place: Tailwater Fishing Access parking area
Address: Lake Lynn Project
Powerhouse, 600 Lake Lynn Road,
Lake Lynn, PA 15451

All persons attending the environmental site review must adhere

to the following requirements: (1) all persons must wear sturdy, closed-toe shoes or boots; (2) persons with open-toed shoes/sandals/flip flops/high heels, etc. will not be allowed on the environmental site review; (3) persons must be 18 years or older, or be accompanied by an adult; (4) no photography will be allowed inside the powerhouse; (5) no weapons are allowed on-site; (6) no alcohol/drugs are allowed on-site (or persons exhibiting the effects thereof); and (7) no animals (except for service animals) are allowed on the environmental site review.

Objectives

At the scoping meetings, Commission staff will: (1) summarize the environmental issues tentatively identified for analysis in the NEPA document; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the NEPA document, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the NEPA document; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a court reporter and become part of the Commission's formal record on the project. Agencies, Native American Tribes, NGOs, and individuals with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the NEPA document.

Dated: August 24, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-18751 Filed 8-29-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02-2001-020, ER20-2726-001, ER20-2694-000]

Before Commissioners: Willie L. Phillips, Acting Chairman, James P. Danly, Allison Clements, and Mark C. Christie; Electric Quarterly Reports; Grand Energy, LLC, Icon Energy LLC; Order on Intent To Revoke Market-Based Rate Authority

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d, and 18 CFR part 35 (2022), require, among other things, that all rates, terms, and conditions for jurisdictional services be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports.¹

2. The Commission requires sellers with market-based rate authorization to file Electric Quarterly Reports summarizing contractual and transaction information related to their market-based power sales as a condition for retaining that authorization.² Commission staff's review of the Electric Quarterly Reports indicates that the following two public utilities with market-based rate authorization have failed to file their Electric Quarterly Reports: Grand Energy, LLC and Icon

¹ Revised Pub. Util. Filing Requirements, Order No. 2001, 99 FERC ¶ 61,107, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, 125 FERC ¶ 61,003 ¶ 31,282 (2008). See also *Filing Requirements for Elec. Util. Serv. Agreements*, 155 FERC ¶ 61,280, *order on reh'g and clarification*, 157 FERC ¶ 61,180 (2016) (clarifying Electric Quarterly Reports reporting requirements and updating Data Dictionary).

² See *Refinements to Policies & Procedures for Mkt.-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. by Pub. Utils.*, Order No. 816, 153 FERC ¶ 61,065 (2015), *order on reh'g*, Order No. 816-A, 155 FERC ¶ 61,188 (2016); *Mkt.-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. by Pub. Utils.*, Order No. 697, 119 FERC ¶ 61,295, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, 123 FERC ¶ 61,055, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, 125 FERC ¶ 61,326 (2008), *order on reh'g*, Order No. 697-C, 127 FERC ¶ 61,284 (2009), *order on reh'g*, Order No. 697-D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011).

Energy LLC. This order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the date of issuance of this order.

3. In Order No. 2001, the Commission stated that,

[i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.³

4. The Commission further stated that,

[o]nce this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations, and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.⁴

5. Pursuant to these requirements, the Commission has revoked the market-based rate tariffs of market-based rate sellers that failed to submit their Electric Quarterly Reports.⁵

6. Sellers must file Electric Quarterly Reports consistent with the procedures set forth in Order Nos. 2001, 768,⁶ and 770.⁷ The exact filing dates for Electric Quarterly Reports are prescribed in 18 CFR 35.10b. As noted above, Commission staff's review of the Electric Quarterly Reports for the period up to the first quarter of 2023 identified two public utilities with market-based rate authorization that failed to file Electric Quarterly Reports. Commission staff contacted or attempted to contact these entities to remind them of their regulatory obligations. Despite these reminders, the public utilities listed in the caption of this order have not met these obligations. Accordingly, this order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements

³ Order No. 2001, 99 FERC ¶ 61,107 at P 222.

⁴ *Id.* P 223.

⁵ See, e.g., *Electric Quarterly Reps.*, 82 FR 60,976 (Dec. 26, 2017); *Electric Quarterly Reps.*, 80 FR 58,243 (Sep. 28, 2015); *Electric Quarterly Reps.*, 79 FR 65,651 (Nov. 5, 2014).

⁶ *Electricity Mkt. Transparency Provisions of Section 220 of the Federal Power Act*, Order No. 768, 140 FERC ¶ 61,232 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013), *order on reh'g*, Order No. 768-B, 150 FERC ¶ 61,075 (2015).

⁷ *Revisions to Elec. Quarterly Rep. Filing Process*, Order No. 770, 141 FERC ¶ 61,120 (2012).

within 15 days of the issuance of this order.

7. In the event that any of the above-captioned market-based rate sellers have already filed its Electric Quarterly Reports in compliance with the Commission's requirements, its inclusion herein is inadvertent. Such market-based rate seller is directed, within 15 days of the date of issuance of this order, to make a filing with the Commission identifying itself and providing details about its prior filings that establish that it complied with the Commission's Electric Quarterly Report filing requirements.

8. If any of the above-captioned market-based rate sellers do not wish to continue having market-based rate authority, that seller may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel its market-based rate tariff.

The Commission orders:

(A) Within 15 days of the date of issuance of this order, each public utility listed in the caption of this order shall file with the Commission all delinquent Electric Quarterly Reports. If a public utility subject to this order fails to make the filings required in this order, the Commission will revoke that public utility's market-based rate authorization and will terminate its electric market-based rate tariff. The Secretary is hereby directed, upon expiration of the filing deadline in this order, to promptly issue a notice, effective on the date of issuance, listing the public utilities whose tariffs have been revoked for failure to comply with the requirements of this order and the Commission's Electric Quarterly Report filing requirements.

(B) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission.

Issued: August 24, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-18742 Filed 8-29-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC23-10-000]

Commission Information Collection Activities (Ferc-603); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC-603 (Critical Energy/Electric Infrastructure Information Data Request), which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due September 29, 2023.

ADDRESSES: Send written comments on FERC-603 to OMB through www.reginfo.gov/public/do/PRAMain, Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902-0197) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. IC23-10-000) to the Commission as noted below. Electronic filing through <https://www.ferc.gov> is preferred.

- Electronic Filing: Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

- *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

- *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions

OMB submissions must be formatted and filed in accordance with submission guidelines at www.reginfo.gov/public/do/PRAMain. Using the search function under the "Currently Under Review field," select Federal Energy Regulatory Commission; click "submit" and select "comment" to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: <https://www.ferc.gov>. For user assistance, contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at: (866) 208-3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <https://www.ferc.gov>.

FOR FURTHER INFORMATION CONTACT:

Ellen Brown may be reached by email at DataClearance@FERC.gov and telephone at (202) 502-8663.

SUPPLEMENTARY INFORMATION:

Title: FERC-603, Critical Energy/Electric Infrastructure Information Data Request.

OMB Control No.: 1902-0197.

Type of Request: Three-year extension of the FERC-603 information collection requirements with no changes to the current reporting and recordkeeping requirements.¹

Abstract: In accordance with section 215A(d) of the Federal Power Act² and 18 CFR 388.113, this collection of information provides that persons may seek Critical Energy/Electric Infrastructure Information (CEII). To receive CEII, they must show they have a legitimate need for such information, and they must submit a non-disclosure agreement that decreases the likelihood that such information could be used to plan or execute terrorist attacks.

This collection of information provides an alternative to seeking CEII in accordance with the Freedom of Information Act (FOIA).³ That statute requires federal agencies to disclose the requested information unless one or more of several FOIA exemptions justifies withholding of the requested information. In the case of CEII, two FOIA exemptions are likely to apply to CEII,⁴ and applying one of them frequently results in a decision to withhold the information from the FOIA requester. The Commission realizes that this process could prevent persons with a legitimate need for CEII from obtaining such information. For example, market participants seeking to develop new or expanded energy resources may have such a need.

In the aftermath of the September 11, 2001 terrorist attacks, the Commission

¹ The CEII request form and five versions of the non-disclosure agreement (General Non-Disclosure Agreement, Media Non-Disclosure Agreement, Federal Agency Acknowledgement and Agreement, State Agency Employee Non-Disclosure Agreement, and Consultant Non-Disclosure Agreement) are posted at <https://www.ferc.gov/legal/ceii-foia/ceii.asp>.

² 16 U.S.C. 824o-1(d).

³ 5 U.S.C. 552 (2018).

⁴ The relevant FOIA exemptions are Exemption 3, which allows the withholding of information prohibited from disclosure by another statute and Exemption 7, which protects from disclosure certain law enforcement information, including information the disclosure of which might jeopardize a person's life or safety.

determined that it was important to improve the appropriate treatment of CEII, both to assist requesters with a legitimate need for CEII, and to restrict access to the sensitive information due to the ongoing terrorism threat. The Commission promulgated 18 CFR 388.113 to achieve those goals.

Under 18 CFR 388.13(g)(5), a request for CEII must contain:

- The requester's name, title, address, and telephone number;
- The name, address, and telephone number of the person or entity on whose behalf the information is requested;
- A detailed Statement of Need; and
- An executed non-disclosure agreement.

Under 18 CFR 388.133(h)(2), the non-disclosure agreement indicates the individual's willingness to adhere to limitations on the use and disclosure of the information requested, and stipulates at minimum that the CEII:

- Will only be used for the purpose for which it was requested;
- May only be discussed with authorized recipients;
- Must be kept in a secure place in a manner that would prevent unauthorized access;
- Must be destroyed or returned to the Commission upon request; and
- Is not subject to release under either FOIA or Sunshine Laws.

In addition, the non-disclosure agreement provides that the

Commission may audit the recipient's compliance with the non-disclosure agreement; that a recipient is obligated to protect the CEII even after a designation has lapsed⁵ until the CEII Coordinator⁶ determines the information should no longer be designated as CEII; and the recipient is required to promptly report all unauthorized disclosures of CEII to the Commission.

Type of Respondents: Persons seeking access to CEII.

Estimate of Annual Burden: The Commission estimates the total annual burden⁷ and cost⁸ for this information collection as follows.

Number of respondents	Annual number of responses per respondent	Total number of responses (column 1 × column 2)	Average burden & cost per response	Total annual burden hours & total annual cost (column 3 × column 4)	Cost per respondent (\$) (column 5 ÷ column 1)
(1)	(2)	(3)	(4)	(5)	(6)
50	1	50	0.3 hrs.; \$27.30	15 hrs.; \$1,365	\$27.30

The Request Form⁹ is attached to this notice but will not be published in the **Federal Register**. It will be posted in the Commission's eLibrary system with this Notice. Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate 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.

Dated: August 24, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-18753 Filed 8-29-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23-519-000]

Rio Bravo Pipeline Company, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Rio Bravo Pipeline Route Amendment

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Rio Bravo Pipeline Route Amendment (Route Amendment), which involves four minor route adjustments to the previously authorized pipeline alignment, as well as a pipe thickness design modification to use an alternative maximum allowable operating pressure (MAOP) calculation, as compared to the previously authorized Rio Bravo Pipeline Project, which was approved

review all requests for CEII, make determinations regarding such requests, establish reasonable conditions on the release of CEII, and release CEII to requesters who agree in writing to abide by the conditions set forth by the Coordinator.

⁷ "Burden" is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

by the Commission on November 22, 2019, in Docket No. CP16-455-000.¹ Please note that the previously approved Rio Bravo Pipeline Project and Rio Bravo Pipeline Project Amendment are not under re-consideration in this Route Amendment. The Commission will use the environmental document referred to in this notice in its decision-making process to determine whether the four minor route adjustments and alternative MAOP proposed in the Route Amendment are in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the Route Amendment. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to

⁸ The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based upon the FERC's 2022 average cost for salary plus benefits, the average hourly cost is \$91/hour.

⁹ The Request Form (and sample non-disclosure agreements) and additional information about the CEII program are posted at: <https://www.ferc.gov/enforcement-legal/ceii/overview>.

¹ The Rio Bravo Pipeline Project was amended, as approved by the Commission on April 21, 2023, in docket no. CP20-481-000.

⁵ The Commission's regulation at 18 CFR 388.113 provides criteria and procedures to designate information as CEII. A designation may last for up to five years, unless it is re-designated. A designation may be removed at any time, in whole or in part, if the Commission determines that the unauthorized disclosure of CEII can no longer be used to impair the security or reliability of the bulk-power system or distribution facilities or any other form of energy infrastructure.

⁶ The regulation at 18 CFR 375.313 delegates authority to a CEII Coordinator to receive and

as “scoping.” The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission’s NEPA process is described below in the NEPA Process and Environmental Document section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on September 22, 2023.

Comments may be submitted in written form. Further details on how to submit comments are provided in the Public Participation section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts specifically related to the modifications proposed in the Route Amendment, which are detailed further below. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

This notice is being sent to the Commission’s current environmental mailing list for this Route Amendment. State and local government representatives should notify their constituents of this proposed Route Amendment and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a Rio Bravo Pipeline Company, LLC (Rio Bravo) representative may contact you about the acquisition of an easement to construct, operate, and maintain the facilities proposed in the Route Amendment. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Route Amendment, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The

courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Rio Bravo provided landowners with a fact sheet prepared by the FERC entitled “An Interstate Natural Gas Facility On My Land? What Do I Need To Know?” which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission’s proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (www.ferc.gov) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission’s website (www.ferc.gov) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission’s website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on “eRegister.” You will be asked to select the type of filing you are making; a comment on a particular project is considered a “Comment on a Filing”; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP23–519–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you

subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

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.

Summary of the Proposed Route Amendment

The four proposed route adjustments are specific to Willacy and Cameron Counties, Texas, as detailed below:

- adjust the certificated route between approximate milepost (MP) 69.8 to approximate MP 79.4 in Willacy County to conform to the U.S. Fish and Wildlife Service’s Biological Opinion issued for the Rio Bravo Pipeline Project and to minimize impacts on potential ocelot habitat (the “U.S. Fish and Wildlife Service Route Adjustment”);
- adjust the certificated route between approximate MP 92.4 and MP 93.0 in Willacy County to accommodate requirements of the International Boundary and Water Commission and landowner requests (the “North Floodway Route Adjustment”);
- adjust the certificated route between approximate MP 99.7 and MP 100.5 in Willacy and Cameron Counties to accommodate a landowner request (the “Arroyo Colorado Route Adjustment”);
- relocate a meter station and extend the approved Rio Bravo Pipeline route approximately 0.6 mile in Cameron County from the currently certificated terminus site to the meter station within the fence line of the approved Rio Grande LNG Terminal site (the “Terminus Adjustment”);
- modify the design (pipe wall thickness) of a majority of the route located in Class 1 areas to use an “alternative MAOP,” which would maintain the currently authorized MAOP of 1,825 pounds per square inch gauge, decrease the pipe wall thickness of the 48-inch-diameter pipeline from 0.87 inch to 0.78 inch, decrease the pipe wall thickness of the 42-inch-diameter

pipeline from 0.761 inch to 0.682 inch, and change the pipeline design factor from 0.72 to 0.80, each as consistent with and approved by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration regulations specified in title 49 of the Code of Federal Regulations Part 192.620; and

- increase the proposed wall thickness of the pipeline system for certain Class 2 areas and bore locations.

The general locations of the Route Amendment facilities are shown in appendix 1.²

Land Requirements for Construction

Commission staff is currently assessing the relative increases and/or decreases in impacts on land that would result from the Route Amendment compared to the project as certificated. Apart from the four discrete route adjustment locations, the Rio Bravo Pipeline facilities and activities will be located and constructed within workspaces as reflected in FERC's final EIS issued under Docket No. CP16-454-000, as updated in the Amendment EA issued under Docket No. CP20-481-000. According to Rio Bravo, the Route Amendment would affect less wetland, forest land, and prime farmland soil acreage compared to the project as currently authorized.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the four route adjustment locations proposed in the Route Amendment under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- environmental justice;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed Route Amendment or portions of the Route Amendment and make recommendations on how to lessen or

avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an environmental assessment (EA) or an environmental impact statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed Route Amendment. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary³ and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this Route Amendment to formally cooperate in the preparation of the environmental document.⁴ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic

Preservation Act, the Commission is using this notice to initiate consultation with the Texas State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project amendment's potential effects on historic properties.⁵ The environmental document for this Route Amendment will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers.

This list also includes all landowners affected by the four proposed route adjustment locations (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Route Amendment and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Route Amendment.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to GasProjectAddressChange@ferc.gov stating your request. You must include the docket number CP23-519-000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

⁵ The Advisory Council on Historic Preservation's regulations are at title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

² The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called "eLibrary." For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (886) 208-3676 or TTY (202) 502-8659.

³ For instructions on connecting to eLibrary, refer to the last page of this notice.

⁴ The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at title 40, Code of Federal Regulations, section 1501.8.

(2) Return the attached “Mailing List Update Form” (appendix 2).

Additional Information

Additional information about the Route Amendment is available from the Commission’s Office of External Affairs, at (866) 208–FERC, or on the FERC website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on “General Search” and enter the docket number in the “Docket Number” field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Any public sessions or site visits will be posted on the Commission’s calendar located at <https://www.ferc.gov/news-events/events> along with other related information.

Dated: August 23, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023–18644 Filed 8–29–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–124–000.
Applicants: Hoosier Wind Project, LLC, Indianapolis Power & Light Company.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Hoosier Wind Project, LLC, et al.

Filed Date: 8/23/23.

Accession Number: 20230823–5140.
Comment Date: 5 p.m. ET 9/13/23.

Docket Numbers: EC23–125–000.
Applicants: Cavalry Energy Center, LLC, Northern Indiana Public Service Company LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Cavalry Energy Center, LLC, et al.

Filed Date: 8/24/23.

Accession Number: 20230824–5031.
Comment Date: 5 p.m. ET 9/14/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–2228–001.
Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 1636R29 Kansas Electric Power Cooperative, Inc. NITSA NOA to be effective 9/1/2023.

Filed Date: 8/24/23.

Accession Number: 20230824–5119.

Comment Date: 5 p.m. ET 9/14/23.

Docket Numbers: ER23–2239–000.
Applicants: HQC Solar Holdings 1, LLC.

Description: Amendment to June 20, 2023, Petition for Limited Waiver of HQC Solar Holdings 1, LLC tariff filing.

Filed Date: 8/22/23.

Accession Number: 20230822–5182.

Comment Date: 5 p.m. ET 9/12/23.

Docket Numbers: ER23–2270–001.
Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 1977R19 Nemaha-Marshall Electric Cooperative NITSA and NOA to be effective 9/1/2023.

Filed Date: 8/24/23.

Accession Number: 20230824–5112.

Comment Date: 5 p.m. ET 9/14/23.

Docket Numbers: ER23–2323–001.
Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 2900R21 KMEA NITSA NOA to be effective 9/1/2023.

Filed Date: 8/24/23.

Accession Number: 20230824–5123.

Comment Date: 5 p.m. ET 9/14/23.

Docket Numbers: ER23–2326–001.
Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to Amended ISA, SA No. 6705; Queue No. AE1–056 in ER23–2326 to be effective 9/1/2023.

Filed Date: 8/24/23.

Accession Number: 20230824–5058.

Comment Date: 5 p.m. ET 9/14/23.

Docket Numbers: ER23–2334–002.
Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 2198R34 Kansas Power Pool NITSA NOA to be effective 9/1/2023.

Filed Date: 8/24/23.

Accession Number: 20230824–5141.

Comment Date: 5 p.m. ET 9/14/23.

Docket Numbers: ER23–2346–000.
Applicants: Oak Ridge Solar, LLC.
Description: Supplement to July 6, 2023, Oak Ridge Solar, LLC tariff filing.

Filed Date: 8/22/23.

Accession Number: 20230822–5172.

Comment Date: 5 p.m. ET 9/1/23.

Docket Numbers: ER23–2440–000.
Applicants: McFarland Solar B, LLC.
Description: Supplement to July 20, 2023, McFarland Solar B, LLC tariff filing.

Filed Date: 8/22/23.

Accession Number: 20230822–5177.

Comment Date: 5 p.m. ET 9/1/23.

Docket Numbers: ER23–2450–000.

Applicants: Great Cove Solar LLC.

Description: Great Cove Solar LLC submits Response to FERC’s request for additional information re one of the upstream owners, and Request for shortened 10-day comment period.

Filed Date: 8/22/23.

Accession Number: 20230822–5132.

Comment Date: 5 p.m. ET 9/1/23.

Docket Numbers: ER23–2686–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2023–08–22 DAME/EDAM Combined Tariff Amendment to be effective 12/21/2023.

Filed Date: 8/22/23.

Accession Number: 20230822–5161.

Comment Date: 5 p.m. ET 9/21/23.

Docket Numbers: ER23–2691–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 314—Amendment No. 2 to be effective 10/23/2023.

Filed Date: 8/23/23.

Accession Number: 20230823–5113.

Comment Date: 5 p.m. ET 9/13/23.

Docket Numbers: ER23–2692–000.

Applicants: Madison Fields Solar Project, LLC.

Description: Baseline eTariff Filing: Reactive Power Compensation Baseline to be effective 12/14/2023.

Filed Date: 8/23/23.

Accession Number: 20230823–5114.

Comment Date: 5 p.m. ET 9/13/23.

Docket Numbers: ER23–2693–000.

Applicants: Interstate Power and Light Company.

Description: Agreement for Consent to Termination of Assignments for Capacity Schedule of Interstate Power and Light Company.

Filed Date: 8/23/23.

Accession Number: 20230823–5117.

Comment Date: 5 p.m. ET 9/13/23.

Docket Numbers: ER23–2694–000.

Applicants: Cereal City Solar, LLC.

Description: Baseline eTariff Filing: Cereal City Solar, LLC Application for Market-Based Rate Authority to be effective 10/23/2023.

Filed Date: 8/23/23.

Accession Number: 20230823–5122.

Comment Date: 5 p.m. ET 9/13/23.

Docket Numbers: ER23–2696–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per

35.13(a)(2)(iii): 2023–08–24_SA 4156
Ameren IL–CWLP TIA to be effective
10/24/2023.

Filed Date: 8/24/23.

Accession Number: 20230824–5037.

Comment Date: 5 p.m. ET 9/14/23.

Docket Numbers: ER23–2697–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing:
Amendment to Rate Schedule FERC No.
67 to be effective 10/23/2023.

Filed Date: 8/24/23.

Accession Number: 20230824–5051.

Comment Date: 5 p.m. ET 9/14/23.

Docket Numbers: ER23–2698–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing:
Amendment to Rate Schedule FERC No.
31 to be effective 10/23/2023.

Filed Date: 8/24/23.

Accession Number: 20230824–5089.

Comment Date: 5 p.m. ET 9/14/23.

Docket Numbers: ER23–2699–000.

Applicants: MRP Elgin LLC.

Description: Baseline eTariff Filing:
MRP Elgin LLC MBR Tariff Application
to be effective 8/24/2023.

Filed Date: 8/24/23.

Accession Number: 20230824–5095.

Comment Date: 5 p.m. ET 9/14/23.

Docket Numbers: ER23–2700–000.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc.
submits Average System Cost Rate
Filing for Sales of Electric Power to the
Bonneville Power Administration, FY
2024–2025.

Filed Date: 8/24/23.

Accession Number: 20230824–5098.

Comment Date: 5 p.m. ET 9/14/23.

Docket Numbers: ER23–2701–000.

Applicants: MRP Rocky Road LLC.

Description: Baseline eTariff Filing:
MRP Rocky Road LLC MBR Tariff
Application to be effective 8/24/2023.

Filed Date: 8/24/23.

Accession Number: 20230824–5111.

Comment Date: 5 p.m. ET 9/14/23.

Docket Numbers: ER23–2702–000.

Applicants: Invenergy Nelson
Expansion LLC.

Description: Invenergy Nelson
Expansion LLC submits Prospective
Waiver Request and Expedited Action
for an exception from the requirement to
offer its capacity into PJM's RPM Third
IA for the 2024/25 Delivery Year.

Filed Date: 8/23/23.

Accession Number: 20230823–5142.

Comment Date: 5 p.m. ET 9/13/23.

The filings are accessible in the
Commission's eLibrary system ([https://
elibrary.ferc.gov/idmws/search/
fercgensearch.asp](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](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](mailto:OPP@ferc.gov).

Dated: August 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–18745 Filed 8–29–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2607–016]

Spencer Mountain Hydropower, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following
hydroelectric application has been filed
with the Commission and is available
for public inspection.

a. *Type of Application:* Subsequent
License.

b. *Project No.:* 2607–016.

c. *Date filed:* June 26, 2023.

d. *Applicant:* Spencer Mountain
Hydropower, LLC.

e. *Name of Project:* Spencer Mountain
Hydroelectric Project (Spencer
Mountain Project).

f. *Location:* On the South Fork
Catawba River, near the town of
Gastonia, in Gaston County, North
Carolina.

g. *Filed Pursuant to:* Federal Power
Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kevin
Edwards and Mrs. Amy Edwards,
Spencer Mountain Hydropower, LLC,
916 Comer Rd, Stoneville, NC 27048;
Phone at (336) 589–6138, or [smhydro@
pht1.com](mailto:smhydro@pht1.com).

i. *FERC Contact:* Michael Spencer at
(202) 502–6093, or [michael.spencer@
ferc.gov](mailto:michael.spencer@ferc.gov).

j. *Deadline for filing motions to
intervene and protests:* 60 days from the
issuance date of this notice.

The Commission strongly encourages
electronic filing. Please file using the
Commission's eFiling system at [https://
ferconline.ferc.gov/FEROnline.aspx](https://ferconline.ferc.gov/FEROnline.aspx).
For assistance, please contact FERC
Online Support at
FEROnlineSupport@ferc.gov, (866)
208–3676 (toll free), or (202) 502–8659
(TTY).

In lieu of electronic filing, you may
submit a paper copy. Submissions sent
via the U.S. Postal Service must be
addressed to: Kimberly D. Bose,
Secretary, Federal Energy Regulatory
Commission, 888 First Street NE, Room
1A, Washington, DC 20426.
Submissions sent via any other carrier
must be addressed to: Kimberly D. Bose,
Secretary, Federal Energy Regulatory
Commission, 12225 Wilkins Avenue,
Rockville, Maryland 20852. All filings
must clearly identify the project name
and docket number on the first page:
Spencer Mountain Project (P–2607–
016).

The Commission's Rules of Practice
require all intervenors filing documents
with the Commission to serve a copy of
that document on each person on the
official service list for the project.
Further, if an intervenor files comments
or documents with the Commission
relating to the merits of an issue that
may affect the responsibilities of a
particular resource agency, they must
also serve a copy of the document on
that resource agency.

k. This application has been accepted
but is not ready for environmental
analysis at this time.

l. The existing Spencer Mountain
Project consists of the following existing
facilities: (1) a 12-foot-high, 636-foot-
long masonry and rubble dam with a
crest elevation of 634.7 feet mean sea
level (msl); (2) a 68-acre reservoir with
a storage capacity of 166 acre-feet; (3) a
58.9-foot-long canal headwork,
consisting of four 6-foot-wide gates; (4)
a 53.8-foot-long canal spillway
connected to the downstream side of the
canal headwork; (5) a 30-foot-wide, 10-
foot-deep, 3,644-foot-long open earthen
canal; (6) a 32-foot-wide trashrack at the
powerhouse forebay with a 2.5-inch

clear bar-space; (7) a 36-inch-diameter bypass pipe; (8) a 22.5-foot-high, 49.5-foot-long, 48.75-foot-wide powerhouse containing two Francis-type generating units with a total capacity of 0.64 megawatts; (9) a concrete lined tailrace discharging flows back into the South Fork Catawba River; (10) a substation containing a 2.3/44-kilovolt (kV) transformer and interconnection to Duke Energy's 44 kV transmission line; and (11) appurtenant facilities.

The project operates in a run-of-river mode with a minimum bypass flow of 76 cubic feet per second. Spencer Mountain Hydropower, LLC proposes no changes to the project facilities or operations. The project has an average annual generation of 4,064 megawatt-hours.

m. 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. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

You may also register online at <https://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements

of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document 1 for comments.	September 2023.
Scoping Document 1 comments due.	October 2023.
Request Additional Information (if necessary).	November 2023.
Issue Scoping Document 2 (if necessary).	November 2023.
Issue Notice of Ready for Environmental Analysis.	January 2024.

Dated: August 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-18744 Filed 8-29-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23-523-000]

ANR Pipeline Company; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Oak Grove Enhancement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Oak Grove Enhancement Project involving construction and operation of facilities by ANR Pipeline Company (ANR) in Richland and West Carroll Parishes, Louisiana. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public

Convenience and Necessity. This gathering of public input is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the NEPA Process and Environmental Document section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC, on or before 5:00 p.m. Eastern Time on September 25, 2023. Comments may be submitted in written form. Further details on how to submit comments are provided in the Public Participation section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on August 1, 2023, you will need to file those comments in Docket No. CP23-523-000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with State law. The

Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

ANR provided landowners with a fact sheet prepared by the FERC entitled “An Interstate Natural Gas Facility On My Land? What Do I Need To Know?” which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission’s proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (www.ferc.gov) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or FercOnlineSupport@ferc.gov.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission’s website (www.ferc.gov) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission’s website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on “eRegister.” You will be asked to select the type of filing you are making; a comment on a particular project is considered a “Comment on a Filing”; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP23-523-000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription which

makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

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.

Summary of the Proposed Project

ANR proposes to construct and operate 34.1 miles of new 30-inch-diameter natural gas pipeline to replace 33.6 miles of existing 30-inch-diameter natural gas pipeline that ANR would abandon. The Oak Grove Enhancement Project would continue to provide about 1,233 million square cubic feet per day of natural gas to its existing end user. No increase in natural gas capacity is anticipated. According to ANR, its project would improve the integrity and reliability of ANR’s system by replacing vintage pipeline facilities installed in the 1950’s with new pipeline facilities.

The Oak Grove Enhancement Project would consist of the following facilities:

- Installation of 34.1 miles of new 30-inch-diameter segment of natural gas pipeline, which will begin at ANR’s existing Delhi Compressor Station (CS) in Richland Parish and primarily parallel the existing Line 0-501, 1-501, and 2-501 pipelines before the new segment ties into the existing route just south of State Route 586 in West Carroll Parish at the terminus of the existing Line 0-501 segment to be abandoned.

- Abandonment in place and by removal of 33.6 miles of existing 30-inch-diameter natural gas pipeline, which begins at ANR’s existing Delhi CS in Richland Parish and terminates just south of State Route 586 in West Carroll Parish. Approximately 1 percent (0.25 mile) of the existing Line 0-501 segment would be abandoned by removal, while the remaining existing pipeline segments (totaling 33.35 miles) would be abandoned in place.

The general location of the project facilities is shown in appendix 1.¹

Land Requirements for Construction

Construction and abandonment of the proposed facilities would disturb about 702.4 acres of land for the replacement pipeline. Following construction, ANR would maintain about 170.3 acres for permanent operation of the project’s facilities; the remaining acreage would be restored. Approximately 91 percent (31.1 miles) of the new pipeline would be co-located with existing rights-of-way or paralleling existing utility corridors. Areas where ANR was unable to co-locate the pipeline with existing rights-of-way or parallel existing corridors was primarily due to reroutes around Wetland Reserve Program easements, sensitive environmental areas, and constructability issues (e.g., crossings of waterbodies).

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the abandonment, construction, and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- environmental justice;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff’s

¹ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called “eLibrary”. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission’s Public Reference Room. For assistance, contact FERC at FercOnlineSupport@ferc.gov or call toll free, (866) 208-3676 or TTY (202) 502-8659.

independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary² and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environmental/environmental-documents>). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.³ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.⁴

² For instructions on connecting to eLibrary, refer to the last page of this notice.

³ The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at title 40, Code of Federal Regulations, section 1501.8.

⁴ The Advisory Council on Historic Preservation's regulations are at title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to GasProjectAddressChange@ferc.gov stating your request. You must include the docket number CP23-523-000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. *This email address is unable to accept comments.* OR

(2) Return the attached "Mailing List Update Form" (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also

provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at <https://www.ferc.gov/news-events/events> along with other related information.

Dated: August 23, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-18638 Filed 8-29-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146-275]

Alabama Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No:* P-2146-275.

c. *Date Filed:* August 8, 2023.

d. *Applicant:* Alabama Power Company (Alabama Power).

e. *Name of Project:* Coosa River Project.

f. *Location:* The project is located on the Coosa River, in Coosa, Chilton, Talladega and Shelby counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Alan L. Peebles, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291-8180, (205) 257-1401.

i. *FERC Contact:* Zeena Aljibury, (202) 502-6065, zeena.aljibury@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance date of this notice by the Commission.*

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance,

please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P-2146-275. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Alabama Power requests approval to modify Unit 1 at the Bouldin Development to address significant maintenance needs and to improve power and efficiency. The proposed scope of work for Unit 1 includes complete turbine replacement, wicket gate replacement, wicket gate stem bushings installation, turbine, and generator bearing upgrades, and related component replacement. Alabama Power states the turbine replacement is not expected to result in an increase to the total rated capacity or the maximum discharge of the unit at rated conditions. Alabama Power notes that project operations will not change, and refurbishment will not include any structural changes to the project facilities. Furthermore, the intake structure will not be modified, nor will there be any modifications to the existing trash racks. Therefore, Alabama Power states that the current approach velocity at the trash racks will remain the same.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via

email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

p. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Dated: August 23, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-18640 Filed 8-29-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pacific Northwest-Pacific Southwest Intertie Project and Parker-Davis Project—Rate Order No. WAPA-210

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order extending transmission and firm electric service rates.

SUMMARY: The extension of the Desert Southwest Region's (DSW) existing transmission service rates for the Pacific Northwest-Pacific Southwest Intertie Project (Intertie) and the existing transmission and firm electric service formula rates for the Parker-Davis Project (PDP) have been confirmed, approved, and placed into effect on an interim basis. The existing rates under Rate Schedules INT-FT5, INT-NFT4, PD-F7, PD-FT7, PD-FCT7, and PD-NFT7 are set to expire on September 30, 2023. This rate extension makes no changes to the existing rates and extends them through September 30, 2024.

DATES: The extended rates under Rate Schedules INT-FT5, INT-NFT4, PD-F7, PD-FT7, PD-FCT7, and PD-NFT7 will be placed into effect on an interim basis on October 1, 2023.

FOR FURTHER INFORMATION CONTACT: Jack D. Murray, Regional Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005-6457, or Tina Ramsey, Rates Manager, Desert Southwest Region, Western Area Power Administration, (602) 605-2565, or email: dswpwrmrk@wapa.gov.

SUPPLEMENTARY INFORMATION: Western Area Power Administration (WAPA) published a **Federal Register** notice (Proposed FRN) on June 23, 2023 (88 FR 41101), proposing to extend the existing Intertie transmission service rates and the existing PDP transmission and firm electric service formula rates under Rate Schedules INT-FT5, INT-NFT4, PD-F7, PD-FT7, PD-FCT7, and PD-NFT7. The Proposed FRN also initiated a 30-day public consultation and comment period.

Legal Authority

By Delegation Order No. S1-DEL-RATES-2016, effective November 19,

2016, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the WAPA Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to FERC. By Delegation Order No. S1–DEL–S3–2023, effective April 10, 2023, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Infrastructure. By Redelegation Order No. S3–DEL–WAPA1–2023, effective April 10, 2023, the Under Secretary for Infrastructure further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA’s Administrator. This extension is issued under Redelegation Order No. S3–DEL–WAPA1–2023 and Department of Energy rate extension procedures set forth in 10 CFR part 903.¹

Following review of DSW’s proposal, Rate Order No. WAPA–210 is hereby confirmed, approved, and placed into effect on an interim basis. This extends, without adjustment, the existing Rate Schedules INT–FT5, INT–NFT4, PD–F7, PD–FT7, PD–FCT7, and PD–NFT7 through September 30, 2024. WAPA will submit Rate Order No. WAPA–210 and the extended rate schedules to FERC for confirmation and approval on a final basis.

Department of Energy Administrator, Western Area Power Administration

In the Matter of: Western Area Power Administration Extension for the Pacific Northwest-Pacific Southwest Intertie Project Transmission Service Rates and Parker-Davis Project Firm Electric Service and Transmission Service Formula Rates, Rate Order No. WAPA–210.

Order Confirming, Approving, and Placing Rates for the Pacific Northwest-Pacific Southwest Intertie Project and Formula Rates for the Parker-Davis Project Into Effect on an Interim Basis

The rates in Rate Order No. WAPA–210 are established in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152).¹

By Delegation Order No. S1–DEL–RATES–2016, effective November 19, 2016, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the Western Area Power Administration (WAPA) Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to FERC. By Delegation Order No. S1–DEL–S3–2023, effective April 10, 2023, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Infrastructure. By Redelegation Order No. S3–DEL–WAPA1–2023, effective April 10, 2023, the Under Secretary for Infrastructure further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA’s Administrator. This extension is issued under Redelegation Order No. S3–DEL–WAPA1–2023 and DOE rate extension procedures set forth in 10 CFR part 903.²

Background

Intertie Project Transmission Service

On August 22, 2013, FERC approved and confirmed Rate Schedules INT–FT5 and INT–NFT4 under Rate Order No. WAPA–157 on a final basis for a 5-year period through April 30, 2018.³ WAPA’s Administrator subsequently approved the use of the existing Intertie transmission service rates for short-term sales for the period between May 1, 2018, and October 31, 2018, or the date the extension of the Intertie transmission service rates went into effect, whichever occurred first. On September 11, 2018, the Deputy Secretary of Energy approved the extension of the Intertie transmission service rates on an interim basis.⁴ On December 3, 2018, FERC approved and confirmed the extension of Rate Schedules INT–FT5 and INT–NFT4 under Rate Order No. WAPA–181 on a final basis for a two-year period through September 30, 2020.⁵ On March 2, 2021, FERC approved and confirmed the extension of Rate Schedules INT–FT5

Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the projects involved.

² 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

³ Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket No. EF13–4–000.

⁴ 83 FR 47921 (Sept. 21, 2018).

⁵ Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket No. EF18–5–000.

and INT–NFT4 under Rate Order No. WAPA–192 on a final basis for a 3-year period through September 30, 2023.⁶

DSW is extending the existing Intertie transmission service rates under Rate Schedules INT–FT5 and INT–NFT4 for one year, through September 30, 2024. The existing rates provide sufficient revenue to pay all annual costs, including interest expense, and repay investment within the allowable period consistent with the cost recovery criteria set forth in Department of Energy (DOE) Order RA 6120.2.

Parker-Davis Project Transmission and Firm Electric Service

On September 18, 2014, FERC approved and confirmed Rate Schedules PD–F7, PD–FT7, PD–FCT7, and PD–NFT7 under Rate Order No. WAPA–162 on a final basis for a 5-year period through September 30, 2018.⁷ On January 31, 2019, FERC approved and confirmed the extension of Rate Schedules PD–F7, PD–FT7, PD–FCT7, and PD–NFT7 under Rate Order No. WAPA–184 on a final basis for a 5-year period through September 30, 2023.⁸

DSW is extending the existing PDP transmission and firm electric service formula rates under Rate Schedules PD–F7, PD–FT7, PD–FCT7, and PD–NFT7 for a one-year period, through September 30, 2024. The existing formula rates provide sufficient revenue to pay all annual costs, including interest expense, and repay investment within the allowable period consistent with the cost recovery criteria set forth in DOE Order RA 6120.2.

Discussion

In accordance with 10 CFR 903.23(a), DSW filed a notice in the **Federal Register** on June 23, 2023, proposing to extend, without adjustment, Rate Schedules INT–FT5, INT–NFT4, PD–F7, PD–FT7, PD–FCT7, and PD–NFT7 under Rate Order No. WAPA–210.⁹ DSW determined it was not necessary to hold public information or public comment forums on the proposed rates and formula rates extension, but provided a 30-day consultation and comment period to give the public an opportunity to comment on the proposed extension. The consultation and comment period ended on July 24,

⁶ Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket No. EF20–9–000.

⁷ Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket No. EF14–4–000.

⁸ Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket No. EF19–1–000.

⁹ 88 FR 41101 (2023).

¹ 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

¹ This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation

2023, and DSW received no comments on the proposed rates and formula rates extension.

Ratemaking Procedure Requirements Environmental Compliance

WAPA previously determined that this action fits within the following categorical exclusions listed in appendix B to subpart D of 10 CFR 1021.410: B4.3 (Electric power marketing rate changes). Categorically excluded projects and activities do not require preparation of either an environmental impact statement or an environmental assessment.¹⁰ A copy of the categorical exclusion determination is available on WAPA's website at www.wapa.gov/regions/DSW/Environment/Pages/environment.aspx. Look for file entitled, "Rate Order WAPA-210."

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Submission to the Federal Energy Regulatory Commission

The provisional rates and formula rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and final approval.

Order

In view of the above and under the authority delegated to me, I hereby confirm, approve, and place into effect on an interim basis, Rate Order No. WAPA-210, which extends the existing transmission rates and firm electric service and transmission formula rates under Rate Schedules INT-FT5, INT-NFT4, PD-F7, PD-FT7, PD-FCT7, and PD-NFT7 through September 30, 2024. The rates will remain in effect on an interim basis until: (1) FERC confirms and approves this extension on a final basis; (2) subsequent rates are confirmed and approved; or (3) such rates are superseded.

Signing Authority

This document of the Department of Energy was signed on August 24, 2023, by Tracey A. LeBeau, Administrator,

Western Area Power Administration, 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 25, 2023.

Treena V. Garrett,

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

Rate Schedule INT-FT5

(Supersedes Rate Schedule INT-FT4)

United States Department of Energy Western Area Power Administration

Desert Southwest Region

Pacific Northwest-Pacific Southwest Intertie Project

Long-Term and Short-Term Firm Point-to-Point Transmission Service (Approved Under Rate Order No. WAPA-157)

Effective

The first day of the first full billing period beginning on or after May 1, 2013, and will remain in effect through September 30, 2018, or until superseded by another rate schedule. [Note: This rate schedule was extended by Rate Order No. WAPA-181 through September 30, 2020, by Rate Order No. WAPA-192 through September 30, 2023, and by Rate Order No. WAPA-210 through September 30, 2024.]

Applicable

To firm point-to-point transmission service customers where capacity and energy are supplied to the Pacific Northwest-Pacific Southwest Intertie Project (Intertie) transmission system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the Intertie transmission system.

Long-Term Rate

For transmission service of one year or longer, the rate is \$19.32 for each kilowatt (kW) per year, payable monthly at the rate of \$1.61 for each kW per month.

Short-Term Rates

For transmission service up to one year, the maximum rate for each kW is as follows:

Monthly: \$1.61

Weekly: \$0.3715

Daily: \$0.0529

Hourly: 2.21 mills

Discounts may be offered from time-to-time in accordance with Western's Open Access Transmission Tariff (OATT).

Billing

Western will bill firm point-to-point transmission service customers monthly by applying the rates listed above to the amount of capacity reserved. Payment for long-term transmission service will be required one month in advance of said service.

Character and Conditions of Service

Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by the service agreement or contract.

Adjustments for Reactive Power

There shall be no entitlement to transfer of reactive kilovolt-amperes at delivery points, except when such transfers may be mutually agreed upon by the customer and Western or their authorized representatives.

Adjustments for Losses: [This Section Was Superseded by Rate Schedule DSW-TL1]

Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by the customer in accordance with the service agreement or contract. If losses are not fully provided by a customer, charges for financial compensation may apply.

Unreserved Use: [This Section Was Superseded by Rate Schedule DSW-UU1]

Western will assess a charge for any unreserved use of the transmission system. Unreserved use occurs when a customer uses transmission service that it has not reserved or uses transmission service in excess of its reserved capacity. Unreserved use may also include a customer's failure to curtail transmission when requested.

The charge for unreserved use is two times the maximum allowable rate for the service at issue, assessed as follows: The penalty for a single hour of unreserved use is based on the daily short-term rate. The penalty for more

¹⁰ The determination was done in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321-4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500-1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

than one assessment of unreserved use for any given duration (e.g., daily) increases to next longest duration (e.g., weekly). The penalty for multiple instances of unreserved use (e.g., more than one hour) within a day is based on the daily short-term rate. The penalty for multiple instances of unreserved use isolated to one calendar week is based on the weekly short-term rate. The penalty for multiple instances of unreserved use during more than one week in a calendar month is based on the monthly short-term rate.

A customer that exceeds its reserved capacity at any point of receipt or point of delivery, or a customer that uses transmission service at a point of receipt or point of delivery that it has not reserved, is required to pay for all ancillary services that were provided by the Western Area Lower Colorado (WALC) Balancing Authority and associated with the unreserved use. The customer will pay for ancillary services based on the amount of transmission service used and not reserved.

Rate Schedule INT–NFT4

(Supersedes Rate Schedule INT–NFT3)

**United States Department of Energy
Western Area Power Administration**

Desert Southwest Region

**Pacific Northwest-Pacific Southwest
Intertie Project**

Nonfirm Transmission Service

Effective

The first day of the first full billing period beginning on or after May 1, 2013, and will remain in effect through September 30, 2018, or until superseded by another rate schedule. [Note: This rate schedule was extended by Rate Order No. WAPA–181 through September 30, 2020, by Rate Order No. WAPA–192 through September 30, 2023, and by Rate Order No. WAPA–210 through September 30, 2024.]

Applicable

To nonfirm transmission service customers where capacity and energy are supplied to the Northwest-Pacific Southwest Intertie Project (Intertie) transmission system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the Intertie transmission system.

Rate

The nonfirm transmission service rate is 2.21 mills for each kilowatt per hour. Discounts may be offered from time-to-time in accordance with Western's Open Access Transmission Tariff (OATT).

Billing

Western will bill nonfirm transmission service customers monthly by applying the rate listed above to the amount of capacity reserved.

Character and Conditions of Service

Alternating current at 60 hertz, three-phase, interruptible, delivered and metered at the voltages and points of delivery established by service agreement or in advance by Western. Curtailment conditions shall be determined by Western and in accordance with Western's OATT.

Adjustments for Reactive Power

There shall be no entitlement to transfer of reactive kilovolt amperes at delivery points, except when such transfers may be mutually agreed upon by the customer and Western or their authorized representatives.

Adjustment for Losses: [This Section Was Superseded by Rate Schedule DSW–TL1]

Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by the customer in accordance with the service agreement or contract. If losses are not fully provided by a customer, charges for financial compensation may apply.

Unreserved Use: [This Section Was Superseded by Rate Schedule DSW–UU1]

Western will assess a charge for any unreserved use of the transmission system. Unreserved use occurs when a customer uses transmission service that it has not reserved or uses transmission service in excess of its reserved capacity. Unreserved use may also include a customer's failure to curtail transmission when requested.

The charge for unreserved use is two times the maximum allowable rate for the service at issue, assessed as follows: The penalty for a single hour of unreserved use is based on the daily short-term rate. The penalty for more than one assessment of unreserved use for any given duration (e.g., daily) increases to next longest duration (e.g., weekly). The penalty for multiple instances of unreserved use (e.g., more than one hour) within a day is based on the daily short-term rate. The penalty for multiple instances of unreserved use isolated to one calendar week is based on the weekly short-term rate. The penalty for multiple instances of unreserved use during more than one week in a calendar month is based on the monthly short-term rate.

A customer that exceeds its reserved capacity at any point of receipt or point of delivery, or a customer that uses transmission service at a point of receipt or point of delivery that it has not reserved, is required to pay for all ancillary services that were provided by the Western Area Lower Colorado (WALC) Balancing Authority and associated with the unreserved use. The customer will pay for ancillary services based on the amount of transmission service used and not reserved.

Rate Schedule PD–F7

(Supersedes Schedule PD–F6)

**United States Department of Energy
Western Area Power Administration**

Desert Southwest Region

Parker-Davis Project

**Schedule of Rates for Firm Electric
Service**

Effective

The first day of the first full billing period beginning on or after October 1, 2008, through September 30, 2013, or until superseded, whichever occurs earlier. [Note: This rate schedule was extended by Rate Order No. WAPA–162 through September 30, 2018, by Rate Order No. WAPA–184 through September 30, 2023, and by Rate Order No. WAPA–210 through September 30, 2024.]

Available

In the area served by the Parker-Davis Project (P–DP).

Applicable

To firm electric service customers for firm power service supplied through one meter at one point of delivery, unless otherwise provided by service agreement or contract.

Character and Conditions of Service

Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by service agreement or contract.

Charges

Energy Charge: Each firm electric service customer shall be billed monthly an energy charge. This charge is equal to the customer's monthly contractual energy reservation multiplied by the Energy Rate, rounded to the penny. The Energy Rate shall be equal to 50 percent of the annual generation revenue requirement divided by the estimated total generation delivery commitments, rounded to two decimal places.

Capacity Charge: Each firm electric service customer shall be billed monthly

a capacity charge. This charge is equal to the customer's monthly contractual capacity reservation multiplied by the Capacity Rate, rounded to the penny. The Capacity Rate shall be equal to 50 percent of the annual generation revenue requirement divided by the estimated total generation delivery commitments, rounded to two decimal places.

Transmission Charge: Each firm electric service customer shall be billed monthly a transmission charge. This charge is equal to the customer's contractual reservation multiplied by the rate calculated in accordance with PD-FT7, rounded to the penny.

Lower Basin Development Fund Contribution Charge: The contribution charge is 4.5 mills/kWh for each kWh measured or scheduled to an Arizona purchaser and 2.5 mills/kWh for each kWh measured or scheduled to a California or Nevada purchaser.

Billing of Excess Energy

For each month in which there is excess energy available, offered, and delivered to the firm electric service customer, such excess energy shall be billed at the Energy Rate.

Billing for Unauthorized Overruns: [This Section Was Superseded by Rate Schedule DSW-UU1]

For each month in which there is a contract violation involving an unauthorized overrun of energy and/or capacity, such overruns shall be billed at 10 times the Energy and/or Capacity Rate in this rate schedule. For each month in which there is a contract violation involving an unauthorized overrun of transmission, such overrun shall be billed at two times the Transmission Charge in this rate schedule.

Transformer Losses: [This Section Was Superseded by Rate Schedule DSW-TL1]

If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

Power Factor

The firm electric service customer will normally be required to maintain a power factor at all points of measurement between 95-percent lagging and 95-percent leading.

Rate Schedule PD-FCT7 (Supersedes Schedule PD-FCT6)

United States Department of Energy Western Area Power Administration

Parker-Davis Project

Schedule of Rate for Firm Transmission Service of Salt Lake City Area/ Integrated Projects Power

Effective

The first day of the first full billing period beginning on or after October 1, 2008, through September 30, 2013, or until superseded, whichever occurs earlier. [Note: This rate schedule was extended by Rate Order No. WAPA-162 through September 30, 2018, by Rate Order No. WAPA-184 through September 30, 2023, and by Rate Order No. WAPA-210 through September 30, 2024.]

Available

In the area served by the Parker-Davis Project (P-DP).

Applicable

To Salt Lake City Area/Integrated Projects (SLCA/IP) southern division customers, where SLCA/IP capacity and energy are supplied to the P-DP system by the Colorado River Storage Project (CRSP) at points of interconnection with the CRSP system and transmitted and delivered on a unidirectional basis, less losses, to southern division customers at points of delivery on the P-DP system.

Character and Conditions of Service

Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by service agreement or contract.

Rate

The annual rate for each kilowatt per year is equal to the annual transmission revenue requirement divided by the estimated transmission delivery commitments, rounded to the nearest 12 cent increment. The annual rate is payable monthly at a rate for each kilowatt per month equal to the annual rate divided by 12.

Billing

Western will bill firm transmission service customers monthly by applying the rates under this rate schedule to the amount of capacity reserved. Payment for service will be required one month in advance of said service.

Adjustments for Reactive Power

There shall be no entitlement to transfer of reactive kilovolt-amperes at delivery points, except when such

transfers may be mutually agreed upon by the customer and Western or their authorized representatives.

Adjustments for Losses: [This Section Was Superseded by Rate Schedule DSW-TL1]

Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by the customer in accordance with the service agreement or contract.

Overrun of Capacity Reserved: [This Section Was Superseded by Rate Schedule DSW-UU1]

Western will assess a charge for unauthorized use of transmission service at a rate equal to two times the applicable rate for the service at issue. The charge will be applied to use in excess of the reservation amount, which shall be the difference between the amount of transmission service actually used by the customer less the amount of transmission service the customer has reserved. The customer will incur the charge for an overrun during the calendar month or for the period of transmission service if such service is for a term of less than one month.

Rate Schedule PD-FT7

(Supersedes Schedule PD-FT6)

United States Department of Energy Western Area Power Administration

Parker-Davis Project

Schedule of Rates for Firm Point-to-Point Transmission Service

Effective

The first day of the first full billing period beginning on or after October 1, 2008, through September 30, 2013, or until superseded, whichever occurs earlier. [Note: This rate schedule was extended by Rate Order No. WAPA-162 through September 30, 2018, by Rate Order No. WAPA-184 through September 30, 2023, and by Rate Order No. WAPA-210 through September 30, 2024.]

Available

In the area served by the Parker-Davis Project (P-DP).

Applicable

To firm point-to-point transmission service customers where capacity and energy are supplied to the P-DP system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the P-DP system.

Character and Conditions of Service

Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by service agreement or contract.

Long-Term Rate

For transmission service one year or longer, the annual rate for each kilowatt per year is equal to the annual transmission revenue requirement divided by the estimated transmission delivery commitments, rounded to the nearest 12 cent increment. The annual rate for long-term service is payable monthly at a rate for each kilowatt per month equal to the annual rate for long-term service divided by 12.

Short-Term Rates

For transmission service up to one year, the maximum rate for each kW is as follows:

Monthly: Equal to the annual long-term rate, divided by 12 and rounded to two decimal places

Weekly: Equal to the annual long-term rate, divided by 52 and rounded to two decimal places

Daily: Equal to the annual long-term rate, divided by 365 and rounded to two decimal places

Hourly: Equal to the annual long-term rate, divided by 8,760 and rounded to five decimal places

Discounts may be offered from time to time in accordance with Western's Open Access Transmission Tariff.

Billing

Western will bill firm point-to-point transmission service customers monthly by applying the rates under this rate schedule to the amount of capacity reserved. Payment for service will be required one month in advance of service.

Adjustments for Reactive Power

There shall be no entitlement to transfer of reactive kilovolt-amperes at delivery points, except when such transfers may be mutually agreed upon by the customer and Western or their authorized representatives.

Adjustments for Losses: [This Section Was Superseded by Rate Schedule DSW-TL1]

Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by the customer in accordance with the service agreement or contract.

Overrun of Capacity Reserved: [This Section Was Superseded by Rate Schedule DSW-UU1]

Western will assess a charge for unauthorized use of transmission service at a rate equal to two times the applicable rate for the service at issue. The charge will be applied to use in excess of the reservation amount, which shall be the difference between the amount of transmission service actually used by the customer less the amount of transmission service the customer has reserved. The customer will incur the charge for an overrun during the calendar month or for the period of transmission service if such service is for a term of less than one month.

Rate Schedule PD-NFT7

(Supersedes Schedule PD-NFT6)

United States Department of Energy Western Area Power Administration

Parker-Davis Project

Schedule of Rate for Nonfirm Transmission Service

Effective

The first day of the first full billing period beginning on or after October 1, 2008, through September 30, 2013, or until superseded, whichever occurs earlier. [Note: This rate schedule was extended by Rate Order No. WAPA-162 through September 30, 2018, and by Rate Order No. WAPA-184 through September 30, 2023, and by Rate Order No. WAPA-210 through September 30, 2024.]

Available

In the area served by the Parker-Davis Project (P-DP).

Applicable

To nonfirm transmission service customers where capacity and energy are supplied to the P-DP system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the P-DP system.

Character and Conditions of Service

Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by service agreement or contract.

Rate

The nonfirm transmission service rate for each kilowatt per hour is equal to the annual transmission revenue requirement divided by the estimated transmission delivery commitments, divided by 8,760 and rounded to five decimal places. Discounts may be

offered from time to time in accordance with Western's Open Access Transmission Tariff.

Billing

Western will bill nonfirm transmission customers monthly by applying the nonfirm rate under this rate schedule to the amount of capacity reserved.

Adjustments for Reactive Power

There shall be no entitlement to transfer of reactive kilovolt-amperes at delivery points, except when such transfers may be mutually agreed upon by the customer and Western or their authorized representatives.

Adjustments for Losses: [This Section Was Superseded by Rate Schedule DSW-TL1]

Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by the customer in accordance with the service agreement or contract.

[FR Doc. 2023-18737 Filed 8-29-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Western Area Power Administration

Formula Rates for Central Valley Project Power, Transmission, and Ancillary Services; and California- Oregon Transmission Project Transmission Service—Rate Order No. WAPA-207

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed power, transmission, and ancillary services formula rates.

SUMMARY: The Sierra Nevada Region (SN) of the Western Area Power Administration (WAPA) proposes new formula rates for the Central Valley Project (CVP) power, transmission, and ancillary services; and California-Oregon Transmission Project (COTP) transmission service. The existing formula rates for these services expire on September 24, 2024, and December 31, 2024. SN proposes to keep the same formula rates, without adjustments, for these services. SN proposes no material changes aside from updating the effective dates.

DATES: A consultation and comment period will begin August 30, 2023 and end November 28, 2023. SN will present a detailed explanation of the proposed formula rates at a public information forum that will be held on November

15, 2023, at 10 a.m. PST to no later than 12:30 p.m. PST. SN will host a public comment forum on November 15, 2023, at 1:30 p.m. to no later than 3:30 p.m. PST. The public information forum and the public comment forum will be conducted via Microsoft Teams. Instructions for participating in the forums will be posted on SN's website at least 14 days prior to the public information and comment forums at: <https://www.wapa.gov/regions/SN/rates/Pages/Rate-Case-2024-WAPA-207.aspx>.

ADDRESSES: Written comments and requests to be informed of Federal Energy Regulatory Commission (FERC) actions concerning the proposed formula rates submitted by SN to FERC for approval should be sent to Bryan W. Griess, Acting Regional Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630, or email: SNR-RateCase@wapa.gov. SN will post information about the proposed formula rates and written comments received to its website at: <https://www.wapa.gov/regions/SN/rates/Pages/Rate-Case-2024-WAPA-207.aspx>.

FOR FURTHER INFORMATION CONTACT: Autumn Wolfe, Rates Manager, Sierra Nevada Region, Western Area Power Administration, (916) 353-4686 or email: SNR-RateCase@wapa.gov.

SUPPLEMENTARY INFORMATION: On December 2, 2011, FERC approved and confirmed Rate Schedules for CVP power, transmission, and ancillary services; COTP transmission; and Pacific Alternating Current Intertie (PACI) transmission under Rate Order No. WAPA-156. That rate order was extended by Rate Order Nos. WAPA-173 and WAPA-185. These rates are set to expire on September 30, 2024.¹ The formula rate schedules are:

- CV-F13—Base Resource and First Preference Power
- CPP-2—Custom Product Power
- CV-T3—Firm and Non-Firm Point-to-Point Transmission Service
- CV-NWT5—Network Integration Transmission Service
- COTP-T3—Firm and Non-Firm Point-to-Point Transmission Service
- PACI-T3—Firm and Non-Firm Point-to-Point Transmission Service (to be handled in a separate rate case)
- CV-TPT7—Third-Party Transmission Service
- CV-UUP1—Unreserved Use Penalties
- CV-RFS4—Regulation and Frequency Response

- CV-SPR4—Spinning Reserves
- CV-SUR4—Supplemental Reserves

On April 27, 2021, the FERC confirmed and approved Rate Order No. WAPA-194, which placed into effect formula rates for the Energy Imbalance Market (EIM) services, Sale of Surplus Products, and revisions to existing rate schedules for Energy Imbalance and Generator Imbalance services. These rates are set to expire on December 31, 2024.² The formula rate schedules are:

- CV-EIM1S—EIM Administrative Service Charge
- CV-EIM4S—EIM Energy Imbalance Service
- CV-EIM9S—EIM Generator Imbalance Service
- CV-SSP2—Sale of Surplus Products
- CV-EID5—Energy Imbalance Service
- CV-GID2—Generator Imbalance Service

The proposed rates continue the formula-based methodology that includes an annual update to the financial, load, and other data in the rate formulas. SN intends the proposed formula-based rates to go into effect October 1, 2024. The proposed formula rates would remain in effect until September 30, 2029, or until WAPA supersedes or changes the formula rates through another public rate process pursuant to 10 CFR part 903, whichever occurs first.

The proposed formula rates would provide sufficient revenue to recover annual costs within the cost recovery criteria set forth in Department of Energy (DOE) Order RA 6120.2. SN proposed rate schedules are located on our website at: <https://www.wapa.gov/regions/SN/rates/Pages/Rate-Case-2024-WAPA-207-Proposed-Rate-Schedules.aspx>. For more detailed information on the proposed rate formulas, example calculations and cost comparisons, please visit the customer Proposed Rate Brochure located on SN's website at: <https://www.wapa.gov/regions/SN/rates/Documents/Rate-Order-WAPA-207-Proposed-Rate-Brochure.pdf>.

Proposed Power Revenue Requirement and Allocation to Preference Customers

Before the start of each Fiscal Year (FY), SN would continue to calculate and publish an annual Power Revenue Requirement (PRR) to determine the total cost of power. The total cost of power is allocated to SN's preference customers, namely, First Preference (FP) customers based on their FP percentages, and the remaining amount

to Base Resource (BR) customers based on their BR allocation, adjusted for programs, such as hourly exchange. The Trinity River Division Act of 1955 (69 Stat. 719) and the Flood Control Act of 1962 (76 Stat. 1173, 1191–1192) accorded first preference to CVP power to customers in Trinity, Tuolumne, and Calaveras Counties. A BR customer, under the 2004 and 2025 Marketing Plans, is an entity that has executed a BR contract and is allocated a percentage of the BR.

SN prepares a Power Repayment Study (PRS) each FY to determine if revenue will be sufficient to repay, within the required periods, all costs assigned to the commercial power function. Generally, the PRR includes Operation and Maintenance (O&M) expenses, purchased power for Project Use and FP customers' loads, interest, and other expenses (including any other statutorily required costs or charges), investment repayment, and the Washoe Project annual PRR. Revenues from Project Use, transmission, ancillary services, and other services offset expenses in the PRR; and the remainder is collected from BR and FP customers. The PRR is reviewed during March of each year; and if such review results in a change of \$5 million or more to the annual PRR, collections are adjusted over the remaining 6-month period. The PRR is an estimate of revenues and expenses including investment and repayment projections from the PRS. Any variance from estimate to actual will increase or decrease annual project repayment. Project repayment is measured over the long term to ensure repayment is met and to maintain rate stability.

For SN to meet the load requirements beyond delivered BR for Full Load Service (FLS) customers and Variable Resource (VR) customers, SN may make Supplemental Power (SP) purchases pursuant to the Custom Product Power (CPP) rate schedule. FLS and VR customers who contract with SN for such service will pay all SP costs. FLS customers pay a portfolio management charge according to their contract, whereas VR customers pay a scheduling charge per the rate schedule.

Proposed Transmission and Ancillary Services Revenue Requirements and Formula Rates

At least annually, SN will publish the CVP transmission rates for Point-to-Point and Network Integration Transmission Service (NITS), the COTP transmission rates, and CVP regulation and frequency response service rates. SN prepares a detailed cost-of-service study to determine the costs, by project,

¹ See Docket No. EF11-9-00 (137 FERC ¶ 62,201) (2011). Extended by Docket No. EF16-3-000 (156 FERC ¶ 62,039) (2016). Extended by Docket No. EF19-4-000 (168 FERC ¶ 62,150) (2019).

² See Docket No. EF21-1-000 (86 FERC ¶ 11760) (2021).

that support the transfer capability of each transmission system and the cost that supports the generation capability of the CVP system. Generally, the costs allocated through the cost-of-service study for the transmission systems include O&M, interest, and depreciation expenses. SN's costs for scheduling, system control and dispatch service associated with CVP and COTP transmission service are included and recovered through the respective transmission system's Revenue Requirement. Third-party transmission service costs are passed through directly to each requesting customer.

SN proposes the Unreserved Use Penalties continue to be assessed at 200 percent of the effective point-to-point transmission rate when transmission service is used and not reserved or when used in excess of the reservation. The required spinning and supplemental reserves charges are based on a price consistent with the California Independent System Operator's (CAISO) market price plus all costs incurred for the sale of these reserves. Customers who have a contractual obligation to provide spinning and supplemental reserves and do not fulfill their obligation will be assessed a penalty equal to the greater of SN's actual cost or 150 percent of the market price.

For Energy Imbalance (EI) service, when the EIM is suspended, customers outside of their contractual bandwidth (under delivery) will pay the greater of 150 percent of the market price or SN's actual cost. Given SN's EI customers are and will continue to operate under existing agreements, SN will continue its existing rate methodology for EI. SN proposes the GI rate use the same tiered methodology as SN's proposed EI service rate.

Proposed Sale of Surplus Products Formula Rates

The proposed rates would be for the sale of surplus energy and/or capacity products. This includes Energy, Frequency Response Reserve, Regulation, Reserves, and Resource Sufficiency. If CVP surplus products are available, SN could make the product(s) available for sale, provided entities enter into separate agreement(s) which would specify the terms of sale(s).

Proposed EIM Service Formula Rates

SN will continue participation in the EIM as a Transmission Service Provider (TSP) within the Balancing Authority of Northern California (BANC) Balancing Authority Area (BAA). SN is proposing continued formula rate schedules for: (1) EIM Administrative Service, (2) EIM EI Service, and (3) EIM GI Service. In

EIM, CAISO economically dispatches energy under its EIM Tariff to meet the imbalances for loads and resources over multiple BAAs. CAISO provides a centralized, automated, and region-wide dispatch for imbalances. The EIM Administrative Services formula rate continues to allow SN to pass through administrative costs incurred by SN resulting from its participation in EIM as a Participating Resource Scheduling Coordinator (PRSC). The formula rates and cost allocation for Administrative, EI, and GI services would be in effect when SN is participating in the EIM, and to the extent SN incurs associated settlements during market suspension or contingency.

Legal Authority

Existing DOE procedures for public participation in power and transmission rate adjustments (10 CFR part 903) were published on September 18, 1985, and February 21, 2019.³ The proposed action is a major rate adjustment, as defined by 10 CFR 903.2(d). In accordance with 10 CFR 903.15(a) and 10 CFR 903.16(a), SN will hold public information and public comment forums for this rate adjustment. SN will review and consider all timely public comments at the conclusion of the consultation and comment period and adjust the proposal as appropriate. The rates will then be approved on an interim basis.

SN is establishing the formula rates for COTP and CVP transmission, CVP power, and other related services in accordance with section 302 of the DOE Organization Act (42 U.S.C. 7152).⁴

By Delegation Order No. S1-DEL-RATES-2016, effective November 19, 2016, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the WAPA Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to FERC. By Delegation Order No. S1-DEL-S3-2023, effective April 10, 2023, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the

Under Secretary for Infrastructure. By Redefinition Order No. S3-DEL-WAPA1-2023, effective April 10, 2023, the Under Secretary for Infrastructure further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA's Administrator.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that SN initiates or uses to develop the proposed formula rates are available for inspection and copying at the Sierra Nevada Region, located at 114 Parkshore Drive, Folsom, California. Many of these documents and supporting information are also available on SN's website at: <https://www.wapa.gov/regions/SN/rates/Pages/Rate-Case-2024-WAPA-207.aspx>.

Ratemaking Procedure Requirements

Environmental Compliance

SN is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.⁵

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Signing Authority

This document of the Department of Energy was signed on August 24, 2023, by Tracey A. LeBeau, Administrator, Western Area Power Administration, 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**.

³ 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

⁴ This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the projects involved.

⁵ In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321-4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500-1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

Signed in Washington, DC, on August 25, 2023.

Treena V. Garrett,

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

[FR Doc. 2023-18748 Filed 8-29-23; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-11289-01-OA]

Local Government Advisory Committee: Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its Local Government Advisory Committee (LGAC). Qualified nominees for the LGAC hold elected positions with local, Tribal, State, or Territorial governments, or serve in a full-time government position appointed by an elected official. EPA is seeking up to 5 individuals to serve one-year terms beginning in January 2024. For more information on the LGAC, including member bios, recent meeting summaries and recommendations, visit: <https://www.epa.gov/ocir/local-government-advisory-committee-lgac>.

DATES: To be considered for 2024 appointments, nominations should be submitted by September 30, 2023.

ADDRESSES: *How to Apply:* Submit nominations electronically to LGAC@epa.gov with a subject heading of 'LGAC 2024 NOMINATION' and complete the form at <https://tinyurl.com/yvt2t6f8>.

FOR FURTHER INFORMATION CONTACT: Paige Lieberman, the LGAC Designated Federal Officer at (202) 564-9957/LGAC@epa.gov.

SUPPLEMENTARY INFORMATION:

Qualifications

The Local Government Advisory Committee (LGAC) is chartered under the Federal Advisory Committee Act (FACA), Public Law 92-463, to advise the EPA Administrator on environmental issues impacting local governments. Members of LGAC will provide advice and recommendations on a broad range of issues related to promoting and protecting public health and the environment. For 2024 the topics addressed will include but not be limited to:

- Advancing environmental justice;
- Developing capacity for technical assistance at the local level;
- Reducing greenhouse gas emissions;
- Bolstering resilience to the impacts of climate change;
- Supporting local governments in the assessment and remediation of PFAS chemicals.

Viable candidates must be current elected officials representing local, State, Tribal, or Territorial governments. Officials working full-time for a local, State, Tribal, or Territorial government who have been appointed directly by an elected official will also be considered. Preference will be given to qualified candidates who demonstrate experience developing and implementing environmental programs consistent with the 2024 topics listed above. To maintain geographical diversity of the Committee, preference for LGAC membership may also be given to qualified candidates from Tribal or Territorial governments, and candidates from the Southwest U.S.

Additional criteria to be considered may include: experience with multi-sector partnerships; coalition-building and grassroots involvement; involvement and leadership in national, State or regional intergovernmental associations; and diversity in vocational/career/volunteer background.

Time Commitment

New LGAC members are appointed for 1-year terms and are eligible for reappointment for up to 6 years. In 2024, the Committee plans to hold two or three full-day, public meetings, where both in-person and online participation options will be available.

In addition to public meetings, Workgroups will be created to address the 2024 topics noted above, as well as any emerging issues. Members will be encouraged to serve on one or more Workgroups, where they will be asked to share their experiences working on an issue, recommend experts on an issue for the Committee to consult with, debate the nuances of policy implementation, and review written recommendations before they are shared with the full Committee. Applicants should plan to spend an average of three hours per month on Committee work. While EPA is unable to provide compensation for services, official Committee travel and related expenses (lodging, etc.) will be fully reimbursed.

Nominations

Nominations must be submitted in electronic format. To be considered, all nominations should complete the

application at this link: <https://forms.gle/8gccVHdd6UUGVZYU9>.

Other sources, in addition to this **Federal Register** notice, may be utilized in the solicitation of nominees. EPA expressly values diversity, equity, and inclusion, and encourages the nominations of elected and appointed officials from diverse backgrounds so that the LGAC and SCAS look like America and reflect the country's rich diversity. Individuals may self-nominate.

Dated: August 22, 2023.

Paige Lieberman,

EPA Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 2023-18652 Filed 8-29-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-11275-01-R9]

Revision of Approved Primacy Program for Guam

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval.

SUMMARY: Notice is hereby given that Guam revised its approved primacy program under the federal Safe Drinking Water Act (SDWA) by adopting regulations that effectuate the federal Revised Total Coliform Rule (RTCR). The Environmental Protection Agency (EPA) has determined that Guam's revision request meets the applicable SDWA program revision requirements and the regulations adopted by Guam are no less stringent than the corresponding federal regulations. Therefore, EPA approves this revision to Guam's approved primacy program. However, this determination on Guam'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 29, 2023.

ADDRESSES: Documents relating to this determination that were submitted by Guam as part of its program revision request are available for public inspection online at <https://notices.guam.gov>, or available upon request by emailing julie.mendoza@epa.guam.gov. In addition, these documents are available by appointment between the hours of 8:00-11:30 a.m. and 1:00-4:00 p.m., Monday through

Friday, at the following address: 3304 Mariner Ave. #17, Barrigada, GU 96913. If there are issues accessing the website, please contact Julie Mendoza at (671) 300-9026, or via email at julie.mendoza@epa.guam.gov.

FOR FURTHER INFORMATION CONTACT: Jake Jenzen, EPA Region 9, Drinking Water Section; via telephone at (415) 927-3570 or via email address at Jenzen.Jacob@epa.gov.

SUPPLEMENTARY INFORMATION:

Background. EPA approved Guam's initial application for primary enforcement authority ("primacy") of drinking water systems on August 10, 1978 (43 FR 35534). Since initial primacy approval, EPA has approved various revisions to Guam's primacy program. For the revision covered by this action, EPA promulgated the RTCR at 40 CFR subpart Y on February 26, 2014 (79 FR 10665). The RTCR revises the 1989 Total Coliform Rule and is intended to improve public health protection through the reduction of potential pathways of entry for fecal contamination into the distribution system. EPA has determined that Guam has adopted into law, RTCR requirements that are comparable to and no less stringent than the federal requirements. EPA has also determined that Guam'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 Guam 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 Guam to attain and retain primary enforcement responsibility, and a statement by the Guam Attorney General certifying that Guam'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 Guam's ability to implement or enforce Guam's laws and regulations pertaining to the program revision. Therefore, EPA approves this revision of Guam's approved primacy program. The Technical Support Document, which provides EPA's analysis of Guam'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 29, 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 "Guam 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 29, 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 8, 2023.

Martha Guzman Aceves,

Regional Administrator, EPA Region 9.

[FR Doc. 2023-17461 Filed 8-29-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-11362-01-R6]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for XTO Energy Inc., Wildcat Compressor Station, Lea County, New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Order on Petition for objection to Clean Air Act title V operating permit.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order dated August 7, 2023, granting in part and denying in part a Petition from the WildEarth Guardians dated March 1, 2023. The Petition requested that the EPA object to the Clean Air Act (CAA) title V operating permit issued by the New Mexico Environment Department (NMED) to XTO Energy Inc., Wildcat Compressor Station, located in Lea County, New Mexico.

ADDRESSES: The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, the Petition, and other supporting information. Please call or email the contact listed below if you need alternative access to the final Order and Petition, which are available electronically at: <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>.

FOR FURTHER INFORMATION CONTACT: Elizabeth Layton, EPA Region 6 Office, Air Permits Section, (214) 665-2165, layton.elizabeth@epa.gov.

SUPPLEMENTARY INFORMATION: The CAA affords the EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issue arose after this period.

The Petitioner claims that the Proposed Permit fails to ensure the facility operates in compliance with the New Mexico State Implementation Plan (SIP) by lacking a reasoned explanation, basis, or analysis demonstrating how the Proposed Permit will ensure the facility's operation will not cause or contribute to an exceedance in the National Ambient Air Quality Standard (NAAQS) for ozone, fails to include emission limitations and standards necessary to assure compliance with applicable requirements, and fails to include sufficient periodic monitoring

and is unenforceable as a practical matter.

On August 7, 2023, the EPA Administrator issued an Order granting in part and denying in part the Petition. The Order explains the basis for the EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review shall file in the United States Court of Appeals for the appropriate circuit no later than October 30, 2023.

Dated: August 24, 2023.

David Garcia,

Director, Air and Radiation Division, Region 6.

[FR Doc. 2023-18726 Filed 8-29-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-11365-01-R5]

Great Lakes Advisory Board Notice for Virtual Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting for Great Lakes Advisory Board.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the Environmental Protection Agency (EPA) provides notice of a public meeting for the Great Lakes Advisory Board (GLAB). Pre-registration is required.

DATES: This virtual public meeting will be held on September 18, 2023, from 12 p.m. to 3 p.m. Central Daylight Time. Members of the public seeking to view the meeting must register by 2 p.m. Central Daylight Time on September 15, 2023. Members of the public seeking to make comments relevant to issues discussed at the virtual meeting must register and indicate a request to make oral and/or written public comments in advance of the meeting. For information on how to register, please see How do I participate in the remote public meeting below.

FOR FURTHER INFORMATION CONTACT: Todd Nettesheim, Acting Designated Federal Officer (DFO), at *Nettesheim.Todd@epa.gov* or 312-353-9153.

SUPPLEMENTARY INFORMATION:

I. General Information

The GLAB is chartered in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C. appendix 2, as amended) and 41 CFR 102-3.50(d).

The Advisory Board provides advice and recommendations on matters related to the Great Lakes Restoration Initiative. The Advisory Board also advises on domestic matters related to implementation of the Great Lakes Water Quality Agreement between the U.S. and Canada. The major objectives are to provide advice and recommendations on: Great Lakes protection and restoration activities; long-term goals, objectives, and priorities for Great Lakes protection and restoration; and other issues identified by the Great Lakes Interagency Task Force/Regional Working Group.

II. How do I participate in the remote public meeting?

A. Remote Meeting

This meeting will be conducted as a virtual meeting on September 18, 2023, from 12 p.m. to 3 p.m. Central Daylight Time. You must register by 2 p.m. Central Daylight Time on September 15, 2023, to receive information on how to participate. You may also submit written or oral comments for the committee by following the processes outlined below.

B. Registration

Individual registration is required for participation in this meeting. Information on registration for this meeting can be found at <https://event.capconcorp.com/form/view.php?id=179577>. When registering, please provide your name, email, organization, city, and state. Please also indicate whether you would like to provide oral and/or written comments during the meeting at the time of registration.

C. Procedures for Providing Public Comments

Oral Statements: In general, oral comments at this virtual conference will be limited to the Public Comments portions of the meeting agenda. Members of the public may provide oral comments limited to up to three minutes per individual or group and may submit further information as written comments. Persons interested in providing oral statements should register at <https://event.capconcorp.com/form/view.php?id=179577> for the meeting and indicate your interest to provide public comments. Oral commenters will be provided an opportunity to speak in the order in which their request was received by the DFO and to the extent permitted by the number of comments and the scheduled length of the meeting. Persons not able to provide

oral comments during the meeting will be given an opportunity to provide written comments after the meeting.

Written Statements: Persons interested in providing written statements pertaining to this committee meeting may do so by indicating at <https://event.capconcorp.com/form/view.php?id=179577>. Written comments will be accepted before and after the public meeting for consideration by the Great Lakes Advisory Board members.

D. Availability of Meeting Materials

The meeting agenda and other materials for the virtual conference will be posted on the GLAB website at www.glri.us/glab.

E. Accessibility

Persons with disabilities who wish to request reasonable accommodations to participate in this event may contact the Acting DFO at *Nettesheim.todd@epa.gov* or 312-353-9153 by 2 p.m. Central Daylight Time on September 11, 2023. All final meeting materials will be posted to the GLAB website in an accessible format following the meeting, as well as a written summary of this meeting.

Debra Shore,

Regional Administrator, & Great Lakes National Program Manager, U.S. EPA Region 5.

[FR Doc. 2023-18634 Filed 8-29-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2023-0074; FRL-10909-01-OCSPP]

Cancellation Order for Certain Pesticide Registrations and Amendments To Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations and amendments to terminate uses, voluntarily requested by the registrants, and accepted by the Agency, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a March 10, 2023, **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 3 of Unit II, to voluntarily cancel and amend to terminate uses of certain product registrations. In the March 10, 2023, notice, EPA indicated that it would issue an order implementing the cancellations and amendments to terminate uses, unless the Agency

received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received one comment on the notice, but it did not merit its further review of the requests. Further, the registrants did not withdraw their requests.

Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations and amendments to terminate uses. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations and amendments are effective August 30, 2023.

FOR FURTHER INFORMATION CONTACT:

Christopher Green, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC

20460–0001; telephone number: (202) 566–2707; email address: green.christopher@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2023–0074, is 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 is (202) 566–1744, and the telephone number for the OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

II. What action is the Agency taking?

This notice announces the cancellations and amendments to terminate uses, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Tables 1 and 2 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
279–2862	279	Niagara Furadan 75 Base	Carbofuran (A) (090601/1563–66–2)—(75%).
279–3038	279	Furadan 85 DB	Carbofuran (A) (090601/1563–66–2)—(85%).
279–3060	279	Carbofuran Technical	Carbofuran (A) (090601/1563–66–2)—(95%).
279–3114	279	Capture 2EC-Cal Insecticide/Miticide	Bifenthrin (A) (128825/82657–04–3)—(25.1%).
279–3244	279	Capture 1.15G Insecticide/Miticide	Bifenthrin (A) (128825/82657–04–3)—(1.15%).
279–3257	279	Double Threat CP Insecticide	Bifenthrin (A) (128825/82657–04–3)—(25.1%), Spinosad (A) (110003/131929–60–7)—(44.2%).
279–3271	279	Double Threat Insecticide	Bifenthrin (A) (128825/82657–04–3)—(12.2%), Spinosad (A) (110003/131929–60–7)—(10.7%).
279–3440	279	F9210–1 Insecticide	Bifenthrin (A) (128825/82657–04–3)—(7.87%), Imidacloprid (A) (129099/138261–41–3)—(13.83%), Zeta-Cypermethrin (A) (129064/)—(2.7%).
279–3613	279	F5555–2 MUP	Bifenthrin (A) (128825/82657–04–3)—(19%).
8660–153	8660	Parker Fertilizer + 0.2% Dimension	Dithiopyr (A) (128994/97886–45–8)—(.2%).
8660–154	8660	Herbicide Granules Formula D–17	Dithiopyr (A) (128994/97886–45–8)—(.17%).
8660–155	8660	Parker Fertilizer + 0.083% Dimension	Dithiopyr (A) (128994/97886–45–8)—(.083%).
8660–157	8660	Dimension 270–G A Granule Preemergence Turf Herbicide.	Dithiopyr (A) (128994/97886–45–8)—(.27%).
8660–158	8660	Polygon Turf Fertilizer Plus Dimension 75 Crabgrass Preventer.	Dithiopyr (A) (128994/97886–45–8)—(.075%).
8660–159	8660	Herbicide Granules Formula D–11	Dithiopyr (A) (128994/97886–45–8)—(.11%).
8660–160	8660	Polygon Turf Fertilizer Plus Dimension 140 Crabgrass Preventer.	Dithiopyr (A) (128994/97886–45–8)—(.14%).
8660–167	8660	Herbicide Granules Formula D6–25	Dithiopyr (A) (128994/97886–45–8)—(.25%).
9779–293	9779	Phorate 20–G	Phorate (A) (057201/298–02–2)—(20%).
32802–83	32802	Howard Johnson's Ronstar 1.0% Plus Turf Fertilizer Herbicide.	Oxadiazon (A) (109001/19666–30–9)—(1%).
43670–4	43670	Intersept PC–20	Phosphoric Acid, Bis(2-Ethylhexyl) Ester, Compd. With 2,2 & Apos;-(Coco Alkylimino) Bis (Ethanol) (129079/68649–38–7)—(13.28%), Phosphoric Acid, Mono(2-Ethylhexyl) Ester (111286/1070–03–7)—(3.54%), Phosphoric Acid, Mono(2-Ethylhexyl) Ester, Compds. With Diethanolamine N-Coco Alkyl Derivs. (1:1) (129080/120579–32–0)—(3.18%).
66222–1	66222	Captan 50–WP	Captan (081301/133–06–2)—(48.93%).
81598–12	81598	Rotam Dicamba Technical	Dicamba (029801/1918–00–9)—(98.9%).
CO–160002	100	Gramoxone SL 2.0	Paraquat dichloride—(30.1%).
FL–100004	279	Fyfanon ULV AG Ultra Low Volume Concentrate Insecticide.	Malathion (No Inert Use) (057701/121–75–5)—(96.5%).
FL–130002	279	Fyfanon 57% EC	Malathion (No Inert Use) (057701/121–75–5)—(57%).
FL–130003	279	Fyfanon ULV AG	Malathion (No Inert Use) (057701/121–75–5)—(96.5%).

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Company No.	Product name	Active ingredients
GA-130002	279	Fyfanon ULV AG	Malathion (No Inert Use) (057701/121-75-5)—(57%).
ID-040011	62719	Stinger	Clpyralid, Monoethanolamine Salt (A) (117401/57754-85-5)—(40.9%).
ID-130001	61842	Linex 4L Herbicide	Linuron (A) (035506/330-55-2)—(40.6%).
ID-170008	62719	Stinger	Clpyralid, Monoethanolamine Salt (A) (117401/57754-85-5)—(40.9%).
IN-130001	10163	Malathion 8	Malathion (No Inert Use) (057701/121-75-5)—(79.5%).
IN-130002	10163	Malathion 8	Malathion (No Inert Use) (057701/121-75-5)—(79.5%).
KS-150005	13808	Zinc Phosphide Prairie Dog Bait	Zinc phosphide (Zn3P2) (088601/1314-84-7)—(2%).
MA-130001	279	Fyfanon ULV AG	Malathion (No Inert Use) (057701/121-75-5)—(96.5%).
MA-130002	279	Fyfanon 57% EC	Malathion (No Inert Use) (057701/121-75-5)—(57%).
MD-130003	10163	Malathion 8	Malathion (No Inert Use) (057701/121-75-5)—(79.5%).
MD-130004	10163	Malathion 8	Malathion (No Inert Use) (057701/121-75-5)—(79.5%).
MI-140004	69969	Avipel (Dry) Corn Seed Treatment	Anthraquinone (A) (122701/84-65-1)—(50%).
NC-130006	279	Fyfanon ULV AG	Malathion (No Inert Use) (057701/121-75-5)—(96.5%).
NH-130001	279	Fyfanon 57% EC	Malathion (No Inert Use) (057701/121-75-5)—(57%).
NH-130002	279	Fyfanon 57% EC	Malathion (No Inert Use) (057701/121-75-5)—(57%).
NH-130003	10163	Malathion 8	Malathion (No Inert Use) (057701/121-75-5)—(79.5%).
NH-130004	10163	Malathion 8	Malathion (No Inert Use) (057701/121-75-5)—(79.5%).
NJ-130005	279	Fyfanon ULV AG	Malathion (No Inert Use) (057701/121-75-5)—(96.5%).
NJ-130006	279	Fyfanon ULV AG	Malathion (No Inert Use) (057701/121-75-5)—(96.5%).
NJ-130007	279	Fyfanon 57% EC	Malathion (No Inert Use) (057701/121-75-5)—(57%).
NJ-130008	279	Fyfanon 57% EC	Malathion (No Inert Use) (057701/121-75-5)—(57%).
NJ-130009	279	Fyfanon 57% EC	Malathion (No Inert Use) (057701/121-75-5)—(57%).
OH-150002	279	Hero Insecticide	Bifenthrin (A) (128825/82657-04-3)—(11.25%), Zeta-Cypermethrin (A) (129064/—)(3.75%).
OR-020030	62719	Dithane DF Rainshield	Mancozeb (014504/8018-01-7)—(75%).
OR-170014	81880	Nexter SC Miticide/Insecticide	Pyridaben (A) (129105/96489-71-3)—(42.47%).
SD-090006	7969	Pristine Fungicide	Pyraclostrobin (A) (099100/175013-18-0)—(12.8%), Boscalid (A) (128008/188425-85-6)—(25.2%).
SD-150005	7969	Sharpen Powered by Kixor Herbicide	Saflufenacil (A) (118203/372137-35-4)—(29.74%).
TX-060018	279	Fyfanon ULV AG	Malathion (No Inert Use) (057701/121-75-5)—(96.5%).
TX-170006	279	Fyfanon ULV AG	Malathion (No Inert Use) (057701/121-75-5)—(96.5%).
VA-130006	10163	Malathion 8	Malathion (No Inert Use) (057701/121-75-5)—(79.5%).
VA-130007	10163	Malathion 8	Malathion (No Inert Use) (057701/121-75-5)—(79.5%).
WA-020028	62719	Dithane DF Rainshield	Mancozeb (A) (014504/8018-01-7)—(75%).
WA-090020	62719	Dithane F-45 Rainshield	Mancozeb (A) (014504/8018-01-7)—(37%).
WA-120009	100	Gramoxone SL 2.0	Paraquat dichloride—(30.1%).
WA-150011	71711	Moncut	Flutolanil (A) (128975/66332-96-5)—(70%).
WA-210007	91810	Romeo	Cerevisane (Cell Walls of Saccharomyces Cerevisiae Strain Las117) (100055/—)(94.1%).

TABLE 2—PRODUCT REGISTRATION AMENDMENTS TO DELETE USES

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
39967-107	39967	N-2000 Antimicrobial	Dodecylguanidine Hydrochloride (A) (044303/13590-97-1)—(35%).	Removal of sewage disposal lagoon and paint, coating and stain uses.
39967-115	39967	N-2001 Antimicrobial	Dodecylguanidine Hydrochloride (A) (044303/13590-97-1)—(35%).	Removal of sewage disposal lagoon use pattern.
39967-116	39967	Veriguard Plus	Dodecylguanidine Hydrochloride (A) (044303/13590-97-1)—(30%), O-Phenylphenol (No Inert Use) (A) (064103/90-43-7)—(10%).	Removal of textile, metalworking fluid, paints, coatings, and stain and sapstain uses.
39967-124	39967	N-2050 Antimicrobial	Dodecylguanidine Hydrochloride (A) (044303/13590-97-1)—(35%).	Removal of sewage disposal lagoon use pattern.
39967-136	39967	Preventol DP 1021	Bronopol (A) (216400/52-51-7)—(21%), Dodecylguanidine Hydrochloride (A) (044303/13590-97-1)—(10.5%).	Removal of paints, coatings, and stain use.

Table 3 of this unit includes the names and addresses of record for all registrants of the products in Tables 1

and 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA

registration numbers of the products listed above.

TABLE 3—REGISTRANTS OF CANCELLED AND AMENDED PRODUCTS

EPA company No.	Company name and address
100	Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
279	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
7969	BASF Corporation, Agricultural Products, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
8660	United Industries Corp., D/B/A Sylorr Plant Corp., P.O. Box 142642, St. Louis, MO 63114–0642.
9779	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164–0589.
10163	Gowan Company, LLC, 370 S Main St., Yuma, AZ 85366.
13808	SD Department of Agriculture & Natural Resources, Foss Bldg., 523 E Capitol Ave., Pierre, SD 57501–3182.
32802	Howard Johnson's Enterprises, Inc., 9675 S 60th Street, Franklin, WI 53132.
39967	Lanxess Corporation, 111 RIDC Park West Drive, Pittsburgh, PA 15275–1112.
43670	Interface Research Corporation, Agent Name: Landis International, Inc., 3185 Madison Highway, P.O. Box 5126, Valdosta, GA 31603–5126.
61842	Tessenderlo Kerley, Inc., Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct. NW, Gig Harbor, WA 98332.
62719	Corteva Agriscience, LLC, 9330 Zionsville Road, Indianapolis, IN 46268.
66222	Makhteshim Agan of North America, Inc., D/B/A Adama, 8601 Six Forks Road, Suite 300, Raleigh, NC 27615.
69969	Arkion Life Sciences, LLC, Agent Name: Wagner Regulatory Associates, Inc., P.O. Box 640, Hockessin, DE 19707.
71711	Nichino America, Inc., 4550 Linden Hill Road, Suite 501, Wilmington, DE 19808.
81598	Albaugh, LLC, 1525 NE 36th Street, Ankeny, IA 50021.
81880	Canyon Group, LLC, C/O Gowan Company, 370 S Main Street, Yuma, AZ 85364.
91810	LeSaffre Yeast Corporation, Agent Name: Wagner Regulatory Associates, Inc., 7217 Lancaster Pike, Suite A, P.O. Box 640, Hockessin, DE 19707–0640.

III. Summary of Public Comments Received and Agency Response to Comments

The agency received one comment from American Bird Conservancy agreeing with the cancellations in the notice of March 10, 2023: For this reason, the Agency does not believe that the comment submitted during the comment period merits further review or a denial of the requests for voluntary cancellation and use termination.

IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)(1)), EPA hereby approves the requested cancellations and amendments to terminate uses of certain pesticide registrations identified in Tables 1 and 2 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Tables 1 and 2 of Unit II, are canceled and amended to terminate the affected uses. The effective date of the cancellations that are subject of this notice is August 30, 2023. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 of Unit II, in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI, will be a violation of FIFRA.

V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA

further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of March 10, 2023 (88 FR 15015) (FRL–10762–01–OCSP). The comment period closed on April 10, 2023.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States, and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows.

For voluntary cancellations, the registrants may continue to sell and distribute existing stocks of products listed in Table 1 until August 30, 2024, which is 1 year after publication of this cancellation order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1 of Unit II, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Now that EPA has approved product labels reflecting the requested amendments to terminate uses, registrants are permitted to sell or distribute products listed in Table 2 of Unit II, under the previously approved labeling until March 3, 2025, a period of 18 months after publication of the

cancellation order in this **Federal Register**, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated uses identified in Table 2 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products and products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products and terminated uses.

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 24, 2023.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2023–18725 Filed 8–29–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2023–0030; FRL–11355–01–OA]

Children's Health Protection Advisory Committee (CHPAC); Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

Notice is hereby given that the Environmental Protection Agency (EPA)

has determined that, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. 1001 *et seq.*, the Children's Health Protection Advisory Committee (CHPAC) is in the public interest and is necessary in connection with the performance of the EPA's duties. Accordingly, the CHPAC will be renewed for an additional two-year period. The purpose of the CHPAC is to provide advice and recommendations to the Administrator of the EPA on issues associated with development of regulations, guidance and policies to address children's health risks. Inquiries may be directed to Amelia Nguyen, Designated Federal Officer, CHPAC, U.S. EPA, OCHP, MC 1107W, 1200 Pennsylvania Avenue NW, Washington, DC 20460, Email: nguyen.amelia@epa.gov, Telephone: (202) 564-4268.

Dated: August 23, 2023.

Grace M. Robiou,

Director, Office of Children's Health Protection.

[FR Doc. 2023-18747 Filed 8-29-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-11240-01-R9]

Revision of Approved Primacy Program for the Navajo Nation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval.

SUMMARY: Notice is hereby given that the Navajo Nation revised its approved primacy program under the federal Safe Drinking Water Act (SDWA) by adopting regulations that effectuate the Federal Stage 2 Disinfectants and Disinfection Byproducts Rule (S2 DBPR) and the Ground Water Rule (GWR). The Environmental Protection Agency (EPA) has determined that Navajo Nation's revision request meets the applicable SDWA program revision requirements and the regulations adopted by the Navajo Nation are no less stringent than the corresponding federal regulations. Therefore, EPA approves this revision to Navajo Nation's approved primacy program. However, this determination on the Navajo Nation'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 29, 2023.

ADDRESSES: Documents relating to this determination that were submitted by the Navajo Nation as part of its program revision request are available for public inspection online at <https://www.navajoepa.org> or available upon request by emailing ybarney@navajopublicwater.org. Should you have difficulty accessing the website, please contact Yolanda Barney, Navajo Nation PWSS Program, via email at ybarney@navajopublicwater.org.

FOR FURTHER INFORMATION CONTACT: Nnana Edmund, EPA Region 9, Drinking Water Section; via telephone at (415) 972-3996 or via email address at edmund.nnana@epa.gov.

SUPPLEMENTARY INFORMATION:

Background. EPA approved the Navajo Nation's initial application for primary enforcement authority ("primacy") of drinking water systems on October 23, 2000. Since initial primacy approval, EPA has approved various revisions to Navajo Nation's primacy program. For the revision covered by this action, EPA promulgated the S2 DBPR on January 4, 2006 (71 FR 387) with technical corrections on January 27, 2006 (71 FR 4644) and June 29, 2006 (71 FR 37168) and minor corrections on November 14, 2008 (73 FR 67456-87463) to strengthen public health protection by tightening compliance monitoring requirements for Trihalomethanes and Haloacetic acids, targeting public water systems with the greatest health risk. EPA promulgated the GWR on November 8, 2006 (71 FR 65574) to provide protection against microbial pathogens in public water systems using groundwater sources. EPA has determined that the Navajo Nation has incorporated by reference into law, the S2 DBPR and GWR requirements that are comparable to and no less stringent than the federal requirements. EPA has also determined that Navajo Nation'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 Navajo Nation 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 Navajo Nation to attain and retain primary enforcement responsibility, and a statement by the Navajo Nation Attorney General certifying that Navajo Nation'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 Navajo Nation's ability to implement or enforce the Navajo Nation laws and regulations pertaining to the program revision. Therefore, EPA approves this revision of the Navajo Nation's approved primacy program. The Technical Support Document, which provides the EPA's analysis of the Navajo Nation's program revision request, is available by submitting a request to the following email address: edmund.nnana@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 29, 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 "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 29, 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 8, 2023.

Martha Guzman Aceves,

Regional Administrator, EPA Region 9.

[FR Doc. 2023–17172 Filed 8–29–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on an Exposure Draft Titled Omnibus Concepts Amendments: Amending SFFAC 2 With Note Disclosures and MD&A Concepts and Rescinding SFFAC 3

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has released an exposure draft titled *Omnibus Concepts Amendments: Amending SFFAC 2 with Note Disclosures and MD&A Concepts and Rescinding SFFAC 3*. Respondents are encouraged to comment on any part of the exposure draft.

DATES: Written comments are requested by November 27, 2023.

ADDRESSES: Written comments should be submitted via https://gaosurvey.gao.gov/jfe/form/SV_bPnJnx0mLj7LAHA or sent to fasab@fasab.gov. Emails should be addressed to Monica R. Valentine, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW, Suite 1155, Washington, DC 20548. The exposure draft is available on the FASAB website at <https://www.fasab.gov/documents-for-comment/>. Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

(Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001–1014)

Dated: August 25, 2023.

Monica R. Valentine,

Executive Director.

[FR Doc. 2023–18714 Filed 8–29–23; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0298; FR ID 166668]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before September 29, 2023.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into www.reginfo.gov per the above instructions for it to be considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to PRA@fcc.gov and to Nicole.Ongele@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page <http://www.reginfo.gov/>

[public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain), (2) look for the section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

OMB Control Number: 3060–0298.

Title: Part 61, Tariffs (Other than the Tariff Review Plan).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 3,834 respondents; 4,659 responses.

Estimated Time per Response: 1 hour–50 hours.

Frequency of Response: On occasion, annual, biennial and one-time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 151–155, 201–205, 208, 251–271, 403, 502 and 503 of

the Communications Act of 1934, as amended (the Act), 47 U.S.C. 151–155, 201–205, 208, 251–271, 403, 502 and 503.

Total Annual Burden: 171,378 hours.

Total Annual Cost: \$604,000.

Needs and Uses: This collection will be submitted as a revision of an existing collection in order to obtain Office of Management and Budget (OMB) approval for the full three-year clearance.

On April 21, 2023, the Commission released the *Access Arbitrage Second Report and Order*, WC Docket No. 18–155, FCC 23–31, 88 FR 35743, which added rules applicable to internet Protocol Enabled Service (IPES) Providers engaged in Access Stimulation. In the *Access Arbitrage Second Report and Order* the Commission adopted rules requiring that access-stimulating IPES Providers provide notice of their status to the Commission by filing a record of their access-stimulating status in the Commission's Access Arbitrage docket, and to provide notice to any affected IXC's and Intermediate Access Providers of the same, within 45 days of the effective date of that requirement after approval of that information collection by OMB (or for an entity that later engages in access stimulation, 45 days from the date it commences access stimulation). If, after the effective date of this requirement subsequent to approval of this requirement by OMB, an access-stimulating IPES Provider is no longer engaged in Access Stimulation, the IPES Provider must file notice of that change in status with the Commission and with any affected IXC's and Intermediate Access Providers.

The revisions to this collection primarily reflect the conclusion of the rate transition(s) adopted in the *8YY Access Charge Reform Order*, WC Docket No. 18–156, FCC 20–143, 85 FR 75894 and the notice and reporting requirements adopted by the Commission in the *Access Arbitrage Second Report and Order*. The information collected through a carrier's tariff is used by the Commission and state commissions to determine whether services offered are just and reasonable as the Act requires. The tariffs and any supporting documentation are examined in order to determine if the services are offered in a just and reasonable manner. The information provided by IPES Providers pursuant to rules adopted in the *Access Arbitrage Second Report and Order* informs interested parties of an entities' engagement in Access Stimulation.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2023–18648 Filed 8–29–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at Secretary@fmc.gov, or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (www.fmc.gov) or by contacting the Office of Agreements at (202)–523–5793 or tradeanalysis@fmc.gov.

Agreement No.: 011962–019.

Agreement Name: Consolidated Chassis Management Pool Agreement.

Parties: Ocean Carrier Equipment Management Association, Inc.; Consolidated Chassis Management LLC; Chicago Ohio Valley Consolidated Chassis Pool LLC; Denver Consolidated Chassis Pool LLC; Gulf Consolidated Chassis Pool LLC; Mid-South Consolidated Chassis Pool LLC; Midwest Consolidated Chassis Pool LLC; UIE Pools LLC; United Intermodal Enterprises LLC; Maersk A/S and Hamburg Sud (acting as a single party); CMA CGM S.A., APL Co. Pte Ltd., and American President Lines, Ltd. (acting as a single party); COSCO SHIPPING Lines Co., Ltd.; Evergreen Line Joint Service Agreement; Ocean Network Express Pte. Ltd.; Hapag-Lloyd AG and Hapag-Lloyd USA (acting as a single party); HMM Company Limited; MSC Mediterranean Shipping Co., S.A.; Zim Integrated Shipping Services Ltd.; Matson Navigation Company; Westwood Shipping Lines; and Yang Ming Marine Transport Corp.

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The Amendment changes the name of Consolidated Chassis Enterprises LLC to United Intermodal Enterprises LLC and CCM Pools LLC to UIE Pools LLC throughout the Agreement.

Proposed Effective Date: 8/22/2023.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/454>.

Agreement No.: 201391–002.

Agreement Name: South Atlantic Multiport Chassis Pool Agreement.

Parties: Ocean Carrier Equipment Management Association, Inc.; South Atlantic Consolidated Chassis Pool LLC; Consolidated Chassis Management LLC; UIE Pools LLC; United Intermodal Enterprises LLC; Georgia Ports Authority; Jacksonville Port Authority; North Carolina State Ports Authority; COSCO SHIPPING Lines Co., Ltd.; Hapag-Lloyd AG and Hapag-Lloyd USA LLC (acting as a single party); Maersk A/S and Hamburg Sud (acting as a single party); MSC Mediterranean Shipping Company S.A.; Ocean Network Express Pte., Ltd.; Wan Hai Lines Ltd.; and Zim Integrated Shipping Services Ltd.

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The Amendment changes the name of Consolidated Chassis Enterprises LLC to United Intermodal Enterprises LLC and CCM Pools LLC to UIE Pools LLC throughout the Agreement.

Proposed Effective Date: 8/22/2023.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/65506>.

Agreement No.: 201391–003.

Agreement Name: South Atlantic Multiport Chassis Pool Agreement.

Parties: Ocean Carrier Equipment Management Association, Inc.; South Atlantic Consolidated Chassis Pool LLC; Consolidated Chassis Management LLC; UIE Pools LLC; United Intermodal Enterprises LLC; Georgia Ports Authority; Jacksonville Port Authority; North Carolina State Ports Authority; COSCO SHIPPING Lines Co., Ltd.; Hapag-Lloyd AG and Hapag-Lloyd USA LLC (acting as a single party); Maersk A/S and Hamburg Sud (acting as a single party); MSC Mediterranean Shipping Company S.A.; Ocean Network Express Pte., Ltd.; Wan Hai Lines Ltd.; and Zim Integrated Shipping Services Ltd.

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The Amendment adds HMM Company Limited; Evergreen Line Joint Service Agreement; CMA CGM S.A.; and American President Lines, LLC as parties to the Agreement. The parties have requested expedited review.

Proposed Effective Date: 10/06/2023.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/65508>.

Agreement No.: 201408.

Agreement Name: Oceanus Line Ltd./Network Shipping Ltd. Central

America—U.S. Southeast Coast Service Space Charter Agreement.

Parties: Network Shipping Ltd.; Oceanus Line Ltd.

Filing Party: Susana Vergel; Network Shipping Ltd.

Synopsis: The Agreement authorizes Network Shipping Ltd. to charter space to Oceanus Line Ltd. on vessels NWS operates in the trade between Costa Rica, on the one hand, and the U.S. Southeast Coast, on the other hand.

Proposed Effective Date: 8/24/2023.

Location:

<https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/84515>.

Dated: August 25, 2023.

Carl Savoy,

Program Support Specialist.

[FR Doc. 2023–18733 Filed 8–29–23; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than September 29, 2023.

A. Federal Reserve Bank of San Francisco: (Joseph Cuenco, Assistant Vice President) Formations, Transactions and Enforcement, 101 Market Street, San Francisco, California 94105–1579. Comments can also be sent electronically to: sf.fisc.comments.applications@sf.frb.org.

1. *Banc of California, Inc., Santa Ana, California;* to acquire PacWest Bancorp, and thereby indirectly acquire Pacific Western Bank, both of Beverly Hills, California.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–18656 Filed 8–29–23; 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 September 14, 2023.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *Robert M. Clements; George M. Egan; W. Ross Singletary, II; John S. Surface; Scott C. Verlander; Jason Burhyte; Jed V. Davis; Preston H. Haskell III as trustee of the Preston H. Haskell III Revocable Trust; Allen D. Miller; William H. Morris as trustee of the William H. Morris 2008 Trust, John J. Morris, as principal of the FH Morris LLC, and Mary Elizabeth Uible Morris, as trustee of the Wingman Irrevocable Trust; Charles B. Tomm; Alonzo D.S. Walton; and Patrick Zalupski, all of Jacksonville, Florida; Michael Hodge, Jacksonville Beach, Florida; William P. Battle; Cooper Family Ventures, LLC, Dwight L. Cooper, principal; Donald Glisson, Jr., all of Ponte Vedra Beach, Florida; W. Bret Cato, Claxton, Georgia; Steven C. Edwards, individually and for the Steven Edwards IRA, Atlanta, Georgia; Robert J. Mylod, Jr., Birmingham, Michigan; Frederic H. Garner; Robert H. Sheridan, III, all of Charlotte, North Carolina; Jeff H. Boyd on behalf of Brothers Brooks, LLC, Darien, Connecticut; John F. Cozzi as trustee of the John F. Cozzi Revocable Trust, Malvern, Pennsylvania; Merrick R. Kleeman, Norwalk, Connecticut; Patrick K. McGee, Dallas, Texas; and John J. Schickel, Jr., Coppell, Texas; all as a group acting in concert; to acquire voting shares of Southern Bankshares, Inc., and thereby indirectly acquire outstanding voting shares of The Claxton Bank, both of Claxton, Georgia.*

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–18759 Filed 8–29–23; 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 September 14, 2023.

A. Federal Reserve Bank of Chicago: (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414.

Comments can also be sent electronically to

Comments.applications@chi.frb.org:

1. *JFG Control, LP, a proposed qualified family partnership, the general partner of which is IPJ 2012 JFG Trust, Helen P. Johnson-Leipold, trustee, all of Racine, Wisconsin;* to join the Johnson Family Control Group and acquire voting shares of Johnson Financial Group, Inc., thereby indirectly acquiring voting shares of Johnson Bank, both of Racine, Wisconsin.

B. Federal Reserve Bank of Kansas City: (Jeffrey Imgarten, Assistant Vice President) One Memorial Drive, Kansas City, Missouri 64198. Comments can also be sent electronically to

CApplicationComments@kc.frb.org:

1. *Shawn Grubb, Weatherford, Oklahoma, and Kenneth Baker as co-trustees of the Derek Joseph Grubb 2012 Trust, and the Jordan Alyssa Grubb 2012 Trust, all of Clinton, Oklahoma; and the Washita Valley Trust, Clinton, Oklahoma, Kenneth Baker, trustee;* to become members of the Shawn Grubb Family Control Group, a group acting in concert, to acquire voting shares of Hydro Bancshares, Inc., and thereby indirectly acquire voting shares of Bank of Hydro, both of Hydro, Oklahoma. Shawn Grubb, co-trustee, has been previously approved by the Federal Reserve Board.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023-18655 Filed 8-29-23; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") is seeking public comments on its proposal to extend for an additional three years the current Paperwork Reduction Act ("PRA") clearance for information collection requirements contained in the FTC's trade regulation rule entitled "Use of Prenotification Negative Option Plans" ("Negative Option Rule" or "Rule"). That clearance expires on January 31, 2024.

DATES: Comments must be filed by October 30, 2023.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Negative Option Rule; PRA Comment: FTC File No. P072108" on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Katherine Johnson, Attorney, Division of Enforcement, Federal Trade Commission, Room CC-9528, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326-2185.

SUPPLEMENTARY INFORMATION:

Title: Use of Prenotification Negative Option Plans (Negative Option Rule or Rule), 16 CFR part 425.¹

OMB Control Number: 3084-0104.

Type of Review: Extension without change of currently approved collection.

Abstract: The Negative Option Rule governs the operation of prenotification subscription plans. Under these types of plans—which can include things such as a book of the month club, food of the month club, or clothing items of the

month club—a seller provides a consumer with automatic shipments of merchandise unless the consumer affirmatively notifies the seller they do not want the shipment. The Rule requires that a seller notify a member that they will automatically ship merchandise to the member and bill the member for the merchandise if the subscriber fails to expressly reject the merchandise beforehand within a prescribed time. The Rule protects consumers by: (1) requiring that promotional materials disclose the terms of membership clearly and conspicuously; and (2) establishing procedures for the administration of such "negative option" plans.

Affected Public: Private Sector: Sellers of prenotification subscription plans.

Estimated Annual Burden Hours: 2,500 hours.

Estimated Annual Labor Costs:

\$152,350 (solely related to labor costs).

Estimated Annual Non-Labor Costs: \$0 or *de minimis*.

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Rule.

Burden Statement

Estimated Annual Burden Hours: 2,500.

Based on industry input, FTC staff estimates that approximately 25 clubs are subject to the disclosure requirements contained in the Rule.² FTC staff further estimates that each club will require annually about 100 hours to comply with the Rule's disclosure requirements. This yields a total annual burden of 2,500 hours (25 clubs × 100 hours).

Estimated Annual Cost Burden:

\$152,350 (solely related to labor costs).

Based on recent data from the Bureau of Labor Statistics, the mean hourly wage for advertising and promotion managers is approximately \$70.70 per hour;³ compensation for office and administrative support personnel is approximately \$21.90 per hour.⁴

² According to industry input, many firms previously covered have transitioned to a subscription-based approach. Thus, the current estimate is lower than past estimates. Additionally, industry sources have indicated in the past that a substantial portion of the existing clubs would make these disclosures absent the Rule because they help foster long-term relationships with consumers.

³ See Occupational Employment and Wages—May 2022, Table 1, at <https://www.bls.gov/news.release/ocwage.t01.htm> (mean hourly wage rate for advertising and promotion managers).

⁴ See *id.* (mean hourly wage rate for office and administrative support occupations).

¹ The Commission recently published a Notice of Proposed Rulemaking seeking comment on proposed amendments to the Commission's Negative Option Rule. 88 FR 24716 (Apr. 24, 2023). The present PRA Notice is not part of that proceeding and merely seeks comment on the existing burden estimates for the current Rule, which applies only to "prenotification" negative option plans.

Assuming that managers perform the bulk of the work, and clerical personnel perform associated tasks (e.g., placing advertisements and responding to inquiries about offerings or prices), the total cost to the industry for the Rule's information collection requirements would be approximately \$152,350 [(80 hours managerial time × 25 clubs × \$70.70 per hour) + (20 hours clerical time × 25 clubs × \$21.90 per hour)].

Because the Rule has been in effect since 1974, the vast majority of the negative option clubs have no current start-up costs. For new clubs entering the market, the costs associated with the Rule's disclosure requirements, beyond the additional labor costs discussed above, are *de minimis*. Negative option clubs already have access to the ordinary office equipment necessary to comply with the Rule. Similarly, the Rule imposes few, if any, printing and distribution costs. The required disclosures generally constitute only a small addition to the advertising for negative option plans. Because printing and distribution expenditures are incurred to market the product regardless of the Rule, adding the required disclosures results in marginal incremental expense.

Request for Comment

Pursuant to section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure and recordkeeping requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information.

For the FTC to consider a comment, we must receive it on or before October 30, 2023. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

You can file a comment online or on paper. Due to heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you file your comment on paper, write "Negative Option Rule; PRA Comment: FTC File No. P072108" on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue

NW, Suite CC-5610 (Annex J), Washington, DC 20580.

Because your comment will become publicly available at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information, such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must (1) be filed in paper form, (2) be clearly labeled "Confidential," and (3) comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 30, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see

<https://www.ftc.gov/site-information/privacy-policy>.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2023-18769 Filed 8-29-23; 8:45 am]

BILLING CODE 6750-01-P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 ("PRA"), the Federal Trade Commission ("FTC" or "Commission") is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for information collection requirements in the Trade Regulation Rule entitled Labeling and Advertising of Home Insulation ("R-value Rule" or "Rule"). That clearance expires on March 31, 2024.

DATES: Comments must be filed by October 30, 2023.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "R-value Rule; PRA Comment: FTC File No. P072108," on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Room CC-9528, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326-2889.

SUPPLEMENTARY INFORMATION:

Title of Collection: R-value Rule, 16 CFR part 460.

OMB Control Number: 3084-0109.

Type of Review: Extension without change of currently approved collection.

Abstract: The R-value Rule establishes uniform standards for the substantiation and disclosure of accurate, material product information about the thermal performance characteristics of home insulation products. The R-value of an insulation signifies the insulation's

degree of resistance to the flow of heat. This information tells consumers how well a product is likely to perform as an insulator and allows consumers to determine whether the cost of the insulation is justified.

Affected Public: Insulation manufacturers, installers, home builders, home sellers, insulation sellers.

Estimated Annual Burden Hours: 100,874 hours.

Estimated Annual Labor Costs: \$2,424,450.68 (solely related to labor costs).

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the R-value Rule.

Burden Statement

Estimated Annual Burden Hours: 100,874 hours.

The Rule's requirements include product testing, recordkeeping, and third-party disclosures on labels, fact sheets, advertisements, and other promotional materials. Based on information provided by industry and government sources, FTC staff estimates that the Rule affects: (1) 150 Insulation manufacturers and their testing laboratories; (2) 1,615 installers who sell home insulation; (3) 1,670,000 new home sales; and (4) 7,500 retail sellers who sell home insulation for installation by consumers.

1. Manufacturers

Under the Rule's testing requirements, manufacturers must test each insulation product for its R-value. Based on past industry input, FTC staff estimates that the test takes approximately two hours. Approximately 15 of the 150 insulation manufacturers in existence introduce one new product each year. Their total annual testing burden is therefore approximately 30 hours.

FTC staff further estimates that most manufacturers require an average of approximately 20 hours per year regarding third-party disclosure requirements in advertising and other promotional materials. Only the five or six largest manufacturers require additional time, approximately 80 hours each. Thus, the annual third-party disclosure burden for manufacturers is approximately 3,360 hours [(144 manufacturers × 20 hours) + (6 manufacturers × 80 hours)].

While the Rule imposes recordkeeping requirements, most manufacturers and their testing laboratories keep their testing-related

records in the ordinary course of business. FTC staff estimates that no more than one additional hour per year per manufacturer is necessary to comply with this requirement, for an annual recordkeeping burden of approximately 150 hours (150 manufacturers × 1 hour).

This yields a total annual burden of 3,540 hours (30 hours for testing + 3,360 hours for third-party disclosures + 150 hours for recordkeeping) for manufacturers.

2. Installers

Installers are required to show the manufacturers' insulation fact sheet to retail consumers before purchase. They must also disclose information in contracts or receipts concerning the R-value and the amount of insulation to install. FTC staff estimates that two minutes per sales transaction is sufficient to comply with these requirements. Approximately 2,000,000 retrofit insulations (an industry source's estimate) are installed by approximately 1,615 installers per year, and, thus, the related annual burden total is approximately 66,667 hours (2,000,000 sales transactions × 2 minutes). FTC staff anticipates that one hour per year per installer is sufficient to cover required disclosures in advertisements and other promotional materials. Thus, the burden for this requirement is approximately 1,615 hours per year. In addition, installers must keep records that indicate the substantiation relied upon for savings claims. The additional time to comply with this requirement is minimal—approximately 5 minutes per year per installer—for a total of approximately 135 hours.

This yields a total annual burden of 68,417 hours (66,667 hours for contract disclosures + 1,615 hours for promotional material disclosures + 135 hours for recordkeeping) for installers.

3. New Home Sellers

New home sellers must make contract disclosures concerning the type, thickness, and R-value of the insulation they install in each part of a new home. FTC staff estimates that not more than 30 seconds per sales transaction are required to comply with this requirement, for a total annual burden of approximately 13,917 hours (an estimated 1,670,000 new home sales per year 1×30 seconds). New home sellers who make energy savings claims must also keep records regarding the substantiation relied upon for those

claims. FTC staff believes that the 30 seconds covering disclosures would also encompass this recordkeeping element.

This yields a total annual burden of 13,917 hours (for disclosures) for new home sellers.

4. Retail Sellers

The Rule requires that the approximately 7,500 retailers who sell home insulation make fact sheets available to consumers before purchase. This can be accomplished by, for example, placing copies in a display rack or keeping copies in a binder on a service desk with an appropriate notice. Replenishing or replacing fact sheets should require no more than approximately one hour per year per retailer, for a total of 7,500 annual hours, industry-wide.

The Rule also requires specific disclosures in advertisements or other promotional materials to ensure that the claims are fair and not deceptive. This burden is very minimal because retailers typically use advertising copy provided by the insulation manufacturer, and even when retailers prepare their own advertising copy, the Rule provides some of the language to be used. Accordingly, approximately one hour per year per retailer should suffice to meet this requirement, for a total annual burden of approximately 7,500 hours.

Retailers who make energy savings claims in advertisements or other promotional materials must keep records that indicate the substantiation they are relying upon. Because few retailers make these types of promotional claims and because the Rule permits retailers to rely on the insulation manufacturer's substantiation data for any claims that are made, the additional recordkeeping burden is de minimis. The time calculated for disclosures, above, would be more than adequate to cover any burden imposed by this recordkeeping requirement.

This yields a total annual burden of 15,000 hours (for fact sheet and other disclosures) for retail sellers.

Estimated Annual Cost Burden: \$2,424,450.68 (solely related to labor costs).

The total annual labor cost for the Rule's information collection requirements is approximately \$2,424,450.68, derived as follows: approximately \$963 for testing, based on 30 hours for manufacturers (30 hours × \$32.10 per hour for skilled technical personnel); \$5,420.70 for manufacturers' and installers' compliance with the Rule's recordkeeping requirements, based on 285 hours (285 hours × \$19.02 per hour for clerical personnel); \$63,907.20 for manufacturers'

¹ See Table 3b on housing starts for privately owned units for 2022 at U.S. Census Bureau, *Monthly New Residential Construction—June 2023* (July 19, 2023), <https://www.census.gov/construction/nrc/pdf/newresconst.pdf>.

compliance with third-party disclosure requirements, based on 3,360 hours (3,360 hours × \$19.02 per hour for clerical personnel); and \$2,354,159.78 for disclosure compliance by installers, new home sellers, and retailers (97,199 hours × \$24.22 per hour for sales persons).²

There are no significant current capital or other non-labor costs associated with this Rule. Because the Rule has been in effect since 1980, members of the industry are familiar with its requirements and already have in place the equipment for conducting tests and storing records. New products are introduced infrequently. Because the required disclosures are placed on packaging or on the product itself, the Rule's additional disclosure requirements do not cause industry members to incur any significant additional non-labor associated costs.

Request for Comment

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure and recordkeeping requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information.

For the FTC to consider a comment, we must receive it on or before October 30, 2023. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

You can file a comment online or on paper. Due to heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you file your comment on paper, write "R-value Rule; PRA Comment: FTC File No. P072108," on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue

NW, Suite CC-5610 (Annex J), Washington, DC 20580.

Because your comment will become publicly available at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information, such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must (1) be filed in paper form, (2) be clearly labeled "Confidential," and (3) comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 30, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see

<https://www.ftc.gov/site-information/privacy-policy>.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2023-18767 Filed 8-29-23; 8:45 am]

BILLING CODE 6750-01-P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") is seeking public comments on its proposal to extend for an additional three years the current Paperwork Reduction Act ("PRA") clearance for information collection requirements contained in the Fair Packaging and Labeling Act regulations ("FPLA Rules"). That clearance expires on March 31, 2024.

DATES: Comments must be filed by October 30, 2023.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "FPLA Rules, PRA Comment, P074200" on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jock Chung, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room CC-9543, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326-2984.

SUPPLEMENTARY INFORMATION:

Title of Collection: Regulations Under Section 4 of the Fair Packaging and Labeling Act (FPLA), 16 CFR parts 500–503.

OMB Control Number: 3084-0110.

Type of Review: Extension without change of currently approved collection.

Abstract: The Fair Packaging and Labeling Act, 15 U.S.C. 1451 *et seq.*, was enacted to enable consumers to obtain accurate package quantity information to facilitate value comparisons and prevent unfair or deceptive packaging

² The wage rates for skilled technical personnel (engineering technologists and technicians, except drafters), clerical personnel (file clerks), and sales persons (sales and related occupations) are based on are based on recent data from the Bureau of Labor Statistics Occupational Employment Statistics Survey. *See* U.S. Bureau of Labor Statistics, *Table 1. National Employment and Wage Data from the Occupational Employment and Wage Statistics Survey by Occupation* (May 2022), <https://www.bls.gov/news.release/ocwage.t01.htm>.

and labeling of consumer commodities. Section 4 of the FPLA requires packages or labels to be marked with: (1) A statement of identity; (2) a net quantity of contents disclosure; and (3) the name and place of business of the company responsible for the product. The FPLA regulations, 16 CFR parts 500–503, specify how manufacturers, packagers, and distributors of “consumer commodities” must comply with the Act’s labeling requirements.

Affected Public: Private Sector: Businesses and other for-profit entities.
Estimated Annual Burden Hours: 7,436,580.

Estimated Annual Labor Costs: \$188,799,893.

Estimated Annual Non-Labor Costs: \$0.

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the FPLA Rules.

Burden Estimates

Estimated Number of Respondents: 743,658.

FTC staff estimates there are approximately 743,658 retailers, wholesalers, and manufacturers that sell consumer commodities that are subject to the FPLA Rules’ labeling requirements.¹

Burden Hours: 7,436,580 hours.

FTC staff estimates that covered entities spend approximately 10 hours

per year to comply with the FPLA Rule’s labeling requirements. As a result, the FTC estimates that the total burden hours attributable to FTC requirements is 7,436,580 hours (743,658 respondents × 10 hours).

Labor Costs: \$188,799,893.

FTC staff derives labor costs by applying estimated hourly cost figures to the burden hours described above. Commission staff estimates the hours spent to comply with the FPLA Rules’ labeling requirements will break down as follows: 1 hour of managerial and/or professional time per covered entity, at an hourly wage of \$59.07,² 2 hours of graphic design support, at an hourly wage of \$31.01,³ 7 hours of clerical time per covered entity, at an hourly wage of \$18.97,⁴ for a total of \$188,799,893⁵ (\$253.88 blended labor cost per covered entity × 743,658 entities).

Capital/Non-Labor Costs: \$0.

Commission staff believes that the FPLA Rules impose negligible capital or other non-labor costs, as the affected entities are likely to have the necessary supplies and/or equipment already (e.g., offices and computers) for the information collections discussed above.

Request for Comment

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure and recordkeeping requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information.

For the FTC to consider a comment, we must receive it on or before October 30, 2023. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

² Based on the mean hourly wage rate for “General and Operations Managers” (\$59.07), available from Bureau of Labor Statistics, Economic News Release, April 25, 2023, Table 1, “National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2022” (“BLS Table 1”), available at <https://www.bls.gov/news.release/ocwage.htm>.

³ This wage estimate consists of work time for graphic designers who design the appearance and layout of product packaging, including the appropriate display of the disclosures required by the FPLA Rules. The corresponding wage estimate is based on mean hourly wages for “Graphic designers” (\$31.01). See BLS Table 1.

⁴ See *id.* The clerical wage estimate is based on the mean hourly wages for “data entry and information processing workers” (\$18.97).

⁵ Rounded from \$188,799,893.04.

You can file a comment online or on paper. Due to heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you file your comment on paper, write “FPLA Rules, PRA Comment, P074200” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580.

Because your comment will become publicly available at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information, such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must (1) be filed in paper form, (2) be clearly labeled “Confidential,” and (3) comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such

¹ FTC staff based this estimate on a combination of U.S. Census Bureau (“Census”) data and information from the North American Industry Classification System (“NAICS”). FTC staff identified categories of retailers, wholesalers, and manufacturers under its jurisdiction that supply consumer commodities as defined in the FPLA Rules. FTC staff estimated the number of retailers (317,973) based on 2021 Census data compiling NAICS subsector codes 445, 452, and 453, respectively, for food and beverage stores, general merchandise stores, and miscellaneous store retailers. See <https://data.census.gov/table?n=445:452:453&tid=CBP2021.CB2100CBP&nkd=EMPSZES-001,LFO-001>. FTC staff estimated the number of wholesalers (354,180) using 2021 Census data concerning the number of firms covered by NAICS subset code 42 for merchant wholesalers, except manufacturers’ sales branches and offices (NAICS subsector code 425). See <https://data.census.gov/table?n=42&tid=CBP2021.CB2100CBP&nkd=EMPSZES-001,LFO-001> (reflecting that NAICS subset code 42 covers 390,842 entities); <https://data.census.gov/table?n=425&tid=CBP2021.CB2100CBP&nkd=EMPSZES-001,LFO-001> (reflecting that NAICS subsector code 425 covers 36,662 entities). FTC staff estimated the number of covered manufacturers (71,505) by compiling the estimated number of manufacturing entities covered by NAICS codes 321999, 322220, 322299, 324191, 324199, 325520, 3256, 325992, 325998, 326111, 326130, 326140, 326199, 327910, 331315, 339999. See <https://www.naics.com/six-digit-naics/?v=2022&code=31-33>.

treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 30, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2023-18766 Filed 8-29-23; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Docket No. ATSDR-2023-0004]

Availability of Five Draft Toxicological Profiles and One Draft Interaction Profile

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR), within the Department of Health and Human Services (HHS), announces the opening of a docket to obtain comments on drafts of five updated toxicological profiles, and one draft interaction profile: Creosote, Nickel, 1,2-Dichloroethene, Vinyl acetate, Acrylonitrile, and the Interaction Profile for Selected Metallic Ions. This action is necessary as this is the opportunity for members of the public and organizations to submit comments on drafts of the profiles. The intended effect of this action is to ensure that the public can note any pertinent additional information or reports on studies about the health effects of these six profiles for review.

DATES: Written comments must be received on or before November 28, 2023.

ADDRESSES: You may submit comments, identified by Docket No. ATSDR-2023-0004 by either of the methods listed below. Do not submit comments by email. ATSDR does not accept comments by email.

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Mail:* Agency for Toxic Substances and Disease Registry, Office of Innovation and Analytics, 4770 Buford Highway, Mail Stop S106-5, Atlanta, GA 30341-3717. Attn: Docket No. ATSDR-2023-0004.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Farhana Rahman, Agency for Toxic Substances and Disease Registry, Office of Innovation and Analytics, 1600 Clifton Rd. NE, Mail Stop S106-5, Atlanta, GA 30329-4027; Email: ATSDRToxProfileFRNs@cdc.gov; Phone: 1-800-232-4636.

SUPPLEMENTARY INFORMATION: ATSDR has prepared drafts of five updated toxicological profiles and one interaction profile based on current understanding of the health effects and availability of new studies and other information since their initial release. All toxicological profiles issued as "Drafts for Public Comment" represent the result of ATSDR's evidence-based evaluations to provide important toxicological information on priority hazardous substances to the public and health professionals. ATSDR considers key studies for these substances during the profile development process, using a systematic review approach. To that end, ATSDR is seeking public comments and additional information or reports on studies about the health effects of these substances for review and potential inclusion in the profiles. ATSDR will evaluate the quality and relevance of such data or studies for possible inclusion in the profile.

Legislative Background

The Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9601 *et seq.*] amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) [42 U.S.C. 9601 *et seq.*] by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) regarding the hazardous substances most commonly found at facilities on the CERCLA National Priorities List. Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare

toxicological profiles for each substance included on the priority list of hazardous substances [also called the Substance Priority List (SPL)]. This list identifies 275 hazardous substances that ATSDR has determined pose the most significant potential threat to human health. The SPL is available online at <http://www.atsdr.cdc.gov/SPL>. ATSDR is also mandated to revise and publish updated toxicological profiles, as necessary, to reflect updated health effects and other information.

In addition, CERCLA provides ATSDR with the authority to prepare toxicological profiles for substances not found on the SPL. CERCLA authorizes ATSDR to establish and maintain an inventory of literature, research, and studies on the health effects of toxic substances (CERCLA Section 104(i)(1)(B); 42 U.S.C. 9604(i)(1)(B)); to respond to requests for health consultations (CERCLA Section 104(i)(4); 42 U.S.C. 9604(i)(4)); and to support the site-specific response actions conducted by the agency (CERCLA Section 104(i)(6); 42 U.S.C. 9604(i)(6)).

ATSDR has now prepared drafts of five updated toxicological profiles, and one interaction profile based on current understanding of the health effects and availability of new studies and other information since their initial release.

Availability

The draft toxicological profiles and interaction profile are available online at <http://www.regulations.gov>, Docket No. ATSDR-2023-0004 and at <http://www.atsdr.cdc.gov/ToxProfiles>.

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on <https://www.regulations.gov>. Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. ATSDR will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail

campaign. Do not submit comments by email. ATSDR does not accept comments by email.

Donata Green,

Acting Associate Director, Office of Policy, Planning and Partnerships, Agency for Toxic Substances and Disease Registry.

[FR Doc. 2023–18730 Filed 8–29–23; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1053]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Customer/Partner Service Satisfaction Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by September 29, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information

collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. The OMB control number for this information collection is 0910–0360. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Customer/Partner Service Satisfaction Surveys

OMB Control Number 0910–0360—Extension

Under section 1003 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393), FDA is authorized to conduct research and public information programs about regulated products and responsibilities of the Agency. Executive Order 12862, entitled “Setting Customer Service Standard,” directs Federal Agencies that “provide significant services directly to the public” to “survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.” FDA is seeking to extend OMB approval to conduct customer service satisfaction surveys to implement Executive Order 12862. Participation in the surveys is

voluntary. This request covers customer/partner (including State and local governments) service satisfaction surveys of regulated entities, such as food processors; cosmetic, drug, biologic, and medical device manufacturers; animal drugs, animal food and feed; tobacco products; and consumers and health professionals.

FDA will use the information from these surveys to identify strengths and weaknesses in service to customers/partners and to make improvements. The surveys will measure timeliness, appropriateness, clarity, and accuracy of information, courtesy, and problem resolution in the context of individual programs.

FDA estimates conducting approximately 20 customer/partner service satisfaction surveys per year, each requiring an average of 25 minutes for review and completion. We estimate respondents to these surveys to be between 100 and 20,000 customers/partners. Some of these surveys will be repeats of earlier surveys for purposes of monitoring customer/partner service and developing long-term data. Respondents to this collection of information cover a broad range of stakeholders who have experience with certain products regulated by or services provided by FDA.

In the **Federal Register** of April 25, 2023 (88 FR 24992), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment was received in support of this information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN¹

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Mail, telephone, web-based survey	85,000	1	85,000	0.42 (25 minutes)	35,700

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Since the last OMB approval of this information collection request, FDA submitted three requests to increase the total burden hours. Therefore, this request for extension of OMB approval adjusts the number of respondents by an increase of 30,000 and the total burden hours by an increase of 21,950.

Dated: August 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–18635 Filed 8–29–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the National Advisory Council on Migrant Health

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 National Advisory Council on Migrant Health (NACMH) has scheduled a public meeting. Information about NACMH and the agenda for this meeting can be found on NACMH’s website at <https://www.hrsa.gov/advisory-committees/migrant-health>.

DATES: November 1–2, 2023, 9:00 a.m.–5:00 p.m. Eastern Standard Time.

ADDRESSES: This meeting will be held in-person at 5600 Fishers Lane,

Rockville, MD 20857 with an option to join virtually. For information about the meeting, visit NACMH's website 30 business days before the meeting date, where instructions to join the meeting will be posted.

FOR FURTHER INFORMATION CONTACT:

Esther Paul, NACMH, Designated Federal Official, Strategic Initiatives Division, Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, 5600 Fishers Lane, Rockville, MD 20857; 301-594-4300; or epaul@hrsa.gov.

SUPPLEMENTARY INFORMATION: NACMH provides advice and recommendations to the Secretary of Health and Human Services on policy, program development, and other matters of significance concerning the activities under section 217 of the Public Health Service Act, as amended (42 U.S.C. 218). Specifically, NACMH provides recommendations concerning the organization, operation, selection, and funding of migrant health centers, and other entities under grants and contracts under section 330 of the Public Health Service Act (42 U.S.C. 254b). NACMH meets twice each calendar year, or at the discretion of the Designated Federal Official in consultation with the NACMH Chair.

During the November 1–2, 2023, meeting, NACMH will discuss issues related to migratory and seasonal agricultural worker health. Agenda items are subject to change as priorities dictate. Refer to the NACMH website for any updated information concerning the meeting.

Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to NACMH should be sent to Esther Paul, Designated Federal Official, using the contact information above at least 3 business days prior to the meeting.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Esther Paul at the address and phone number listed above at least 10 business days prior to the meeting. Since this meeting occurs in a federal

government building, attendees must go through a security check to enter the building. Non-U.S. Citizen attendees must notify HRSA of their planned attendance at least 20 business days prior to the meeting to facilitate their entry into the building. All attendees are required to present government-issued identification prior to entry.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023-18768 Filed 8-29-23; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment; 60-Day Information Collection: Application for Participation in the IHS Scholarship Program

AGENCY: Indian Health Service, HHS.

ACTION: Notice and request for comments; request for extension of approval.

SUMMARY: In compliance the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) invites the general public to comment on the information collection titled, “Application for Participation in the IHS Scholarship Program,” Office of Management and Budget (OMB) Control No. 0917-0006. The IHS is requesting OMB to approve an extension for this collection, which expires on October 31, 2023.

DATES: *Comment Due Date:* October 30, 2023. Your comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

ADDRESSES: Send your written comments, requests for more information on the collection, or requests to obtain a copy of the data collection instrument and instructions by one of the following methods:

- **Mail:** CAPT Michael Bartholomew, Branch Chief, Scholarship Programs, Division of Health Professions Support, Indian Health Service, 5600 Fishers Lane, Mail Stop: OHR 11E53A, Rockville, MD 20857.

- **Phone:** (301) 443-2349.

- **Email:** michael.bartholomew@ihs.gov

- **Fax:** 301-443-6048.

SUPPLEMENTARY INFORMATION: This previously approved information collection project was last published in the **Federal Register** (85 FR 16636), on March 24, 2020 and allowed 30 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 60 days for public comment. A copy of the supporting statement is available at www.regulations.gov (see Docket ID IHS-2020-01).

Information Collection: Title: “Application for Participation in the IHS Scholarship Program,” OMB Control No. 0917-0006. **Type of Information Collection Request:** Extension of the currently approved information collection “Application for Participation in the IHS Scholarship Program,” OMB Control No. 0917-0006. **Form Number(s):** IHS-856-07 through 856-12; 856-14 through 856-16, IHS-856-21 through 856-23, IHS-817, and IHS-818 are retained for use by the IHS Scholarship Program (IHSSP) as part of this current Information Collection Request. Reporting forms are found on the IHS website at www.ihs.gov/scholarship. Forms IHS-856-03, IHS-856-05, and IHS-856-06 have been moved to the online application process and can be found at www.ihs.gov/scholarship/applynow/. **Need and Use of Information Collection:** The IHS Scholarship Branch needs this information for program administration and uses the information to: solicit, process, and award IHS Pre-graduate, Preparatory, and/or Health Professions Scholarship recipients; monitor the academic performance of recipients; and to place recipients at payback sites. The IHSSP application is electronically available on the internet at the IHS website at: <http://www.ihs.gov/scholarship/applynow/>. **Affected Public:** Individuals, not-for-profit institutions and State, local or Tribal governments. **Type of Respondents:** Students pursuing health care professions.

The table below provides: Types of data collection instruments, Estimated Number of Respondents, Number of Responses Per Respondent, Annual Number of Responses, Average Burden Hour Per Response, and Total Annual Burden Hours.

Forms	Data collection instrument(s)	Number of respondents	Responses per respondent	Total annual response	Burden hour per response *	Annual burden hours
1	Scholarship Online Application	850	1	850	1.00 (60 min)	850
	Verification of Acceptance or Decline of Award (IHS-856-7).	300	1	300	0.13 (8 min)	40

Forms	Data collection instrument(s)	Number of respondents	Responses per respondent	Total annual response	Burden hour per response *	Annual burden hours
2	Scholarship Program Agreement (IHS–817).	60	1	60	0.16 (10 min)	10
3	Health Professions Contract (IHS–818)	225	1	225	0.16 (10min)	38
4	Recipient's Initial Program Progress Report (IHS–856–8).	800	1	800	0.13 (8 min)	107
5	Notification of Academic Problem (IHS–856–9).	20	1	20	0.13 (8 min)	3
6	Change of Status (IHS–856–10)	50	1	50	.045 (25 min)	21
7	Request for Approval of Deferment (IHS–856–11).	60	1	60	0.13 (8 min)	8
8	Preferred Placement (IHS–856–12)	150	1	150	0.50 (30 min)	75
9	Notification of Deferment Program (IHS–856–14).	60	1	60	0.13 (8 min)	8
10	Placement Update (IHS–856–15)	170	1	170	0.18 (11 min)	31
11	Annual Status Report (IHS–856–16)	200	1	200	0.25 (15 min)	50
12	Summer School Request (IHS–856–21)	100	1	100	0.10 (6 min)	10
13	Change of Name or Address (IHS–856–22).	20	1	20	0.13 (8 min)	3
14	Request for Credit Validation (IHS–856–23).	30	1	30	0.10 (6 min)	3
Total .....		.....	.....	3,095	3.28	1,257

* For ease of understanding, burden hours per response are also provided in minutes.

There are no direct costs to respondents other than their time to voluntarily complete the forms and submit them for consideration. The estimated cost for the Federal Government is \$145,223.00 (contractor) to work on the program with IHS program staff.

There are no capital costs, operating costs and/or maintenance costs to respondents.

Requests for Comments: Your written comments and/or suggestions are invited on one or more of the following points:

(a) Whether the information collection activity is necessary to carry out an agency function;

(b) Whether the agency processes the information collected in a useful and timely fashion;

(c) The accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information);

(d) Whether the methodology and assumptions used to determine the estimates are logical;

(e) Ways to enhance the quality, utility, and clarity of the information being collected; and

(f) Ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

P. Benjamin Smith,

Deputy Director, Indian Health Service.

[FR Doc. 2023–18699 Filed 8–29–23; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Genes, Genomes and Genetics II.

Date: September 20, 2023.

Time: 3:00 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Linda Wagner Jurata, Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–8032, linda.jurata@nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844,

93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 24, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–18653 Filed 8–29–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications/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 grant applications/contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Epidemiology Cohort Studies.

Date: October 6, 2023.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W106, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Eduardo Emilio Chufan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W106, Rockville, Maryland 20850, 240-276-7975, chufanee@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel, SEP-9: NCI Clinical and Translational Cancer Research.

Date: October 11, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W102, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Shakeel Ahmad, Ph.D., Branch Chief, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W102, Rockville, Maryland 20850, 240-276-6442 ahmads@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel, Collaborative Human Tissue Network (CHTN) (UM1).

Date: October 11, 2023.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W240, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Hasan Siddiqui, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W240, Rockville, Maryland 20850, 240-276-5122 hasan.siddiqui@nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Prevention and Control Clinical Trials.

Date: October 11, 2023.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W246, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Jun Fang, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Rockville, Maryland 20850, 240-276-5460, jfang@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel, SEP-6: NCI Clinical and Translational Cancer Research.

Date: October 13, 2023.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W260, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Robert F. Gahl, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9606 Medical Center Drive, Room 7W260, Rockville, Maryland 20850, 240-276-7869, robert.gahl@nih.gov.

Name of Committee: National Cancer Institute, Special Emphasis Panel, SEP-5: NCI Clinical and Translational Cancer Research.

Date: October 17-18, 2023.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W240, Rockville, Maryland 20850, (Virtual Meeting).

Contact Person: Hasan Siddiqui, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W240, Rockville, Maryland 20850, 240-276-5122, hasan.siddiqui@nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Concept Award.

Date: October 18, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W236, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Shuli Xia, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W236, Rockville, Maryland 20850, 240-276-5256, shuli.xia@nih.gov.

Name of Committee: National Cancer Institute, Special Emphasis Panel, SEP-8: NCI Clinical and Translational Cancer Research.

Date: October 18, 2023.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W246, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Jun Fang, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Rockville, Maryland 20850, 240-276-5460, jfang@mail.nih.gov.

Name of Committee: National Cancer Institute, Special Emphasis Panel, Biospecimen Methods and Resources for Cancer Research.

Date: October 19, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850, 240-276-5856, nadeem.khan@nih.gov.

Name of Committee: National Cancer Institute, Special Emphasis Panel, Cancer Immunoprevention Network (CIP-Net).

Date: October 20, 2023.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Byeong-Chel Lee, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850, 240-276-7755, byeong-chel.lee@nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Cancer Moonshot Scholars Diversity Program Review Meeting A.

Date: October 25-26, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W254, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Susan Lynn Spence, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W254, Rockville, Maryland 20850, 240-620-0819, susan.spence@nih.gov.

Name of Committee: National Cancer Institute Initial Review Group Institutional Training and Education Study Section (F)

Date: October 25-26, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Adriana Stoica, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850, 240-276-6368, Stoicaa2@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel, SEP-11: NCI Clinical and Translational Cancer Research.

Date: October 26, 2023.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W526, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Viktoriya Sidorenko, Ph.D., Scientific Review Officer, Program and Review Extramural Staff Training Office, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W526, Rockville, Maryland 20850, 240-276-5073, viktoriya.sidorenko@nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel, Discovery and Development of Natural Products for Cancer Interception and Prevention (UG3/UH3 Clinical Trial Not Allowed).

Date: October 27, 2023.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W260, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Robert F. Gahl, Ph.D., Scientific Review Officer, Special Review Branch Division of Extramural Activities, National Cancer Institute, NIH, 9606 Medical Center Drive, Room 7W260, Rockville, Maryland 20850, 240-276-7869 robert.gahl@nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Adoptive Cellular Therapy Network (CAN-Act).

Date: October 27, 2023.

Time: 10:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Byeong-Chel Lee, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850, 240-276-7755, byeong-chel.lee@nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel, SEP-12: NCI Clinical and Translational Cancer Research.

Date: November 1, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W110, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Priya Srinivasan, Ph.D., Scientific Review Officer, Resource and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W110, Rockville, Maryland 20850, 240-276-5619, priya.srinivasan@nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Cancer Moonshot Scholars Diversity Program Review Meeting B.

Date: November 8, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W254, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Susan Lynn Spence, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W254, Rockville, Maryland 20850, 240-620-0819, susan.spence@nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel, Thyroid Cancer and other Malignancies in Belarus

Date: November 9, 2023.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850, 240-276-5856, nadeem.khan@nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Concept Award.

Date: November 15, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W246, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Jun Fang, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Rockville, Maryland 20850, 240-276-5460, jfang@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 24, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-18703 Filed 8-29-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651-0019]

Vessel Entrance Clearance System (VECS)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than October 30, 2023) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0019 in the subject line and the agency name. Please use the following method to submit comments: Email. Submit comments to: CBP_PRA@cbp.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should

address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Vessel Entrance and Clearance System (VECS).

OMB Number: 1651–0019.

Form Number: CBP Form 1300.

Current Actions: Extension.

Type of Review: Extension.

Affected Public: Individuals.

Abstract: CBP Form 1300, Vessel Entrance or Clearance Statement, is used to collect essential commercial vessel data at time of formal entrance and clearance in U.S. ports, allows the master to attest to the truthfulness of all CBP forms associated with the manifest package, and collects relevant information about the vessel and cargo. The form was developed through agreement by the United Nations Intergovernmental Maritime Organization (IMO) in conjunction with the United States and various other countries. The form was developed as a single form to replace the numerous other forms used by various countries for the entrance and clearance of vessels. CBP Form 1300 is authorized by 5 U.S.C. 301, and 19 U.S.C. 66, 1415, 1624, 2071, 1431, 1433, and 1434, as well as 46 U.S.C. 501, 60105 and provided for by 19 CFR 4. This form is accessible at: <http://www.cbp.gov/newsroom/publications/forms?title=1300&=Apply>.

This form is currently submitted in paper format and is anticipated to be submitted electronically as part of CBP's efforts to automate maritime forms through the Vessel Entrance and Clearance System (VECS), which will reduce the need for paper submission of

any vessel entrance or clearance requirements under the above referenced statutes and regulations. VECS will still collect and maintain the same data as CBP Form 1300 but will automate the capture of data to reduce or eliminate redundancy with other data collected by CBP.

Respondents are enabled to create a new ACE Account type for Vessel Agencies through the ACE Portal. The new account type within ACE will operate as a portal that leads to the Vessel Entrance and Clearance System (VECS), which will run as its own independent system.

Vessel Agents will be required to provide identifying information such as: their name, their employer identification number (EIN), company address, and their phone numbers, which will be requested at the time Vessel Agents apply for the new ACE account type.

After creating an ACE account, Vessel Agencies, Vessel Operating Common Carriers (VOCCs), and their designees are able to use the new Vessel Entrance and Clearance System (VECS) as part of the ongoing pilot program to test the functionality of VECS, and will be able to file vessel entrance, clearance, and related data to CBP electronically.

CBP is currently running a small public VECS Pilot on several ports. VECS will automate and digitize the collection and processing of the data and filing requirements for which the CBP Form 1300 is used. CBP plans to run an initial public pilot to test the system. All users who obtained a Vessel Agency Account through the ACE Portal will be automatically enrolled into the VECS public pilot. Initially, the pilot began at one of eleven ports where VECS was previously internally tested. CBP is providing training to each CBP port and the Vessel Agency personnel at each port, prior to beginning/expanding the public pilot in another port.

The VECS public pilot will continue to expand to additional ports, in an effort to progressively test and implement the system nationwide. There will be no change to the paper format of CBP Form 1300, and CBP Form 1300 in paper format will continue to be accepted.

New Submission

The VECS Pilot will be live for 51 port codes as of August 2023 enabling fully electronic processing of vessel entrance and clearance. The public pilot has allowed CBP to identify areas for additional enhancement and automation, fix minor errors with the system's operation, and simultaneously deploy to new locations while

continuing to test fixes and new capabilities. VECS pilot will continue to expand to other port codes while implementing training for port staff.

Type of Information Collection: CBP Form 1300.

Estimated Number of Respondents: 2,624.

Estimated Number of Annual Responses per Respondent: 72.

Estimated Number of Total Annual Responses: 188,928.

Estimated Time per Response: 30 minutes (0.5 hours).

Estimated Total Annual Burden Hours: 94,464.

Dated: August 25, 2023.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2023–18735 Filed 8–29–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2023–0021]

Commercial Customs Operations Advisory Committee (COAC)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Committee management; notice of Federal advisory committee meeting.

SUMMARY: The Commercial Customs Operations Advisory Committee (COAC) will hold its quarterly meeting on Wednesday, September 20, 2023. The meeting will be open to the public via webinar only. There is no on-site, in-person option for the public to attend this quarterly meeting.

DATES: The COAC will meet on Wednesday, September 20, 2023, from 1:00 p.m. to 5:00 p.m. EDT. Please note that the meeting may close early if the committee has completed its business. Comments must be submitted in writing no later than September 15, 2023.

ADDRESSES: The meeting will be open to the public via webinar only. The webinar link and conference number will be posted by 5:00 p.m. EDT on September 19, 2023, at <https://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings>. For information or to request special assistance for the meeting, contact Ms. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, at (202) 344–1440 as soon as possible. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for Docket Number USCBP–2023–0021. To submit a comment, click the “Comment” button located on the top left-hand side of the docket page.

- *Email:* tradeevents@cbp.dhs.gov. Include Docket Number USCBP–2023–0021 in the subject line of the message.

Comments must be submitted in writing no later than September 15, 2023, and must be identified by Docket No. USCBP–2023–0021. All submissions received must also include the words “Department of Homeland Security.” All comments received will be posted without change to <https://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings> and www.regulations.gov. Therefore, please refrain from including any personal information you do not wish to be posted. You may wish to view the Privacy and Security Notice, which is available via a link on www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229, (202) 344–1440; or Ms. Felicia M. Pullam, Designated Federal Officer, at (202) 344–1440 or via email at tradeevents@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the authority of the Federal Advisory Committee Act, title 5 U.S.C. ch. 10. The Commercial Customs Operations Advisory Committee (COAC) provides advice to the Secretary of the Department of Homeland Security, the Secretary of the Department of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

The COAC is committed to ensuring that all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Ms. Latoria Martin at (202) 344–1440 as soon as possible.

Please feel free to share this information with other interested members of your organization or association.

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the AGENDA section below.

There will be multiple public comment periods held during the meeting on September 20, 2023. Speakers are requested to limit their comments to two minutes or less to facilitate greater participation. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP web page: <http://www.cbp.gov/trade/stakeholder-engagement/coac>.

Agenda

The COAC will hear from the current subcommittees on the topics listed below:

1. The Intelligent Enforcement Subcommittee will provide updates on the work completed and topics discussed in its working groups. The Antidumping/Countervailing Duty (AD/CVD) Working Group will provide updates regarding its work and discussions on importer compliance with AD/CVD requirements. The Intellectual Property Rights (IPR) Process Modernization Working Group will report on, and anticipates providing recommendations for the committee's consideration relating to, the development of a portal on the CBP IPR web page and other enhancements in communications between CBP, rights holders, and the trade community regarding enforcement actions. The Bond Working Group will report on the ongoing discussions and status updates for eBond requirements. The Forced Labor Working Group (FLWG) has been working on the implementation of recommendations and updates, as well as revisions to its statement of work. The FLWG will also provide updates and anticipates making recommendations for the committee's consideration at the September public meeting.

2. The Next Generation Facilitation Subcommittee will provide updates on its working groups. There will be an update and potential recommendations for the committee's consideration from the Automated Commercial Environment (ACE) 2.0 Working Group regarding progress on the ACE 2.0 initiative resulting from the working group's recent in-person sessions held to review the CBP ACE 2.0 Concept of Operations processes. The Customs Interagency Industry Working Group (CII) (formerly the One U.S. Government Working Group) will provide an update on the work accomplished this quarter, which includes discussions with Partner Government Agencies and an update on ACE 2.0. The Passenger Air Operations (PAO) Working Group has been focusing its discussions on CBP

security seal processing and access to international aircraft and passengers, landing rights, and elimination of outdated or obsolete forms, and will provide an update on those discussions.

3. The Rapid Response Subcommittee will provide updates from the Broker Modernization Working Group and the United States-Mexico-Canada Agreement (USMCA) Chapter 7 Working Group. The Broker Modernization Working Group currently meets monthly and continues to focus on the 19 CFR part 111 final rules relating to Modernization of the Customs Broker Regulations and Continuing Education for Licensed Customs Brokers, as well as Customs Broker Licensing Exams matters. The subcommittee anticipates the Broker Modernization Working Group will provide one recommendation for the committee's consideration. The USMCA Chapter 7 Working Group meets bi-weekly with the expectation that recommendations will be developed and submitted for consideration at an upcoming COAC public meeting. The current focus of this working group is to review the Chapter 7 articles of the USMCA and identify gaps in implementation between the United States, Mexico, and Canada.

4. The Secure Trade Lanes Subcommittee will provide updates on its five active working groups: the Export Modernization Working Group, the In-Bond Working Group, the Trade Partnership and Engagement Working Group, the Pipeline Working Group, and the Cross-Border Recognition Working Group. The Export Modernization Working Group has continued its work on the electronic export manifest pilot program. The In-Bond Working Group has continued its focus on the implementation of previously submitted recommendations. The Trade Partnership and Engagement Working Group has focused its work on implementing previous recommendations for Customs Trade Partnership Against Terrorism (CTPAT) Trade Compliance partners and is working to update its statement of work to include CTPAT security. The Pipeline Working Group expects to submit a recommendation for the committee's consideration that CBP develop a pilot to use Distributed Ledger Technology to enhance transparency in supply chains for pipeline-borne goods. Although the Cross-Border Recognition Working Group did not meet this quarter, it remains an active working group within the subcommittee and will resume meetings next quarter.

Meeting materials will be available by September 11, 2023, at: <http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings>.

Dated: August 25, 2023.

Felicia M. Pullam,

Executive Director, Office of Trade Relations.

[FR Doc. 2023-18718 Filed 8-29-23; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2023-0024]

Homeland Security Advisory Council

AGENCY: Office of Partnership and Engagement (OPE), Department of Homeland Security (DHS).

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will hold a public in-person meeting on Thursday, September 14, 2023. The meeting will be open to the public via teleconference. **DATES:** The meeting will take place from 02 p.m. ET to 04:30 p.m. ET on Thursday, September 14, 2023. Please note that the meeting may end early if the Council has completed its business.

ADDRESSES: The HSAC meeting will be held at DHS St. Elizabeths Campus in Washington, DC. Members of the public interested in participating may do so via teleconference by following the process outlined below. The public will be in listen-only mode except for the public comment portion of the meeting. Written comments must be submitted by 05 p.m. ET on September 13, 2023. Comments must be identified by Docket No. DHS-2023-0024 and may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Email:** HSAC@hq.dhs.gov. Include Docket No. DHS-2023-0024 in the subject line of the message.

- **Mail:** Rebecca Sternhell, Acting Executive Director of the Homeland Security Advisory Council, Office of Partnership and Engagement, Mailstop 0385, Department of Homeland Security, 2707 Martin Luther King Jr Ave SE, Washington, DC 20032.

Instructions: All submissions received must include the words "Department of Homeland Security" and "DHS-2023-0024", the docket number for this action. 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 a link on the homepage of www.regulations.gov.

Docket: For access to the docket to read comments received by the Council, go to <http://www.regulations.gov>, search "DHS-2023-0024," "Open Docket Folder" to view the comments.

FOR FURTHER INFORMATION CONTACT:

Rebecca Sternhell, Acting Executive Director, Homeland Security Advisory Council at 202-891-2876 or HSAC@hq.dhs.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C. 1009, which requires each FACA committee meeting to be open to the public unless the President, or the head of the agency to which the advisory committee reports, determines that a portion of the meeting may be closed to the public in accordance with 5 U.S.C. 552b(c).

The HSAC provides organizationally independent, strategic, timely, specific, actionable advice, and recommendations to the Secretary of Homeland Security on matters related to homeland security. The Council consists of senior executives from government, the private sector, academia, law enforcement, and non-governmental organizations. The open session will include: (1) Remarks from Senior DHS leaders, (2) Introduction and swearing in of a new member, (3) briefings, public comment, HSAC member deliberation, and voting on the the four draft reports from the DHS Workforce; Alternatives to Detention; Homeland Security Grant Program Review; and the Artificial Intelligence—Mission Focused subcommittees. The Council was tasked to create these subcommittees on March 27, 2023. The taskings can be found on the HSAC website at www.dhs.gov/homeland-security-advisory-council. The HSAC will also receive updates on previous recommendations it has submitted to the Secretary.

Members of the public will be in listen-only mode except during the public comment session. Members of the public may register to participate in this Council meeting via teleconference under the following procedures. Each individual must provide their full legal name and email address no later than 5:00 p.m. ET on Wednesday, September 13, 2023, to Rebecca Sternhell, Acting Executive Director of the Homeland Security Advisory Council via email to HSAC@hq.dhs.gov or via phone at 202-891-2876. Members of the public who have registered to participate will be provided the teleconference call-in

number, meeting agenda, and the four draft subcommittee reports after the closing of the public registration period and prior to the start of the meeting. For more information about the HSAC, please visit our website: <https://www.dhs.gov/homeland-security-advisory-council>.

For information on services for individuals with disabilities, or to request special assistance, please email HSAC@hq.dhs.gov by 5:00 p.m. ET on Thursday, September 7, 2023 or call 202-891-2876. The HSAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Rebecca Sternhell at 202-891-2876 or HSAC@hq.dhs.gov as soon as possible.

Dated: August 24, 2023.

Rebecca Sternhell,

Acting Executive Director, Homeland Security Advisory Council, Department of Homeland Security.

[FR Doc. 2023-18631 Filed 8-29-23; 8:45 am]

BILLING CODE 9112-FN-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7071-N-10]

60-Day Notice of Proposed Information Collection; Housing Counseling Homeownership Initiative Notice of Funding Opportunity (HI NOFO); OMB Control No.: 2502-NEW

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 30, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be submitted within 60 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 60-day Review—Open

for Public Comments” or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000 or email at PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email; Colette.Pollard@hud.gov or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Housing Counseling Homeownership Initiative Notice of Funding Opportunity (HI NOFO).

OMB Approval Number: 2502–NEW.

OMB Expiration Date: None.

Type of Request: New collection.

Form Numbers: HUD–91045; HUD–424–B; HUD–50153; HUD–2880; SF–LLL; SF–424.

Description of the need for the information and proposed use: The HUD Office of Housing Counseling will use the information collected to objectively evaluate grant applicants on how well they will be able to meet the selection factors set forth in the new Homeownership Initiative Notice of Funding Opportunity, hereinafter HI–NOFO, based on their history of performance and on their responses to questions. The collection will also serve to monitor selected applicants or grantees to assess compliance and effectiveness. This collection of information is required for the award of the HI NOFO grant program in furtherance of HUD’s mission to increase homeownership rates among historically underserved communities.

The grant program looks to deliver measurable outcomes by awarding funds to HUD-approved Intermediaries, Multi-State Organizations, and State and Local government Housing Finance Agencies who have demonstrated experience providing culturally sensitive, linguistically appropriate pre- and post-purchase housing counseling. Selected agencies will provide independent, expert, and customized guidance to help underserved communities. The NOFO specific information is collected via the new form HUD–90145 (Homeownership Initiative Chart). All other forms that are part of this collection are mandatory OMB or HUD standard grant application forms.

This review is necessary to support HUD participating agencies who are seeking to increase the homeownership rate among historically underserved communities and stop or reverse the increasing homeownership gap resulting from the effects of the COVID–19 pandemic and resulting shortage of affordable homes within those communities. These agencies will provide targeted counseling, outreach to members of their communities as well as seek partnerships with other agencies to help individuals and families achieve sustainable homeownership, no matter their race, ethnicity, disability status, or other protected class.

Respondents: HUD-approved non-profit HUD National and Regional Intermediaries (Intermediaries), Multi-State Organizations (MSOs), and State Housing Finance Agencies (SHFAs).

Estimated Number of Respondents: 56.

Estimated Number of Responses: 341.

Frequency of Response: Annually.

Average Hours per Response: 8.7.

Total Estimated Burden: 2,968 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency’s estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated collection

techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Jeffrey D. Little,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2023–18643 Filed 8–29–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7071–N–21]

60-Day Notice of Proposed Information Collection: Eviction Counseling Survey; OMB Control No.: 2502–0625

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 30, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be submitted within 60 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 60-day Review—Open for Public Comments” or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000 or email at PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, REE, Department of Housing

and Urban Development, 451 7th Street SW, Washington, DC 20410; email; Colette.Pollard@hud.gov or telephone 202-402-3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Eviction Counseling Survey.
OMB Approval Number: 2502-0625.
OMB Expiration Date: November 30, 2023.

Type of Request: Extension of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: The purpose of the survey is to collect information from HUD Participating Housing Counseling agencies that will be used to identify and develop innovative programming and best practices for the Department's Housing Counseling Program under Section 106 of the Housing and Community Development Act of 1974. The survey will gather critical data about how HUD-

approved counseling agencies are providing services to households at risk of or facing eviction. HUD proposes to use the information to improve support to housing counseling agencies in providing effective and innovative counseling services for households facing or at risk of eviction.

Respondents: Not-for-Profit Institutions.

Estimated Number of Respondents: 1,500.

Estimated Number of Responses: 1,500.

Frequency of Response: Once.

Average Hours per Response: 0.50 hours.

Total Estimated Burden Hours: 750 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Information collection/ affected public	Form name/ form number collection tool	Number of respondents	Frequency of response	Responses per year	Average burden hours per response	Annual burden hours	Hourly cost per response (hourly wage rate)	Total annual respondent cost
Not for Profit Institu- tions	Eviction Counseling Survey	1,500	1	1,500	.50	750	\$53.74	\$40,305.00
Totals .....	.....	1,500	.....	1,500	.....	750	.....	40,305.00

Note: The "Avg. Hourly Wage Rate" for each respondent includes a 1.46 multiplier to reflect a fully-loaded wage rate.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Jeffrey D. Little,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2023-18645 Filed 8-29-23; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7071-N-19]

60-Day Notice of Proposed Information Collection: FHA-Insured Mortgage Loan Servicing for Performing Loans; MIP Processing, Escrow Administration, Customer Service, Servicing Fees, and 235 Loans; OMB Control No.: 2502-0583

AGENCY: Office of the Assistant Secretary for Housing- Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget

(OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 30, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be submitted within 60 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 60-day Review—Open for Public Comments" or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410-5000 or email at

PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: FHA-Insured Mortgage Loan Servicing for Performing Loans; MIP Processing, Escrow Administration, Customer Services, Servicing Fees, and 235 Loans.

OMB Approval Number: 2502–0583.

Type of Request: Revision of currently approved collection.

Form Numbers: HUD–92210.1.

Description of the need for the information and proposed use: This information request is a comprehensive collection for FHA-approved Mortgagees that service FHA-insured mortgages and the Mortgagors (borrowers) who are involved with collection and payment of mortgage insurance premiums, payment processing, escrow account administration, Section 235, and assumptions. The data and information provided are essential for managing HUD's Single Family loan programs.

Respondents: Servicers of FHA-insured mortgage loans.

Estimated Number of Respondents: 6,215.

Estimated Number of Responses: 66,242,960.

Frequency of Response: Monthly.

Average Hours per Response: 0.005.

Total Estimated Burdens: 327,977.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the

proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Jeffrey D. Little,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2023–18636 Filed 8–29–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7071–N–18]

60-Day Notice of Proposed Information Collection: Single Family Application for Insurance Benefits; OMB Control No.: 2502–0429

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 30, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be submitted within 60 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 60-day Review—Open for Public Comments” or by using the search function. Interested persons are

also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000 or email at *PaperworkReductionActOffice@hud.gov*.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Single Family Application for Insurance Benefits.

OMB Approval Number: 2502–0429.

Type of Request: Revision of currently approved collection.

Form Numbers: HUD–9539, HUD–27011, HUD–50002, HUD–50012.

Description of the need for the information and proposed use: FHA insurance is an important source of mortgage credit for low and moderate-income borrowers. It is essential that the Federal Housing Administration (FHA) maintain a healthy mortgage insurance fund through premiums charged to the borrower by FHA. Providing policy and guidance to the single family housing mortgage industry regarding changes in FHA's program is essential to protect the fund. This information collection is based on the claim activity involving FHA-insured mortgage loan servicing of foreclosed mortgage loans after the foreclosure sale. This is a revision to the currently approved collection due to program activity. With each form, the Public Burden Statement is updated.

Respondents: Business or other for-profit and individuals or households.

Estimated Number of Respondents: 1,222.

Estimated Number of Responses:
10,062,965.

Frequency of Response: On occasion.

Average Hours per Response: 0.19.

Total Estimated Burdens: 1,884,906.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Jeffrey D. Little,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2023-18642 Filed 8-29-23; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAK001030/
A0A501010.999900; OMB Control Number
1035-0004]

Agency Information Collection Activities; Individual Indian Money (IIM) Instructions for Disbursement of Funds and Change of Address

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Notice of information collection;
request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 30, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Nina Alexander, 4400 Masthead NE, Albuquerque, NM 87109; or by email to nina_alexander@btfa.gov. Please reference OMB Control Number 1035-0004 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nina Alexander by email at nina_alexander@btfa.gov, or by telephone at (505) 273-1620. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the BTFA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BTFA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BTFA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. 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: As codified in 25 U.S.C. 4001, The American Indian Trust Fund Management Reform Act of 1994 (the Reform Act) makes provisions for the Bureau of Trust Funds Administration (BTFA) (formerly known as The Office of the Special Trustee for American Indians) to administer trust fund accounts for individuals and tribes. The collection of information is required to facilitate the processing of deposits, investments, and distribution of monies held in trust by the U.S. Government and administered by the BTFA. The collection of information provides the information needed to establish procedures to: Deposit and retrieve funds from accounts, perform transactions such as cashing checks, reporting lost or stolen checks, stopping payment of checks, change of address and general verification for account activities.

Title of Collection: Individual Indian Money (IIM) Instructions for Disbursement of Funds and Change of Address, 25 CFR 115.

OMB Control Number: 1035-0004.

Form Number: OST-01-004—Trust Funds for Tribes and Individual Indians, 25 CFR part 115.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals/households.

Total Estimated Number of Annual Respondents: 42,109.

Total Estimated Number of Annual Responses: 42,109.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 10,527 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

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 Officer.

[FR Doc. 2023-18632 Filed 8-29-23; 8:45 am]

BILLING CODE 4337-15-P

**INTERNATIONAL TRADE
COMMISSION**

[Investigation Nos. 701–TA–579–580 and
731–TA–1369–1372 (Review)]

**Fine Denier Polyester Staple Fiber
(PSF) From China, India, South Korea,
and Taiwan; Scheduling of Full Five-
Year Reviews**

AGENCY: United States International
Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 (“the Act”) to determine whether revocation of the antidumping and countervailing duty orders on fine denier polyester staple fiber (PSF) from China, India, South Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: August 24, 2023.

FOR FURTHER INFORMATION CONTACT:

Kristina Lara ((202) 205–3386), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these reviews may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On May 8, 2023, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews should proceed (88 FR 31006, May 15, 2023); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners’ votes, the Commission’s statement on adequacy, and any individual Commissioner’s statements are available from the Office of the Secretary and at the Commission’s website.

Participation in the reviews and public service list.—Persons, including industrial users of the subject

merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission’s rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission’s notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission’s Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary’s Office will accept only electronic filings during this time. Filings must be made through the Commission’s Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission’s rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission’s notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on December 21, 2023, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission’s rules.

Hearing.—The Commission will hold an in-person hearing in connection with the reviews beginning at 9:30 a.m. on Tuesday, January 23, 2024. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Wednesday,

January 17, 2024. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the reviews, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3 p.m. the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission’s website at <https://www.usitc.gov/calendarpad/calendar.html>.

A nonparty who has testimony that may aid the Commission’s deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on Thursday, January 18, 2024. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00 p.m. on January 22, 2024. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission’s rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission’s rules; the deadline for filing is January 9, 2024. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission’s rules. The deadline for filing posthearing briefs is February 2, 2024. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before 5:15 p.m. on February 2, 2024. On March 1, 2024, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 5, 2024, but such final comments must not contain new factual information and

must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C.1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: August 24, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023-18651 Filed 8-29-23; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On August 22, 2023, the Department of Justice lodged a proposed consent decree agreed to with defendants Atlantic Richfield Company and ARCO Environmental Remediation, LLC, in the United States District Court for the District of Montana in the lawsuit

entitled *United States and State of Montana v. Atlantic Richfield Company and ARCO Environmental Remediation, LLC*, Civil Action No. 4:23-cv-00050-BMM. The consent decree resolves the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), for the performance of response actions and for payment of response costs incurred in connection with the release of hazardous substances at the ACM Smelter and Refinery Site in Cascade County, Montana. The consent decree also resolves related claims brought by the State of Montana, through the Montana Department of Environmental Quality, under the Montana Comprehensive Environmental Cleanup and Responsibility Act, 75-10-701, *et seq.* The consent decree obligates defendants to perform certain remedial actions to address soil contamination at the Site consistent with a Record of Decision issued by the U.S. Environmental Protection Agency ("EPA"), pay EPA \$464,475.12 in reimbursement of past response costs, and reimburse EPA for future costs to oversee implementation of the work required by the settlement.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Montana v. Atlantic Richfield Company and ARCO Environmental Remediation, LLC*, Civil Action No. 4:23-cv-00050-BMM, D.J. Ref. No. 90-11-2-12191. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: <http://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$269 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is \$7.25.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023-18646 Filed 8-29-23; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF LABOR

Office of the Worker's Compensation Programs

[OMB Control No. 1240-0045]

Proposed Extension of Information Collection; Rehabilitation Plan and Award, (OWCP-16)

AGENCY: Office of Workers' Compensation, Division of Federal Employees' Longshore and Harbor Workers' Compensation, (OWCP/DFELHWC), 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 request for comment 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 request helps to ensure that: requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, OWCP/DFELHWC is soliciting comments on the information collection for Rehabilitation Plan and Award, (OWCP-16).

DATES: All comments must be received on or before October 30, 2023.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- **Mail/Hand Delivery:** Mail or visit DOL—OWCP/DFELHWC, Office of Workers' Compensation Programs, Division of Federal Employees' Longshore and Harbor Workers' Compensation, U.S. Department of

Labor, 200 Constitution Ave. NW, Room S-3323, Washington, DC 20210.

- **Electronic submission:** You may submit comments and attachments electronically at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs, Office of Workers' Compensation Programs, Division of Federal Employees Longshore, and Harbor Workers' Compensation, OWCP/DFELHWC, at suggs.anjanette@dol.gov (email); (202) 354-9660.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Longshore and Harbor Workers' Compensation Act (LHWCA), and the Federal Employees' Compensation Act (FECA). 33 U.S.C. 939 (LHWCA) and 5 U.S.C. 8104 and 8111 (FECA) authorizes OWCP to pay for approved vocational rehabilitation services to eligible workers with work-related disabilities. In order to decide whether to approve a rehabilitation plan, OWCP must receive a copy of the plan, supporting vocational testing materials and the estimated cost to implement the plan, broken down to show the fees, supplies, tuition and worker maintenance payments that are contemplated. OWCP also must receive the signatures of the worker and the rehabilitation counselor to show that the worker agrees to follow the proposed plan, and that the proposed plan is appropriate. Form OWCP-16 is the standard format for the collection of this information. The regulations implementing these statutes allow for the collection of information needed for OWCP to determine if a rehabilitation plan should be approved and payment of any related expenses should be authorized. (LHWCA, 702.506 and 702.507, (FECA, 20 CFR 10.518, 10.519)

II. Desired Focus of Comments

OWCP is soliciting comments concerning the proposed information collection (ICR) titled, "Rehabilitation Plan and Award", OWCP-16. OWCP/DFELHWC 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 OWCP/DFELHWC's estimate of the burden related to the information collection, including the validity of the

methodology and assumptions used in the estimate;

- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Background documents related to this information collection request are available at <https://regulations.gov> and at DOL-OWCP/DFELHWC located at 200 Constitution Avenue NW, Room S-3323, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns the Rehabilitation Plan and Award, OWCP-16. OWCP/DFELHWC 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: Office of Workers' Compensation Programs, Division of Federal Employees' Longshore, and Harbor Workers' Compensation, OWCP/DFELHWC.

OMB Number: 1240-0045.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Number of Respondents: 3,413.

Frequency: On occasion.

Number of Responses: 3,413.

Annual Burden Hours: 1,707 hours.

Total Respondent or Recordkeeper Cost: \$0.

OWCP Form 16, Rehabilitation Plan and Award.

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>.

Anjanette Suggs,
Certifying Officer.

[FR Doc. 2023-18668 Filed 8-29-23; 8:45 am]

BILLING CODE 4510-CH-P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2023-6]

Artificial Intelligence and Copyright

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of inquiry and request for comments.

SUMMARY: The United States Copyright Office is undertaking a study of the copyright law and policy issues raised by artificial intelligence ("AI") systems. To inform the Office's study and help assess whether legislative or regulatory steps in this area are warranted, the Office seeks comment on these issues, including those involved in the use of copyrighted works to train AI models, the appropriate levels of transparency and disclosure with respect to the use of copyrighted works, and the legal status of AI-generated outputs.

DATES: Written comments are due no later than 11:59 p.m. Eastern Time on Wednesday, October 18, 2023. Written reply comments are due no later than 11:59 p.m. Eastern Time on Wednesday, November 15, 2023.

ADDRESSES: For reasons of governmental efficiency, the Copyright Office is using the [regulations.gov](https://www.regulations.gov) system for the submission and posting of public comments in this proceeding. All comments should be submitted electronically through [regulations.gov](https://www.regulations.gov). Specific instructions for submitting comments are available on the Copyright Office website at <https://copyright.gov/policy/artificial-intelligence>. If electronic submission is not feasible, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Rhea Efthimiadis, Assistant to the General Counsel, by email at mefth@copyright.gov or telephone at 202-707-8350.

SUPPLEMENTARY INFORMATION:

I. Introduction

Over the last year, artificial intelligence ("AI") systems and the rapid growth of their capabilities have attracted significant media and public attention. One type of AI, "generative AI" technology, is capable of producing outputs such as text, images, video, or audio (including emulating a human voice) that would be considered copyrightable if created by a human author.¹ The adoption and use of

¹ Generative AI technologies produce outputs based on "learning" statistical patterns in existing

generative AI systems by millions of Americans²—and the resulting volume of AI-generated material—have sparked widespread public debate about what these systems may mean for the future of creative industries and raise significant questions for the copyright system.³

Some of these questions relate to the scope and level of human authorship, if any, in copyright claims for material produced in whole or in part by generative AI. Over the past several years, the Office has begun to receive applications to register works containing AI-generated material, some of which name AI systems as an author or co-author.⁴ At the same time, copyright owners have brought infringement claims against AI

companies based on the training process for, and outputs derived from, generative AI systems.⁵ As concerns and uncertainties mount, Congress and the Copyright Office have been contacted by many stakeholders with diverse views. The Office has publicly announced a broad initiative earlier this year to explore these issues. This Notice is part of that initiative and builds on the Office's research, expertise, and prior work, as well as information that stakeholders have provided to the Office.

II. The Copyright Office's Past Work on Machine Learning and AI

The Copyright Office has long been engaged in questions involving machine learning and copyright. In 1965, the Office's annual report noted that developments in computer technology had begun to raise "difficult questions of authorship"—namely the question of the authorship of works "'written' by computers."⁶ As the then-Register of Copyrights observed:

The crucial question appears to be whether the "work" is basically one of human authorship, with the computer merely being an assisting instrument, or whether the traditional elements of authorship in the work (literary, artistic, or musical expression or elements of selection, arrangement, etc.) were actually conceived and executed not by man but by a machine.⁷

Because the answer depends on the circumstances of a work's creation, the head of the Office's Examining Division (and future Register) Barbara Ringer warned that the Office could not "take the categorical position that registration will be denied merely because a computer may have been used in some manner in creating the work."⁸ As she noted, "a typewriter is a machine that is used in the creation of a manuscript[,] but this does not result in the manuscript being uncopyrightable."⁹ This view was echoed a decade later by the National Commission on New Technological Uses of Copyrighted

Works ("CONTU"),¹⁰ which agreed with the Office¹¹ but declined to discuss the issue in depth because "[t]he development of this capacity for 'artificial intelligence' has not yet come to pass, and, indeed, it has been suggested to this Commission that such a development is too speculative to consider at this time."¹² In the intervening years, as AI moved out of the realm of speculation, the Office continued to participate in discussions on AI issues, from a 1991 conference hosted by the World Intellectual Property Organization ("WIPO")¹³ to more recent events the Office co-hosted with WIPO¹⁴ and with the U.S. Patent and Trademark Office.¹⁵

Last year, in two separate copyright registration matters, the Office publicly addressed the question of copyright in AI-generated material. In the first instance, the Office refused to register a claim for two-dimensional artwork described as "autonomously created by a computer algorithm running on a machine."¹⁶ The Office's Review

data, which may include copyrighted works. Kim Martineau, *What is generative AI?*, IBM Research Blog (Apr. 20, 2023), <https://research.ibm.com/blog/what-is-generative-ai> ("At a high level, generative models encode a simplified representation of their training data and draw from it to create a new work that's similar, but not identical, to the original data."). The Office has defined "generative AI" and other key terms in a glossary at the end of this Notice.

² See, e.g., Microsoft FY23 Second Quarter Earnings Conference Call Transcript, Microsoft (Jan. 24, 2023), <https://www.microsoft.com/en-us/Investor/events/FY-2023/earnings-fy-2023-q2.aspx> (Microsoft CEO Satya Nadella stating that "[m]ore than one million people have used Copilot to date"); Krystal Hu, *ChatGPT sets record for fastest-growing user base—analyst note*, Reuters (Feb. 2, 2023), <https://www.reuters.com/technology/chatgpt-sets-record-fastest-growing-user-base-analyst-note-2023-02-01/>.

³ See, e.g., James Vincent, *The scary truth about AI copyright is nobody knows what will happen next*, The Verge (Nov. 15, 2022), <https://www.theverge.com/23444685/generative-ai-copyright-infringement-legal-fair-use-training-data> (discussing the "key [legal] questions from which the topic's many uncertainties unfold"); see Kevin Roose & Cade Metz, *How to Become an Expert on A.I.*, N.Y. Times (Apr. 4, 2023), <https://www.nytimes.com/article/ai-artificial-intelligence-chatbot.html>; Kim Martineau, *What is generative AI?*, IBM Research Blog (Apr. 20, 2023), <https://research.ibm.com/blog/what-is-generative-ai>; Harvard Online, *The Benefits and Limitations of Generative AI: Harvard Experts Answer Your Questions*, Harvard Online Blog (Apr. 19, 2023), <https://www.harvardonline.harvard.edu/blog/benefits-limitations-generative-ai>; Arhan Islam, *A History of Generative AI: From GAN to GPT-4*, Marktechpost (Mar. 21, 2023), <https://www.marktechpost.com/2023/03/21-a-history-of-generative-ai-from-gan-to-gpt-4/>. Generative AI is also a point of contention in the labor disputes between the Alliance of Motion Picture and Television Producers and both the Writers Guild of America and SAG-AFTRA (the guild representing actors and other media professionals). See Andrew Webster, *Actors say Hollywood studios want their AI replicas—for free, forever*, The Verge (July 13, 2023), <https://www.theverge.com/2023/7/13/23794224/sag-aftra-actors-strike-ai-image-rights>.

⁴ See U.S. Copyright Office Review Board, *Decision Affirming Refusal of Registration of A Recent Entrance to Paradise* at 2 (Feb. 14, 2022), <https://www.copyright.gov/rulings-filings/review-board/docs/a-recent-entrance-to-paradise.pdf> (noting visual work was submitted listing the author as the "Creativity Machine").

⁵ See, e.g., Am. Compl. ¶¶ 8, 61, *Getty Images (US), Inc. v. Stability AI, Inc.*, No. 1:23-cv-135, ECF No. 13 (D. Del. Mar. 29, 2023) (alleging infringement based on use of copyrighted images to train a generative AI model and on the possibility of that model generating images "highly similar to and derivative of" copyrighted images).

⁶ U.S. Copyright Office, *Sixty-Eighth Annual Report of the Register of Copyrights for the Fiscal Year Ending June 30, 1965*, at 5 (1966), <https://www.copyright.gov/reports/annual/archive/ar-1965.pdf>.

⁷ *Id.*

⁸ U.S. Copyright Office, *Annual Report of the Examining Division, Copyright Office, for the Fiscal Year 1965*, at 4 (1965), <https://copyright.gov/reports/annual/archive/ar-examining1965.pdf>.

⁹ *Id.*

¹⁰ CONTU was created "to assist the President and Congress in developing a national policy for both protecting the rights of copyright owners and ensuring public access to copyrighted works when they are used in computer and machine duplication systems." CONTU, *Final Report of the National Commission on New Technological Uses of Copyrighted Works* at 3 (July 31, 1978) ("CONTU Final Report"). One of its statutory mandates was to study "the creation of new works by the application or intervention of [] automatic systems or machine reproduction." *National Commission on New Technological Uses of Copyrighted Works*, Public Law 93-573, sec. 201(b)(2), 88 Stat. 1873 (1974).

¹¹ CONTU Final Report at 44-46 (recommending the same "approach [that] is followed by the Copyright Office today in conducting examinations for determining registrability for copyright of works created with the assistance of computers").

¹² *Id.* at 44.

¹³ See U.S. Copyright Office, *94th Annual Report of the Register of Copyrights for the Fiscal Year Ending September 30, 1991*, at 2 (1991), <https://copyright.gov/reports/annual/archive/ar-1991.pdf>.

¹⁴ See *Copyright in the Age of Artificial Intelligence*, U.S. Copyright Office (Feb. 5, 2020), <https://www.copyright.gov/events/artificial-intelligence/>.

¹⁵ See *Copyright law and machine learning for AI: Where are we and where are we going?*, U.S. Patent and Trademark Office (Oct. 26, 2021), <https://www.uspto.gov/about-us/events/copyright-law-and-machine-learning-ai-where-are-we-and-where-are-we-going>. The Office also supported the U.S. Patent and Trademark Office when it solicited public comments on the impact of AI on intellectual property policy, including copyright. See U.S. Patent and Trademark Office, *Public Views on Artificial Intelligence and Intellectual Property Policy* (Oct. 2020), https://www.uspto.gov/sites/default/files/documents/USPTO_AI-Report_2020-10-07.pdf.

¹⁶ U.S. Copyright Office Review Board, *Decision Affirming Refusal of Registration of A Recent Entrance to Paradise* at 2 (Feb. 14, 2022), <https://www.copyright.gov/rulings-filings/review-board/docs/a-recent-entrance-to-paradise.pdf>.

Board¹⁷ explained that the work could not be registered because it was made “without any creative input or intervention from a human author,” and that “statutory text, judicial precedent, and longstanding Copyright Office practice” all require human authorship as a condition of copyrightability.¹⁸ The Office’s registration denial, as well as the supporting legal analysis, was recently affirmed in federal district court.¹⁹

A second registration application, submitted in 2022, involved a work containing both human authorship and generative AI material. The work was a graphic novel with text written by the human applicant and illustrations created through the use of Midjourney, a generative AI system. After soliciting information from the applicant about the process of the work’s creation, the Office determined that copyright protected both the human-authored text and human selection and arrangement of the text and images, but not the AI-generated images themselves.²⁰ The Office explained that where a human author lacks sufficient creative control over the AI-generated components of a work, the human is not the “author” of those components for copyright purposes.²¹ The Office continues to receive applications to register works incorporating AI-generated material, involving different levels of human contributions.²²

¹⁷ The Review Board is a three-member body that hears administrative appeals of copyright registration decisions. Review Board decisions constitute final agency actions and are subject to judicial review. See 37 CFR 202.5(f), (g).

¹⁸ U.S. Copyright Office Review Board, *Decision Affirming Refusal of Registration of A Recent Entrance to Paradise* at 3 (Feb. 14, 2022), <https://www.copyright.gov/rulings-filings/review-board/docs/a-recent-entrance-to-paradise.pdf>.

¹⁹ Mem. Op., *Thaler v. Perlmutter*, No. 22–cv–1564, ECF No. 24 (D.D.C. Aug. 18, 2023).

²⁰ U.S. Copyright Office, *Cancellation Decision re: Zarya of the Dawn* (VAu001480196) at 1 (Feb. 21, 2023), <https://www.copyright.gov/docs/zarya-of-the-dawn.pdf> (letter from the Office to applicant canceling the original certificate and issuing a new one covering only the expressive material created by the applicant).

²¹ *Id.* at 9.

²² In addition to registration, the Office has considered AI in the regulatory context of the section 1201 rulemaking. Section 1201 of the Copyright Act sets up a triennial proceeding to address possible exceptions to a statutory ban on circumventing technological protection measures that control access to copyrighted works. See 17 U.S.C. 1201(a)(1)(C) (charging Register of Copyrights with making recommendation as to whether particular users of copyrighted works are adversely affected in ability to engage in noninfringing uses). In the most recent proceeding, the Register was asked to consider text and data mining activities as part of this analysis, and she concluded that existing copyright case law did not support the conclusion that all such activity is fair use. The Register did, however, recommend

III. The Office’s AI Initiative

In response to growing Congressional²³ and public interest,²⁴ the Office launched a comprehensive AI Initiative in early 2023. The Initiative identified a number of steps that the Office would take to further explore the copyright policy questions surrounding AI, including hosting public listening sessions and publishing a notice of inquiry.²⁵ At the same time, the Office created a website, www.copyright.gov/ai, to provide information about the Initiative, including planned events and opportunities for public engagement.

a. March 2023 Registration Guidance

At the outset of the Initiative, the Office issued a statement of policy providing registration guidance on works containing AI-generated material (“AI Registration Guidance”).²⁶ The AI Registration Guidance reiterated the principle that copyright protection in the United States requires human authorship. Under well-established case law, the Guidance explained, “the term

granting a narrow exemption after concluding that the specific use as described was likely to be fair because it was limited to a “researcher or group of researchers seeking to investigate a particular set of questions that require examination of a large number of works;” access to the works in full would be limited to researchers solely for purposes of verifying research results; and the researchers would not use the works “for their expressive purposes.” U.S. Copyright Office, *Section 1201 Rulemaking: Eighth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights* 107–13 (Oct. 2021).

²³ See Letter from Sen. Chris Coons, Chair, and Sen. Thom Tillis, Ranking Member, Subcomm. on Intell. Prop. of the S. Comm. on the Judiciary, to Kathi Vidal, Under Secretary of Commerce for Intell. Prop. and Director, U.S. Patent and Trademark Office, and Shira Perlmutter, Register of Copyrights, U.S. Copyright Office (Oct. 27, 2022) and Letter from Kathi Vidal, Under Secretary of Commerce for Intell. Prop. and Director, U.S. Patent and Trademark Office, and Shira Perlmutter, Register of Copyrights, to Sen. Chris Coons, Chair, and Sen. Thom Tillis, Ranking Member, Subcomm. on Intell. Prop. of the S. Comm. on the Judiciary (Dec. 12, 2022), <https://www.copyright.gov/laws/hearings/Letter-to-USPTO-USCO-on-National-Commission-on-AI-1.pdf> (Senate letter requesting the Office to provide guidance on what the law around generative AI should be in the future and the Office’s response explaining that it intended, among other things, to issue a notice of inquiry on questions involving copyright and AI).

²⁴ See, e.g., *Virtual AI Townhall hosted by Karla Ortiz featuring the U.S. Copyright Office*, Concept Art Ass’n (Nov. 2, 2022), <https://www.conceptartassociation.com/calendar/virtual-ai-townhall-featuring-us-copyright-office> (event that featured two senior attorneys from the Office).

²⁵ *Copyright Office Launches New Artificial Intelligence Initiative*, U.S. Copyright Office (Mar. 16, 2023), <https://www.copyright.gov/newsnet/2023/1004.html>.

²⁶ *Copyright Registration Guidance: Works Containing Materials Generated by Artificial Intelligence*, 88 FR 16190 (Mar. 16, 2023). A copy of the guidance is available at https://copyright.gov/ai/ai_policy_guidance.pdf.

‘author,’ used in both the Constitution and the Copyright Act, excludes non-humans.”²⁷ In the context of generative AI, this means that “[i]f a work’s traditional elements of authorship were produced by a machine, the work lacks human authorship and the Office will not register it.”²⁸ The Guidance instructed applicants seeking to register works containing more than *de minimis* AI-generated material to disclose that the work contains such material and provide a brief explanation of the human author’s contributions.²⁹

b. Public Listening Sessions

In April and May 2023, the Office held four public listening sessions to gather input on the copyright issues raised by generative AI. Each session focused on a different category of creative work: literary works, including print journalism and software; works of visual art; audiovisual works, including video games; and musical works and sound recordings. Over the four listening sessions, nearly 90 participants representing individual artists, academic experts, legal practitioners, technology companies, and industry associations shared their views with the Office. Transcripts, videos recordings, and agendas for each session are available on the Office’s website.³⁰

c. Educational Webinars

In June and July 2023, the Office held two public webinars on generative AI, each of which drew an audience of nearly 2,000. The first webinar focused on registration of works containing AI-generated material. It included an overview of the Office’s general rules on how to register works containing material created or owned by someone other than the applicant, followed by examples illustrating how those rules apply to works that incorporate AI-generated material.³¹ The second webinar convened experts on different regions of the world to discuss international developments in generative AI and copyright law. These experts discussed how other countries are addressing copyright issues, including authorship, training, and exceptions and limitations. They provided an overview of legislative

²⁷ *Id.* at 16191.

²⁸ *Id.* at 16192.

²⁹ *Id.* at 16193.

³⁰ *Spring 2023 AI Listening Sessions*, U.S. Copyright Office, <https://www.copyright.gov/ai/listening-sessions.html>.

³¹ The transcript and recording of the registration webinar are available at <https://www.copyright.gov/events/ai-application-process/>. In the coming months, the Office intends to provide further guidance to copyright applicants seeking to register works containing AI-generated material.

developments and highlighted possible areas of convergence and divergence.³²

d. Engagement With Stakeholders

In addition to the public events described above, the Office has spoken with a broad spectrum of stakeholders, participating in dozens of meetings with academics, trade groups, individual creators, technology companies, and creative industries.³³ These meetings have provided valuable information on the technical aspects of generative AI models and systems, how creators are using generative AI, and the continuing questions copyright applicants have about registering works that include AI-generated material.

IV. The Current Inquiry

Drawing on our prior AI Initiative work, including discussions with stakeholders, the Office has identified a wide range of copyright policy issues arising from the development and use of AI. These relate to: (1) the use of copyrighted works to train AI models; (2) the copyrightability of material generated using AI systems; (3) potential liability for infringing works generated using AI systems; and (4) the treatment of generative AI outputs that imitate the identity or style of human artists. The Office seeks public comments on these and related issues.

As to the first issue, the Office is aware that there is disagreement about whether or when the use of copyrighted works to develop datasets for training AI models (in both generative and non-generative systems) is infringing.³⁴ This Notice seeks information about the collection and curation of AI datasets, how those datasets are used to train AI models, the sources of materials ingested into training, and whether permission by and/or compensation for copyright owners is or should be required when their works are included.

To the extent that commenters believe such permission and/or compensation is necessary, the Office seeks their views on what kind of remuneration system(s) might be feasible and effective. The Office also seeks information regarding the retention of records necessary to identify underlying training materials and the availability of this information to copyright owners and others.

On the second issue, the Office seeks comment on the proper scope of copyright protection for material created using generative AI. Although we believe the law is clear that copyright protection in the United States is limited to works of human authorship,³⁵ questions remain about where and how to draw the line between human creation and AI-generated content. For example, are there circumstances where a human's use of a generative AI system could involve sufficient control over the technology, such as through the selection of training materials and multiple iterations of instructions ("prompts"), to result in output that is human-authored? Resolution of this question will affect future registration decisions. While the Office is separately working to update its registration guidance on works that include AI-generated material,³⁶ this Notice explores the broader policy questions related to copyrightability.

On the third question, the Office is interested in how copyright liability principles could apply to material created by generative AI systems.³⁷ For example, if an output is found to be substantially similar to a copyrighted work that was part of the training dataset, and the use does not qualify as fair, how should liability be apportioned between the user whose instructions prompted the output and developers of the system and dataset?

Lastly, in both our listening sessions and other outreach, the Office heard

from artists and performers concerned about generative AI systems' ability to mimic their voices, likenesses, or styles. Although these personal attributes are not generally protected by copyright law, their copying may implicate varying state rights of publicity and unfair competition law, as well as have relevance to various international treaty obligations.³⁸

V. Overview of Notice

The purpose of this Notice is to collect factual information and views relevant to the copyright law and policy issues raised by recent advances in generative AI. The Office undertakes this study pursuant to its statutory mandate in title 17 to "[c]onduct studies" and "[a]dvise Congress on national and international issues relating to copyright, other matters arising under this title, and related matters."³⁹ It intends to use this information to advise Congress by providing analyses of the current state of the law, identifying unresolved issues, and evaluating potential areas for congressional action. The Office will also use this record to inform its regulatory work and to offer information and resources to the public, courts, and other government entities considering these issues.

The questions are grouped into several categories. This Notice begins with several general high-level questions and then inquires about AI training, including questions of transparency and accountability; generative AI outputs, including questions of copyrightability, infringement, and labeling or identification of such outputs; and other issues related to copyright. Because of the importance of using shared language in discussing these issues, the questions are followed by a glossary of key terms for the purposes of this Notice. The Office welcomes input from commenters on the definitions.

VI. Instructions and Questions

The Office does not expect that every party choosing to respond to this Notice will address every question raised below. The questions are designed to gather views from a broad range of parties. The Office does request that, when responding to a question, commenters clearly identify each

³² The transcript and recording of the international webinar are available at <https://www.copyright.gov/events/international-ai-copyright-webinar/>.

³³ Additionally, the Office has offered guidance to The Mechanical Licensing Collective ("The MLC"), explaining that AI-generated music is not eligible for the statutory mechanical blanket license in section 115 of the Copyright Act and that The MLC should not disburse royalties for such musical works. See Letter from Suzanne V. Wilson, General Counsel and Associate Register of Copyrights, U.S. Copyright Office, to Kris Ahrend, Chief Exec. Officer, The MLC, at 2–3 (Apr. 20, 2023), <https://www.copyright.gov/ai/USCO-Guidance-Letter-to-The-MLC-Letter-on-AI-Created-Works.pdf>.

³⁴ In some cases, a non-generative AI model may be trained on copyrighted material. In other cases, the same AI model may be capable of being deployed in both a generative AI system and a non-generative one. The Office's consideration of training is framed broadly in order to encompass these and other situations.

³⁵ See Mem. Op., *Thaler v. Perlmutter*, No. 22–cv–1564, ECF No. 24 (D.D.C. Aug. 18, 2023) (affirming the Office's registration denial of AI-generated work).

³⁶ For example, the Office has received questions about how to apply its guidance that applicants disclose more than *de minimis* amounts of AI-generated material in their works. See AI Registration Guidance, 88 FR at 16193 (explaining that "AI-generated content that is more than *de minimis* should be explicitly excluded from the application").

³⁷ Some of these questions are currently before the courts in lawsuits that have already been filed over generative AI systems. See, e.g., *J.L. v. Alphabet Inc.*, 3:23–cv–03340 (N.D. Cal.); *Kadrey v. Meta Platforms, Inc.*, 3:23–cv–3417 (N.D. Cal.); *Silverman v. OpenAI, Inc.*, 4:23–cv–3416 (N.D. Cal.); *Tremblay v. OpenAI, Inc.*, 3:23–cv–3223 (N.D. Cal.); *Getty Images (US), Inc. v. Stability AI, Inc.*, 1:23–cv–0135 (D. Del.); *Andersen v. Stability AI Ltd.*, 3:23–cv–0201 (N.D. Cal.); *Doe v. GitHub, Inc.*, 4:22–cv–6823 (N.D. Cal.).

³⁸ See U.S. Copyright Office, *Authors, Attribution, and Integrity: Examining Moral Rights in the United States* 112–116 (Apr. 2019), <https://www.copyright.gov/policy/moralrights/full-report.pdf> (discussing how such interests are generally protected under state right of publicity laws).

³⁹ 17 U.S.C. 701(b)(1), (b)(4).

question for which they submit a response, address questions separately, and provide the factual, legal, or policy basis for their responses. Commenters should make clear whether they are submitting in a personal capacity or on behalf of an organization or entity they are authorized to represent. Commenters are particularly encouraged to explain any technical understandings that inform their legal and policy viewpoints, as well as whether their answers are applicable only to certain industries, technologies, or types of copyrighted works. Although some questions seek technical information about generative AI systems, commenters do not need to be affiliated with a technical entity to answer these questions.

General Questions

The Office has several general questions about generative AI in addition to the specific topics listed below. Commenters are encouraged to raise any positions or views that are not elicited by the more detailed questions further below.

1. As described above, generative AI systems have the ability to produce material that would be copyrightable if it were created by a human author. What are your views on the potential benefits and risks of this technology? How is the use of this technology currently affecting or likely to affect creators, copyright owners, technology developers, researchers, and the public?

2. Does the increasing use or distribution of AI-generated material raise any unique issues for your sector or industry as compared to other copyright stakeholders?

3. Please identify any papers or studies that you believe are relevant to this Notice. These may address, for example, the economic effects of generative AI on the creative industries or how different licensing regimes do or could operate to remunerate copyright owners and/or creators for the use of their works in training AI models. The Office requests that commenters provide a hyperlink to the identified papers.

4. Are there any statutory or regulatory approaches that have been adopted or are under consideration in other countries that relate to copyright and AI that should be considered or avoided in the United States?⁴⁰ How

important a factor is international consistency in this area across borders?

5. Is new legislation warranted to address copyright or related issues with generative AI? If so, what should it entail? Specific proposals and legislative text are not necessary, but the Office welcomes any proposals or text for review.

Training

If your comment applies only to a specific subset of AI technologies, please make that clear.

6. What kinds of copyright-protected training materials are used to train AI models, and how are those materials collected and curated?

6.1. How or where do developers of AI models acquire the materials or datasets that their models are trained on? To what extent is training material first collected by third-party entities (such as academic researchers or private companies)?

6.2. To what extent are copyrighted works licensed from copyright owners for use as training materials? To your knowledge, what licensing models are currently being offered and used?

6.3. To what extent is non-copyrighted material (such as public domain works) used for AI training? Alternatively, to what extent is training material created or commissioned by developers of AI models?

6.4. Are some or all training materials retained by developers of AI models after training is complete, and for what purpose(s)? Please describe any relevant storage and retention practices.

7. To the extent that it informs your views, please briefly describe your personal knowledge of the process by which AI models are trained. The Office is particularly interested in:

7.1. How are training materials used and/or reproduced when training an AI model? Please include your understanding of the nature and duration of any reproduction of works that occur during the training process, as well as your views on the extent to which these activities implicate the exclusive rights of copyright owners.

7.2. How are inferences gained from the training process stored or represented within an AI model?

7.3. Is it possible for an AI model to “unlearn” inferences it gained from training on a particular piece of training material? If so, is it economically feasible? In addition to retraining a

model, are there other ways to “unlearn” inferences from training?

7.4. Absent access to the underlying dataset, is it possible to identify whether an AI model was trained on a particular piece of training material?

8. Under what circumstances would the unauthorized use of copyrighted works to train AI models constitute fair use? Please discuss any case law you believe relevant to this question.

8.1. In light of the Supreme Court’s recent decisions in *Google v. Oracle America*⁴¹ and *Andy Warhol Foundation v. Goldsmith*,⁴² how should the “purpose and character” of the use of copyrighted works to train an AI model be evaluated? What is the relevant use to be analyzed? Do different stages of training, such as pre-training and fine-tuning,⁴³ raise different considerations under the first fair use factor?

8.2. How should the analysis apply to entities that collect and distribute copyrighted material for training but may not themselves engage in the training?

8.3. The use of copyrighted materials in a training dataset or to train generative AI models may be done for noncommercial or research purposes.⁴⁴ How should the fair use analysis apply if AI models or datasets are later adapted for use of a commercial nature?⁴⁵ Does it make a difference if funding for these noncommercial or research uses is provided by for-profit developers of AI systems?

8.4. What quantity of training materials do developers of generative AI models use for training? Does the volume of material used to train an AI model affect the fair use analysis? If so, how?

8.5. Under the fourth factor of the fair use analysis, how should the effect on the potential market for or value of a copyrighted work used to train an AI

⁴¹ 141 S. Ct. 1183 (2021).

⁴² 143 S. Ct. 1258 (2023).

⁴³ See *Pre-training, Fine-tuning, and Foundation Models*, GenLaw: Glossary (June 1, 2023), <https://genlaw.github.io/glossary.html> (explaining that pre-training is a relatively slow and expensive process that “results in a general-purpose or foundation model” whereas fine-tuning “adapts a pretrained model checkpoint to perform a desired task using additional data”).

⁴⁴ For example, the generative AI model, Stable Diffusion, was reportedly developed in part by researchers at the Ludwig Maximilian University of Munich but is used by the for-profit company Stability AI. See Kenrick Cai, *Startup Behind AI Image Generator Stable Diffusion Is In Talks To Raise At A Valuation Up To \$1 Billion*, *Forbes* (Sept. 7, 2022), <https://www.forbes.com/sites/kenrickcai/2022/09/07/stability-ai-funding-round-1-billion-valuation-stable-diffusion-text-to-image/?sh=31e11f5a24d6>.

⁴⁵ 17 U.S.C. 107(1).

⁴⁰ For example, several jurisdictions have adopted copyright exceptions for text and data mining that could permit use of copyrighted material to train AI systems. Separately, the European Parliament passed its version of the Artificial Intelligence Act on June 14, 2023, which includes a requirement that providers of generative AI systems publish “a sufficiently detailed

summary of the use of training data protected under copyright law.” See Artificial Intelligence Act, amend. 399, art. 28b(4)(c), EUR. PARL. DOC. P9_TA (2023)0236 (2023), https://www.europarl.europa.eu/doceo/document/TA-9-2023-0236_EN.html.

model be measured?⁴⁶ Should the inquiry be whether the outputs of the AI system incorporating the model compete with a particular copyrighted work, the body of works of the same author, or the market for that general class of works?

9. Should copyright owners have to affirmatively consent (opt in) to the use of their works for training materials, or should they be provided with the means to object (opt out)?

9.1. Should consent of the copyright owner be required for all uses of copyrighted works to train AI models or only commercial uses?⁴⁷

9.2. If an “opt out” approach were adopted, how would that process work for a copyright owner who objected to the use of their works for training? Are there technical tools that might facilitate this process, such as a technical flag or metadata indicating that an automated service should not collect and store a work for AI training uses?⁴⁸

9.3. What legal, technical, or practical obstacles are there to establishing or using such a process? Given the volume of works used in training, is it feasible to get consent in advance from copyright owners?

9.4. If an objection is not honored, what remedies should be available? Are existing remedies for infringement appropriate or should there be a separate cause of action?

9.5. In cases where the human creator does not own the copyright—for example, because they have assigned it or because the work was made for hire—should they have a right to object to an AI model being trained on their work? If so, how would such a system work?

10. If copyright owners’ consent is required to train generative AI models, how can or should licenses be obtained?

10.1. Is direct voluntary licensing feasible in some or all creative sectors?

10.2. Is a voluntary collective licensing scheme a feasible or desirable approach?⁴⁹ Are there existing collective management organizations that are well-suited to provide those licenses, and are there legal or other impediments that would prevent those organizations from performing this role? Should Congress consider statutory or other changes, such as an antitrust exception, to facilitate negotiation of collective licenses?

10.3. Should Congress consider establishing a compulsory licensing regime?⁵⁰ If so, what should such a regime look like? What activities should the license cover, what works would be subject to the license, and would copyright owners have the ability to opt out? How should royalty rates and terms be set, allocated, reported and distributed?

10.4. Is an extended collective licensing scheme⁵¹ a feasible or desirable approach?

10.5. Should licensing regimes vary based on the type of work at issue?

11. What legal, technical or practical issues might there be with respect to

⁴⁹ Collective licensing is one alternative to a direct licensing regime, in which copyright owners negotiate and enter into private agreements on an individual basis. Under a collective licensing arrangement, rights are aggregated and administered by a management organization. The management organization negotiates the terms of use and distributes payment to participating copyright owners. See WIPO, *WIPO Good Practice Toolkit for CMOs* at 6 (2021), <https://www.wipo.int/publications/en/details.jsp?id=4561>.

⁵⁰ A compulsory or “statutory” license allows for certain uses of a copyrighted work “without the consent of the copyright owner provided that the person adhered to the provisions of the license, most notably paying a statutorily established royalty to the copyright owner.” *Music Licensing Reform: Hearing Before the Subcomm. on Intell. Prop. of the S. Comm. on the Judiciary*, 109th Cong. (2005) (statement of Marybeth Peters, Register of Copyrights), <http://copyright.gov/docs/regstat071205.html>.

⁵¹ “An Extended Collective Licensing scheme is one where a relevant licensing body, subject to certain safeguards, is authorized to license specified copyright works on behalf of all rights holders in its sector (including non-members), and not just members who have given specific permission for it to act.” *Extended Collective Licensing (ECL) scheme definition*, LexisNexis Glossary (2023), <https://www.lexisnexis.co.uk/legal/glossary/extended-collective-licensing-ecl-scheme>; see also Letter from Karyn A. Temple, Acting Register of Copyrights, U.S. Copyright Office, to Rep. Robert Goodlatte, Chair, and Rep. John Conyers, Ranking Member, H. Comm. on the Judiciary (Sept. 29, 2017), <https://www.copyright.gov/policy/massdigitization/house-letter.pdf>; Letter from Karyn A. Temple, Acting Register of Copyrights, U.S. Copyright Office, to Sen. Charles Grassley, Chair, and Sen. Dianne Feinstein, Ranking Member, S. Comm. on the Judiciary (Sept. 29, 2017), <https://www.copyright.gov/policy/massdigitization/senate-letter.pdf>.

obtaining appropriate licenses for training? Who, if anyone, should be responsible for securing them (for example when the curator of a training dataset, the developer who trains an AI model, and the company employing that model in an AI system are different entities and may have different commercial or noncommercial roles)?

12. Is it possible or feasible to identify the degree to which a particular work contributes to a particular output from a generative AI system? Please explain.

13. What would be the economic impacts of a licensing requirement on the development and adoption of generative AI systems?

14. Please describe any other factors you believe are relevant with respect to potential copyright liability for training AI models.

Transparency & Recordkeeping

15. In order to allow copyright owners to determine whether their works have been used, should developers of AI models be required to collect, retain, and disclose records regarding the materials used to train their models? Should creators of training datasets have a similar obligation?

15.1. What level of specificity should be required?

15.2. To whom should disclosures be made?

15.3. What obligations, if any, should be placed on developers of AI systems that incorporate models from third parties?

15.4. What would be the cost or other impact of such a recordkeeping system for developers of AI models or systems, creators, consumers, or other relevant parties?

16. What obligations, if any, should there be to notify copyright owners that their works have been used to train an AI model?

17. Outside of copyright law, are there existing U.S. laws that could require developers of AI models or systems to retain or disclose records about the materials they used for training?

Generative AI Outputs

If your comment applies only to a particular subset of generative AI technologies, please make that clear.

Copyrightability

18. Under copyright law, are there circumstances when a human using a generative AI system should be considered the “author” of material produced by the system? If so, what factors are relevant to that determination? For example, is selecting what material an AI model is trained on and/or providing an iterative series of

⁴⁶ *Id.* at 107(4).

⁴⁷ For example, the European Union’s Directive on Copyright in the Digital Single Market provides for two copyright exceptions or limitations for text and data mining (which may be used in the training of generative AI systems): one for purposes of scientific research and one for any other purpose. The latter is available only to the extent that rightsholders have not expressly reserved their rights to the use of their works in text and data mining. See Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, 2019 O.J. (L 130), <https://eur-lex.europa.eu/eli/dir/2019/790/oj>.

⁴⁸ For example, some AI companies have reportedly started to allow copyright owners to tag their works as not available for AI training. See Emilia David, *Now you can block OpenAI’s web crawler*, The Verge (Aug. 7, 2023), <https://www.theverge.com/2023/8/7/23823046/openai-data-scrape-block-ai>; Melissa Heikkilä, *Artists can now opt out of the next version of Stable Diffusion*, MIT Tech. Review (Dec. 16, 2022), <https://www.technologyreview.com/2022/12/16/1065247/artists-can-now-opt-out-of-the-next-version-of-stable-diffusion/>.

text commands or prompts sufficient to claim authorship of the resulting output?

19. Are any revisions to the Copyright Act necessary to clarify the human authorship requirement or to provide additional standards to determine when content including AI-generated material is subject to copyright protection?

20. Is legal protection for AI-generated material desirable as a policy matter? Is legal protection for AI-generated material necessary to encourage development of generative AI technologies and systems? Does existing copyright protection for computer code that operates a generative AI system provide sufficient incentives?

20.1. If you believe protection is desirable, should it be a form of copyright or a separate *sui generis* right? If the latter, in what respects should protection for AI-generated material differ from copyright?

21. Does the Copyright Clause in the U.S. Constitution permit copyright protection for AI-generated material? Would such protection “promote the progress of science and useful arts”?⁵² If so, how?

Infringement

22. Can AI-generated outputs implicate the exclusive rights of preexisting copyrighted works, such as the right of reproduction or the derivative work right? If so, in what circumstances?

23. Is the substantial similarity test adequate to address claims of infringement based on outputs from a generative AI system, or is some other standard appropriate or necessary?

24. How can copyright owners prove the element of copying (such as by demonstrating access to a copyrighted work) if the developer of the AI model does not maintain or make available records of what training material it used? Are existing civil discovery rules sufficient to address this situation?

25. If AI-generated material is found to infringe a copyrighted work, who should be directly or secondarily liable—the developer of a generative AI model, the developer of the system incorporating that model, end users of the system, or other parties?

25.1. Do “open-source” AI models raise unique considerations with respect to infringement based on their outputs?⁵³

26. If a generative AI system is trained on copyrighted works containing copyright management information, how does 17 U.S.C. 1202(b) apply to the treatment of that information in outputs of the system?

27. Please describe any other issues that you believe policymakers should consider with respect to potential copyright liability based on AI-generated output.

Labeling or Identification

28. Should the law require AI-generated material to be labeled or otherwise publicly identified as being generated by AI? If so, in what context should the requirement apply and how should it work?

28.1. Who should be responsible for identifying a work as AI-generated?

28.2. Are there technical or practical barriers to labeling or identification requirements?

28.3. If a notification or labeling requirement is adopted, what should be the consequences of the failure to label a particular work or the removal of a label?

29. What tools exist or are in development to identify AI-generated material, including by standard-setting bodies? How accurate are these tools? What are their limitations?

Additional Questions About Issues Related to Copyright

30. What legal rights, if any, currently apply to AI-generated material that features the name or likeness, including vocal likeness, of a particular person?

31. Should Congress establish a new federal right, similar to state law rights of publicity, that would apply to AI-generated material? If so, should it preempt state laws or set a ceiling or floor for state law protections? What should be the contours of such a right?

32. Are there or should there be protections against an AI system generating outputs that imitate the artistic style of a human creator (such as an AI system producing visual works “in the style of” a specific artist)? Who should be eligible for such protection? What form should it take?

33. With respect to sound recordings, how does section 114(b) of the Copyright Act relate to state law, such as state right of publicity laws?⁵⁴ Does

this issue require legislative attention in the context of generative AI?

34. Please identify any issues not mentioned above that the Copyright Office should consider in conducting this study.

VII. Glossary of Key Terms

The Office has included definitions of key terms as they are used in this Notice to clarify the technical processes involved in generative AI systems. The following definitions are used for purposes of this Notice only; they do not necessarily reflect the government’s legal position with respect to any particular term.

Artificial Intelligence (AI): A general classification of automated systems designed to perform tasks typically associated with human intelligence or cognitive functions.⁵⁵ Generally, AI technologies may use different techniques to accomplish such tasks. This Notice uses the term “AI” in a more limited sense to refer to technologies that employ machine learning, a technique further defined below.

AI Model: A combination of computer code and numerical values (or “weights,” which is defined below) that is designed to accomplish a specified task. For example, an AI model may be designed to predict the next word or word fragment in a body of text. Examples of AI models include GPT–4, Stable Diffusion, and LLaMA.

AI System: A software product or service that substantially incorporates one or more AI models and is designed for use by an end-user.⁵⁶ An AI system may be created by a developer of an AI model, or it may incorporate one or more AI models developed by third parties.

Generative AI: An application of AI used to generate outputs in the form of expressive material such as text, images, audio, or video. Generative AI systems may take commands or instructions

independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording.”

⁵⁵ See John S. McCain National Defense Authorization Act for Fiscal Year 2019, Public Law 115–232, sec. 238(g)(2), 132 Stat. 1636, 1697–98 (2018) (defining “artificial intelligence system” to include systems “developed in computer software, physical hardware, or other context that solves tasks requiring human-like perception, cognition, planning, learning, communication, or physical action”).

⁵⁶ See James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117–263, sec. 7223(4)(A), 136 Stat. 2395, 3669 (2022) (defining “artificial intelligence system” as “any data system, software, application, tool, or utility that operates in whole or in part using dynamic or static machine learning algorithms or other forms of artificial intelligence”).

⁵² U.S. Const. art. I, sec. 8, cl. 8.

⁵³ Some AI models are released by their developers for download and use by members of the general public. Such so-called “open-source” models may restrict how those models can be used through the terms of a licensing agreement. See, e.g., *Llama 2 Community License Agreement*, Meta

AI (July 18, 2023), <https://ai.meta.com/llama/license/> (requiring users of Llama 2 AI model to include an attribution notice and excluding use in services with greater than 700 million monthly active users).

⁵⁴ Under 17 U.S.C. 114(b), the reproduction and derivative work rights for sound recordings “do not extend to the making or duplication of another sound recording that consists entirely of an

from a human user, which are sometimes called “prompts.” Examples of generative AI systems include Midjourney, OpenAI’s ChatGPT, and Google’s Bard.

Machine Learning: A technique for building AI systems that is characterized by the ability to automatically learn and improve on the basis of data or experience, without relying on explicitly programmed rules.⁵⁷ Machine learning involves ingesting and analyzing materials such as quantitative data or text and obtain inferences about qualities of those materials and using those inferences to accomplish a specific task. These inferences are represented within an AI model’s weights.

Training Datasets: A collection of training material (as defined below) that is compiled and curated for use in machine learning. Examples of training datasets include BookCorpus, ImageNet, and LAION.

Training Material: Individual units of material that are used for purposes of training an AI model. They may include a combination of text, images, audio, or other categories of expressive material, as well as annotations describing the material. An example of training material would be an individual image and an associated text “label” that describes the image.

Weights: A collection of numerical values that define the behavior of an AI model. Weights are stored within an AI model and reflect inferences from the training process.

Dated: August 24, 2023.

Suzanne V. Wilson,
General Counsel and Associate Register of Copyrights.

Maria Strong,
Associate Register of Copyrights and Director of Policy and International Affairs.

[FR Doc. 2023–18624 Filed 8–29–23; 8:45 am]

BILLING CODE 1410–30–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0212]

Information Collection: NRC Form 5, Occupational Dose Record for a Monitoring Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, “NRC Form 5, Occupational Dose Record for a Monitoring Period.”

DATES: Submit comments by October 30, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC–2022–0212. Address questions about Docket IDs in [Regulations.gov](https://www.regulations.gov) to Stacy Schumann; telephone: 301–415–0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **Mail comments to:** David C. Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0212 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC–2022–0212.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/>

[adams.html](#). To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to PDR.Resource@nrc.gov. The supporting statement and NRC Form 5 are available in ADAMS under Accession Nos. ML23082A250 and ML23082A254.

- **NRC’s PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

- **NRC’s Clearance Officer:** A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC’s Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2022–0212, in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

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

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB’s approval for the

⁵⁷ See *National Artificial Intelligence Initiative Act of 2020*, 15 U.S.C. 9401(11).

information collection summarized below.

1. *The title of the information collection:* NRC Form 5, "Occupational Dose Record for a Monitoring Period."
2. *OMB approval number:* 3150-0006.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 5.
5. *How often the collection is required or requested:* Annually.
6. *Who will be required or asked to respond:* NRC licensees who are required to comply with part 20 of title 10 of the Code of Federal Regulations (10 CFR).
7. *The estimated number of annual responses:* 4,656 (252 reporting + 4,404 recordkeepers).
8. *The estimated number of annual respondents:* 4,404.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 109,060 (7,560 reporting + 101,500 recordkeeping).
10. *Abstract:* NRC Form 5 is used to record and report the results of individual monitoring for occupational radiation exposure during a monitoring period (one calendar year) to ensure regulatory compliance with annual radiation dose limits specified in 10 CFR 20.1201.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.
2. Is the estimate of the burden of the information collection accurate? Please explain your answer.
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: August 24, 2023.

For the Nuclear Regulatory Commission.

Kristen E. Benney,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023-18662 Filed 8-29-23; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2023-0060]

Information Collection: Codes and Standards

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on this proposed information collection. The information collection is entitled, "Codes and Standards."

DATES: Submit comments by October 30, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0060. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T-6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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

FOR FURTHER INFORMATION CONTACT:

David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2023-0060 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0060.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. The supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML23072A435 and ML23072A434.

- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2023-0060, in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

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

the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 50.55a, Codes and Standards.
2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.
3. *Type of submission:* New.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* Reports are submitted on occasion, typically at each refueling outage or when an alternative is requested. Inservice Testing Program Test and Examination Plans must be submitted within 90 days of their implementation for the applicable 120-month IST Program interval.
6. *Who will be required or asked to respond:* Licensees and applicants for or holders of an operating license or construction permit, applicants for a standard design certification under part 52 of this chapter or an applicant for or holder of a standard design approval, or a combined license.
7. *The estimated number of annual responses:* 754 (660 reporting responses plus 94 recordkeepers).
8. *The estimated number of annual respondents:* 94.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 336,416 (119,276 reporting + 217,140 recordkeeping).
10. *Abstract:* Part 50.55a of title 10 of the Code of Federal Regulations (10 CFR), "Codes and Standards," specifies technical information and data to be provided to the NRC or maintained by applicants and licensees so that the NRC may take determinations necessary to protect the health and safety of the public, in accordance with the Atomic Energy Act of 1954, as amended. The reporting and recordkeeping requirements contained in 10 CFR part 50.55a are mandatory for the affected licensees and applicants.

10. *Abstract:* Part 50.55a of title 10 of the Code of Federal Regulations (10 CFR), "Codes and Standards," specifies technical information and data to be provided to the NRC or maintained by applicants and licensees so that the NRC may take determinations necessary to protect the health and safety of the public, in accordance with the Atomic Energy Act of 1954, as amended. The reporting and recordkeeping requirements contained in 10 CFR part 50.55a are mandatory for the affected licensees and applicants.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the

information have practical utility? Please explain your answer.

2. Is the estimate of the burden of the information collection accurate? Please explain your answer.

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: August 24, 2023.

For the Nuclear Regulatory Commission.

Kristen E. Benney,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023-18661 Filed 8-29-23; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2022-0211]

Information Collection: NRC Form 4, Cumulative Occupational Dose History

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, "NRC Form 4, Cumulative Occupational Dose History."

DATES: Submit comments by October 30, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2022-0211. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T-6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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

FOR FURTHER INFORMATION CONTACT:

David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2022-0211 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2022-0211.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. The supporting statement and NRC Form 4 are available in ADAMS under Accession Nos. ML23082A177 and ML23082A160.

- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>)

www.regulations.gov). Please include Docket ID NRC–2022–0211, in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

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

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 4, "Cumulative Occupational Dose History."
2. *OMB approval number:* 3150–0005.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 4.
5. *How often the collection is required or requested:* On Occasion.
6. *Who will be required or asked to respond:* NRC licensees who are required to comply with 10 CFR part 20.
7. *The estimated number of annual responses:* 243,429 (1,880 reporting + 237,145 third-party disclosure + 4,404 recordkeepers).
8. *The estimated number of annual respondents:* 4,404.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 66,558 (157 reporting + 7,115 third-party disclosure + 59,286 recordkeeping).
10. *Abstract:* Abstract: The NRC Form 4 is used to record the summary of an occupational worker's cumulative occupational radiation dose, including prior occupational exposure and the current year's occupational radiation exposure. The NRC Form 4 is used by licensees, and inspected by the NRC, to ensure that occupational radiation doses

do not exceed the regulatory limits specified in 10 CFR 20.1501.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.
2. Is the estimate of the burden of the information collection accurate? Please explain your answer.
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: August 24, 2023.

For the Nuclear Regulatory Commission.

Kristen E. Benney,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–18665 Filed 8–29–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2020–172; CP2023–35; MC2023–244 and CP2023–247; MC2023–245 and CP2023–248; MC2023–246 and CP2023–249; MC2023–247 and CP2023–250; MC2023–248 and CP2023–251; MC2023–249 and CP2023–252]

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 31, 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

II. Docketed Proceeding(s)

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):* CP2020–172; *Filing Title:* Notice of the United States Postal Service of Filing Modification Three to Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date:* August 23, 2023;

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).

Filing Authority: 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* August 31, 2023.

2. *Docket No(s).*: CP2023–35; *Filing Title:* Notice of the United States Postal Service of Filing Modification One to Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 11; *Filing Acceptance Date:* August 23, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* August 31, 2023.

3. *Docket No(s).*: MC2023–244 and CP2023–247; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 36 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 23, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Philip Abraham; *Comments Due:* August 31, 2023.

4. *Docket No(s).*: MC2023–245 and CP2023–248; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 37 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 23, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Philip Abraham; *Comments Due:* August 31, 2023.

5. *Docket No(s).*: MC2023–246 and CP2023–249; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 38 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 23, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Philip Abraham; *Comments Due:* August 31, 2023.

6. *Docket No(s).*: MC2023–247 and CP2023–250; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 39 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 23, 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 31, 2023.

7. *Docket No(s).*: MC2023–248 and CP2023–251; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 40 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 23, 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 31, 2023.

8. *Docket No(s).*: MC2023–249 and CP2023–252; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 41 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 23, 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 31, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2023–18666 Filed 8–29–23; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–11224; 34–98223/August 25, 2023]

Order Making Fiscal Year 2024 Annual Adjustments to Registration Fee Rates

I. Background

The Commission collects fees under various provisions of the securities laws. Section 6(b) of the Securities Act of 1933 (“Securities Act”) requires the Commission to collect fees from issuers on the registration of securities.¹ Section 13(e) of the Securities Exchange Act of 1934 (“Exchange Act”) requires the Commission to collect fees on specified repurchases of securities.² Section 14(g) of the Exchange Act requires the Commission to collect fees on specified proxy solicitations and statements in corporate control transactions.³ These provisions require the Commission to make annual adjustments to the applicable fee rates.

II. Fiscal Year 2024 Annual Adjustment to Fee Rates

Section 6(b)(2) of the Securities Act requires the Commission to make an annual adjustment to the fee rate applicable under Section 6(b).⁴ The annual adjustment to the fee rate under

Section 6(b) of the Securities Act also sets the annual adjustment to the fee rates under Sections 13(e) and 14(g) of the Exchange Act.⁵

Section 6(b)(2) sets forth the method for determining the annual adjustment to the fee rate under Section 6(b) for fiscal year 2024. Specifically, the Commission must adjust the fee rate under Section 6(b) to a “rate that, when applied to the baseline estimate of the aggregate maximum offering prices for [fiscal year 2024], is reasonably likely to produce aggregate fee collections under [Section 6(b)] that are equal to the target fee collection amount for [fiscal year 2024].” That is, the adjusted rate is determined by dividing the “target fee collection amount” for fiscal year 2024 by the “baseline estimate of the aggregate maximum offering prices” for fiscal year 2024.

III. Target Fee Collection Amount for FY 2024

The statutory “target fee collection amount” for fiscal year 2021 and “each fiscal year thereafter” is “an amount that is equal to the target fee collection amount for the prior fiscal year, adjusted by the rate of inflation.”⁶ Consistent with the fiscal year 2021 calculation, the Commission has determined that it will use an approach similar to one that it uses to annually adjust civil monetary penalties by the rate of inflation.⁷ Under this approach, the Commission will use the year-over-year change, rounded to five decimal places, in the Consumer Price Index for All Urban Consumers (“CPI–U”), not seasonally adjusted, in calculating the target fee collection amount, which is then rounded to the nearest whole dollar. The calculation for the fiscal year 2024 target fee collection amount is described in more detail below.

The most recent CPI–U index value, not seasonally adjusted, available for use by the Commission at the time this fee rate update was prepared was for June 2023. This value is 305.109.⁸ The CPI–U index value, not seasonally

⁵ 15 U.S.C. 78m(e)(4) and 15 U.S.C. 78n(g)(4).

⁶ 15 U.S.C. 77f(b)(6)(A).

⁷ The Commission annually adjusts for inflation the civil monetary penalties that can be imposed under the statutes administered by Commission, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, pursuant to guidance from the Office of Management and Budget (“OMB”). See OMB Dec. 16, 2019, Memorandum for the Heads of Executive Departments and Agencies, “M–20–05, on ‘Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.’”

⁸ This value was announced on July 12, 2023. See https://www.bls.gov/news.release/archives/cpi_07122023.htm.

¹ 15 U.S.C. 77f(b).

² 15 U.S.C. 78m(e).

³ 15 U.S.C. 78n(g).

⁴ 15 U.S.C. 77f(b)(2). The annual adjustments are designed to adjust the fee rate in a given fiscal year so that, when applied to the aggregate maximum offering prices at which securities are proposed to be offered for the fiscal year, it is reasonably likely to produce total fee collections under Section 6(b) equal to the “target fee collection amount” required by Section 6(b)(6)(A) for that fiscal year.

adjusted, for June 2022 is 296.311.⁹ Dividing the June 2023 value by the June 2022 value and rounding to five decimal places yields a multiplier value of 1.02969. Multiplying the fiscal year 2023 target fee collection amount of \$815,557,629¹⁰ by the multiplier value of 1.02969 and rounding to the nearest whole dollar yields a fiscal year 2024 target fee collection amount of \$839,771,535.

Section 6(b)(6)(B) defines the “baseline estimate of the aggregate maximum offering prices” for fiscal year 2024 as “the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during [fiscal year 2024] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget”

To make the baseline estimate of the aggregate maximum offering prices for fiscal year 2024, the Commission is using the methodology it has used in prior fiscal years and that was developed in consultation with the Congressional Budget Office and OMB.¹¹ Using this methodology, the Commission determines the “baseline estimate of the aggregate maximum offering price” for fiscal year 2024 to be \$5,690,702,748,940. Based on this estimate and the fiscal year 2024 target fee collection amount, the Commission calculates the fee rate for fiscal year 2024 to be \$147.60 per million. This adjusted fee rate applies to Section 6(b) of the Securities Act, as well as to Sections 13(e) and 14(g) of the Exchange Act.

IV. Effective Dates of the Annual Adjustments

The fiscal year 2024 annual adjustments to the fee rates applicable under Section 6(b) of the Securities Act

and Sections 13(e) and 14(g) of the Exchange Act will be effective on October 1, 2023.¹²

V. Conclusion

Accordingly, pursuant to Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act,¹³

It is hereby ordered that the fee rates applicable under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act shall be \$147.60 per million effective on October 1, 2023.

By the Commission.

J. Matthew DeLesDernier,
Deputy Secretary.

Appendix A

Congress has established a target amount of monies to be collected from fees charged to issuers based on the value of their registrations. This appendix provides the formula for determining such fees, which the Commission adjusts annually. Congress has mandated that the Commission determine these fees based on the “aggregate maximum offering prices,” which measures the aggregate dollar amount of securities registered with the Commission over the course of the year (hereafter, “registrations”). In order to maximize the likelihood that the amount of monies targeted by Congress will be collected, the fee rate must be set to reflect projected aggregate maximum offering prices. As a percentage, the fee rate equals the ratio of the target amounts of monies to the projected aggregate maximum offering prices.

For 2024, the Commission has estimated the aggregate maximum offering prices by projecting forward the trend established in the previous decade. More specifically, an auto-regressive integrated moving average (“ARIMA”) model was used to forecast the value of the aggregate maximum offering prices for months subsequent to July 2023, the last month for which the Commission has data on the aggregate maximum offering prices.

The following sections describe this process in detail.

A. Baseline Estimate of the Aggregate Maximum Offering Prices for Fiscal Year 2024

First, calculate the aggregate maximum offering prices (AMOP) for each month in the sample (July 2013 through July 2023). Next, calculate the percentage change in the AMOP from month to month.

Model the monthly percentage change in AMOP as a first order moving average process. The moving average approach allows one to model the effect that an

exceptionally high (or low) observation of AMOP tends to be followed by a more “typical” value of AMOP.

Use the [estimated moving average] [ARIMA] model to forecast the monthly percent change in AMOP. These percent changes can then be applied to obtain forecasts of the total dollar value of registrations. The following is a more formal (mathematical) description of the procedure:

1. Begin with the monthly data for AMOP. The sample spans ten years, from July 2013 to July 2023.

2. Divide each month’s AMOP (column C) by the number of trading days in that month (column B) to obtain the average daily AMOP (AAMOP, column D).

3. For each month t , the natural logarithm of AAMOP is reported in column E.

4. Calculate the change in $\log(\text{AAMOP})$ from the previous month as $\Delta_t = \log(\text{AAMOP}_t) - \log(\text{AAMOP}_{t-1})$. This approximates the percentage change.

5. Estimate the first order moving average model $\Delta_t = \alpha + \beta e_{t-1} + e_t$, where e_t denotes the forecast error for month t . The forecast error is simply the difference between the one-month ahead forecast and the actual realization of Δ_t . The forecast error is expressed as $e_t = \Delta_t - \alpha - \beta e_{t-1}$. The model can be estimated using standard commercially available software. Using least squares, the estimated parameter values are $\alpha = 0.0034213782$ and $\beta = 0.8643834013$.

6. For the month of August 2023 forecast $\Delta_t = 8/2023 = \alpha + \beta e_{t-1} = 7/2023$. For all subsequent months, forecast $\Delta_t = \alpha$.

7. Calculate forecasts of $\log(\text{AAMOP})$. For example, the forecast of $\log(\text{AAMOP})$ for October 2023 is given by $\text{FLAAMOP}_{t=10/2023} = \log(\text{AAMOP}_{t=7/2023}) + \Delta_{t=8/2023} + \Delta_{t=9/2023} + \Delta_{t=10/2023}$.

8. Under the assumption that e_t is normally distributed, the n -step ahead forecast of AAMOP is given by $\exp(\text{FLAAMOP}_t + \sigma_n^2/2)$, where σ_n denotes the standard error of the n -step ahead forecast.

9. For October 2023, this gives a forecast AAMOP of \$22,085 million (Column I), and a forecast AMOP of \$485,871 million (Column J).

10. Iterate this process through September 2024 to obtain a baseline estimate of the aggregate maximum offering prices for fiscal year 2024 of \$5,690,702,748,940.

B. Using the Forecasts From A To Calculate the New Fee Rate

1. Using the data from Table A, estimate the aggregate maximum offering prices between 10/01/23 and 9/30/24 to be \$5,690,702,748,940.

2. The rate necessary to collect the target \$839,771,535 in fee revenues required by Section 6(b) of the Securities Act is then calculated as: $\$839,771,535 \div \$5,690,702,748,940 = 0.0001475690$.

3. Round the result to the seventh decimal point, yielding a rate of 0.0001476 (or \$147.60 per million).

⁹ See “Table 1. Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, by expenditure category, June 2023” in the announcement referenced above.

¹⁰ See 87 FR 53030, published Aug. 30, 2022 (<https://www.federalregister.gov/documents/2022/08/30/2022-18668/order-making-fiscal-year-2023-annual-adjustments-to-registration-fee-rates>).

¹¹ Appendix A explains how we determined the “baseline estimate of the aggregate maximum offering prices” for fiscal year 2024 using our methodology, and then shows the arithmetical process of calculating the fiscal year 2024 annual adjustment based on that estimate. The appendix includes the data used by the Commission in making its “baseline estimate of the aggregate maximum offering prices” for fiscal year 2024.

¹² 15 U.S.C. 77f(b)(4), 15 U.S.C. 78m(e)(6), and 15 U.S.C. 78n(g)(6).

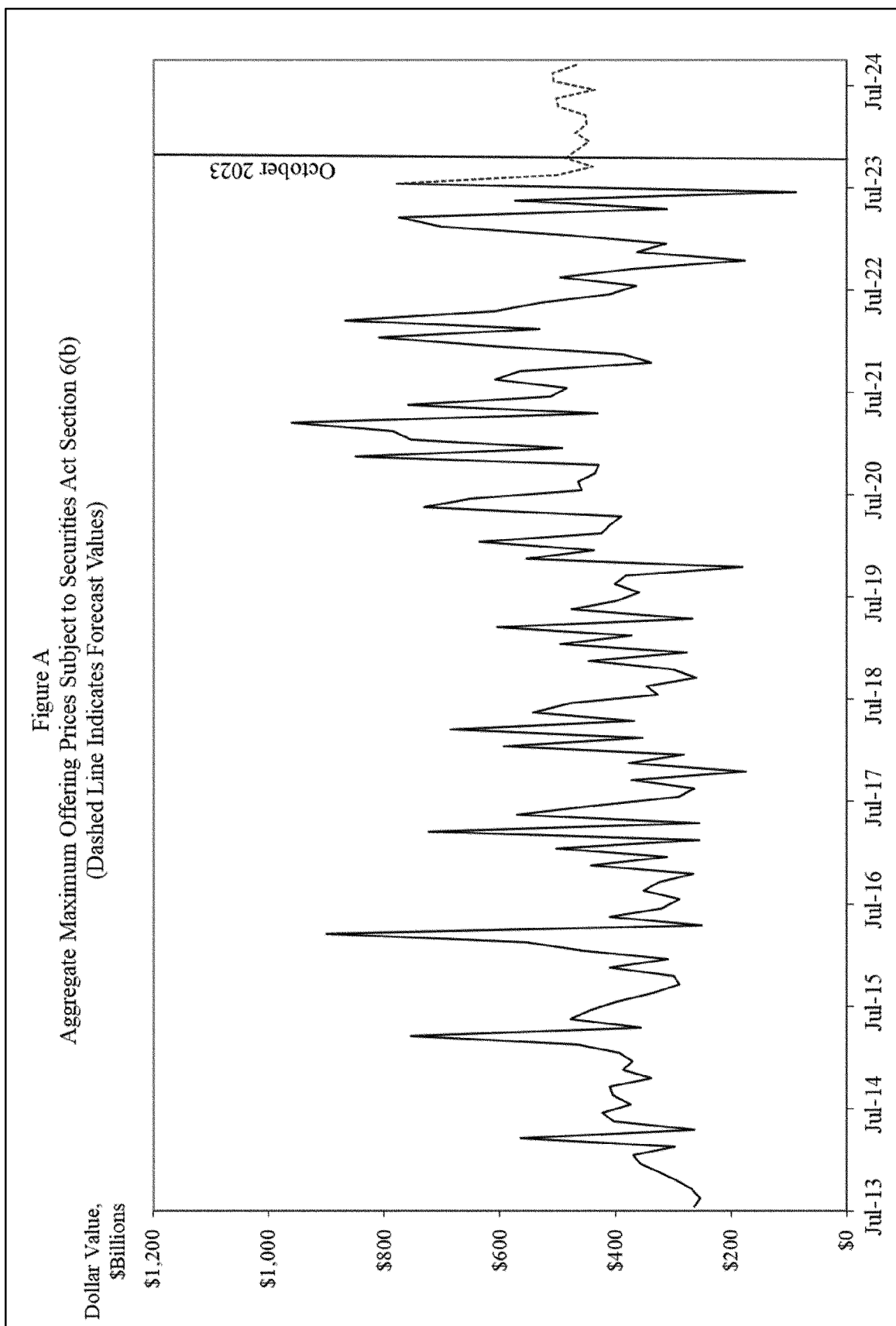
¹³ 15 U.S.C. 77f(b), 78m(e), and 78n(g).

TABLE A—ESTIMATION OF BASELINE OF AGGREGATE MAXIMUM OFFERING PRICES
[Fee rate calculation]

a. Baseline estimate of the aggregate maximum offering prices, 10/01/23 to 09/30/24 (\$Millions)	5,690,703
b. Implied fee rate (\$839,771,535 / a)	\$147.60

Month	Number of trading days in month	Aggregate maximum offering prices, in \$Millions	Average daily aggregate max. offering prices (AAMOP) in \$Millions	log(AAMOP)	Log (change in AAMOP)	Forecast log(AAMOP)	Standard error	Forecast AAMOP, in \$Millions	Forecast aggregate maximum offering prices, in \$Millions
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)
Jul-13	22	263,869	11,994	23.208	.....	.....	.....	.....	.....
Aug-13	22	253,305	11,514	23.167	−0.041	.....	.....	.....	.....
Sep-13	20	267,923	13,396	23.318	0.151	.....	.....	.....	.....
Oct-13	23	293,847	12,776	23.271	−0.047	.....	.....	.....	.....
Nov-13	20	326,257	16,313	23.515	0.244	.....	.....	.....	.....
Dec-13	21	358,169	17,056	23.560	0.045	.....	.....	.....	.....
Jan-14	21	369,067	17,575	23.590	0.030	.....	.....	.....	.....
Feb-14	19	298,376	15,704	23.477	−0.113	.....	.....	.....	.....
Mar-14	21	564,840	26,897	24.015	0.538	.....	.....	.....	.....
Apr-14	21	263,401	12,543	23.252	−0.763	.....	.....	.....	.....
May-14	21	403,700	19,224	23.679	0.427	.....	.....	.....	.....
Jun-14	21	423,075	20,146	23.726	0.047	.....	.....	.....	.....
Jul-14	22	373,811	16,991	23.556	−0.170	.....	.....	.....	.....
Aug-14	21	405,017	19,287	23.683	0.127	.....	.....	.....	.....
Sep-14	21	409,349	19,493	23.693	0.011	.....	.....	.....	.....
Oct-14	23	338,832	14,732	23.413	−0.280	.....	.....	.....	.....
Nov-14	19	386,898	20,363	23.737	0.324	.....	.....	.....	.....
Dec-14	22	370,760	16,853	23.548	−0.189	.....	.....	.....	.....
Jan-15	20	394,127	19,706	23.704	0.156	.....	.....	.....	.....
Feb-15	19	466,138	24,534	23.923	0.219	.....	.....	.....	.....
Mar-15	22	753,747	34,261	24.257	0.334	.....	.....	.....	.....
Apr-15	21	356,560	16,979	23.555	−0.702	.....	.....	.....	.....
May-15	20	478,591	23,930	23.898	0.343	.....	.....	.....	.....
Jun-15	22	446,102	20,277	23.733	−0.166	.....	.....	.....	.....
Jul-15	22	402,062	18,276	23.629	−0.104	.....	.....	.....	.....
Aug-15	21	334,746	15,940	23.492	−0.137	.....	.....	.....	.....
Sep-15	21	289,872	13,803	23.348	−0.144	.....	.....	.....	.....
Oct-15	22	300,276	13,649	23.337	−0.011	.....	.....	.....	.....
Nov-15	20	409,690	20,485	23.743	0.406	.....	.....	.....	.....
Dec-15	22	308,569	14,026	23.364	−0.379	.....	.....	.....	.....
Jan-16	19	457,411	24,074	23.904	0.540	.....	.....	.....	.....
Feb-16	20	554,343	27,717	24.045	0.141	.....	.....	.....	.....
Mar-16	22	900,301	40,923	24.435	0.390	.....	.....	.....	.....
Apr-16	21	250,716	11,939	23.203	−1.232	.....	.....	.....	.....
May-16	21	409,992	19,523	23.695	0.492	.....	.....	.....	.....
Jun-16	22	321,219	14,601	23.404	−0.291	.....	.....	.....	.....
Jul-16	20	289,671	14,484	23.396	−0.008	.....	.....	.....	.....
Aug-16	23	352,068	15,307	23.452	0.055	.....	.....	.....	.....
Sep-16	21	326,116	15,529	23.466	0.014	.....	.....	.....	.....
Oct-16	21	266,115	12,672	23.263	−0.203	.....	.....	.....	.....
Nov-16	21	443,034	21,097	23.772	0.510	.....	.....	.....	.....
Dec-16	21	310,614	14,791	23.417	−0.355	.....	.....	.....	.....
Jan-17	20	503,030	25,152	23.948	0.531	.....	.....	.....	.....
Feb-17	19	255,815	13,464	23.323	−0.625	.....	.....	.....	.....
Mar-17	23	723,870	31,473	24.172	0.849	.....	.....	.....	.....
Apr-17	19	255,275	13,436	23.321	−0.851	.....	.....	.....	.....
May-17	22	569,965	25,908	23.978	0.657	.....	.....	.....	.....
Jun-17	22	445,081	20,231	23.730	−0.247	.....	.....	.....	.....
Jul-17	20	291,167	14,558	23.401	−0.329	.....	.....	.....	.....
Aug-17	23	263,981	11,477	23.164	−0.238	.....	.....	.....	.....
Sep-17	20	372,705	18,635	23.648	0.485	.....	.....	.....	.....
Oct-17	22	173,749	7,898	22.790	−0.858	.....	.....	.....	.....
Nov-17	21	377,262	17,965	23.612	0.822	.....	.....	.....	.....
Dec-17	20	281,126	14,056	23.366	−0.245	.....	.....	.....	.....
Jan-18	21	593,025	28,239	24.064	0.698	.....	.....	.....	.....
Feb-18	19	353,182	18,589	23.646	−0.418	.....	.....	.....	.....
Mar-18	21	685,784	32,656	24.209	0.563	.....	.....	.....	.....
Apr-18	21	367,569	17,503	23.586	−0.624	.....	.....	.....	.....
May-18	22	543,840	24,720	23.931	0.345	.....	.....	.....	.....
Jun-18	21	477,967	22,760	23.848	−0.083	.....	.....	.....	.....
Jul-18	21	327,710	15,605	23.471	−0.377	.....	.....	.....	.....
Aug-18	23	347,239	15,097	23.438	−0.033	.....	.....	.....	.....
Sep-18	19	259,874	13,678	23.339	−0.099	.....	.....	.....	.....
Oct-18	23	300,814	13,079	23.294	−0.045	.....	.....	.....	.....
Nov-18	21	447,767	21,322	23.783	0.489	.....	.....	.....	.....
Dec-18	19	276,130	14,533	23.400	−0.383	.....	.....	.....	.....
Jan-19	21	495,624	23,601	23.885	0.485	.....	.....	.....	.....
Feb-19	19	372,166	19,588	23.698	−0.186	.....	.....	.....	.....

Month	Number of trading days in month	Aggregate maximum offering prices, in \$Millions	Average daily aggregate max. offering prices (AAMOP) in \$Millions	log(AAMOP)	Log (change in AAMOP)	Forecast log(AAMOP)	Standard error	Forecast AAMOP, in \$Millions	Forecast aggregate maximum offering prices, in \$Millions
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)
Mar-19	21	604,813	28,801	24.084	0.385	.....	.....	.....	.....
Apr-19	21	267,737	12,749	23.269	-0.815	.....	.....	.....	.....
May-19	22	476,892	21,677	23.800	0.531	.....	.....	.....	.....
Jun-19	20	399,178	19,959	23.717	-0.083	.....	.....	.....	.....
Jul-19	22	359,438	16,338	23.517	-0.200	.....	.....	.....	.....
Aug-19	22	401,391	18,245	23.627	0.110	.....	.....	.....	.....
Sep-19	20	382,876	19,144	23.675	0.048	.....	.....	.....	.....
Oct-19	23	181,113	7,874	22.787	-0.888	.....	.....	.....	.....
Nov-19	20	553,889	27,694	24.044	1.258	.....	.....	.....	.....
Dec-19	21	438,062	20,860	23.761	-0.283	.....	.....	.....	.....
Jan-20	21	636,403	30,305	24.135	0.373	.....	.....	.....	.....
Feb-20	19	424,133	22,323	23.829	-0.306	.....	.....	.....	.....
Mar-20	22	409,403	18,609	23.647	-0.182	.....	.....	.....	.....
Apr-20	21	389,821	18,563	23.644	-0.002	.....	.....	.....	.....
May-20	20	731,835	36,592	24.323	0.679	.....	.....	.....	.....
Jun-20	22	650,219	29,555	24.110	-0.214	.....	.....	.....	.....
Jul-20	22	457,871	20,812	23.759	-0.351	.....	.....	.....	.....
Aug-20	21	465,953	22,188	23.823	0.064	.....	.....	.....	.....
Sep-20	21	435,323	20,730	23.755	-0.068	.....	.....	.....	.....
Oct-20	22	429,638	19,529	23.695	-0.060	.....	.....	.....	.....
Nov-20	20	849,894	42,495	24.473	0.777	.....	.....	.....	.....
Dec-20	22	493,133	22,415	23.833	-0.640	.....	.....	.....	.....
Jan-21	19	753,590	39,663	24.404	0.571	.....	.....	.....	.....
Feb-21	19	785,163	41,324	24.445	0.041	.....	.....	.....	.....
Mar-21	23	960,806	41,774	24.456	0.011	.....	.....	.....	.....
Apr-21	21	430,803	20,514	23.744	-0.711	.....	.....	.....	.....
May-21	20	759,512	37,976	24.360	0.616	.....	.....	.....	.....
Jun-21	22	512,966	23,317	23.872	-0.488	.....	.....	.....	.....
Jul-21	21	485,097	23,100	23.863	-0.009	.....	.....	.....	.....
Aug-21	22	608,745	27,670	24.044	0.181	.....	.....	.....	.....
Sep-21	21	565,229	26,916	24.016	-0.028	.....	.....	.....	.....
Oct-21	21	338,100	16,100	23.502	-0.514	.....	.....	.....	.....
Nov-21	21	387,841	18,469	23.639	0.137	.....	.....	.....	.....
Dec-21	22	618,897	28,132	24.060	0.421	.....	.....	.....	.....
Jan-22	20	809,773	40,489	24.424	0.364	.....	.....	.....	.....
Feb-22	19	531,622	27,980	24.055	-0.370	.....	.....	.....	.....
Mar-22	23	868,009	37,740	24.354	0.299	.....	.....	.....	.....
Apr-22	20	607,591	30,380	24.137	-0.217	.....	.....	.....	.....
May-22	21	529,417	25,210	23.951	-0.187	.....	.....	.....	.....
Jun-22	21	410,380	19,542	23.696	-0.255	.....	.....	.....	.....
Jul-22	20	364,895	18,245	23.627	-0.069	.....	.....	.....	.....
Aug-22	23	495,621	21,549	23.794	0.166	.....	.....	.....	.....
Sep-22	21	371,472	17,689	23.596	-0.197	.....	.....	.....	.....
Oct-22	21	175,612	8,362	22.847	-0.749	.....	.....	.....	.....
Nov-22	21	362,262	17,251	23.571	0.724	.....	.....	.....	.....
Dec-22	21	311,922	14,853	23.421	-0.150	.....	.....	.....	.....
Jan-23	20	484,759	24,238	23.911	0.490	.....	.....	.....	.....
Feb-23	19	700,233	36,854	24.330	0.419	.....	.....	.....	.....
Mar-23	23	775,232	33,706	24.241	-0.089	.....	.....	.....	.....
Apr-23	19	310,952	16,366	23.518	-0.722	.....	.....	.....	.....
May-23	22	574,632	26,120	23.986	0.467	.....	.....	.....	.....
Jun-23	21	87,686	4,176	22.153	-1.833	.....	.....	.....	.....
Jul-23	20	778,808	38,940	24.385	2.233	.....	.....	.....	.....
Aug-23	23	.....	.....	.....	.....	23.737	0.380	21,876	503,156
Sep-23	20	.....	.....	.....	.....	23.740	0.383	21,980	439,609
Oct-23	22	.....	.....	.....	.....	23.743	0.387	22,085	485,871
Nov-23	21	.....	.....	.....	.....	23.747	0.390	22,190	465,993
Dec-23	20	.....	.....	.....	.....	23.750	0.393	22,296	445,914
Jan-24	21	.....	.....	.....	.....	23.754	0.397	22,402	470,438
Feb-24	20	.....	.....	.....	.....	23.757	0.400	22,508	450,168
Mar-24	20	.....	.....	.....	.....	23.761	0.403	22,616	452,311
Apr-24	22	.....	.....	.....	.....	23.764	0.407	22,723	499,909
May-24	22	.....	.....	.....	.....	23.767	0.410	22,831	502,288
Jun-24	19	.....	.....	.....	.....	23.771	0.413	22,940	435,859
Jul-24	22	.....	.....	.....	.....	23.774	0.416	23,049	507,080
Aug-24	22	.....	.....	.....	.....	23.778	0.420	23,159	509,493
Sep-24	20	.....	.....	.....	.....	23.781	0.423	23,269	465,379



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98212; File No. SR–FINRA–2022–032]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Alternative Display Facility New Entrant

August 24, 2023.

I. Introduction

On December 16, 2022, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission” or “SEC”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) ¹ and Rule 19b–4 thereunder,² a proposed rule change (the “Proposal”) to add IntelligentCross ATS (“IntelligentCross”) as a new entrant to the Alternative Display Facility (“ADF”). The proposed rule change was published for comment in the **Federal Register** on December 27, 2022.³ On February 9, 2023, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to March 27, 2023.⁴ On March 24, 2023, the Commission initiated proceedings under Section 19(b)(2)(B) of the Exchange Act⁵ to determine whether to approve or disapprove the proposed rule change.⁶ On June 21, 2023, the Commission extended the time period for Commission action to August 24, 2023.⁷ The Commission has received comments on the proposed rule change.⁸ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The ADF is a quotation collection and trade reporting facility that provides ADF participants (*i.e.*, ADF-registered market makers or electronic

communications networks)⁹ the ability to post quotations, display orders and report transactions in NMS stocks¹⁰ for submission to the securities information processors (“SIP”) for consolidation and dissemination to vendors and other market participants.¹¹ The ADF is also designed to deliver real-time data to FINRA for regulatory purposes, including enforcement of requirements imposed by Regulation NMS.¹²

In particular, Regulation NMS includes an order protection rule that provides that a trading center “shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks” that do not fall within one of the exceptions set forth in the rule.¹³ For quotations to be protected under the rule, they must be, among other things, executable “immediately and automatically” against an incoming immediate-or-cancel (“IOC”) order.¹⁴ In 2016, the Commission interpreted Regulation NMS’s immediacy requirement to allow for “an intentional access delay that is *de minimis*—*i.e.*, a delay so short as to not frustrate the purposes of Rule 611 by impairing fair and efficient access to an exchange’s quotations.”¹⁵ The Commission stated that “[i]n the context of Regulation NMS, the term ‘immediate’ does not preclude all intentional delays regardless of their duration, and such preclusion is not necessary to achieve the objectives of Rule 611. As long as any intentional delay is *de minimis*—*i.e.*, does not impair fair and efficient access to an exchange’s protected quotations—it is consistent with both the text and purpose of Rule 611.”¹⁶

In addition, Rule 610 of Regulation NMS requires that a trading center displaying quotations in an NMS stock through a self-regulatory organization (“SRO”) display-only facility (such as the ADF) “provide a level and cost of access to such quotations that is

substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities in that stock.”¹⁷ Rule 610 also requires that a trading center displaying quotations in an NMS stock through an SRO display-only facility not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotations through a member, subscriber, or customer of the trading center.¹⁸ In articulating this standard, the Commission stated that the level and cost of access would “encompass both (1) the policies, procedures, and standards that govern access to quotations of the trading center, and (2) the connectivity through which market participants can obtain access and the cost of such connectivity.”¹⁹ The nature and cost of connections for market participants seeking to access an ADF participant’s quotations would need to be substantially equivalent to the nature and cost of connections to SRO trading facilities.²⁰

In evaluating whether a prospective ADF participant meets the access standards under Rule 610, Regulation NMS requires FINRA to submit a proposed rule change under Section 19(b) of the Exchange Act in order to add the new ADF participant.²¹ Accordingly, FINRA is proposing to add IntelligentCross as a new ADF participant.²² IntelligentCross is an NMS stock alternative trading system (“ATS”) operating pursuant to an effective Form ATS–N.²³ IntelligentCross currently operates three separate limit order books with optional display capability distinguished by different fee structures—the ASPEN fee/fee limit order book (“ASPEN Fee/Fee book”), ASPEN maker/taker limit order book, and ASPEN taker/maker limit order book (collectively, “IntelligentCross ASPEN”).²⁴ FINRA

¹⁷ 17 CFR 242.610(b)(1).

¹⁸ 17 CFR 242.610(b)(2).

¹⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37549 (June 29, 2005) (“NMS Adopting Release”).

²⁰ See *id.*

²¹ See Notice, *supra* note 3, at 79401.

²² According to FINRA, there have been no ADF participants since the first quarter of 2015. See *id.*

²³ See Form ATS–N Filings and Information page on the Commission’s website, at <https://www.sec.gov/divisions/marketreg/form-ats-n-filings.htm>.

²⁴ See Notice, *supra* note 3, at 79402. FINRA states that all three IntelligentCross ASPEN order books act independently of each other (*i.e.*, orders resting in one book do not rest on or interact with orders resting in another book). See *id.* In addition to IntelligentCross ASPEN, FINRA states that IntelligentCross also operates a midpoint book that only accepts non-displayed midpoint orders, which is distinct from and does not interact with the

⁹ See FINRA Rule 6220(a)(3).

¹⁰ See 17 CFR 242.600.

¹¹ See Notice, *supra* note 3, at 79401.

¹² See 17 CFR 242.600.

¹³ See 17 CFR 242.611 (“Order Protection Rule” or “Rule 611”).

¹⁴ 17 CFR 242.600(b)(6).

¹⁵ Commission Interpretation Regarding Automated Quotations Under Regulation NMS, Securities Exchange Act Release No. 78102 (June 17, 2016), 81 FR 40785, 40792 (June 23, 2016) (“Commission Interpretation of Automated Quotations”).

¹⁶ See *id.* at 40789; see also *Citadel Secs. LLC v. SEC*, 45 F.4th 27, 35 (D.C. Cir. 2022) (finding the Commission’s conclusion that “mere *de minimis* delays do not cause an order to violate Regulation NMS’s immediacy requirement” was reasonable).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 96550 (December 20, 2022), 87 FR 79401 (“Notice”).

⁴ See Securities Exchange Act Release No. 96864, 88 FR 9945 (February 15, 2023).

⁵ 15 U.S.C. 78s(b)(2)(B).

⁶ See Securities Exchange Act Release No. 97195, 88 FR 19173 (March 30, 2023).

⁷ See Securities Exchange Act Release No. 97784, 88 FR 41710 (June 27, 2023).

⁸ Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-fina-2022-032/srfina2022032.htm>.

states that the ASPEN Fee/Fee book would be the only order book displaying orders on the ADF.²⁵

IntelligentCross provided FINRA with a summary of its policies and procedures regarding access to its quotations in an NMS stock displayed on the ADF, and a summary of its proposed fees for such access.²⁶ Based on IntelligentCross' representations, FINRA believes that IntelligentCross' proposed level and cost of access to quotations on the ASPEN Fee/Fee book is substantially equivalent to the level and cost of access to quotations displayed by an SRO trading facility, both in absolute and relative terms.²⁷ FINRA also believes that the quotations displayed on ASPEN Fee/Fee book would meet the definition of an "automated quotation" under Regulation NMS.²⁸

In particular, FINRA states that IntelligentCross only permits registered broker-dealers to be subscribers to IntelligentCross, and subscribers can interact with the ASPEN Fee/Fee book using conventional order types.²⁹ The ASPEN Fee/Fee book will accept incoming intermarket sweep orders ("ISOs")³⁰ once it displays orders on the ADF.³¹

FINRA states that the ASPEN Fee/Fee book establishes a matching schedule³² using an overnight optimization process based on historical performance measurements from prior days' matches across all three IntelligentCross ASPEN books.³³ The match event time is

randomized within the time band throughout the course of the trading day and any order that arrives prior to a match event (and that has not been cancelled, become unmarketable, or repriced)³⁴ is eligible to participate in the next match event for that security.³⁵

IntelligentCross has represented to FINRA that, in the following cases, an incoming order on ASPEN Fee/Fee book may not execute against a resting order at match event time when: (i) an existing resting order cancels prior to the next match event; (ii) an incoming order is cancelled prior to the next match event; (iii) the NBBO moves between the time an order is received and the next match event takes place, making either the incoming order or the resting order non-marketable; or (iv) the NBBO changed before the next match event and pegged orders were repriced to the new NBBO, making the incoming order or the resting pegged order non-marketable.³⁶

FINRA states that the ASPEN Fee/Fee book's matching engine operates near-continuously and that, when a new order arrives in the ASPEN Fee/Fee book, it would participate in the next scheduled match event by interacting with existing orders in the order book within a maximum time capped at 900 microseconds.³⁷

FINRA states that for each match event time, the ASPEN Fee/Fee book retrieves the NBBO and processes all the orders that have arrived and have not been cancelled in price-time priority.³⁸ No subscriber to IntelligentCross (or non-subscriber accessing IntelligentCross through a subscriber) is given any priority through the matching

process and the matching process is blind to the identity of the subscriber.³⁹ All matches are reported immediately to subscribers and the SIPs via a FINRA trade reporting facility and disseminated on IntelligentCross' market data feed.⁴⁰

FINRA further states that IntelligentCross utilizes a fee/fee pricing model for activity on the ASPEN Fee/Fee book where both sides are charged the same fee⁴¹ for transactions.⁴² Eligible displayed orders are published via a free market data feed ("IQX Market Data Feed").⁴³ IntelligentCross does not charge connectivity fees to its subscribers.⁴⁴ FINRA states that firms wishing to access liquidity on the ASPEN Fee/Fee book may connect in a variety of ways.⁴⁵ Firms that are IntelligentCross subscribers can connect to the ASPEN Fee/Fee book via a Financial Information Exchange ("FIX") connection.⁴⁶ Such access is available to subscribers through an internet protocol address via communications that are compliant with the FIX application programming interface ("API") provided by IntelligentCross.⁴⁷ IntelligentCross does not accept orders via any other forms of communication (e.g., telephone, email, instant message).⁴⁸ IntelligentCross allows a subscriber to determine its level of connectivity and

IntelligentCross ASPEN. *See id.* at n.17. All activity on IntelligentCross is identified and reported under the "INCR" market participant identifier ("MPID"). *See id.* at 79402.

²⁵ *See id.* at 79402. FINRA states that the "effective date" of the Proposal would be the date of the Commission's approval. *See id.* at 79404.

²⁶ *See id.* at 76341.

²⁷ *See id.* at 79404, n.37.

²⁸ *See id.* at 79403.

²⁹ *See id.* at 79402. FINRA states that the ASPEN Fee/Fee book accepts limit orders with optional display instructions, IOC orders, and pegged orders (which are treated as regular orders with an automated repricing to the national best bid or offer ("NBBO")). *See id.* Only limit orders and primary peg orders (with or without a limit price) are eligible to be displayed on the ASPEN Fee/Fee book, and therefore on the ADF. *See id.*

³⁰ 17 CFR 242.600(b)(38).

³¹ *See Notice, supra* note 3, at 79402.

IntelligentCross has represented to FINRA that the ASPEN Fee/Fee book will be the only IntelligentCross ASPEN order book that will accept ISOs. *See id.* at 79402, n.22.

³² *See id.* at 79402. FINRA states that the ASPEN Fee/Fee book match schedules are defined by minimum/maximum time bands for each security, and these bands can have a minimum time of 150 microseconds and a maximum time of 900 microseconds. *See id.* For example, on a particular day, the match event band for XYZ stock may have a minimum time of 450 microseconds and a maximum time of 600 microseconds. *See id.*

³³ *See id.*

³⁴ *See id.*

³⁵ *See id.* at 79402. According to FINRA, IntelligentCross has represented that both sides of the trade (buyers and sellers) are on equal footing for the next scheduled match event, while maintaining full control of their orders, i.e., both sides can cancel or update their orders at any time prior to the match. *See id.* at n.24. In addition, the ASPEN Fee/Fee book automatically updates its quotations, and all quotation updates, including those due to new or cancelled orders, are immediate. *See id.*

³⁶ *See id.* at 79402, n.23. IntelligentCross has represented to FINRA that non-match events on the ASPEN Fee/Fee book occur in a minority of cases. *See id.* at 79403. For a more detailed discussion of examples regarding situations where an incoming order may not execute against a resting order at match event time, *see id.* at 79403.

³⁷ *See id.* at 79403. FINRA states that the quotations displayed on the ASPEN Fee/Fee book are handled on an automated basis and that there is no human discretion in determining any action taken with respect to an order after the order is received. *See id.*

³⁸ *See id.* FINRA states that IntelligentCross uses a combination of SIP and proprietary direct feeds from national securities exchanges to determine the NBBO and protected quotes, and to price executions. *See id.* at 79402, n.27.

³⁹ *See id.*

⁴⁰ *See id.*

⁴¹ *See id.* at 79404. FINRA states that the IntelligentCross' fee schedule is published in the IntelligentCross Form ATS-N and advance notice is provided to its subscribers prior to a pricing change. *See id.*

⁴² *See id.* FINRA states that the base rate charged by IntelligentCross is \$0.0008 per share for each side of a transaction on the ASPEN Fee/Fee book. *See id.*

⁴³ *See id.* IntelligentCross has represented to FINRA that displayed orders from all three IntelligentCross ASPEN order books are available in the IQX Market Data Feed. *See id.* at 79402, n.28.

⁴⁴ *See id.* at 79404. IntelligentCross has represented to FINRA that it is not involved in the installation of cross-connects; thus, subscribers must establish a relationship directly with the network service provider in NY4. *See id.* Further, IntelligentCross does not currently charge connectivity fees to access the ASPEN Fee/Fee book and has offered to pay for certain of subscribers' cross-connect fees at NY4. *See id.* In particular, IntelligentCross currently covers payment for one primary connection and one back-up connection, and any direct subscriber is eligible for this payment. *See id.* IntelligentCross' network provider and other similar network providers may charge fees relating to connectivity in NY4. *See id.* IntelligentCross has represented to FINRA that any such connectivity fees would be substantially equivalent to the costs to connect to any other trading center, such as an exchange. *See id.*

⁴⁵ *See id.*

⁴⁶ *See id.*

⁴⁷ *See id.*

⁴⁸ *See id.*

does not tier or discriminate among subscribers.⁴⁹

Additionally, FINRA states that IntelligentCross has established and maintains policies and procedures related to periodic system capacity reviews and tests to ensure future capacity, as well as policies and procedures to identify potential weaknesses and reduce the risks of system failures and threats to system integrity.⁵⁰ FINRA also states that, for purposes of displaying orders through the ADF, IntelligentCross' policies and procedures require continuous monitoring of the ASPEN Fee/Fee book's connections with an SRO display-only facility and, in the event that the ASPEN Fee/Fee book loses connection with the ADF, IntelligentCross has contingency plans in place, including removing (*i.e.*, "zeroing out") all quotes previously published by the system to the ADF and notifying its subscribers of such interruption.⁵¹

In the event that IntelligentCross makes a material change to the policies and procedures governing access to IntelligentCross, including a change to its fees, IntelligentCross has represented to FINRA that it will submit the changes made to FINRA, and acknowledges that FINRA will post on its website an amended description of IntelligentCross' policies, procedures and fees governing access.⁵²

Finally, FINRA states that all members in good standing of an SRO would be eligible to become a subscriber to the ASPEN Fee/Fee book and would be subject to eligibility requirements set by IntelligentCross.⁵³

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.⁵⁴ Specifically, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,⁵⁵ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to

promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also finds that the proposed rule change by FINRA to allow IntelligentCross to operate as an ADF participant is consistent with Rule 610(b) of Regulation NMS,⁵⁶ which requires that any trading center that displays quotations in an NMS stock through an SRO display-only facility (such as the ADF) provide a level and cost of access to such quotations that is substantially equivalent to the level and cost of access to quotations displayed by an SRO trading facility in that stock, and not impose unfairly discriminatory terms that would prevent or inhibit any person from obtaining efficient access to such quotations through a member, subscriber, or customer of the trading center. In addition, the Commission finds that IntelligentCross would operate as an automated trading center, in compliance with Rule 600(b)(7) of Regulation NMS,⁵⁷ such that its quotations would be "automated" under Rule 600(b)(6),⁵⁸ and thus "protected" under Rule 611 of Regulation NMS.⁵⁹

The Commission received several comment letters opposing the Proposal,⁶⁰ a comment letter supporting the Proposal,⁶¹ and responses by FINRA

and IntelligentCross.⁶² Commenters opposing the Proposal generally state the Proposal lacks sufficient detail necessary for the Commission to approve the Proposal and raise concerns about whether the Proposal: (1) complies with the requirements of Regulation NMS; (2) should contain additional processes for the ongoing operations of IntelligentCross while it is an ADF participant; (3) provides a sufficient implementation period for the industry to adopt changes due to the addition of IntelligentCross as an ADF participant; and (4) has provided information that the ADF has appropriate technological infrastructure.⁶³

LLC, dated January 17, 2023. This commenter states that adding IntelligentCross' displayed liquidity to the public quote would enable market participants to interact with better prices, enhance price discovery, and minimize pricing errors. *See id.*

⁶² *See* Letter from Faisal Sheikh, Assistant General Counsel, FINRA, dated March 13, 2023 ("FINRA Letter"); Letter from Faisal Sheikh, Assistant General Counsel, FINRA, dated August 22, 2023 ("FINRA Letter II"); Letter from Ari Burstein, General Counsel, Imperative Execution, dated February 16, 2023 ("IntelligentCross Letter"); Letter from Ari Burstein, General Counsel, Imperative Execution, dated July 14, 2023 ("IntelligentCross Letter II"); Letter from Ari Burstein, General Counsel, Imperative Execution, dated August 18, 2023 ("IntelligentCross Letter III").

⁶³ In particular, one commenter states that the Commission should reconsider and withdraw the Commission Interpretation of Automated Quotations. *See* Citadel Letter at 1–4, 8 (stating, among other things, that the Commission Interpretation of Automated Quotations is "inconsistent with the plain text of Regulation NMS and therefore invalid"); Citadel Letter II at 3; Citadel Letter III at 2, n.11. Some commenters question the appropriateness of the ADF in today's market structure, including the need for the ADF given the number of exchanges and active non-display ATSs in the marketplace. *See* Nasdaq Letter at 2; Healthy Markets Letter at 8; IEX Letter at 10. One commenter recommends that the Commission should consider "whether the ADF is still needed or should be eliminated entirely." Nasdaq Letter at 1, 3 (stating that the ADF "continues to exist in form only, while serving no productive function"). One commenter raises general questions regarding the potential impact to competing consolidators of adding IntelligentCross protected quotes after the implementation of the Commission's Market Data Infrastructure Rule. *See* IEX Letter at 9. Finally, some commenters state that approval of the Proposal may undermine the recent Commission proposals to modernize equity market structure. *See* Healthy Markets Letter at 16; Nasdaq Letter at 2. One of these commenters also questions how recent proposed reforms to Rule 605 of Regulation NMS would apply to the Proposal, particularly in relation to the single MPID that IntelligentCross uses to identify and report its transaction activity. *See* Healthy Markets Letter at 5, 16. These comments raise issues that are beyond the scope of the Commission's consideration of whether the present Proposal is consistent with the Exchange Act and the rules and regulations thereunder.

⁴⁹ *See id.*

⁵⁰ *See id.*

⁵¹ *See id.*

⁵² *See id.* at 79404, n.43.

⁵³ *See id.* at 79405.

⁵⁴ In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵⁵ 15 U.S.C. 78o–3(b)(6).

⁵⁶ *See* 17 CFR 242.610(b).

⁵⁷ *See* 17 CFR 242.600(b)(7).

⁵⁸ *See* 17 CFR 242.600(b)(6).

⁵⁹ *See* 17 CFR 242.611. Rule 611(a)(1) requires a trading center to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on the trading center of protection quotations. 17 CFR 242.611(a)(1).

⁶⁰ *See* Letter from Tyler Gellasch, President and CEO, Healthy Markets Association, dated January 13, 2023 ("Healthy Markets Letter"); Letter from Brett Kitt, Associate Vice President & Principal Associate General Counsel, Nasdaq, Inc., dated January 17, 2023 ("Nasdaq Letter"); Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, dated January 17, 2023 ("FIA PTG Letter"); Letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, dated January 23, 2023 ("Citadel Letter"); Letter from Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA, dated February 8, 2023 ("SIFMA Letter"); Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, dated March 8, 2023 ("FIA PTG Letter II"); Letter from Tyler Gellasch, President and CEO, Healthy Markets Association, dated March 14, 2023 ("Healthy Markets Letter II"); Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, dated April 14, 2023 ("IEX Letter"); Letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, dated May 4, 2023 ("Citadel Letter II"); Letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities, dated August 3, 2023 ("Citadel Letter III"); Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, dated August 4, 2023 ("IEX Letter II").

⁶¹ *See* Letter from Nataliya Bershova, Head of Execution Research, Sanford C. Bernstein & Co.,

1. Compliance With Regulation NMS and Ongoing Obligation To File

a. Definition of Automated Quotation and Protected Quote Status

As discussed above, FINRA believes that the quotations displayed on the ASPEN Fee/Fee book would meet the definition of an “automated quotation” under Regulation NMS,⁶⁴ and thus “protected” under the Order Protection Rule.⁶⁵

Some commenters raise concern that IntelligentCross’ displayed quotations do not meet the Commission’s definition of “automated quotations” due to the intentional delay built into IntelligentCross’ delayed matching process.⁶⁶ In particular, some commenters state that the Proposal does not demonstrate how the intentionally delayed matching process is *de minimis*.⁶⁷ Some commenters state that the Proposal wrongly assumes that any delay under a millisecond is *de minimis*.⁶⁸ One commenter questions whether IntelligentCross’ delayed matching process “frustrates the purposes of Rule 611 by impairing fair and efficient access” as required by the Commission Interpretation of Automated Quotations.⁶⁹

In response, IntelligentCross states that its matching process is consistent with the Commission Interpretation of Automated Quotations.⁷⁰ IntelligentCross states that, while the Commission did not establish a “bright line *de minimis* threshold,” the ASPEN Fee/Fee book’s matching engine “operates near-continuously and when a new order arrives in the ASPEN Fee/Fee book, it will participate in the next scheduled match event by interacting with existing orders in the order book within a maximum time capped at 900 microseconds.”⁷¹ The Commission also

disagrees with commenters who assert that as a result of IntelligentCross’ matching system, quotations displayed on the ASPEN Fee/Fee book would not meet the definition of an “automated quotation” under Regulation NMS. The Commission issued a final interpretation that, when determining whether a trading center maintains an “automated quotation” for purposes of Rule 611 of Regulation NMS, the term “immediate” in Rule 600(b)(6) precludes any coding of automated systems or other type of intentional device that would delay the action taken with respect to a quotation unless such delay is *de minimis*—i.e., so short as to not frustrate the purposes of Rule 611 by impairing fair and efficient access to an exchange’s quotations.⁷² In accordance with that interpretation, the Commission does not believe that IntelligentCross’ delayed matching functionality precludes IntelligentCross from maintaining an automated quotation. Because the delay imposed by IntelligentCross is well within geographic and technological latencies experienced today that do not impair fair and efficient access to an exchange’s quotations or otherwise frustrate the objectives of Regulation NMS, the Commission believes that such intentional delay will not frustrate the purposes of Regulation NMS by impairing fair and efficient access to IntelligentCross’ quotations.⁷³ Accordingly, the delay in IntelligentCross’ matching functionality (a randomized delay of up to 900 microseconds) is *de minimis* and thus IntelligentCross can maintain a protected quotation.⁷⁴

One commenter states that the “novel features” of the Proposal have not been adequately assessed to provide the Commission with sufficient basis to make an affirmative finding that the Proposal is consistent with the Exchange Act.⁷⁵ One commenter states

under Regulation NMS. See FINRA Letter II at 3. Accordingly, FINRA states that the “Commission has available detailed information regarding IntelligentCross’ operations and the nature of its quotations that is sufficient to enable the Commission to make a substantive determination regarding whether FINRA’s rule filing to add IntelligentCross as an ADF participant is consistent with the Exchange Act.” *Id.* at 3.

⁷² See Commission Interpretation of Automated Quotations, *supra* note 15.

⁷³ See Citadel Secs., 45 F.4th at 37 (upholding Commission’s determination that a 350-millisecond delay was *de minimis*, noting that it was “similar to the delay that traders’ communications already experience when traveling between various other exchanges across the country”).

⁷⁴ See Commission Interpretation of Automated Quotations, *supra* note 15.

⁷⁵ See Citadel Letter at 4. This commenter states that the “required assessment of whether or not an

that IntelligentCross should provide additional transparency on the operation of its matching process.⁷⁶ This commenter states that all markets, including ATSS and registered exchanges, “should be subject to an equivalent level of transparency and review” regarding “how their quotes may be accessed and displayed and how executions involving those quotes may occur.”⁷⁷ This commenter also states that market participants need enough information “so that those who wish to do so can replicate how the mechanism will affect results in various market conditions.”⁷⁸ Additionally, this commenter states that it is unclear whether market participants could alter their routing strategies to account for IntelligentCross’ “randomized delay in the same way they can account for static

intentional delay is *de minimis* must consider the impact of the intentional delay on fill rates and execution quality and whether it operates to frustrate the purposes of Rule 611 by impairing fair and efficient access to displayed quotations.” *Id.* at 8. The commenter further states that based on the data presented in the Proposal, “nearly 9% of executable transactions do not occur” because of the reasons described by the commenter in its letter, which the commenter states is “certainly not *de minimis*.” *Id.* The commenter also states that granting “protected quotation” status for the first time to a matching process that uses discrete match events would treat the IntelligentCross displayed quote as equivalent to those on other market centers, even though the matching of counterparties and the execution of transactions only occurs after the match event is conducted. *Id.* at 7. See also Citadel Letter II at 9 (stating that the Proposal does not contain any analysis as to the whether the intentional delay may be inconsistent with Exchange Act Section 15A(b)(6) or Rule 610(b)(2) of Regulation NMS); IEX Letter II at 1 (stating that there are “meaningful differences between the matching process proposed to be used by IntelligentCross and the processes used by all other markets with protected quotes today.”).

⁷⁶ IEX Letter at 2; IEX Letter II at 2. This commenter states that there should be additional transparency on the “specific inputs and the formula(s) applied” and the “technology or methods used to apply the randomized delay within the timebands.” *Id.* at 2–3. One commenter states that “FINRA must provide all necessary information and analysis in its own proposal so that the ‘public [can] provide meaningful comment’ on FINRA’s analysis.” Citadel Letter III at 3.

⁷⁷ IEX Letter at 3. See also IEX Letter II at 3–4 (contrasting the Proposal’s level of disclosures on the IntelligentCross matching process with a recent exchange proposed rule change on a new order type and noting that a matching process driven by “artificial intelligence” requires further inquiry and disclosure, especially in the application of displaying and accessing protected quotations).

⁷⁸ IEX Letter II at 4 (“Specifically, [market participants] would not know the amount of time to account for in ‘staggering’ the routing of their orders to IntelligentCross. If they send individual orders to arrive on all markets simultaneously, the order to IntelligentCross will be subject to a maximum delay of 900 microseconds. If the execution of the IntelligentCross order were delayed substantially longer than the minimum time required to receive execution reports from other markets, this could allow fast market participants to cancel resting orders on IntelligentCross before the execution could occur.”).

⁶⁴ See Notice, *supra* note 3, at 79403.

⁶⁵ 17 CFR 242.611. Rule 611(a)(1) requires a trading center to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on the trading center of protection quotations. 17 CFR 242.611(a)(1).

⁶⁶ See Citadel Letter at 1; SIFMA Letter at 3; FIA PTG Letter at 1–2; FIA PTG Letter II at 1–2; Nasdaq Letter at 2; Healthy Markets Letter at 13; Citadel Letter II at 1; Citadel Letter III at 1.

⁶⁷ See Citadel Letter at 1; FIA PTG Letter at 1–2; FIA PTG Letter II at 1–2; SIFMA Letter at 4; Citadel Letter III at 2.

⁶⁸ See Citadel Letter at 4; FIA PTG Letter at 2; Citadel Letter II at 3; Citadel Letter III at 2.

⁶⁹ See Citadel Letter at 3; Citadel Letter II at 5; Citadel Letter III at 4.

⁷⁰ See IntelligentCross Letter at 9.

⁷¹ *Id.* FINRA also highlights the overall record of the Proposal, including the information and analysis provided by FINRA in the Notice and the letters by FINRA and IntelligentCross responding to comments regarding the qualification of IntelligentCross’ quotes as “protected quotations”

and geographic delays.”⁷⁹ Similarly, another commenter states that the randomized nature of the matching process “creates significant challenges for best execution for brokers” and prevents “predictable staging of order sending activity by brokers across multiple venues,” resulting in “significant risk of material information leakage and quote fading—leading to materially worse execution quality for investors.”⁸⁰

One commenter raises concerns about the relative ability of different market participants to react to market price movements in deciding whether to cancel after their orders have been accepted by the IntelligentCross system and during the delay before execution.⁸¹ This commenter believes that some “participants could use their superior ability to track price changes on other markets within the variable delay period to determine whether to cancel their orders.”⁸² This commenter asserts that this is a unique challenge that market participants do not face in managing the orders that they send to other protected quote venues.⁸³

Some commenters state that the ability for liquidity providers to cancel displayed ADF orders through IntelligentCross’ functionality at any time raises questions about whether its functionality is consistent with Regulation NMS and prior Commission guidance.⁸⁴ For example, some commenters state that they are concerned that a resting limit order could be cancelled at any time (even after the incoming order is received) prior to the match, including when such incoming orders are routed to

IntelligentCross consistent with regulatory obligations under the Order Protection Rule.⁸⁵ One commenter states, according to data it compiled on typical routing latencies using fiber infrastructure between datacenters, a liquidity provider on IntelligentCross has ample time to observe the trades executed on other U.S. equities exchanges before determining whether to cancel its own resting order.⁸⁶ The commenter states that this option to cancel benefits liquidity providers on IntelligentCross at the expense of liquidity takers and hurts market competition across venues.⁸⁷ The commenter further states that the non-match event data stated in the Proposal is a “material” figure that “likely understates expected cancellation rates” if market participants are required to route order flow to IntelligentCross.⁸⁸ Another commenter states that order posters in the ASPEN Fee/Fee book have the ability to immediately cancel their orders, whereas order transmitters seeking to interact with that interest at the NBBO do not have the same ability to cancel their orders due to their regulatory obligation to attempt to access the protected quote.⁸⁹ One

⁸⁵ See SIFMA Letter at 3–4; Citadel Letter at 4. One of these commenters discusses prior SRO proposals considered by the Commission that raised similar concerns related to asymmetrical “speed bumps” in which one of the orders and/or messages on one side of the market are subject to a delay whereas others are not. See SIFMA Letter at 3. See also Citadel Letter II at 8 (stating that the IntelligentCross intentional delay resembles an asymmetric delay and, as a result, the Proposal warrants further scrutiny “to determine whether any discrimination is unfair and, therefore, inconsistent with the Exchange Act”); Citadel Letter III at 4.

⁸⁶ See Citadel Letter III at 6.

⁸⁷ See *id.* at 6. This commenter also states that “geographical and technological latencies are applicable to all market participants and do not provide liquidity providers with a clear structural advantage—namely, the option to cancel a displayed quote after an incoming order reaches the IntelligentCross matching engine.” *Id.* at 8.

⁸⁸ See Citadel Letter at 5. This commenter further states that IntelligentCross fails to consider that the execution experience on IntelligentCross may be far worse than advertised, and may explain why more orders are not routed to the venue. See Citadel Letter III at 7. See also IEX Letter at 6 (requesting more transparency on how often cancellations might occur if IntelligentCross were to maintain a protected quote); Citadel Letter III at 8 (stating that the statistics cited by IntelligentCross are only based on its current status as a non-protected quotation venue where market participants are not required to route to IntelligentCross and its unclear the impact that granting IntelligentCross protected quotation status would have on those figures).

⁸⁹ See SIFMA Letter at 3. This commenter states that areas to explore in addressing its concerns with the Proposal could include “instituting a delay regarding the ability to cancel a posted order that mirrors the delay for incoming orders seeking to interact with that posted order or removing the delay on incoming ISO/IOC orders attempting to access the ADF protected quote.” *Id.* at 4, n.10.

commenter asserts that the IntelligentCross “price-sliding” mechanism to avoid locking its own market can result in quotations that may be “impossible to access” for incoming orders.⁹⁰ Another commenter states that the Proposal “lacks basic information, such as whether the speed bump is symmetric or asymmetric and how it operates in practice.”⁹¹ One commenter states that it has concerns about IntelligentCross creating a new protected NBB or NBO for orders that are pending a match and for which new, incoming orders will be “very likely inaccessible.”⁹² The commenter provides a hypothetical example to support its assertion where, after a number of events occur in the markets, the NBBO is made up solely of two 100 share orders on IntelligentCross such that, if another market participant responded to the quote, the new participant would be sequentially added to the queue and would not trade.⁹³ Another commenter requests more transparency on how the consolidated market data feeds would reflect the state of IntelligentCross’ protected quotes.⁹⁴

In its response letters, IntelligentCross states that it disagrees with the characterizations made by commenters of the IntelligentCross matching process.⁹⁵ Specifically, IntelligentCross states that its matching process is “completely symmetric in nature and does not favor a particular side of the trade; there is no differential treatment of certain market participants.”⁹⁶ IntelligentCross states that both sides—the buyer and the seller—“can cancel or update their orders at any time prior to a match” and “must equally wait for the next scheduled match event to occur.”⁹⁷ It states that no information is provided to any market participant regarding the status (or existence) of the

⁹⁰ Citadel Letter III at 3.

⁹¹ FIA PTG Letter at 2.

⁹² See FIA PTG Letter II at 2; see also Citadel Letter II at 5–6.

⁹³ See FIA PTG Letter II at 2. IntelligentCross responds that the specific example the commenter illustrates, while possible to occur, is nonetheless extremely unlikely, according to their most recent calculations based on observations on the IntelligentCross platform. Specifically, in June 2023, the daily average incidence of such a hypothetical was 158 times in the course of 45 million orders, *i.e.*, 0.00035 percent of the time. See IntelligentCross Letter II at 7.

⁹⁴ See IEX Letter at 8; IEX Letter II at 5.

⁹⁵ See IntelligentCross Letter at 3; IntelligentCross Letter II at 3.

⁹⁶ See IntelligentCross Letter at 4. IntelligentCross further states that both the taker and maker “are on equal footing for the next scheduled match while maintaining full control of their orders, and both sides of the trade must wait equally for the next scheduled match event to occur.” IntelligentCross Letter II at 5.

⁹⁷ IntelligentCross Letter at 4.

⁷⁹ IEX Letter at 6.

⁸⁰ See Healthy Markets Letter at 14. This commenter also states, without identifying specifics, that the delayed randomized match creates “some challenges regarding the operation of ISOs.” See *id.* at 4. See also Healthy Markets Letter II at 4; Citadel Letter at 6–7 (stating that market participants could have difficulty adopting routing strategies to account for IntelligentCross’ randomized intentional delay); Citadel Letter III at 6–7 (stating that the randomized intentional delay “makes it practically impossible for market participants to stagger order routing such that orders are executed at IntelligentCross and other venues at precisely the same time”); IEX Letter II at 2 (stating that the matching process used by IntelligentCross is “relatively opaque and unpredictable compared to other markets with protected quotes”).

⁸¹ See IEX Letter II at 4.

⁸² See *id.* at 5.

⁸³ See *id.* at 4.

⁸⁴ See SIFMA Letter at 3–4. See also Citadel Letter II at 6 (stating that “[t]he displayed quotations on IntelligentCross are ‘maybe’ quotations that do not provide market participants with execution certainty. As a result, it would frustrate the purposes of Rule 611 to provide trade-through protection to these manual quotations on IntelligentCross.”); Citadel Letter III at 5.

matchable state or the match event.⁹⁸ IntelligentCross also emphasizes that the regulatory obligations attendant to “protected quotations” under Regulation NMS do not provide a guarantee of an execution.⁹⁹ Accordingly, IntelligentCross states that a market participant that routes an order to any market with the intention of matching against a displayed order may not ultimately receive an execution.¹⁰⁰ Moreover, IntelligentCross disagrees with a commenter’s statement that non-match events on IntelligentCross are “material”¹⁰¹ and states that there is no evidence to the effect that non-match rates would increase if market participants are required to route order flow to IntelligentCross.¹⁰² IntelligentCross states that “it is just as likely that cancellations will decrease” as “the IntelligentCross order book will be in a matchable state more frequently.”¹⁰³

IntelligentCross also disagrees with commenters¹⁰⁴ that express concern regarding the ability for liquidity providers to cancel their order in IntelligentCross prior to a match event and believe it to be detrimental to the markets and investors.¹⁰⁵ IntelligentCross’ stated purpose is to provide a “venue that optimizes price discovery, achieves maximum price stability after trades, and provides an opportunity for market participants to improve performance and achieve best execution by reducing market impact and adverse selection.”¹⁰⁶ IntelligentCross points to its own user experience on the platform, and data specifying that “in January 2023, ASPEN Fee/Fee [book] improved the NBBO over 5.3 million times per day (for orders of round-lot size or larger on arrival).”¹⁰⁷ Additionally, IntelligentCross states that any “trade-offs” due to the manner of IntelligentCross’ matching process “certainly do not frustrate the purpose of Regulation NMS by impairing fair

and efficient access to IntelligentCross’ displayed quotations.”¹⁰⁸ IntelligentCross also states that in the scenario where the NBBO moves between the time an order is received and the next match event takes place, depending on the direction the NBBO moves, the liquidity taker may end up better off not executing at the old NBBO.¹⁰⁹ Additionally, the “price sliding mechanism” raised by one commenter¹¹⁰ is designed to address Rule 610 requirements to establish, maintain, and enforce specific written rules that are generally aimed at limiting the display of quotations that lock or cross any protected quotations in an NMS stock.¹¹¹ Moreover, IntelligentCross states that there is no basis for the assumption by a commenter¹¹² that there is a significant risk of information leakage and quote fading due to an IntelligentCross protected quote.¹¹³

¹⁰⁸ *Id.* at 6.

¹⁰⁹ *See id.* at n. 24. *See also id.* at 7 (stating that “[t]he determination of fair and efficient access should not be about protecting the economic interests of one particular group of market participants or impeding innovation or the introduction of competition to protect the exchange status quo”); IntelligentCross Letter III at 4 (stating that “[a] point that either has been misunderstood by commenters or effectively ignored in comments is that a market participant who sends an order to IntelligentCross does not know how much time remains before a match event may occur, and therefore how long they have—whether they are a maker or taker—to cancel or amend their order”).

¹¹⁰ *See supra* note 90.

¹¹¹ *See* IntelligentCross Letter II at 10 (“In ASPEN, if a displayed Limit Order or Primary Peg Order would lock or cross displayed contra-side interest inside the ATS or the NBBO, such order will be displayed one minimum price variation less aggressive than the price of the displayed contra-side interest inside the ATS or as part of the NBBO and ranked at the price of displayed contra-side interest inside the ATS or as part of the NBBO. In the event the displayed contra-side interest inside the ATS or the NBBO updates, such order’s displayed price will be updated to the most aggressive price permissible without locking displayed contra-side interest inside the ATS or as part of the NBBO, up to the order’s limit price, and such order’s ranked price will be updated to the most aggressive price permissible without crossing displayed contra-side interest inside the ATS or as part of the NBBO, up to the order’s limit price.”). *See also* FINRA Rule 6240 (Prohibition from Locking or Crossing Quotations in NMS Stocks).

¹¹² *See supra* note 80 and accompanying text.

¹¹³ *See* IntelligentCross Letter at 6. For the proposition that its system is designed to provide for best execution, IntelligentCross states that in the past year, it has grown from 70 basis points of the market on average in January 2022 to 110 basis points during January 2023. *See id.* In addition, IntelligentCross reached its highest daily market share versus total consolidated volume on June 6, 2023 at 146 basis points and has averaged over 124 basis points daily for the first six months of 2023. *See* IntelligentCross Letter II at 2. IntelligentCross also states that, for displayed orders in S&P 500 stocks, quotations in the ASPEN Fee/Fee book were available strictly inside the NBB/NBO more than 12 percent of the time, with an average improvement of over 2.5 basis points, and for displayed orders

With respect to commenter concerns regarding “speed” in the markets related to the ability to cancel on IntelligentCross,¹¹⁴ IntelligentCross states that speed advantages already exist for faster market participants related to executions on all markets, including those currently with protected quotations such as exchanges.¹¹⁵ Accordingly, IntelligentCross states that “it is unrealistic to claim that there is no speed advantage across all trading markets, including on continuous exchange markets.”¹¹⁶

With respect to commenter concerns regarding “predictability” and the ability for market participants to “replicate” the matching process due to the randomization of the matching delay,¹¹⁷ IntelligentCross responds that the randomization of the matching process “is what contributes to [the] matching process not discriminating in favor of a particular market participant or category of participants, and also makes any would-be manipulation of the matching process difficult by reducing the potential for ‘systematical gaming.’”¹¹⁸

In addressing commenter concerns regarding any difficulties for market participants to adapt to an IntelligentCross protected quote,¹¹⁹ IntelligentCross states it is already widely used by most major broker-dealer and electronic trading firms.¹²⁰ IntelligentCross states that these firms and others “make routing decisions every day in response to the numerous order types already in place by exchanges, as well as implement a plethora of routing strategies to interact with, and respond to, the displayed liquidity in the markets.”¹²¹ IntelligentCross further states that “brokers must currently consider and account for technological and geographic differences and latencies when routing.”¹²² Additionally,

in Russell 3000 stocks and the top 100 ETFs, bids and offers strictly inside the NBB/NBO were available over 9 percent of the time, with an average improvement of over 10 basis points. *See id.*

¹¹⁴ *See supra* notes 81–83 and accompanying text.

¹¹⁵ *See* IntelligentCross Letter II at 6.

¹¹⁶ *Id.*

¹¹⁷ *See supra* notes 78 and 80 and accompanying text.

¹¹⁸ IntelligentCross Letter III at 4.

¹¹⁹ *See supra* notes 78–80 and accompanying text.

¹²⁰ *See* IntelligentCross Letter at 2, 7.

¹²¹ IntelligentCross Letter at 7. IntelligentCross also states that randomizing the match frequency provides benefits to both sides of a trade by, for example, reducing the potential for “gaming,” which can impede the process for achieving best execution. *See id.* at n.28.

¹²² *Id.* at 7. IntelligentCross states that the “speed of a trader’s software, telecommunication resources, geography, and the number of ports purchased from

Continued

⁹⁸ IntelligentCross Letter III at 4.

⁹⁹ IntelligentCross Letter at 4.

¹⁰⁰ *Id.* IntelligentCross also states that, in the case of ISOs, commenter “concerns are misplaced as once the ISO is sent to a trading center displaying a protected quotation, a broker’s obligations under the Rule 611 have been met.” *Id.* at 5. IntelligentCross also states that “[t]he fact that a market participant may not receive an execution when routing to a market is not unique to IntelligentCross and is not indicative of the absence of fair and efficient access.” IntelligentCross Letter II at 4.

¹⁰¹ *See supra* note 88.

¹⁰² IntelligentCross Letter at 8.

¹⁰³ *Id.*

¹⁰⁴ *See supra* notes 84–87 and accompanying text.

¹⁰⁵ IntelligentCross Letter at 5.

¹⁰⁶ *See id.* at 1.

¹⁰⁷ *Id.*

IntelligentCross points to the “technological capabilities of order routers today” and believes that a market participant “should not have difficulties in configuring their routers to adopt to the IntelligentCross matching process.”¹²³ IntelligentCross states that market participants already use “tools to manage order routing and repricing on the scale of hundreds of microseconds” such as “mechanisms that adapt to the changing technology on trading venues,” including adaptations that address delay periods.¹²⁴ Accordingly, IntelligentCross believes that any market participants should be able to account for the IntelligentCross protected quote without significant or material changes to its technology and without adopting any change that would frustrate the purposes of Regulation NMS.¹²⁵

In response to questions regarding how IntelligentCross protected quotes would be reflected in consolidated market data feeds,¹²⁶ IntelligentCross states that it will provide any quotes or quote updates to the ADF no later than when it is disseminated via the IQX Market Data Feed.¹²⁷ In response to commenter questions regarding additional transparency of the matching process,¹²⁸ IntelligentCross states that it publicly posts its Form ATS–N disclosures on EDGAR.¹²⁹ IntelligentCross also states that in calculating its matching schedules, the firm uses an “overnight optimization process” that uses, among other things, historical performance measurements from prior days’ matches, and each security has an individualized matching schedule.¹³⁰ IntelligentCross further

states that it has policies and procedures in place to oversee and to review the calculation and application of its matching schedules.¹³¹ In particular, IntelligentCross states that it performs reviews on a daily basis to ensure that its matching parameters are within the correct time bands,¹³² and, on a weekly basis, reviews performance of its systems “to ensure that it is accomplishing its objectives and to ensure that the matching process does not act in a discriminatory manner in favor of or against any participant or category of participants.”¹³³

The other concerns related to the IntelligentCross matching process and the qualification of its displayed quotes as a protected quotation, have been adequately addressed in the response letters by IntelligentCross and FINRA, as well as in the Proposal, such that the Proposal is consistent with the requirements of the Exchange Act and the rules and regulations applicable to a national securities association. Specifically, with respect to requests for more transparency and detail on access to its displayed quotations and the differential treatment of market participants,¹³⁴ IntelligentCross has provided more detail, demonstrating that its matching process is symmetric in nature and does not favor a particular side of the trade.¹³⁵ Match schedules are defined by minimum/maximum time bands for each security (between 150 and 900 microseconds) based on an overnight optimization process that uses historical performance measurements from prior days’ matches. The time of the actual match event is randomized

within the match event band throughout the course of the trading day. As described by IntelligentCross, the delayed matching process is calibrated to reduce market impact and adverse selection for market participants, thereby fostering increased access to displayed liquidity through the ADF and more competition among markets to the benefit of all market participants. Both sides—the buyer and the seller—can cancel their orders at any time prior to a match and must wait equally for the next scheduled match event to occur in price-time priority, thus not resembling an asymmetric delay as supposed by certain commenters.¹³⁶ The IntelligentCross matching process provides both sides a fair opportunity to manage their orders, as both sides are blind to the length of the delay once an order is accepted by the system or where the order sits in the delay mechanism (e.g., whether there are 5 microseconds or 500 microseconds remaining before a match event takes place), and neither side knows when submitting their order which direction the market may move if there are changes in the NBBO that occur during the delay. Accordingly, depending on the side of the market the NBBO moves, the buyer or seller may be as equally likely to attempt to cancel their orders prior to a match event as there is not a systematized delay on one side of a trade, and thus the matching process does not impose unfairly discriminatory terms against efficient access to displayed quotations.

With respect to more information on “fill rates and execution quality” on IntelligentCross in assessing protected quotation status to the market, IntelligentCross provided additional data highlighting execution quality metrics for the first six months of 2023.¹³⁷

The Commission also agrees with IntelligentCross that the regulatory obligations associated with protected quotations under Regulation NMS do not provide a guarantee of an execution, which commenters appear to suppose when highlighting non-match events or cancellation rates.¹³⁸ While market participants accessing the IntelligentCross protected quotation would be subject to IntelligentCross’ delayed, randomized matching process, the Commission believes, as stated above, that the length of

an exchange” are all factors that “can affect outcomes as much as (if not more than) any actual delay mechanism.” IntelligentCross Letter II at 6.

¹²³ IntelligentCross Letter at 7. For example, IntelligentCross states that its matching process “does not prevent market participants” from adopting “staggering” order routing strategies or employing “tools that already exist to assist in the ‘predictable staging’ of order sending activity across multiple venues.” IntelligentCross Letter II at 5–6.

¹²⁴ See IntelligentCross Letter II at n.23.

¹²⁵ IntelligentCross Letter at 2, 7. IntelligentCross also states that none of the commenters identify “any basis under current regulations or from a practical standpoint why they would not be able to adjust and account for the IntelligentCross matching process.” *Id.* at 7–8.

¹²⁶ See *supra* note 94 and accompanying text.

¹²⁷ IntelligentCross Letter II at 7.

¹²⁸ See *supra* note 76 and accompanying text.

¹²⁹ IntelligentCross Letter II at 11 (additionally reiterating arguments made in the Proposal).

¹³⁰ *Id.* at 11 (“The match event intervals per security are adjusted overnight after enough data points have been accumulated to warrant an adjustment, and each match event interval is designed to achieve two objectives: (1) provide for as many matches as possible to maximize liquidity; and (2) keep the NBBO as stable as possible for a period of time after executions occur on the ATS”).

IntelligentCross further states that one commenter misunderstands its use of “machine learning/AI” in the IntelligentCross matching process, and asserts that such technology is used solely for calculating the matching schedules using the overnight optimization process. See IntelligentCross Letter III at 2. IntelligentCross represents that “no changes occur to the IntelligentCross matching process during the trading day due to ‘machine learning technology’ or AI,” and the IntelligentCross “matching process is not reactive to changing market conditions like other exchange order types or matching processes, i.e., our trade matching process is not ‘driven by AI as characterized by the commenter.’” *Id.* See also *supra* note 77 (describing commenter concern on the use of “machine learning technology” in the IntelligentCross matching process).

¹³¹ See IntelligentCross Letter III at 4.

¹³² IntelligentCross states that this review is to ensure “there are no anomalies outside a tolerance time band before those matching schedules are utilized during the trading day” and “a principal signs off that such review was performed.” *Id.* at 4–5.

¹³³ *Id.* at 5.

¹³⁴ See *supra* note 84.

¹³⁵ See *supra* note 75 (describing commenter’s request to consider impact of the intentional delay on fill rates and execution quality on IntelligentCross).

¹³⁶ See *supra* note 87 and accompanying text.

¹³⁷ See IntelligentCross Letter at 2; IntelligentCross Letter II at 2. See also *supra* note 113 (describing execution quality statistics for the first six months of 2023).

¹³⁸ See *infra* notes 169 and 171 and accompanying text.

IntelligentCross' specific delay or its randomized nature would not frustrate the purposes of Regulation NMS by impairing fair and efficient access to IntelligentCross' displayed quotations. Furthermore, as described above, the information provided in the Proposal, the response letters by IntelligentCross and FINRA, and the availability of further information on IntelligentCross' publicly posted Form ATS-N and website, have addressed transparency concerns surrounding the IntelligentCross matching process such that the information will promote fair and efficient access to its quotations.

The Commission is also unpersuaded by comments regarding the difficulties for market participants to adapt to an IntelligentCross protected quote.¹³⁹ With respect to ISOs,¹⁴⁰ the Commission believes that market participants can satisfy their obligations under Regulation NMS by simply routing ISOs to IntelligentCross' protected quotations, as necessary. While some commenters state that the IntelligentCross matching mechanism could pose challenges for market participants to deploy certain order routing strategies or lead to information leakage,¹⁴¹ IntelligentCross is already widely used by most major broker-dealer and electronic trading firms,¹⁴² which no other commenter disputed, and the commenters did not present evidence that the current considerations that market participants face when interacting with IntelligentCross' liquidity and displayed liquidity in other markets would be appreciably affected by the Proposal.

b. Compliance With Rule 610 of Regulation NMS and Ongoing Obligations

As discussed above, FINRA believes that IntelligentCross' proposed level and cost of access to quotations on the ASPEN Fee/Fee book is substantially equivalent to the level and cost of access to quotations displayed by an SRO trading facility, both in absolute and relative terms.¹⁴³ Two commenters raise questions regarding the regulatory process in connection with proposed changes to IntelligentCross' operations and fees associated with displaying

protected quotations on the ADF.¹⁴⁴ One commenter states that there is currently no regulatory process for ongoing operational changes at non-exchange venues with protected quotes and intentional access delays.¹⁴⁵ This commenter states that without the exchange notice and comment process in connection with changes to operations, it seeks additional information on the regulatory process for managing such changes at IntelligentCross and the ADF.¹⁴⁶ One commenter states that even if IntelligentCross agrees to a method of review for material changes as an ADF participant, IntelligentCross does not offer suggestions about how rule filing and review process would work or suggest any alternatives.¹⁴⁷ This commenter also states that FINRA has made no representation in the record to indicate it would be willing to undertake a rule filing obligation with respect to material changes by IntelligentCross as an ADF participant.¹⁴⁸

One commenter states that if the Commission chooses to permit any trading center to disseminate quotations using the ADF, it must condition approval with limitations that are consistent with limitations imposed upon other trading venues (*i.e.*, exchanges) whose quotations have protected quotation status.¹⁴⁹ In particular, this commenter states that approval of the Proposal should be conditioned upon IntelligentCross: (1) continuing to not charge for market data or connectivity; (2) having fees and rebates (if adopted) that are at or below those charged by exchanges; (3) notifying the Commission and FINRA of all changes related to the ASPEN Fee/Fee book; and (4) describing how any such changes are consistent with the ASPEN Fee/Fee book quotations continuing to be included as a protected

quotation is consistent with the Exchange Act and protection of investors.¹⁵⁰ This commenter also states that both the Commission and FINRA should detail how they would "gather, review, analyze, and publish for public consideration" any changes to IntelligentCross' policies and procedures related to the Proposal, as well as describe how they would intervene to block or disallow any concerning changes in IntelligentCross' policies and procedures related to the ADF.¹⁵¹ Overarching this commenter's concerns with the Proposal are that any changes to the ASPEN Fee/Fee book rules and operations should be treated the same for regulatory purposes as if they were changes made by an exchange, including that they are put out for notice and public comment, and subject to Commission disapproval.¹⁵²

In its response letters, IntelligentCross points to its current regulatory responsibilities associated with being a registered broker-dealer and an ATS, as well as the Regulation NMS obligations attached to being an ADF participant.¹⁵³ FINRA also states that its rules set forth requirements applicable to an ADF participant and require that such participants meet the requisite standards on an ongoing basis.¹⁵⁴ IntelligentCross states its belief that the level and cost of access to its quotations complies with Rule 610 as it is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities and will not impose burdens on market participants.¹⁵⁵ Additionally, IntelligentCross states that it does not impose unfairly discriminatory terms that would prevent or inhibit any person from accessing its quotations through a subscriber of the trading

¹⁵⁰ See Healthy Markets Letter at 2. This commenter also states that if the Commission approves the Proposal, it should expressly condition the approval on IntelligentCross being compliant with Regulation SCI like other trading centers with protected quotations. *See id.* at 8, n.29. IntelligentCross states that it became Regulation SCI compliant as of August 1, 2023. *See* IntelligentCross Letter III at 5.

¹⁵¹ See Healthy Markets Letter at 2.

¹⁵² *See id.* at 17. *See also* IEX Letter at 10; IEX Letter II at 6 (stating that "approval of the Proposal would result in a double standard in treatment of exchanges compared to ATSs that have protected quotes").

¹⁵³ *See* IntelligentCross Letter at 11; IntelligentCross Letter II at 8–9.

¹⁵⁴ *See* FINRA Letter II at 3–4.

¹⁵⁵ *See* IntelligentCross Letter II at 8–9 (discussing level and cost of access to IntelligentCross). IntelligentCross states that FINRA provides a pre-approved (non-exclusive) list of ADF connectivity providers to help market participants seeking to access quotations posted through the ADF, and ADF participants must be accessible through at least two of the connectivity providers. *Id.* at 8.

¹³⁹ *See supra* notes 78–80 and accompanying text.

¹⁴⁰ *See supra* note 80.

¹⁴¹ *See id.*

¹⁴² *See* IntelligentCross Letter at 2 (in January 2023, IntelligentCross' daily market share was 110 basis points, and was consistently third in total shares traded by ATSs of NMS Tier 1 and Tier 2 stocks in FINRA ATS weekly statistics, averaging \$5.9 billion notional traded per day).

¹⁴³ *See* Notice, *supra* note 3, at 79404, n.37.

¹⁴⁴ *See* Healthy Markets Letter at 2; FIA PTG Letter at 2; FIA PTG Letter II at 2. *See also* IEX Letter at 3 (stating that it is important for there to be a "clear expectation that material changes to methods affecting quote display and access" be subject to appropriate review, for example, by requiring material changes to be filed by FINRA through the SEC rule filing process); IEX Letter II at 6.

¹⁴⁵ *See* FIA PTG Letter at 2; FIA PTG Letter II at 2–3.

¹⁴⁶ *See* FIA PTG Letter at 2; FIA PTG Letter II at 2–3.

¹⁴⁷ *See* IEX Letter II at 6.

¹⁴⁸ *See id.* at 6.

¹⁴⁹ *See* Healthy Markets Letter at 2. This commenter states that if the Commission approves the Proposal, "it would be difficult, if not impossible, for the Commission to practically constrain IntelligentCross' fees and potential limitations for accessing the newly protected quotations." *Id.* at 9. *See also* Healthy Markets Letter II.

center.¹⁵⁶ Specifically, IntelligentCross represents that “it does not tier or discriminate among subscribers” and any registered US broker-dealer in good standing of an SRO may become a subscriber of IntelligentCross.¹⁵⁷

IntelligentCross also states that, while an ATS is not subject to the same regulatory requirements as exchanges, it also does not share the same benefits as exchanges.¹⁵⁸ However, IntelligentCross states that it does not object to notifying the Commission and FINRA in advance if changes are made to the level and cost of access to the ASPEN Fee/Fee book impacting the display of IntelligentCross’ protected quotations on the ADF, or the operation of the ASPEN Fee/Fee book impacting the provision of the protected quote.¹⁵⁹ IntelligentCross also states that it does not object to an “appropriately structured process” to engage the Commission in evaluating and commenting on such changes.¹⁶⁰ Further, IntelligentCross acknowledges that it may be subject to other regulatory obligations in the future depending on changes to its platform or its volume.¹⁶¹ But IntelligentCross disagrees with the commenter’s recommendation to condition IntelligentCross’ approval on “continuing to not charge for market data or connectivity”¹⁶² given that it believes such a requirement would not be consistent with the limitations imposed on exchanges and the “substantially equivalent” basis under Rule 610.¹⁶³

¹⁵⁶ See *id.* at 9 (discussing fair access to its market by subscribers). IntelligentCross highlights obligations under FINRA Rules 6240 (Prohibition from Locking or Crossing Quotations in NMS Stocks), 6250 (Quote and Order Access Requirements), and 6260 (Review of Direct or Indirect Access Complaints) regarding ADF access requirements. See *id.*

¹⁵⁷ See *id.* at 9–10 (also stating that IntelligentCross creates and maintains records of all decisions granting or denying access, that IntelligentCross considers a subscriber’s regulatory history in examining a subscriber’s application, and that, when the ASPEN Fee/Fee book displays orders through the ADF, non-subscribers would access IntelligentCross).

¹⁵⁸ See IntelligentCross Letter at 11.

¹⁵⁹ See *id.* IntelligentCross also states that it would not object to describing how such changes are consistent with the ASPEN Fee/Fee book quotations continuing to be included as protected quotations, consistent with the Exchange Act. See *id.* In addition, IntelligentCross states that material changes to its policies and procedures governing access to IntelligentCross, including a change to its fees, will be submitted to the Commission under Form ATS–N. See IntelligentCross Letter II at 11.

¹⁶⁰ See IntelligentCross Letter at 11.

¹⁶¹ See Notice, *supra* note 3, at 79402, n.19. See also IntelligentCross Letter at 11, n. 41.

¹⁶² See *supra* note 145 and accompanying text.

¹⁶³ See IntelligentCross Letter at 11–12.

IntelligentCross also states that it currently does not charge for market data and connectivity. See *id.* at 12.

FINRA, as the SRO responsible for enforcing compliance by ADF participants with the requirements of the Exchange Act, must act as the “gatekeeper” for the ADF, and, as such, is required to closely evaluate the extent to which ADF participants, including IntelligentCross and any future ADF participants, meet the access standards of Rule 610.¹⁶⁴ As part of this process, the Commission stated in the NMS Adopting Release that NASD (now FINRA) would be required to submit a proposed rule change under Section 19(b) of the Exchange Act in order to add a new ADF participant.¹⁶⁵ If an ADF participant is not complying with the access standards under Rule 610, FINRA has the responsibility to stop publishing the participant’s quotations until the participant comes into compliance.¹⁶⁶ The Commission believes that a reasonable and appropriate method for FINRA to satisfy its ongoing responsibility for ensuring that an ADF participant is complying with Rule 610 is to submit material changes that affect access, including the level and cost of access, to quotations displayed by the ADF participant as proposed rule changes under Section 19(b) of the Exchange Act that would be subject to notice and comment.

The fees and the policies and procedures governing access to protected quotations displayed on the ADF by IntelligentCross as described above would provide market participants with fair and efficient access and are not unfairly discriminatory such that they would prevent a market participant from obtaining efficient access to such quotations. All members in good standing of an SRO are eligible to become IntelligentCross subscribers, and both subscribers and non-subscribers may access IntelligentCross liquidity. IntelligentCross offers both subscribers and non-subscribers multiple options to access its liquidity. In addition, IntelligentCross has policies and procedures that require it to respond to orders by non-subscribers as promptly as it responds to orders by subscribers and allow for non-subscribers to be able to automatically execute against quotations displayed by the system. IntelligentCross does not assess charges that may be assessed by exchanges, such as membership fees, trading rights fees, risk gateway fees, and other miscellaneous fees. IntelligentCross’ proposed level and cost of access to quotations on the ASPEN

Fee/Fee book is substantially equivalent to the level and cost of access to quotations displayed by an SRO trading facility, both in absolute terms and relative to its trading volume.¹⁶⁷ Both sides—the buyer and the seller—can cancel or update their orders at any time prior to a match and both must equally wait for the next scheduled match event to occur. In addition, the Commission does not believe that the level of cancellation during the delay imposes unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotations as it has been shown that non-match events occur in a minority of cases, and market participants receive an execution the majority of the time.¹⁶⁸ IntelligentCross has policies and procedures in place to oversee and review the calculation and application of its matching schedules to help ensure the matching process does not act in a discriminatory manner in favor of or against any market participants.¹⁶⁹ Furthermore, the Commission believes that the cancellation rate alone does not demonstrate that IntelligentCross imposes unfairly discriminatory terms given that the ability of any market participant to successfully execute against any particular displayed quote is subject to a number of factors and is not guaranteed on any market, as at any time any market participant can be seeking to execute against an order that is being repriced, changed, cancelled, or executed by a different market participant.¹⁷⁰

Further, as discussed above, in the event that IntelligentCross intends to make a material change to the policies and procedures governing access to IntelligentCross, including a change to its fees, it has represented that it will submit the changes made to FINRA, and acknowledges that FINRA will post on its website an amended description of IntelligentCross’ policies, procedures, and fees governing access.¹⁷¹ In response to comments on the lack of a notice and comment process in connection with the potential for future material changes to the operations and

¹⁶⁷ See NMS Adopting Release at 35749, n.449.

¹⁶⁸ IntelligentCross states that in January 2023, 3.9 percent of potential matches on the ASPEN Fee/Fee book did not complete because a displayed order was cancelled, and 4.5 percent of potential matches did not complete because the NBBO changed and at least one of the sides became non-marketable. See IntelligentCross Letter at 8, n.30.

¹⁶⁹ See *supra* note 133 and accompanying text.

¹⁷⁰ See Securities Exchange Act Release No. 89686 (August 26, 2020), 85 FR 54438, 54445 (September 1, 2020) (Order Approving a Proposed Rule Change to Add a New Discretionary Limit Order Type Called D Limit).

¹⁷¹ See *supra* note 52.

¹⁶⁴ See NMS Adopting Release at 37549.

¹⁶⁵ See *id.*

¹⁶⁶ See *id.*

fees of IntelligentCross as an ADF participant.¹⁷² FINRA has represented to the Commission that it will file such material changes as a proposed rule change with the Commission under Section 19(b) of the Exchange Act.¹⁷³ Under this process, the Commission would review the proposed rule change and consider any public comments received. In addition, changes to the operations of IntelligentCross, as well as its disclosures on its public Form ATS–N, are subject to the requirements of Rule 304 of Regulation ATS. Accordingly, the Commission believes that commenter concerns regarding the regulatory process for proposed changes to IntelligentCross' operations and fees associated with displaying protected quotations on the ADF have been adequately addressed by IntelligentCross and FINRA.¹⁷⁴ FINRA's ongoing obligation to ensure compliance by IntelligentCross as an ADF participant with its Regulation NMS obligations, FINRA's commitment to file proposed rule changes relating to IntelligentCross' operations, and IntelligentCross' regulatory responsibilities as an ATS, appropriately ensures transparency and ongoing assessment of consistency with the Exchange Act.

Finally, in response to one commenter's recommendation that approval of the Proposal be conditioned on IntelligentCross "continuing to not charge for market data or connectivity,"¹⁷⁵ such a condition is inconsistent with the limitations imposed on an ADF participant under Rule 610 which requires a level and cost of access that is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities.¹⁷⁶

2. Implementation Period

FINRA states that the "effective date" of the Proposal would be the date of the Commission's approval.¹⁷⁷

Two commenters suggest that the proposed implementation period for the Proposal is too short given the connectivity arrangements that the industry would need time to establish.¹⁷⁸ One commenter suggests an implementation period of no less than 120 days following the date of

Commission approval.¹⁷⁹ Another commenter recommends an implementation period of no less than 90 days following the date of Commission approval.¹⁸⁰ In one of its response letters, IntelligentCross states that it has been working with industry participants to ensure that they have all the information necessary to prepare for the IntelligentCross protected quote.¹⁸¹ IntelligentCross also states that most major broker-dealers and electronic trading firms are already connected to, and trading within, IntelligentCross.¹⁸² Moreover, IntelligentCross believes that a reasonable implementation timeframe would be to require that industry participants begin treating IntelligentCross' quotes as a protected quotation no later than 90 days after the date of the Commission's approval order.¹⁸³ One commenter states that the 90-day implementation period proposed by IntelligentCross is in line with previous Commission guidance on treating new exchange quotes as protected.¹⁸⁴

Following the issuance of this order and IntelligentCross having met the conditions to begin operating as an ADF participant, market participants will be required to have reasonably designed policies and procedures to treat IntelligentCross' best bid and best offer as a protected quotation.¹⁸⁵ At the same time, to meet their regulatory responsibilities under Rule 611(a) of Regulation NMS, market participants must have sufficient notice of new protected quotations, as well as all necessary information (such as final technical specifications).¹⁸⁶ Given that the Commission understands IntelligentCross is already widely used by most major broker-dealer and electronic trading firms,¹⁸⁷ and has engaged in market participant outreach regarding its status as an ADF participant,¹⁸⁸ the Commission believes that an implementation period of no less

than 90 days following the date of Commission approval is a sufficient timeframe for market participants to establish connectivity to the IntelligentCross protected quotation in order to meet their obligations under Rule 611. Accordingly, the Commission believes that it would be a reasonable policy and procedure under Rule 611(a) to require that industry participants to begin treating IntelligentCross' best bid and best offer as a protected quotation within 90 days after the date of this order, or such later date as IntelligentCross begins operation as a new ADF participant.

3. ADF Technological Infrastructure

One commenter states that the Commission and FINRA should consider whether to "wind down" the ADF due to concerns regarding the latency and technological infrastructure of the ADF.¹⁸⁹ Specifically, this commenter states that the Proposal does not provide any details of the ADF's systems capabilities and questions whether the "intake, processing, and dissemination systems [are] up to 2023 speed and capacity standards."¹⁹⁰ This commenter also expresses concern regarding the speed at which the ADF disseminates quotation data compared to the speed at which IntelligentCross' proprietary quotation feed is disseminated to market participants.¹⁹¹ This commenter states that it is unclear the extent to which "FINRA has attempted to upgrade the system" to address the latency gap.¹⁹² One commenter requests more transparency regarding any latency tests conducted by FINRA with IntelligentCross to determine the latency related to transmission from IntelligentCross to the ADF and the time for the ADF to process and publish updates to the SIPs.¹⁹³

In its response letter, FINRA states that it has made technological updates to the ADF infrastructure that make it "well-equipped to support use of the ADF by multiple market participants for

¹⁷⁹ See FIA PTG Letter at 2.

¹⁸⁰ See SIFMA Letter at 4–5.

¹⁸¹ See IntelligentCross Letter at 10.

¹⁸² See *id.*

¹⁸³ See *id.*

¹⁸⁴ See FIA PTG Letter II at 3 (citing to Securities Exchange Act Release Nos. 58375 (August 18, 2008), 73 FR 49498, 49505 (August 21, 2008) (approval of the BATS Exchange), 61698 (March 12, 2010), 75 FR 13151, 13163 (March 28, 2010) (approval of the EDGA and EDGX exchanges) and 78101 (June 17, 2016), 81 FR 41141 (approval of the Investors' Exchange)).

¹⁸⁵ See 17 CFR 242.611(a).

¹⁸⁶ See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038, 30041 (May 24, 2006) (File No. S7–10–04) (extending the compliance dates for Rule 610 and Rule 611 of Regulation NMS under the Exchange Act).

¹⁸⁷ See *supra* note 120.

¹⁸⁸ See *supra* note 182.

¹⁸⁹ See Healthy Markets Letter at 14–17.

¹⁹⁰ See *id.* at 14. This commenter asserts that it is "not aware of any public details regarding the details of [the ADF's] operations, including systems specifications and latencies." *Id.*

¹⁹¹ See *id.* at 7.

¹⁹² See *id.* at 8.

¹⁹³ See IEX Letter at 8. This commenter also raises general questions regarding latency and the use of consolidated data or proprietary data for receiving IntelligentCross quotes. See *id.* at 9. IntelligentCross states that it has committed to providing quote updates to the ADF no later than when they are disseminated via its proprietary data feed. See IntelligentCross Letter II at 7.

¹⁷² See *supra* notes 145–147.

¹⁷³ See FINRA Letter II at 4.

¹⁷⁴ See *supra* notes 150–152 and accompanying text.

¹⁷⁵ See *supra* note 151.

¹⁷⁶ See *supra* note 151 and accompanying text.

¹⁷⁷ See Notice, *supra* note 3, at 790404.

¹⁷⁸ See FIA PTG Letter at 2; FIA PTG Letter II at 3; SIFMA Letter at 4.

quoting and trading purposes.”¹⁹⁴ FINRA also states that its recent technological updates to the ADF have significantly reduced the ADF’s processing latency times as compared to when the ADF was last operational in 2015.¹⁹⁵ FINRA also represents that it continues to conduct capacity requirement testing with IntelligentCross and “aim[s] to address any potential areas identified for further improvement prior to IntelligentCross becoming an ADF [p]articipant and sending quotes to the ADF (subject to SEC approval).”¹⁹⁶ Additionally, based on the results of FINRA’s ADF testing with IntelligentCross, FINRA states that ADF latency is generally in line with exchange latency to dissemination by the SIPs.¹⁹⁷ FINRA also states that it expects the ADF latency in production to be lower than in the ADF test environment.¹⁹⁸ Accordingly, FINRA believes that any processing latency for the ADF would generally be in line with exchange processing latencies once IntelligentCross begins quoting on the ADF.¹⁹⁹

The Commission believes that FINRA has demonstrated that, with the recent technological updates to address latency in the ADF’s system capabilities,²⁰⁰ along with recent tests to the ADF application with IntelligentCross, the ADF technology infrastructure will be consistent with current speed and capacity standards for processing and disseminating IntelligentCross’ quotations. Moreover, FINRA and IntelligentCross have represented that they will continue to conduct testing and explore technological enhancements to further reduce ADF latency, thus ensuring that the ADF technology infrastructure continues to be consistent with current processing latencies.²⁰¹

¹⁹⁴ See FINRA Letter at 3. FINRA states that in 2021 it began a multi-year effort to update the technological infrastructure for several of its facilities, relevant data vendor feeds, and related reference data. See *id.* The ADF’s trade reporting and quoting functionality were migrated onto a new platform in November 2021 and March 2022, respectively. See *id.*

¹⁹⁵ See *id.* FINRA states that the ADF supports increments of nanoseconds for both its quoting and reporting functions. See *id.*

¹⁹⁶ *Id.*

¹⁹⁷ See FINRA Letter II at 6. FINRA states that the ADF latency tests conducted by FINRA with IntelligentCross were conducted as stress tests that included processing volumes and sustained messages rates well in excess of those likely to be experienced in production. See *id.* See FINRA Letter II at 5–6 for additional detailed description of FINRA’s ADF latency tests.

¹⁹⁸ See *id.*

¹⁹⁹ See *id.*

²⁰⁰ See *supra* notes 195 and 196.

²⁰¹ See Notice, *supra* note 3, at 79404; FINRA Letter II at 6.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,²⁰² that the proposed rule change (SR–FINRA–2022–032) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰³

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98213; File No. SR–NSCC–2023–007]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify the Amended and Restated Stock Options and Futures Settlement Agreement and Make Certain Revisions to the NSCC Rules

August 24, 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 10, 2023, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to (1) modify the Amended and Restated Stock Options and Futures Settlement Agreement dated August 5, 2017 between NSCC and The Options Clearing Corporation (“OCC,” and together with NSCC, the “Clearing Agencies”) (“Existing Accord”) ³ and (2) make certain revisions to Rule 18, Procedure III and Addendum K of the NSCC Rules & Procedures (“NSCC

²⁰² 15 U.S.C. 78s(b)(2).

²⁰³ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The Existing Accord was previously approved by the Commission. See Securities Exchange Act Release Nos. 81266, 81260 (Jul. 31, 2017) (File Nos. SR–NSCC–2017–007; SR–OCC–2017–013), 82 FR 36484 (Aug. 4, 2017).

Rules”) ⁴ in connection with the proposed modifications to the Existing Accord, as described in greater detail below.⁵

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Executive Summary

NSCC is a clearing agency that provides clearing, settlement, risk management, and central counterparty services for trades involving equity securities. OCC is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, including options that contemplate the physical delivery of equities cleared by NSCC in exchange for cash (“physically settled” options).⁶ OCC also clears certain futures contracts that, at maturity, require the delivery of equity securities cleared by NSCC in exchange for cash. As a result, the exercise/assignment of certain options or maturation of certain futures cleared by OCC effectively results in stock settlement obligations. NSCC and OCC maintain a legal agreement, generally referred to by the parties as the “Accord” agreement, that governs the processing of such physically settled options and futures cleared by OCC that

⁴ Capitalized terms not defined herein are defined in the NSCC Rules available at www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf.

⁵ OCC also has filed a proposed rule change and an advance notice with the Commission in connection with this proposal. See File Nos. SR–OCC–2023–007 and SR–OCC–2023–801 (the “OCC Filing”).

⁶ The term “physically-settled” as used throughout the OCC Rulebook refers to cleared contracts that settle into their underlying interest (*i.e.*, options or futures contracts that are not cash-settled). When a contract settles into its underlying interest, shares of stock are sent, *i.e.*, delivered, to contract holders who have the right to receive the shares from contract holders who are obligated to deliver the shares at the time of exercise/assignment in the case of an option, and maturity in the case of a future.

result in transactions in underlying equity securities to be cleared by NSCC ("Existing Accord").

The Existing Accord establishes terms under which NSCC accepts for clearing certain securities transactions that result from the exercise and assignment of relevant options contracts and the maturity of futures contracts that are cleared and settled by OCC.⁷ It also establishes the time when OCC's settlement guaranty in respect of those transactions ends and NSCC's settlement guaranty begins.

The Existing Accord allows for a scenario in which NSCC could choose not to guarantee the settlement of such securities arising out of transactions. Specifically, NSCC is not obligated to guarantee settlement until its member has met its collateral requirements at NSCC. If NSCC chooses not to guarantee settlement, OCC would engage in an alternate method of settlement outside of NSCC. This scenario presents two primary problems. First, the cash required for OCC and its Clearing Members in certain market conditions to facilitate settlement outside of NSCC could be significantly more than the amount required if NSCC were to guarantee the relevant transactions. This is because settlement of the transactions in the underlying equity securities outside of NSCC would mean that they would no longer receive the benefit of netting through the facilities of NSCC. In such a scenario, the additional collateral required from Clearing Members to support OCC's continuing settlement guarantee would also have to be sufficiently liquid to properly manage the risks associated with those transactions being due on the second business day following the option exercise, or the relevant futures contract maturity date.

Based on an analysis of scenarios using historical data where it was assumed that OCC could not settle transactions through the facilities of NSCC, the worst-case outcome resulted in extreme liquidity demands—of over \$300 billion—for OCC to effect settlement via an alternative method, *e.g.*, by way of gross broker-to-broker settlement, as discussed in more detail below. OCC Clearing Members, by way of their contributions to the OCC Clearing Fund, would bear the brunt of this demand. Furthermore, there is no guarantee that OCC Clearing Members could fund the entire amount of any similar real-life scenarios. By contrast,

projected GSPs identified during the study ranged from approximately \$419 million to over \$6 billion, also as discussed in more detail below.

The second primary problem relates to the significant operational complexities if settlement occurs outside of NSCC. More specifically, netting through NSCC reduces the volume and value of settlement obligations. For example, in 2022 it is estimated that netting through NSCC's continuous net settlement ("CNS") accounting system⁸ reduced the value of CNS settlement obligations by approximately 98% or \$510 trillion from \$519 trillion to \$9 trillion. If settlement occurred outside of NSCC, on a broker-to-broker basis between OCC Clearing Members, for example, shares would not be netted, and Clearing Members would have to coordinate directly with each other to settle the relevant transactions. The operational complexities and uncertainty associated with alternate means of settlement would impact every market participant involved in a settlement of OCC-related transactions.

To address these problems, the Clearing Agencies are proposing to amend and restate the Existing Accord and make related changes to their respective rules that would allow OCC to elect to make a cash payment to NSCC following the default of a Common Member⁹ that would cause NSCC to guarantee settlement of that Common Member's transactions and, therefore, cause those transactions to be settled through processing by NSCC. As part of this proposal, OCC also would enhance its daily liquidity stress testing processes and procedures to account for the possibility of OCC making such a payment to NSCC in the event of a Common Member default. By making these enhancements to its stress testing, OCC could include the liquid resources necessary to make the payment in its resource planning. The Clearing Agencies believe that by NSCC accepting such a payment from OCC the operational efficiencies and reduced costs related to the settlement of transactions through NSCC would limit

market disruption following a Common Member default because settlement through NSCC following such a default would be less operationally complex and would be expected to require less liquidity and other collateral from market participants than the processes available to OCC for closing out positions. Additionally, proposed enhancements by OCC to its liquidity stress testing would add assurances that OCC could make such a payment in the event of a Common Member default. The Clearing Agencies believe that their respective clearing members and all other participants in the markets for which OCC provides clearance and settlement would benefit from OCC's ability to choose to make a cash payment to effect settlement through the facilities of NSCC. This change would provide more certainty around certain default scenarios and would blunt the financial and operational burdens market participants could experience in the case of most clearing member defaults.¹⁰

Background

OCC acts as a central counterparty clearing agency for U.S.-listed options and futures on a number of underlying financial assets including common stocks, currencies and stock indices. In connection with these services, OCC provides the OCC Guaranty pursuant to its By-Laws and Rules. NSCC acts as a central counterparty clearing agency for certain equity securities, corporate and municipal debt, exchange traded funds and unit investment trusts that are eligible for its services. Eligible trading activity may be processed through NSCC's CNS system or Balance Order Account system,¹¹ where all eligible compared and recorded transactions for a particular settlement date are netted by issue into one net long (buy), net short (sell) or flat position. As a result, for each day with activity, each Member has a single deliver or receive obligation for each issue in which it has activity. In connection with these services, NSCC also provides the NSCC Guaranty pursuant to Addendum K of the NSCC Rules.

OCC's Rules provide that delivery of, and payment for, securities underlying certain exercised stock options and matured single stock futures that are physically settled are generally effected through the facilities of NSCC and are

⁸ See Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation) of the NSCC Rules, *supra* note 4.

⁹ A firm that is both an OCC Clearing Member and an NSCC Member or is an OCC Clearing Member that has designated an NSCC Member to act on its behalf is referred to herein as a "Common Member". The term "Clearing Member" as used herein has the meaning provided in OCC's By-Laws. See OCC's By-laws & Rules, available at www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules. The term "Member" as used herein has the meaning provided in NSCC's Rules. See *supra* note 4.

¹⁰ OCC filed its analysis of the financial impact of alternate means of settlement as an exhibit to the OCC Filing.

¹¹ See Rule 8 (Balance Order and Foreign Security Systems) and Procedure V (Balance Order Accounting Operation) of the NSCC Rules, *supra* note 4.

⁷ Under the Existing Accord, such options and futures are defined as "E&A/Delivery Transactions," which refers to "Exercise & Assignment Delivery Transactions."

not settled through OCC's facilities.¹² OCC and NSCC executed the Existing Accord to facilitate, via NSCC's systems, the physical settlement of securities arising out of options and futures cleared by OCC. OCC Clearing Members that clear and settle physically settled options and futures transactions through OCC also are required under OCC's Rules¹³ to be Members of NSCC or to have appointed or nominated a Member of NSCC to act on its behalf. As noted above, these firms are referred to as "Common Members" in the Existing Accord.

Summary of the Existing Accord

The Existing Accord governs the transfer between OCC and NSCC of responsibility for settlement obligations that involve a delivery and receipt of stock in the settlement of physically settled options and futures that are cleared and settled by OCC and for which the underlying securities are eligible for clearing through the facilities of NSCC ("E&A/Delivery Transactions"). It also establishes the time when OCC's settlement guarantee (the "OCC Guaranty") ends and NSCC's settlement guarantee (the "NSCC Guaranty")¹⁴ begins with respect to E&A/Delivery Transactions. However, in the case of a Common Member default¹⁵ NSCC can reject these settlement obligations, in which case the settlement guaranty would not transfer from OCC to NSCC, and OCC would not have a right to settle the transactions through the facilities of NSCC. Instead, OCC would have to engage in alternative methods of settlement that have the potential to create significant liquidity and collateral requirements for both OCC and its non-defaulting Clearing Members.¹⁶ More specifically, this could involve broker-to-broker settlement between OCC Clearing

Members.¹⁷ This settlement method is operationally complex because it requires bilateral coordination directly between numerous Clearing Members rather than relying on NSCC to facilitate multilateral netting to settle the relevant settlement obligations. As described above, it also potentially could result in significant liquidity and collateral requirements for both OCC and its non-defaulting Clearing Members because the transactions would not be netted through the facilities of NSCC. Alternatively, where NSCC accepts the E&A/Delivery Transactions from OCC, the OCC Guaranty ends and the NSCC Guaranty takes effect. The transactions are then netted through NSCC's systems, which allows settlement obligations for the same settlement date to be netted into a single deliver or receive obligation. This netting reduces the costs associated with securities transfers by reducing the number of securities movements required for settlement and further reduces operational and market risk. The benefits of such netting by NSCC may be significant with respect to the large volumes of E&A/Delivery Transactions processed during monthly options expiry periods.

Pursuant to the Existing Accord, on each trading day NSCC delivers to OCC a file that identifies the securities, including stocks, exchange-traded funds and exchange-traded notes, that are eligible (1) to settle through NSCC and (2) to be delivered in settlement of (i) exercises and assignments of stock options cleared and settled by OCC or (ii) delivery obligations from maturing stock futures cleared and settled by OCC. OCC, in turn, delivers to NSCC a file identifying securities to be delivered, or received, for physical settlement in connection with OCC transactions.¹⁸

After NSCC receives the list of eligible transactions from OCC and NSCC has received all required deposits to the NSCC Clearing Fund from all Common Members taking into consideration

amounts required to physically settle the OCC transactions, the OCC Guaranty would end and the NSCC Guaranty would begin with respect to physical settlement of the eligible OCC-related transactions.¹⁹ At this point, NSCC is solely responsible for settling the transactions.²⁰

Each day, NSCC is required to promptly notify OCC at the time the NSCC Guaranty takes effect. If NSCC rejects OCC's transactions due to an improper submission²¹ or if NSCC "ceases to act" for a Common Member,²² NSCC's Guaranty would not take effect for the affected transactions pursuant to the NSCC Rules.

NSCC is required to promptly notify OCC if it ceases to act for a Common Member. Upon receiving such a notice, OCC would not continue to submit to NSCC any further unsettled transactions that involve such Common Member, unless authorized representatives of both OCC and NSCC otherwise consent. OCC would, however, deliver to NSCC a list of all transactions that have already been submitted to NSCC and that involve such Common Member. The NSCC Guaranty ordinarily would not take effect with respect to transactions for a Common Member for which NSCC has ceased to act, unless both Clearing Agencies agree otherwise. As such, NSCC does not have any existing contractual obligation to guarantee such Common Member's transactions. To the extent the NSCC Guaranty does not take effect, OCC's Guaranty would continue to apply, and, as described above, OCC would remain responsible for effecting the settlement

¹² See Chapter IX of OCC's Rules (Delivery of Underlying Securities and Payment), *supra* note 9.

¹³ See OCC Rule 901, *supra* note 9.

¹⁴ See Addendum K and Procedure III of the NSCC Rules, *supra* note 4.

¹⁵ A Common Member that has been suspended by OCC or for which NSCC has ceased to act is referred to as a "Mutually Suspended Member."

¹⁶ For example, OCC evaluated certain Clearing Member default scenarios in which OCC assumed that NSCC would not accept the settlement obligations under the Existing Accord, including the default of a large Clearing Member coinciding with a monthly options expiration. OCC has estimated that in such a Clearing Member default scenario, the aggregate liquidity burden on OCC in connection with obligations having to be settled on a gross, broker-to-broker basis could reach a significantly high level. For example, in January 2022, the largest gross broker-to-broker settlement amount in the case of a larger Clearing Member default would have resulted in liquidity needs of approximately \$384,635,833,942. OCC provided the data and analysis as an exhibit to the OCC Filing.

¹⁷ In broker-to-broker settlement, Clearing Member parties are responsible for coordinating settlement—delivery and payment—among themselves on a transaction-by-transaction basis. Once transactions settle, the parties also have an obligation to affirmatively notify OCC so that OCC can close out the transactions. If either one of or both of the parties do not notify OCC, the transaction would remain open on OCC's books indefinitely until the time both parties have provided notice of settlement to OCC.

¹⁸ Each day that both OCC and NSCC are open for accepting trades for clearing is referred to as an "Activity Date" in the Existing Accord. Securities eligible for settlement at NSCC are referred to collectively as "Eligible Securities" in the Existing Accord. Eligible securities are settled at NSCC through NSCC's CNS Accounting Operation or NSCC's Balance Order Accounting Operation.

¹⁹ The term "NSCC Clearing Fund" as used herein has the same meaning as the term "Clearing Fund" as provided in the NSCC Rules. Procedure XV of the NSCC Rules provides that all NSCC Clearing Fund requirements and other deposits must be made within one hour of demand, unless NSCC determines otherwise, *supra* note 4.

²⁰ This is referred to in the Existing Accord as the "Guaranty Substitution Time," and the process of the substitution of the NSCC Guaranty for the OCC Guaranty with respect to E&A/Delivery Transactions is referred to as "Guaranty Substitution."

²¹ Guaranty Substitution by NSCC (discussed further below) does not occur with respect to an E&A/Delivery Transaction that is not submitted to NSCC in the proper format or that involves a security that is not identified as an Eligible Security on the then-current NSCC Eligibility Master File.

²² Under NSCC's Rules, a default would generally be referred to as a "cease to act" and could encompass a number of circumstances, such as an NSCC Member's failure to make a Required Fund Deposit in a timely fashion. See NSCC Rule 46 (Restrictions on Access to Services), *supra* note 4. An NSCC Member for which it has ceased to act is referred to in the Existing Accord as a "Defaulting NSCC Member." Transactions associated with a Defaulting NSCC Member are referred to as "Defaulted NSCC Member Transactions" in the Existing Accord.

of such Common Member's transactions pursuant to OCC's By-Laws and Rules.

As noted above, the Existing Accord does provide that the Clearing Agencies may agree to permit additional transactions for a Common Member default ("Defaulted NSCC Member Transactions") to be processed by NSCC while subject to the NSCC Guaranty. This optional feature, however, creates uncertainty for the Clearing Agencies and market participants about how Defaulted NSCC Member Transactions may be processed following a Common Member default and also does not provide NSCC with the ability to collect collateral from OCC that it may need to close out these additional transactions. While the optional feature would remain in the agreement as part of this proposal, the proposed changes to the Existing Accord, as described below, could significantly reduce the likelihood that it would be utilized.

Proposed Changes to the Existing Accord

The proposed changes to the Existing Accord would permit OCC to make a cash payment, referred to as the "Guaranty Substitution Payment" or "GSP," to NSCC. This cash payment could occur on either or both of the day that the Common Clearing Member becomes a Mutually Suspended Member and on the next business day. Upon NSCC's receipt of the Guaranty Substitution Payment from OCC, the NSCC Guaranty would take effect for the Common Member's transactions, and they would be accepted by NSCC for clearance and settlement.²³ OCC could use all Clearing Member contributions to the OCC Clearing Fund²⁴ and certain Margin Assets²⁵ of a defaulted Clearing Member to pay the GSP, as described in more detail below.

NSCC would calculate the Guaranty Substitution Payment as the sum of the Mutually Suspended Member's unpaid required deposit to the NSCC Clearing Fund ("Required Fund Deposit")²⁶ and the unpaid Supplemental Liquidity Deposit²⁷ obligation that is attributable

to E&A/Delivery Transactions. The proposed changes to the Existing Accord define how NSCC would calculate the Guaranty Substitution Payment.

More specifically, NSCC would first determine how much of the member's unpaid Clearing Fund requirement would be included in the GSP. NSCC would look at the day-over-day change in gross market value of the Mutually Suspended Member's positions as well as day-over-day change in the member's NSCC Clearing Fund requirements. Based on such changes, NSCC would identify how much of the change in the Clearing Fund requirement was attributable to E&A/Delivery Transactions coming from OCC. If 100 percent of the day-over-day change in the NSCC Clearing Fund requirement is attributable to activity coming from OCC, then the GSP would include 100 percent of the member's NSCC Clearing Fund requirement. If less than 100 percent of the change is attributable to activity coming from OCC, then the GSP would include that percent of the member's unpaid NSCC Clearing Fund requirement attributable to activity coming from OCC. NSCC would then determine the portion of the member's unpaid SLD obligation that is attributable to E&A/Delivery Transactions. As noted above, the GSP would be the sum of these two amounts. A member's NSCC Clearing Fund requirement and SLD obligation at NSCC are designed to address the credit and liquidity risks that a member poses to NSCC. The GSP calculation is intended to assess how much of a member's obligations arise out of activity coming from OCC so that the amount paid by OCC is commensurate with the risk to NSCC of guarantying such activity.

To permit OCC to anticipate the potential resources it would need to pay the GSP for a Mutually Suspended Member, each business day NSCC would provide OCC with (1) Required Fund Deposit and Supplemental Liquidity Deposit obligations, as calculated pursuant to the NSCC Rules, and (2) the gross market value of the E&A/Delivery Transactions and the gross market value of total Net Unsettled Positions (as such term is defined in the NSCC Rules). On options expiry days that fall on a Friday, NSCC would also provide OCC with information regarding liquidity needs and resources, and any intraday SLD requirements of Common

Members. Such information would be delivered pursuant to the ongoing information sharing obligations under the Existing Accord (as proposed to be amended) and the Service Level Agreement ("SLA") to which both NSCC and OCC are a party pursuant to Section 2 of the Existing Accord.²⁸ The SLA addresses specifics regarding the time, form and manner of various required notifications and actions described in the Accord and also includes information applicable under the Accord.

NSCC and OCC believe the proposed calculation of the Required Fund Deposit portion of the GSP is appropriate because it is designed to provide a reasonable proxy for the impact of the Mutually Suspended Member's E&A/Delivery Transactions on its Required Fund Deposit. While impact study data did show that the proposed calculation could result in a GSP that overestimates or underestimates the Required Fund Deposit attributable to the Mutually Suspended Member's E&A/Delivery Transactions,²⁹ current technology constraints prohibit NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member.³⁰

Implementing the ability for OCC to make the GSP and cause the E&A/Delivery Transactions to be cleared and settled through NSCC would promote the ability of OCC and NSCC to be efficient and effective in meeting the requirements of the markets they serve. This is because data demonstrates that the expected size of the GSP would be smaller than the amount of cash that would otherwise be needed by OCC and its Clearing Members to facilitate settlement outside of NSCC. More specifically, based on a historical study

²⁸ The revised SLA has been filed as an exhibit to this filing.

²⁹ The impact study was conducted at the Commission's request to cover a three-day period and reviewed the ten Common Members with the largest Required Fund Deposits attributable to the Mutually Suspended Member's E&A/Delivery Transactions. Over the 30 instances in the study, approximately 15 instances resulted in an underestimate of the Required Fund Deposit by an average of approximately \$112,900,926; four instances where the proxy calculation was the same as the Required Fund Deposit; and eleven instances of an overestimate of the Required Fund Deposit by an average of approximately \$59,654,583. NSCC filed additional detail related to the referenced study as an exhibit to this filing.

³⁰ OCC and NSCC have agreed that performing the necessary technology build at this time would delay the implementation of this proposal. Therefore, NSCC would consider incorporating those technology updates into future revisions to the Accord, for example in connection with a move to a shorter settlement cycle in the U.S. equities markets.

²³ Acceptance of such transactions by NSCC would be subject to NSCC's standard validation criteria for incoming trades. See NSCC Rule 7, *supra* note 4.

²⁴ The term "OCC Clearing Fund" as used herein has the same meaning as the term "Clearing Fund" in OCC's By-Laws, *supra* note 9.

²⁵ The term "Margin Assets" as used herein has the same meaning as provided in OCC's By-Laws, *supra* note 9.

²⁶ The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules. See *supra* note 4.

²⁷ Under the NSCC Rules, NSCC collects additional cash deposits from those Members who

would generate the largest settlement debits in stressed market conditions, referred to as "Supplemental Liquidity Deposits" or "SLD." See Rule 4A of the NSCC Rules, *supra* note 4.

of alternate means of settlement available to OCC from September 2021 through September 2022, in the event that NSCC did not accept E&A/Delivery Transactions, the worst-case scenario peak liquidity need OCC identified was \$384,635,833,942 for settlement to occur on a gross broker-to-broker basis. OCC estimates that the corresponding GSP in this scenario would have been \$863,619,056. OCC also analyzed several other large liquidity demand amounts that were identified during the study if OCC effected settlement on a gross broker-to-broker basis.³¹ These liquidity demand amounts and the largest liquidity demand amount OCC observed of \$384,635,833,942 substantially exceed the amount of liquid resources currently available to OCC.³² By contrast, projected GSPs identified during the study ranged from \$419,297,734 to \$6,281,228,428. For each of these projected GSP amounts, OCC observed that the Margin Assets and OCC Clearing Fund contributions that would have been required of Clearing Members in these scenarios would have been sufficient to satisfy the amount of the projected GSPs.

To help address the current technology constraint that prohibits NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member, proposed Section 6(b)(i) of the Existing Accord and related Section 7(d) of the SLA would provide that, with respect to a Mutually Suspended Member, either NSCC or OCC may require that the Required Fund Deposit portion of the GSP be re-calculated by calculating the Required Fund Deposit for the Mutually Suspended Member both before and after the delivery of the E&A/Delivery Transactions and utilize the precise amount that is attributable to that activity in the final GSP. If such a recalculation is required, the result would replace the Required Fund Deposit component of the GSP that was initially calculated. The SLD component of the GSP would be unchanged by such recalculation.

As the above demonstrates, the GSP is intended to address the significant collateral and liquidity requirements that could be required of OCC Clearing Members in the event of a Common Member default.

Allowing OCC to make a GSP payment also is intended to allow for

settlement processing to take place through the facilities of NSCC to retain operational efficiencies associated with the settlement process. Alternative settlement means such as broker-to-broker settlement add operational burdens because transactions would need to be settled individually on one-off bases. In contrast, NSCC's netting reduces the volume and value of settlement obligations that would need to be closed out in the market.³³ Because the clearance and settlement of obligations through NSCC's facilities following a Common Member default, including netting of E&A/Delivery Transactions with a Common Member's positions at NSCC would avoid these potentially significant operational burdens for OCC and its Clearing Members, OCC and NSCC believe that the proposed changes would limit market disruption relating to a Common Member default. NSCC netting significantly reduces the total number of obligations that require the exchange of money for settlement. Allowing more activity to be processed through NSCC's netting systems would minimize risk associated with the close out of those transactions following the default of a Common Member.

Amending the Existing Accord to define the terms and conditions under which Guaranty Substitution may occur, at OCC's election, with respect to Defaulted NSCC Member Transactions after a Common Member becomes a Mutually Suspended Member would also provide more certainty to both the Clearing Agencies and market participants generally about how a Mutually Suspended Member's Defaulted NSCC Member Transactions may be processed.

NSCC and OCC have agreed it is appropriate to limit the availability of the proposed provision to the day of the Common Member default and the next business day because, based on historical cease to act events and simulations of cease to act events involving Common Members, most activity of a Mutually Suspended Member is closed out on those days.³⁴ Furthermore, the benefits of netting through NSCC's systems would be reduced for any activity submitted to NSCC after that time.

To implement these proposed changes to the Existing Accord, OCC and NSCC propose to make the following changes.

Section 1—Definitions

First, new definitions would be added, and existing definitions would be amended in Section 1, which is the Definitions section.

The new defined terms would be as follows.

- The term “Close Out Transaction” would be defined to mean “the liquidation, termination or acceleration of one or more exercised or matured Stock Options³⁵ or Stock Futures³⁶ contracts, securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, master netting agreements or similar agreements of a Mutually Suspended Member pursuant to OCC Rules 1101 through 1111 and/or NSCC Rule 18.” This proposed definition would make it clear that the payment of the Guaranty Substitution Payment and NSCC's subsequent acceptance of Defaulted NSCC Member Transactions for clearance and settlement are intended to fall within the “safe harbors” provided in the Bankruptcy Code,³⁷ the Securities Investor Protection Act,³⁸ and other similar laws.

- The term “Guaranty Substitution Payment” would be defined to mean “an amount calculated by NSCC in accordance with the calculations set forth in Appendix A [to the Existing Accord (as proposed to be amended)], to include two components: (i) a portion of the Mutually Suspended Member's Required Fund Deposit deficit to NSCC at the time of the cease to act and (ii) a portion of the Mutually Suspended Member's unpaid Supplemental Liquidity Deposit obligation at the time of the cease to act.”

- The term “Mutually Suspended Member” would mean “any OCC Participating Member³⁹ that has been

³⁵ The term “Stock Options” is defined in the Existing Accord within the definition of “Eligible Securities” and refers to options issued by OCC.

³⁶ The term “Stock Futures” is defined in the Existing Accord within the definition of “Eligible Securities,” described below, and refers to stock futures contracts cleared by OCC.

³⁷ 11 U.S.C. 101 *et seq.*, including §§ 362(b)(6), (7), (17), (25) and (27) (exceptions to the automatic stay), §§ 546(e)–(g) and (j) (limitations on avoiding powers), and §§ 555–556 and 559–562 (contractual right to liquidate, terminate or accelerate certain contracts).

³⁸ 15 U.S.C. 78aaa–1ll, including § 78eeb(b)(2)(C) (exceptions to the stay).

³⁹ The term “OCC Participating Member” is defined in the Existing Accord to mean “(i) a Common Member; (ii) an OCC Clearing Member that is an ‘Appointing Clearing Member’ (as defined in Article I of OCC's By-Laws) and has appointed an Appointed Clearing Member that is an NSCC Member to effect settlement of E&A/Delivery Transactions through NSCC on the Appointing Clearing Member's behalf; (iii) an OCC Clearing Member that is an Appointed Clearing Member; or (iv) a Canadian Clearing Member.” No changes are proposed to this definition.

³¹ OCC filed additional detail related to the referenced study as an exhibit to the OCC Filing.

³² As of Mar. 31, 2023, OCC held approximately \$10.37 billion in qualifying liquid resources. See OCC Quantitative Disclosure, Jan.–Mar. 2023, available at www.theocc.com/risk-management/pfmi-disclosures.

³³ CNS reduces the value of obligations that require financial settlement by approximately 98 percent, where, for example, approximately \$519 trillion in trades could be netted down to approximately \$9 trillion in net settlements.

³⁴ OCC filed data regarding simulated events as an exhibit to the OCC Filing.

suspended by OCC that is also an NSCC Participating Member⁴⁰ for which NSCC has ceased to act.”

- The term “Required Fund Deposit” would have the meaning “provided in Rule 4 of NSCC’s Rules and Procedures (or any replacement or substitute rule), the version of which, with respect to any transaction or obligation incurred that is the subject of this Agreement, is in effect at the time of such transaction or incurrence of obligation.”

- The term “Supplemental Liquidity Deposit” would have the meaning “provided in Rule 4A of NSCC’s Rules and Procedures (or any replacement or substitute rule), the version of which, with respect to any transaction or obligation incurred that is the subject of this Agreement, is in effect at the time of such transaction or incurrence of obligation.”

The defined terms that would be amended in Section 1 of the Existing Accord are as follows.

- The definition for the term “E&A/Delivery Transaction” generally contemplates a transaction that involves a delivery and receipt of stock in the settlement of physically settled options and futures that are cleared and settled by OCC and for which the underlying securities are eligible for clearing through the facilities of NSCC. The definition would be amended to make clear that it would apply in respect of a “Close Out Transaction” of a “Mutually Suspended Member” as those terms are proposed to be defined (described above).

- The definition for the term “Eligible Securities” generally contemplates the securities that are eligible to be used for physical settlement under the Existing Accord. The term would be modified to clarify that this may include, for example, equities, exchange-traded funds and exchange-traded notes that are underlying securities for options issued by OCC.

Section 6—Default by an NSCC Participating Member or OCC Participating Member

Section 6 of the Existing Accord provides that NSCC is required to provide certain notice to OCC in circumstances in which NSCC has ceased to act for a Common Member. Currently, Section 6(A)(ii) of the

Existing Accord also requires NSCC to notify OCC if a Common Member has failed to satisfy its Clearing Fund obligations to NSCC, but for which NSCC has not yet ceased to act. In practice, this provision would trigger a number of obligations (described below) when a Common Member fails to satisfy its NSCC Clearing Fund obligations for any reason, including those due to an operational delay. Therefore, OCC and NSCC are proposing to remove the notification requirement under Section 6(A)(ii) from the Existing Accord. Under Section 7(d) of the Existing Accord, NSCC and OCC are required to provide each other with general surveillance information regarding Common Members, which includes information regarding any Common Member that is considered by the other party to be in distress. Therefore, if a Common Member has failed to satisfy its NSCC Clearing Fund obligations and NSCC believes this failure is due to, for example, financial distress and not, for example, due to a known operational delay, and NSCC has not yet ceased to act for that Common Member, such notification to OCC would still occur but would be done pursuant to Section 7(d) of the Existing Accord (as proposed to be amended), and not Section 6(A)(ii). Notifications under Section 6 of the Existing Accord (as proposed to be amended) would be limited to instances when NSCC has actually ceased to act for a Common Member pursuant to the NSCC Rules.⁴¹

Following notice by NSCC that it has ceased to act for a Common Member, OCC is obligated in turn to deliver to NSCC a list of all E&A/Delivery Transactions (excluding certain transactions for which Guaranty Substitution does not occur) involving the Common Member.⁴² This provision would be amended to clarify that it applies in respect of such E&A/Delivery Transactions for the Common Member for which the NSCC Guaranty has not yet attached—meaning that Guaranty Substitution has not yet occurred.

As described above in the summary of the Existing Accord, where NSCC has ceased to act for a Common Member, the Existing Accord refers to the Common Member as the Defaulting NSCC Member and also refers to the relevant E&A/Delivery Transactions in connection with that Defaulting NSCC Member for which a Guaranty

Substitution has not yet occurred as Defaulted NSCC Member Transactions.

If the Defaulting NSCC Member is also suspended by OCC, it would be covered by the proposed definition that is described above for a Mutually Suspended Member. For such a Mutually Suspended Member, the proposed changes in Section 6(b) would provide that NSCC, by a time agreed upon by the parties, would provide OCC with the amount of the Guaranty Substitution Payment as calculated by NSCC and related documentation regarding the calculation. The Guaranty Substitution Payment would be calculated pursuant to NSCC’s Rules as that portion of the unmet Required Fund Deposit⁴³ and Supplemental Liquidity Deposit⁴⁴ obligations of the Mutually Suspended Member attributable to the Defaulted NSCC Member Transactions. By a time agreed upon by the parties,⁴⁵ OCC would then be required to either notify NSCC of its intent to make the full amount of the Guaranty Substitution Payment to NSCC or notify NSCC that it would not make the Guaranty Substitution Payment. If OCC makes the full amount of the Guaranty Substitution Payment, NSCC’s guaranty would take effect at the time of NSCC’s receipt of that payment and the OCC Guaranty would end.

The proposed changes would further provide that if OCC does not suspend the Common Member (such that the Common Member would therefore not meet the proposed definition of a Mutually Suspended Member) or if OCC elects to not make the full amount of the Guaranty Substitution Payment to NSCC, then all of the Defaulted NSCC Member Transactions would be exited from NSCC’s CNS Accounting Operation and/or NSCC’s Balance Order Accounting Operation, as applicable, and Guaranty Substitution would not occur in respect thereof. Therefore, NSCC would continue to have no obligation to guarantee or settle the Defaulted NSCC Member Transactions, and the OCC Guaranty would continue

⁴³ The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules, *see supra* note 4.

⁴⁴ The Supplemental Liquidity Deposit is calculated pursuant to Rule 4A (Supplemental Liquidity Deposits) of the NSCC Rules, *see supra* note 4.

⁴⁵ The time by which OCC would be required to notify NSCC of its intent would be defined in the Service Level Agreement. As of the time of this filing, the parties intend to set that time as one hour after OCC’s receipt of the calculated Guaranty Substitution Payment from NSCC.

⁴⁰ The term “NSCC Participating Member” is defined in the Existing Accord to mean “(i) a Common Member; (ii) an NSCC Member that is an ‘Appointed Clearing Member’ (as defined in Article I of OCC’s By-Laws); or (iii) [The Canadian Depository for Securities Limited, or ‘CDS’]. For the avoidance of doubt, the Clearing Agencies agree that CDS is an NSCC Member for purposes of this Agreement.” No changes are proposed to this definition.

⁴¹ *See* Rule 46 (Restrictions on Access to Services) of the NSCC Rules, *supra* note 4.

⁴² The section of the Existing Accord that addresses circumstances in which NSCC ceases to act and/or an NSCC Member defaults is currently part of Section 6(a). It would be re-designated as Section 6(b) for organizational purposes.

to apply to them pursuant to OCC's By-Laws and Rules.⁴⁶

Proposed changes to the Existing Accord would also address the application of any Guaranty Substitution Payment by NSCC. Specifically, new Section 6(d) would provide that any Guaranty Substitution Payment made by OCC may be used by NSCC to satisfy any liability or obligation of the Mutually Suspended Clearing Member to NSCC on account of transactions involving the Mutually Suspended Clearing Member for which the NSCC Guaranty applies and to the extent that any amount of assets otherwise held by NSCC for the account of the Mutually Suspended Member (including any Required Fund Deposit or Supplemental Liquidity Deposit) are insufficient to satisfy its obligations related to transactions for which the NSCC Guaranty applies. Proposed changes to Section 6(d) would further provide for the return to OCC of any unused portion of the GSP. With regard to the portion of the Guaranty Substitution Payment that corresponds to a member's Supplemental Liquidity Deposit obligation, NSCC must return any unused amount to OCC within fourteen (14) days following the conclusion of NSCC's settlement, close-out and/or liquidation. With regard to the portion of the Guaranty Substitution Payment that corresponds to a Required Fund Deposit, NSCC must return any unused amount to OCC under terms agreed to by the parties.⁴⁷

Other Proposed Changes

Certain other technical changes are also proposed to the Existing Accord to conform it to the proposed changes described above. For example, the preamble and the "whereas" clauses in the Preliminary Statement would be amended to clarify that the agreement is an amended and restated agreement and to summarize that the agreement would be modified to contemplate the Guaranty Substitution Payment structure. Section 1(c), which addresses the terms in the Existing Accord that are defined by reference to NSCC's Rules and Procedures and OCC's By-Laws and Rules would be modified to state that such terms would have the meaning then in effect at the time of any transaction or obligation that is covered

by the agreement rather than stating that such terms have the meaning given to them as of the effective date of the agreement. This change is proposed to help ensure that the meaning of such terms in the agreement would not become inconsistent with the meaning in the NSCC Rules and/or OCC By-Laws and Rules, as they may be modified through proposed rule changes with the Commission.

Technical changes would be made to Sections 3(d) and (e) of the Existing Accord to provide that those provisions would not apply in the event new Section 6(b) described above, is triggered. Section 3(d) generally provides that OCC would no longer submit E&A/Delivery Transactions to NSCC involving a suspended OCC Participating Member. Similarly, Section 3(e) generally provides that OCC would no longer submit E&A/Delivery Transactions to NSCC involving an NSCC Participating Member for which NSCC has ceased to act. A proposed change would also be made to Section 5 of the Existing Accord to modify a reference to Section 5 of Article VI of OCC's By-Laws to instead provide that the updated cross-reference should be to Chapter IV of OCC's Rules.

Section 5 would also be amended to clarify that Guaranty Substitution occurs when NSCC has received both the Required Fund Deposit and Supplemental Liquidity Deposit, as calculated by NSCC in its sole discretion, from Common Members. The addition of the collection of the Supplemental Liquidity Deposit to the definition of the Guaranty Substitution Time in this Section 5 would reflect OCC and NSCC's agreement that both amounts are components of the Guaranty Substitution Payment (as described above) and would make this definition consistent with that agreement.

In Section 7 of the Existing Accord, proposed changes would be made to provide that NSCC would provide to OCC information regarding a Common Member's Required Fund Deposit and Supplemental Liquidity Deposit obligations, to include the Supplemental Liquidity Deposit obligation in this notice requirement, and additionally that NSCC would provide OCC with information regarding the potential Guaranty Substitution Payment for the Common Member. On an options expiration date that is a Friday, NSCC would, by close of business on that day, also provide to OCC information regarding the intra-day liquidity requirement, intra-day liquidity resources and intra-day calls for a Common Member that is subject to

a Supplemental Liquidity Deposit at NSCC.

Finally, Section 14 of the Existing Accord would be modernized to provide that notices between the parties would be provided by email rather than by hand, overnight delivery service or first-class mail.

Proposed Changes to NSCC Rules

In connection with the proposed changes to the Existing Accord, NSCC is also proposing changes to its Rules, described below.

First, NSCC would amend Rule 18 (Procedures for When the Corporation Ceases to Act), which describes the actions NSCC would take with respect to the transactions of a Member after NSCC has ceased to act for that Member.⁴⁸ The proposed changes would include a new Section 9(a) to specify that following a Member default, NSCC may continue to act and provide the NSCC Guaranty pursuant to a "Close-Out Agreement" such as the Existing Accord (as it is proposed to be amended);⁴⁹ a new Section 9(b) to specify that any transactions undertaken pursuant to a Close-Out Agreement would be treated as having been received, provided or undertaken for the account of the Member for which NSCC has ceased to act, but that any deposit, payment, financial assurance or other accommodation provided to NSCC pursuant to a Close-Out Agreement shall be returned or released as provided for in the agreement; and a new Section 9(c), to provide that NSCC shall have a lien upon, and may apply, any property of the defaulting Member in satisfaction of any obligation, liability or loss that relates to a transaction undertaken or service provided pursuant to a Close-Out Agreement.

NSCC would also propose clarifications to Sections 4, 6(b)(iii)(B) and 8 to use more precise references to the legal entity described in those sections of this Rule.

Second, NSCC would amend Section B of Procedure III and Addendum K of the NSCC Rules⁵⁰ to provide that the NSCC Guaranty would not attach to Defaulted NSCC Member Transactions except as provided for in the Existing Accord (as it is proposed to be amended), and that the NSCC Guaranty attaches, with respect to obligations arising from the exercise or assignment of OCC options settled at NSCC or stock futures contracts cleared by OCC, as

⁴⁶ Under the current and proposed terms of the Existing Accord, NSCC would be permitted to voluntarily guaranty and settle the Defaulted NSCC Member Transactions.

⁴⁷ Such amounts would be returned to OCC as appropriate and in accordance with a Netting Contract and Limited Cross-Guaranty, by and among The Depository Trust Company, Fixed Income Clearing Corporation, NSCC and OCC, dated as of Jan. 1, 2003, as amended.

⁴⁸ See *supra* note 4.

⁴⁹ The Existing Accord is currently the only agreement that would be considered a "Close-Out Agreement" under this new Section 9(b).

⁵⁰ See *id.*

provided for in the Existing Accord (as it is proposed to be amended) or other arrangement with OCC. Finally, the proposed changes to Procedure III would clarify that Guaranty Substitution occurs when NSCC has received both the Required Fund Deposit and Supplemental Liquidity Deposit, consistent with the proposed revisions to Section 5 of the Current Accord, described above. As noted above, the proposal to include the collection of the Supplemental Liquidity Deposit in connection with the Guaranty Substitution reflect OCC and NSCC's agreement that both amounts are components of the Guaranty Substitution Payment.

Collectively, these proposed changes would establish and clarify the rights of both NSCC and a Member for which NSCC has ceased to act with respect to property held by NSCC and the operation and applicability of any Close-Out Agreement, and would make it clear that any payments received pursuant to a Close-Out Agreement and NSCC's acceptance of a Mutually Suspended Member's transactions for clearance and settlement pursuant to a Close-Out Agreement are intended to fall within the Bankruptcy Code and Securities Investor Protection Act "safe harbors."

2. Statutory Basis

NSCC believes the proposed changes to the Existing Accord and its Rules are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes the proposed change is consistent with Section 17A(b)(3)(F) of the Act⁵¹ and Rules 17Ad-22(e)(7) and (20), each promulgated under the Act,⁵² for the reasons described below.

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed, in general, to protect investors and the public interest.⁵³ As described above, NSCC believes that providing OCC with the ability to make a Guaranty Substitution Payment to it with respect to any unmet obligations of a Mutually Suspended Member would promote prompt and accurate clearance and settlement because it would allow relevant securities settlement obligations to be accepted by NSCC for clearance and settlement, which would reduce the size of the related settlement obligations for both the Mutually Suspended Member and its assigned

delivery counterparties through netting through NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation. Further, this proposal would reduce the circumstances in which OCC's Guaranty would continue to apply to these settlement obligations, to be settled on a broker-to-broker basis between OCC Clearing Members, which could result in substantial collateral and liquidity requirements for OCC Clearing Members and that, in turn, could also increase a risk of default by the affected OCC Clearing Members at a time when a Common Member has already been suspended. For these reasons, NSCC believes that the proposed changes would be beneficial to and protective of OCC, NSCC, their participants, and the markets that they serve and that the proposed changes are therefore designed, in general, to protect investors and the public interest.

Rule 17Ad-22(e)(7) requires NSCC, in relevant part, to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor and manage the liquidity risk that arises in or is borne by NSCC and to, among other things, address foreseeable liquidity shortfalls that would not be covered by NSCC's liquid resources.⁵⁴ NSCC believes the proposal is consistent the requirements of Rule 17Ad-22(e)(7) because, any increase to NSCC's liquidity needs that may be created by applying the NSCC Guaranty to Defaulted Member Transactions would occur with a simultaneous increase to its liquidity resources in the form of the Guaranty Substitution Payment. Therefore, NSCC believes it will continue to adhere to the requirements of Rule 17Ad-22(e)(7) under the proposal.

Finally, Rule 17Ad-22(e)(20) requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor and manage risks related to any link that NSCC establishes with one or more other clearing agencies, financial market utilities, or trading markets.⁵⁵ The Existing Accord between OCC and NSCC is one such link. As described above, NSCC believes that implementation of the proposal would help manage the risks presented by the settlement link because, when the proposed provision is triggered by OCC, NSCC would receive the Guaranty Substitution Payment with respect to

the relevant securities settlement obligations.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act⁵⁶ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. NSCC does not believe that the proposal would impose any burden on competition. This is because it would implement changes that would permit OCC in certain circumstances to make a Guaranty Substitution Payment to NSCC so that the NSCC Guaranty would take effect for the Defaulted NSCC Member Transactions, and the OCC Guaranty would end. The proposed changes would not inhibit access to NSCC's services in any way, applies to all Members and does not disadvantage or favor any particular user in relationship to another user. Accordingly, NSCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at* www.sec.gov/regulatory-actions/how-to-submit-comments. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

NSCC reserves the right not to respond to any comments received.

⁵¹ 15 U.S.C. 78q-1(b)(3)(F).

⁵² 17 CFR 240.17Ad-22(e)(7), (20).

⁵³ 15 U.S.C. 78q-1(b)(3)(F).

⁵⁴ 17 CFR 240.17Ad-22(e)(7).

⁵⁵ 17 CFR 240.17Ad-22(e)(20).

⁵⁶ 15 U.S.C. 78q-1(b)(3)(I).

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NSCC-2023-007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-NSCC-2023-007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for

inspection and copying at the principal office of NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>).

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-NSCC-2023-007 and should be submitted on or before September 20, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-18670 Filed 8-29-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98215; File No. SR-OCC-2023-007]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning Modifications to the Amended and Restated Stock Options and Futures Settlement Agreement Between The Options Clearing Corporation and the National Securities Clearing Corporation

August 24, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 10, 2023, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change would (1) modify the Amended and Restated Stock Options and Futures Settlement Agreement dated August 5, 2017 between OCC and National Securities Clearing Corporation ("NSCC," and together with OCC, the "Clearing

Agencies") ("Existing Accord")³ and (2) make certain revisions to OCC By-Laws, OCC Rules,⁴ OCC's Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description and OCC's Liquidity Risk Management Framework in connection with the proposed modifications to the Existing Accord, as described in greater detail below.⁵

The proposed changes would permit OCC to elect to make a cash payment to NSCC following the default of a common clearing participant that would cause NSCC's central counterparty trade guaranty to attach to certain obligations of that participant, as described in greater detail below.

The proposed changes are included in Exhibits 5A and 5B and confidential Exhibits 5C, 5D, and 5E to File No. SR-OCC-2023-007. Material proposed to be added is underlined and material proposed to be deleted is marked in strikethrough text.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Executive Summary

NSCC is a clearing agency that provides clearing, settlement, risk management, and central counterparty services for trades involving equity securities. OCC is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, including options that contemplate the

³ The Existing Accord was previously approved by the Commission. See Securities Exchange Act Release Nos. 81266, 81260 (July 31, 2017) (File Nos. SR-NSCC-2017-007; SR-OCC-2017-013), 82 FR 36484 (Aug. 4, 2017).

⁴ OCC By-Laws are available at https://www.theocc.com/getmedia/3309eceb-56cf-48fc-b3b3-498669a24572/occ_bylaws.pdf and OCC Rules are available at https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf.

⁵ NSCC also has filed a proposed rule change with the Commission in connection with this proposal. See SR-NSCC-2023-007.

⁵⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

physical delivery of equities cleared by NSCC in exchange for cash (“physically settled” options).⁶ OCC also clears certain futures contracts that, at maturity, require the delivery of equity securities cleared by NSCC in exchange for cash. As a result, the exercise/assignment of certain options or maturation of certain futures cleared by OCC effectively results in stock settlement obligations. NSCC and OCC maintain a legal agreement, generally referred to by the parties as the “Accord” agreement, that governs the processing of such physically settled options and futures cleared by OCC that result in transactions in underlying equity securities to be cleared by NSCC (*i.e.*, the Existing Accord). The Existing Accord establishes terms under which NSCC accepts for clearing certain securities transactions that result from the exercise and assignment of relevant options contracts and the maturity of futures contracts that are cleared and settled by OCC.⁷ It also establishes the time when OCC’s settlement guaranty in respect of those transactions ends and NSCC’s settlement guaranty begins.

The Existing Accord allows for a scenario in which NSCC could choose not to guarantee the settlement of such securities arising out of transactions. Specifically, NSCC is not obligated to guarantee settlement until its member has met its collateral requirements at NSCC. If NSCC chooses not to guarantee settlement, OCC would engage in an alternate method of settlement outside of NSCC. This scenario presents two primary problems. First, the cash required for OCC and its Clearing Members in certain market conditions to facilitate settlement outside of NSCC could be significantly more than the amount required if NSCC were to guarantee the relevant transactions. This is because settlement of the transactions in the underlying equity securities outside of NSCC would mean that they would no longer receive the benefit of netting through the facilities of NSCC. In such a scenario, the additional collateral required from Clearing Members to support OCC’s continuing

settlement guarantee would also have to be sufficiently liquid to properly manage the risks associated with those transactions being due on the second business day following the option exercise or the relevant futures contract maturity date. Based on an analysis of scenarios using historical data where it was assumed that OCC could not settle transactions through the facilities of NSCC, the worst-case outcome resulted in extreme liquidity demands of over \$300 billion for OCC to effect settlement via an alternative method, *e.g.*, by way of gross broker-to-broker settlement, as discussed in more detail below. OCC Clearing Members, by way of their contributions to the OCC Clearing Fund, would bear the brunt of this demand. Furthermore, there is no guarantee that OCC Clearing Members could fund the entire amount of any similar real-life scenarios. By contrast, projected GSPs, defined below, identified during the study ranged from approximately \$419 million to over \$6 billion, also as discussed in more detail below.

The second primary problem relates to the significant operational complexities if settlement occurs outside of NSCC. More specifically, netting through NSCC reduces the volume and value of settlement obligations. For example, in 2022 it is estimated that netting through NSCC’s continuous net settlement (“CNS”) accounting system⁸ reduced the value of CNS settlement obligations by approximately 98% or \$510 trillion from \$519 trillion to \$9 trillion. If settlement occurred outside of NSCC, on a broker-to-broker basis between OCC Clearing Members, for example, shares would not be netted and Clearing Members would have to coordinate directly with each other to settle the relevant transactions. The operational complexities and uncertainty associated with alternate means of settlement would impact every market participant involved in a settlement of OCC-related transactions.

To address these problems, the Clearing Agencies are proposing to amend and restate the Existing Accord and make related changes to their respective rules that would allow OCC to elect to make a cash payment to NSCC following the default of a Common Member⁹ that would cause

NSCC to guarantee settlement of that Common Member’s transactions and, therefore, cause those transactions to be settled through processing by NSCC. As part of this proposal, OCC also will enhance its daily liquidity stress testing processes and procedures to account for the possibility of OCC making such a payment to NSCC in the event of a Common Member default. By making these enhancements to its stress testing, OCC could include the liquid resources necessary to make the payment in its resource planning. The Clearing Agencies believe that by NSCC accepting such a payment from OCC, the operational efficiencies and reduced costs related to the settlement of transactions through NSCC would limit market disruption following a Common Member default because settlement through NSCC following such a default would be less operationally complex and would be expected to require less liquidity and other collateral from market participants than the processes available to OCC for closing out positions. Additionally, proposed enhancements by OCC to its liquidity stress testing would add assurances that OCC could make such a payment in the event of a Common Member default. The Clearing Agencies believe that their respective clearing members and all other participants in the markets for which OCC provides clearance and settlement will benefit from OCC’s ability to choose to make a cash payment to effect settlement through the facilities of NSCC. This change will provide more certainty around certain default scenarios and would blunt the financial and operational burdens market participants could experience in the case of most clearing member defaults.¹⁰

Background

OCC acts as a central counterparty clearing agency for U.S.-listed options and futures on a number of underlying financial assets including common stocks, currencies, and stock indices. In connection with these services, OCC provides the OCC Guaranty pursuant to its By-Laws and Rules. NSCC acts as a central counterparty clearing agency for certain equity securities, corporate and municipal debt, exchange traded funds and unit investment trusts that are eligible for its services. Eligible trading

⁶ The term “physically-settled” as used throughout the OCC Rulebook refers to cleared contracts that settle into their underlying interest (*i.e.*, options or futures contracts that are not cash-settled). When a contract settles into its underlying interest, shares of stock are sent, *i.e.*, delivered, to contract holders who have the right to receive the shares from contract holders who are obligated to deliver the shares at the time of exercise/assignment in the case of an option and maturity in the case of a future.

⁷ Under the Existing Accord, such options and futures are defined as “E&A/Delivery Transactions”, which refers to “Exercise & Assignment Delivery Transactions.”

⁸ See Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation) of the NSCC Rules. See NSCC’s Rules, available at https://www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf.

⁹ A firm that is both an OCC Clearing Member and an NSCC Member or is an OCC Clearing Member that has designated an NSCC Member to act on its behalf is referred to herein as a “Common

Member.” The term “Clearing Member” as used herein has the meaning provided in OCC’s By-Laws. See OCC’s By-Laws, *supra*, note 4. The term “Member” as used herein has the meaning provided in NSCC’s Rules. See NSCC’s Rules, *supra*, note 8.

¹⁰ OCC provided its analysis of the financial impact of alternate means of settlement as Exhibit 3A to File No. SR-OCC-2023-007.

activity may be processed through NSCC's CNS system¹¹ or through its Balance Order Account system,¹² where all eligible compared and recorded transactions for a particular settlement date are netted by issue into one net long (buy), net short (sell) or flat position. As a result, for each day with activity, each Member has a single deliver or receive obligation for each issue in which it has activity. In connection with these services, NSCC also provides the NSCC Guaranty pursuant to Addendum K of the NSCC Rules.

OCC's Rules provide that delivery of, and payment for, securities underlying certain exercised stock options and matured single stock futures that are physically settled are generally effected through the facilities of NSCC and are not settled through OCC's facilities.¹³ OCC and NSCC executed the Existing Accord to facilitate, via NSCC's systems, the physical settlement of securities arising out of options and futures cleared by OCC. OCC Clearing Members that clear and settle physically settled options and futures transactions through OCC also are required under OCC's Rules¹⁴ to be Members of NSCC or to have appointed or nominated a Member of NSCC to act on its behalf. As noted above, these firms are referred to as "Common Members" in the Existing Accord.

Summary of the Existing Accord

The Existing Accord governs the transfer between OCC and NSCC of responsibility for settlement obligations that involve a delivery and receipt of stock in the settlement of physically settled options and futures that are cleared and settled by OCC and for which the underlying securities are eligible for clearing through the facilities of NSCC ("E&A/Delivery Transactions"). It also establishes the time when OCC's settlement guarantee (the "OCC Guaranty") ends and NSCC's settlement guarantee (the "NSCC Guaranty")¹⁵ begins with respect to E&A/Delivery Transactions. However, in the case of a Common Member default¹⁶

NSCC can reject these settlement obligations, in which case the settlement guaranty will not transfer from OCC to NSCC and OCC would not have a right to settle the transactions through the facilities of NSCC. Instead, OCC would have to engage in alternative methods of settlement that have the potential to create significant liquidity and collateral requirements for both OCC and its non-defaulting Clearing Members.¹⁷ More specifically, this could involve broker-to-broker settlement between OCC Clearing Members.¹⁸ This settlement method is operationally complex because it requires bilateral coordination directly between numerous Clearing Members rather than relying on NSCC to facilitate multilateral netting to settle the relevant settlement obligations. As described above, it also potentially could result in significant liquidity and collateral requirements for both OCC and its non-defaulting Clearing Members because the transactions will not be netted through the facilities of NSCC. Alternatively, where NSCC accepts the E&A/Delivery Transactions from OCC, the OCC Guaranty ends and the NSCC Guaranty takes effect. The transactions are then netted through NSCC's systems, which allows settlement obligations for the same settlement date to be netted into a single deliver or receive obligation. This netting reduces the costs associated with securities transfers by reducing the number of securities movements required for settlement and further reduces operational and market risk. The benefits of such netting by NSCC may be significant with respect to the large volumes of E&A/Delivery

Transactions processed during monthly options expiry periods.

Pursuant to the Existing Accord, on each trading day NSCC delivers to OCC a file that identifies the securities, including stocks, exchange-traded funds and exchange-traded notes, that are eligible (1) to settle through NSCC and (2) to be delivered in settlement of (i) exercises and assignments of stock options cleared and settled by OCC or (ii) delivery obligations from maturing stock futures cleared and settled by OCC. OCC, in turn, delivers to NSCC a file identifying securities to be delivered, or received, for physical settlement in connection with OCC transactions.¹⁹

After NSCC receives the list of eligible transactions from OCC and NSCC has received all required deposits to the NSCC Clearing Fund from all Common Members taking into consideration amounts required to physically settle the OCC transactions, the OCC Guaranty would end and the NSCC Guaranty would begin with respect to physical settlement of the eligible OCC-related transactions.²⁰ At this point, NSCC is solely responsible for settling the transactions.²¹

Each day, NSCC is required to promptly notify OCC at the time the NSCC Guaranty takes effect. If NSCC rejects OCC's transactions due to an improper submission²² or if NSCC "ceases to act" for a Common Member,²³ NSCC's Guaranty will not

¹⁹ Each day that both OCC and NSCC are open for accepting trades for clearing is referred to as an "Activity Date" in the Existing Accord. Securities eligible for settlement at NSCC are referred to collectively as "Eligible Securities" in the Existing Accord. Eligible securities are settled at NSCC through NSCC's CNS Accounting Operation or NSCC's Balance Order Accounting Operation.

²⁰ The term "NSCC Clearing Fund" as used herein has the same meaning as the term "Clearing Fund" as provided in the NSCC Rules. Procedure XV of the NSCC Rules provides that all NSCC Clearing Fund requirements and other deposits must be made within one hour of demand, unless NSCC determines otherwise, *supra* note 8.

²¹ This is referred to in the Existing Accord as the "Guaranty Substitution Time," and the process of the substitution of the NSCC Guaranty for the OCC Guaranty in respect of E&A/Delivery Transactions is referred to as "Guaranty Substitution".

²² Guaranty Substitution by NSCC (discussed further below) does not occur with respect to an E&A/Delivery Transaction that is not submitted to NSCC in the proper format or that involves a security that is not identified as an Eligible Security on the then-current NSCC Eligibility Master File.

²³ Under NSCC's Rules, a default would generally be referred to as a "cease to act" and could encompass a number of circumstances, such as an NSCC Member's failure to make a Required Fund Deposit in a timely fashion. See NSCC Rule 46 (Restrictions on Access to Services), *supra* note 8. An NSCC Member for which it has ceased to act is referred to in the Existing Accord as a "Defaulting NSCC Member". Transactions associated with a Defaulting NSCC Member are referred to as

¹¹ See Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation) of the NSCC Rules, *supra* note 8.

¹² See Rule 8 (Balance Order and Foreign Security Systems) and Procedure V (Balance Order Accounting Operation) of the NSCC Rules, *supra* note 8.

¹³ See Chapter IX of OCC's Rules (Delivery of Underlying Securities and Payment), *supra* note 4.

¹⁴ See OCC Rule 901, *supra* note 4.

¹⁵ See Addendum K and Procedure III of the NSCC Rules, *supra* note 8.

¹⁶ A Common Member that has been suspended by OCC or for which NSCC has ceased to act is referred to as a "Mutually Suspended Member".

¹⁷ For example, OCC evaluated certain Clearing Member default scenarios in which OCC assumed that NSCC would not accept the settlement obligations under the Existing Accord, including the default of a large Clearing Member coinciding with a monthly options expiration. OCC has estimated that in such a Clearing Member default scenario, the aggregate liquidity burden on OCC in connection with obligations having to be settled on a gross broker-to-broker basis could reach a significantly high level. For example, in January 2022, the largest gross broker-to-broker settlement amount in the case of a larger Clearing Member default would have resulted in liquidity needs of approximately \$384,635,833,942. OCC provided the data and analysis as Exhibit 3A to File No. SR-OCC-2023-007.

¹⁸ In broker-to-broker settlement, Clearing Member parties are responsible for coordinating settlement—delivery and payment—among themselves on a transaction-by-transaction basis. Once transactions settle, the parties also have an obligation to affirmatively notify OCC so that OCC can close out the transactions. If either one of or both of the parties do not notify OCC, the transaction will remain open on OCC's books indefinitely until the time both parties have provided notice of settlement to OCC.

take effect for the affected transactions pursuant to the NSCC Rules.

NSCC is required to promptly notify OCC if it ceases to act for a Common Member. Upon receiving such a notice, OCC would not continue to submit to NSCC any further unsettled transactions that involve such Common Member, unless authorized representatives of both OCC and NSCC otherwise consent. OCC would, however, deliver to NSCC a list of all transactions that have already been submitted to NSCC and that involve such Common Member. The NSCC Guaranty ordinarily would not take effect with respect to transactions for a Common Member for which NSCC has ceased to act, unless both Clearing Agencies agree otherwise. As such, NSCC does not have any existing contractual obligation to guarantee such Common Member's transactions. To the extent the NSCC Guaranty does not take effect, OCC's Guaranty would continue to apply, and, as described above, OCC would remain responsible for effecting the settlement of such Common Member's transactions pursuant to OCC's By-Laws and Rules.

As noted above, the Existing Accord does provide that the Clearing Agencies may agree to permit additional transactions for a Common Member default ("Defaulted NSCC Member Transactions") to be processed by NSCC while subject to the NSCC Guaranty. This optional feature, however, creates uncertainty for the Clearing Agencies and market participants about how Defaulted NSCC Member Transactions may be processed following a Common Member default, and also does not provide NSCC with the ability to collect collateral from OCC that it may need to close out these additional transactions. While the optional feature would remain in the agreement as part of this proposal, the proposed changes to the Existing Accord, as described below, could significantly reduce the likelihood that it would be utilized.

Proposed Changes to the Existing Accord

The proposed changes to the Existing Accord would permit OCC to make a cash payment, referred to as the "Guaranty Substitution Payment" or "GSP," to NSCC. This cash payment could occur on either or both of the day that the Common Clearing Member becomes a Mutually Suspended Member and on the next business day. Upon NSCC's receipt of the Guaranty Substitution Payment from OCC, the NSCC Guaranty would take effect for the

Common Member's transactions, and they would be accepted by NSCC for clearance and settlement.²⁴ OCC could use all Clearing Member contributions to the OCC Clearing Fund²⁵ and certain Margin Assets²⁶ of a defaulted Clearing Member to pay the GSP, as described in more detail below.

NSCC would calculate the Guaranty Substitution Payment as the sum of the Mutually Suspended Member's unpaid required deposit to the NSCC Clearing Fund ("Required Fund Deposit")²⁷ and the unpaid Supplemental Liquidity Deposit²⁸ obligation that is attributable to E&A/Delivery Transactions. The proposed changes to the Existing Accord define how NSCC would calculate the Guaranty Substitution Payment.

More specifically, NSCC would first determine how much of the member's unpaid Clearing Fund requirement would be included in the GSP. NSCC would look at the day-over-day change in gross market value of the Mutually Suspended Member's positions as well as day-over-day change in the member's NSCC Clearing Fund requirements. Based on such changes, NSCC would identify how much of the change in the Clearing Fund requirement was attributable to E&A/Delivery Transactions coming from OCC. If 100 percent of the day-over-day change in the NSCC Clearing Fund requirement is attributable to activity coming from OCC, then the GSP would include 100 percent of the member's NSCC Clearing Fund requirement. If less than 100 percent of the change is attributable to activity coming from OCC, then the GSP would include that percent of the member's unpaid NSCC Clearing Fund requirement attributable to activity coming from OCC. NSCC would then determine the portion of the member's unpaid SLD obligation that is attributable to E&A/Delivery Transactions. As noted above, the GSP would be the sum of these two amounts.

²⁴ Acceptance of such transactions by NSCC would be subject to NSCC's standard validation criteria for incoming trades. See NSCC Rule 7, *supra* note 8.

²⁵ The term "OCC Clearing Fund" as used herein has the same meaning as the term "Clearing Fund" in OCC's By-Laws, *supra* note 4.

²⁶ The term "Margin Assets" as used herein has the same meaning as provided in OCC's By-Laws, *supra* note 4.

²⁷ The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules, *see supra* note 8.

²⁸ Under the NSCC Rules, NSCC collects additional cash deposits from those Members who would generate the largest settlement debits in stressed market conditions, referred to as "Supplemental Liquidity Deposits" or "SLD". See Rule 4A of the NSCC Rules, *supra* note 8.

A member's NSCC Clearing Fund requirement and SLD obligation at NSCC are designed to address the credit and liquidity risks that a member poses to NSCC. The GSP calculation is intended to assess how much of a member's obligations arise out of activity coming from OCC so that the amount paid by OCC is commensurate with the risk to NSCC of guarantying such activity.

To permit OCC to anticipate the potential resources it would need to pay the GSP for a Mutually Suspended Member, each business day, NSCC would provide OCC with (1) Required Fund Deposit and Supplemental Liquidity Deposit obligations, as calculated pursuant to the NSCC Rules, and (2) the gross market value of the E&A/Delivery Transactions and the gross market value of total Net Unsettled Positions (as such term is defined in the NSCC Rules). On options expiry days that fall on a Friday, NSCC would also provide OCC with information regarding liquidity needs and resources, and any intraday SLD requirements of Common Members. Such information would be delivered pursuant to the ongoing information sharing obligations under the Existing Accord (as proposed to be amended) and the Service Level Agreement ("SLA") to which both NSCC and OCC are a party pursuant to Section 2 of the Existing Accord.²⁹ The SLA addresses specifics regarding the time, form, and manner of various required notifications and actions described in the Accord and also includes information applicable under the Accord.

NSCC and OCC believe the proposed calculation of the Required Fund Deposit portion of the GSP is appropriate because it is designed to provide a reasonable proxy for the impact of the Mutually Suspended Member's E&A/Delivery Transactions on its Required Fund Deposit. While impact study data did show that the proposed calculation could result in a GSP that overestimates or underestimates the Required Fund Deposit attributable to the Mutually Suspended Member's E&A/Delivery Transactions,³⁰ current technology

²⁹ OCC provided the revised SLA to the Commission as Exhibit 3C to File No. SR-OCC-2023-007.

³⁰ The impact study was conducted at the Commission's request to cover a three-day period and reviewed the ten Common Members with the largest Required Fund Deposits attributable to the Mutually Suspended Member's E&A/Delivery Transactions. Over the 30 instances in the study, approximately 15 instances resulted in an underestimate of the Required Fund Deposit by an average of approximately \$112,900,926, four

"Defaulted NSCC Member Transactions" in the Existing Accord.

constraints prohibit NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member.³¹

Implementing the ability for OCC to make the GSP and cause the E&A/Delivery Transactions to be cleared and settled through NSCC would promote the ability of OCC and NSCC to be efficient and effective in meeting the requirements of the markets they serve. This is because data demonstrates that the expected size of the GSP would be smaller than the amount of cash that would otherwise be needed by OCC and its Clearing Members to facilitate settlement outside of NSCC. More specifically, based on a historical study of alternate means of settlement available to OCC from September 2021 through September 2022, in the event that NSCC did not accept E&A/Delivery Transactions, the worst-case scenario peak liquidity need OCC identified was \$384,635,833,942 for settlement to occur on a gross broker-to-broker basis. OCC estimates that the corresponding GSP in this scenario would have been \$863,619,056. OCC also analyzed several other large liquidity demand amounts that were identified during the study if OCC effected settlement on a gross broker-to-broker basis.³² These liquidity demand amounts and the largest liquidity demand amount OCC observed of \$384,635,833,942 substantially exceed the amount of liquid resources currently available to OCC.³³ By contrast, projected GSPs identified during the study ranged from \$419,297,734 to \$6,281,228,428. For each of these projected GSP amounts, OCC observed that the Margin Assets and OCC Clearing Fund contributions that would have been required of Clearing Members in these scenarios would have been sufficient to satisfy the amount of the projected GSPs.

To help address the current technology constraint that prohibits

instances where the proxy calculation was the same as the Required Fund Deposit, and eleven instances of an overestimate of the Required Fund Deposit by an average of approximately \$59,654,583. See Exhibit 3D to File No. SR-OCC-2023-007 for additional detail related to the referenced study.

³¹ OCC and NSCC have agreed that performing the necessary technology build at this time would delay the implementation of this proposal. Therefore, NSCC would consider incorporating those technology updates into future revisions to the Accord, for example in connection with a move to a shorter settlement cycle in the U.S. equities markets.

³² See Exhibit 3A to File No. SR-OCC-2023-007 for additional detail related to the referenced study.

³³ As of March 31, 2023, OCC held approximately \$10.37 billion in qualifying liquid resources. See *OCC Quantitative Disclosure*, January–March 2023, available at <https://www.theocc.com/risk-management/pfmi-disclosures>.

NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member, proposed Section 6(b)(i) of the Existing Accord and related Section 7(d) of the SLA would provide that with respect to a Mutually Suspended Member, either NSCC or OCC may require that the Required Fund Deposit portion of the GSP be re-calculated by calculating the Required Fund Deposit for the Mutually Suspended Member both before and after the delivery of the E&A/Delivery Transactions and utilize the precise amount that is attributable to that activity in the final GSP. If such a recalculation is required, the result would replace the Required Fund Deposit component of the GSP that was initially calculated. The SLD component of the GSP would be unchanged by such recalculation.

As the above demonstrates, the GSP is intended to address the significant collateral and liquidity requirements that could be required of OCC Clearing Members in the event of a Common Member default.

Allowing OCC to make a GSP payment also is intended to allow for settlement processing to take place through the facilities of NSCC to retain operational efficiencies associated with the settlement process. Alternative settlement means such as broker-to-broker settlement add operational burdens because transactions would need to be settled individually on one-off bases. In contrast, NSCC's netting reduces the volume and value of settlement obligations that would need to be closed out in the market.³⁴ Because the clearance and settlement of obligations through NSCC's facilities following a Common Member default, including netting of E&A/Delivery Transactions with a Common Member's positions at NSCC, would avoid these potentially significant operational burdens for OCC and its Clearing Members, OCC and NSCC believe that the proposed changes would limit market disruption relating to a Common Member default. NSCC netting significantly reduces the total number of obligations that require the exchange of money for settlement. Allowing more activity to be processed through NSCC's netting systems would minimize risk associated with the close out of those transactions following the default of a Common Member.

Amending the Existing Accord to define the terms and conditions under

³⁴ CNS reduces the value of obligations that require financial settlement by approximately 98%, where, for example \$519 trillion in trades could be netted down to approximately \$9 trillion in net settlements.

which Guaranty Substitution may occur, at OCC's election, with respect to Defaulted NSCC Member Transactions after a Common Member becomes a Mutually Suspended Member will also provide more certainty to both the Clearing Agencies and market participants generally about how a Mutually Suspended Member's Defaulted NSCC Member Transactions may be processed.

NSCC and OCC have agreed it is appropriate to limit the availability of the proposed provision to the day of the Common Member default and the next business day because, based on historical simulations of cease to act events involving Common Members, most activity of a Mutually Suspended Member is closed out on those days.³⁵ Furthermore, the benefits of netting through NSCC's systems would be reduced for any activity submitted to NSCC after that time.

To implement these proposed changes to the Existing Accord, OCC and NSCC propose to make the following changes.

Section 1—Definitions

First, new definitions would be added, and existing definitions would be amended in Section 1, which is the Definitions section.

The new defined terms would be as follows.

- The term “Close Out Transaction” would be defined to mean “the liquidation, termination or acceleration of one or more exercised or matured Stock Options³⁶ or Stock Futures³⁷ contracts, securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, master netting agreements or similar agreements of a Mutually Suspended Member pursuant to OCC Rules 901, 1006 and 1101 through 1111 (including but not limited to Rules 1104 and 1107) and/or NSCC Rule 18.” This proposed definition would make it clear that the payment of the Guaranty Substitution Payment and NSCC's subsequent acceptance of Defaulted NSCC Member Transactions for clearance and settlement are intended to fall within the “safe harbors” provided

³⁵ OCC provided data regarding such events in Exhibit 3B to File No. SR-OCC-2023-007. The information contained therein includes the assumptions and timelines leading up to the declaration of a default for a Common Member and the anticipated timing of OCC's payment of the GSP.

³⁶ The term “Stock Options” is defined in the Existing Accord within the definition of “Eligible Securities” and refers to options issued by OCC.

³⁷ The term “Stock Futures” is defined in the Existing Accord within the definition of “Eligible Securities” and refers to stock futures contracts cleared by OCC.

in the Bankruptcy Code,³⁸ the Securities Investor Protection Act,³⁹ and other similar laws.

- The term “Guaranty Substitution Payment” would be defined to mean “an amount calculated by NSCC in accordance with the calculations set forth in Appendix A [to the Existing Accord (as proposed to be amended)], to include two components: (i) a portion of the Mutually Suspended Member’s Required Fund Deposit deficit to NSCC at the time of the cease to act; and (ii) a portion of the Mutually Suspended Member’s unpaid Supplemental Liquidity Deposit obligation at the time of the cease to act.”

- The term “Mutually Suspended Member” would mean “any OCC Participating Member⁴⁰ that has been suspended by OCC that is also an NSCC Participating Member⁴¹ for which NSCC has ceased to act.”

- The term “Required Fund Deposit” would have the meaning “provided in Rule 4 of NSCC’s Rules and Procedures (or any replacement or substitute rule), the version of which, with respect to any transaction or obligation incurred that is the subject of this Agreement, is in effect at the time of such transaction or incurrence of obligation.”

- The term “Supplemental Liquidity Deposit” would have the meaning “provided in Rule 4A of NSCC’s Rules and Procedures (or any replacement or substitute rule), the version of which, with respect to any transaction or obligation incurred that is the subject of this Agreement, is in effect at the time of such transaction or incurrence of obligation.”

³⁸ 11 U.S.C. 101 *et seq.*, including §§ 362(b)(6), (7), (17), (25) and (27) (exceptions to the automatic stay), §§ 546(e)–(g) and (j) (limitations on avoiding powers), and §§ 555–556 and 559–562 (contractual right to liquidate, terminate or accelerate certain contracts).

³⁹ 15 U.S.C. 78aaa–lll, including § 78eee(b)(2)(C) (exceptions to the stay).

⁴⁰ The term “OCC Participating Member” is defined in the Existing Accord to mean “(i) a Common Member; (ii) an OCC Clearing Member that is an ‘Appointing Clearing Member’ (as defined in Article I of OCC’s By-Laws) and has appointed an Appointed Clearing Member that is an NSCC Member to effect settlement of E&A/Delivery Transactions through NSCC on the Appointing Clearing Member’s behalf; (iii) an OCC Clearing Member that is an Appointed Clearing Member; or (iv) a Canadian Clearing Member.” No changes are proposed to this definition.

⁴¹ The term “NSCC Participating Member” is defined in the Existing Accord to mean “(i) a Common Member; (ii) an NSCC Member that is an ‘Appointed Clearing Member’ (as defined in Article I of OCC’s By-Laws); or (iii) [or Canadian Depository for Securities, or ‘CDS’]. For the avoidance of doubt, the Clearing Agencies agree that CDS is an NSCC Member for purposes of this Agreement.” No changes are proposed to this definition.

The defined terms that would be amended in Section 1 of the Existing Accord are as follows.

- The definition for the term “E&A/Delivery Transaction” generally contemplates a transaction that involves a delivery and receipt of stock in the settlement of physically settled options and futures that are cleared and settled by OCC and for which the underlying securities are eligible for clearing through the facilities of NSCC. The definition would be amended to make clear that it would apply in respect of a “Close Out Transaction” of a “Mutually Suspended Member” as those terms are proposed to be defined (described above).

- The definition for the term “Eligible Securities” generally contemplates the securities that are eligible to be used for physical settlement under the Existing Accord. The term would be modified to clarify that this may include, for example, equities, exchange-traded funds and exchange-traded notes that are underlying securities for options issued by OCC.

Section 6—Default by an NSCC Participating Member or OCC Participating Member

Section 6 of the Existing Accord provides that NSCC is required to provide certain notice to OCC in circumstances in which NSCC has ceased to act for a Common Member. Currently, Section 6(A)(ii) of the Existing Accord also requires NSCC to notify OCC if a Common Member has failed to satisfy its Clearing Fund obligations to NSCC, but for which NSCC has not yet ceased to act. In practice, this provision would trigger a number of obligations (described below) when a Common Member fails to satisfy its NSCC Clearing Fund obligations for any reason, including those due to an operational delay. Therefore, OCC and NSCC are proposing to remove the notification requirement under Section 6(A)(ii) from the Existing Accord. Under Section 7(d) of the Existing Accord, NSCC and OCC are required to provide each other with general surveillance information regarding Common Members, which includes information regarding any Common Member that is considered by the other party to be in distress. Therefore, if a Common Member has failed to satisfy its NSCC Clearing Fund obligations and NSCC believes this failure is due to, for example, financial distress and not, for example, due to a known operational delay, and NSCC has not yet ceased to act for that Common Member, such notification to OCC would still occur but would be done pursuant to Section

7(d) of the Existing Accord (as proposed to be amended), and not Section 6(A)(ii). Notifications under Section 6 of the Existing Accord (as proposed to be amended) would be limited to instances when NSCC has actually ceased to act for a Common Member pursuant to the NSCC Rules.⁴²

Following notice by NSCC that it has ceased to act for a Common Member, OCC is obligated in turn to deliver to NSCC a list of all E&A/Delivery Transactions (excluding certain transactions for which Guaranty Substitution does not occur) involving the Common Member.⁴³ This provision would be amended to clarify that it applies in respect of such E&A/Delivery Transactions for the Common Member for which the NSCC Guaranty has not yet attached—meaning that Guaranty Substitution has not yet occurred.

As described above in the summary of the Existing Accord, where NSCC has ceased to act for a Common Member, the Existing Accord refers to the Common Member as the Defaulting NSCC Member and also refers to the relevant E&A/Delivery Transactions in connection with that Defaulting NSCC Member for which a Guaranty Substitution has not yet occurred as Defaulted NSCC Member Transactions.

If the Defaulting NSCC Member is also suspended by OCC, it would be covered by the proposed definition that is described above for a Mutually Suspended Member. For such a Mutually Suspended Member, the proposed changes in Section 6(b) would provide that NSCC, by a time agreed upon by the parties, would provide OCC with the amount of the Guaranty Substitution Payment as calculated by NSCC and related documentation regarding the calculation. The Guaranty Substitution Payment would be calculated pursuant to NSCC’s Rules as that portion of the unmet Required Fund Deposit⁴⁴ and Supplemental Liquidity Deposit⁴⁵ obligations of the Mutually Suspended Member attributable to the Defaulted NSCC Member Transactions. By a time agreed

⁴² See Rule 46 (Restrictions on Access to Services) of the NSCC Rules, *supra* note 8.

⁴³ The section of the Existing Accord that addresses circumstances in which NSCC ceases to act and/or an NSCC Member defaults is currently part of Section 6(a). It would be re-designated as Section 6(b) for organizational purposes.

⁴⁴ The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules, *see supra* note 8.

⁴⁵ The Supplemental Liquidity Deposit is calculated pursuant to Rule 4A (Supplemental Liquidity Deposits) of the NSCC Rules, *see supra* note 8.

upon by the parties,⁴⁶ OCC would then be required to either notify NSCC of its intent to make the full amount of the Guaranty Substitution Payment to NSCC or notify NSCC that it will not make the Guaranty Substitution Payment. If OCC makes the full amount of the Guaranty Substitution Payment, NSCC's guaranty would take effect at the time of NSCC's receipt of that payment and the OCC Guaranty would end.

The proposed changes would further provide that if OCC does not suspend the Common Member (such that the Common Member would therefore not meet the proposed definition of a Mutually Suspended Member) or if OCC elects to not make the full amount of the Guaranty Substitution Payment to NSCC, then all of the Defaulted NSCC Member Transactions would be exited from NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation, as applicable, and Guaranty Substitution would not occur in respect thereof. Therefore, NSCC would continue to have no obligation to guarantee or settle the Defaulted NSCC Member Transactions, and the OCC Guaranty would continue to apply to them pursuant to OCC's By-Laws and Rules.⁴⁷

Proposed changes to the Existing Accord would also address the application of any Guaranty Substitution Payment by NSCC. Specifically, new Section 6(d) would provide that any Guaranty Substitution Payment made by OCC may be used by NSCC to satisfy any liability or obligation of the Mutually Suspended Clearing Member to NSCC on account of transactions involving the Mutually Suspended Clearing Member for which the NSCC Guaranty applies and to the extent that any amount of assets otherwise held by NSCC for the account of the Mutually Suspended Member (including any Required Fund Deposit or Supplemental Liquidity Deposit) are insufficient to satisfy its obligations related to transactions for which the NSCC Guaranty applies. Proposed changes to Section 6(d) would further provide for the return to OCC of any unused portion of the GSP. With regard to the portion of the Guaranty Substitution Payment that corresponds to a member's Supplemental Liquidity

Deposit obligation, NSCC must return any unused amount to OCC within fourteen (14) days following the conclusion of NSCC's settlement, close-out and/or liquidation. With regard to the portion of the Guaranty Substitution Payment that corresponds to a Required Fund Deposit, NSCC must return any unused amount to OCC under terms agreed to by the parties.⁴⁸

Other Proposed Changes

Certain other technical changes are also proposed to the Existing Accord to conform it to the proposed changes described above. For example, the preamble and the "whereas" clauses in the Preliminary Statement would be amended to clarify that the agreement is an amended and restated agreement and to summarize that the agreement would be modified to contemplate the Guaranty Substitution Payment structure. Section 1(c), which addresses the terms in the Existing Accord that are defined by reference to NSCC's Rules and Procedures and OCC's By-Laws and Rules would be modified to state that such terms would have the meaning then in effect at the time of any transaction or obligation that is covered by the agreement rather than stating that such terms have the meaning given to them as of the effective date of the agreement. This change is proposed to help ensure that the meaning of such terms in the agreement will not become inconsistent with the meaning in the NSCC Rules and/or OCC By-Laws and Rules, as they may be modified through proposed rule changes with the Commission.

Technical changes would be made to Sections 3(d) and (e) of the Existing Accord to provide that those provisions would not apply in the event new Section 6(b) described above, is triggered. Section 3(d) generally provides that OCC will no longer submit E&A/Delivery Transactions to NSCC involving a suspended OCC Participating Member.⁴⁹ Similarly, Section 3(e) generally provides that OCC will no longer submit E&A/Delivery Transactions to NSCC involving an NSCC Participating Member⁵⁰ for which NSCC has ceased to act. A proposed change would also be made to Section 5 of the Existing Accord to

modify a reference to Section 5 of Article VI of OCC's By-Laws to instead provide that the updated cross-reference should be to Chapter IV of OCC's Rules.

Section 5 would also be amended to clarify that Guaranty Substitution occurs when NSCC has received both the Required Fund Deposit and Supplemental Liquidity Deposit, as calculated by NSCC in its sole discretion, from Common Members. The addition of the collection of the Supplemental Liquidity Deposit to the definition of the Guaranty Substitution Time in this Section 5 would reflect OCC and NSCC's agreement that both amounts are components of the Guaranty Substitution Payment (as described above) and would make this definition consistent with that agreement.

In Section 7 of the Existing Accord, proposed changes would be made to provide that NSCC would provide to OCC information regarding a Common Member's Required Fund Deposit and Supplemental Liquidity Deposit obligations, to include the Supplemental Liquidity Deposit obligation in this notice requirement, and additionally that NSCC would provide OCC with information regarding the potential Guaranty Substitution Payment for the Common Member. On an options expiration date that is a Friday, NSCC would, by close of business on that day, also provide to OCC information regarding the intra-day liquidity requirement, intra-day liquidity resources and intra-day calls for a Common Member that is subject to a Supplemental Liquidity Deposit at NSCC.

Finally, Section 14 of the Existing Accord would be modernized to provide that notices between the parties would be provided by email rather than by hand, overnight delivery service or first-class mail.

Proposed Changes to OCC By-Laws and Rules

General Description

OCC is also proposing certain changes to its By-Laws and Rules that are designed to complement the proposed changes described above regarding the Existing Accord. These proposed changes to the By-Laws and Rules are described below, and they generally cover the following four areas. First, the proposed changes would define Guaranty Substitution Payment. Second, the proposed changes would describe the circumstances under which OCC could make a Guaranty Substitution Payment to NSCC. Third, the proposed changes would specify what financial

⁴⁶ The time by which OCC would be required to notify NSCC of its intent would be defined in the Service Level Agreement. As of the time of this filing, the parties intend to set that time as one hour after OCC's receipt of the calculated Guaranty Substitution Payment from NSCC.

⁴⁷ Under the current and proposed terms of the Existing Accord, NSCC would be permitted to voluntarily guaranty and settle the Defaulted NSCC Member Transactions.

⁴⁸ Such amounts would be returned to OCC as appropriate and in accordance with a Netting Contract and Limited Cross-Guaranty, by and among the Depository Trust Company, Fixed Income Clearing Corporation, NSCC and OCC, dated as of January 1, 2003, as amended.

⁴⁹ See *supra* note 40 defining OCC Participating Member.

⁵⁰ See *supra* note 41 defining NSCC Participating Member.

resources could be used by OCC to make the Guaranty Substitution Payment.⁵¹ Fourth, the proposed changes to OCC's Comprehensive Stress Testing and Clearing Fund Methodology, and Liquidity Risk Management Description would outline enhanced stress testing incorporating the GSP and OCC's ability to call for additional resources from Clearing Members. OCC also is proposing changes to OCC's Liquidity Risk Management Framework to account for OCC's ability to make the GSP.

Article I—Definitions

OCC proposes to add "Guaranty Substitution Payment" as a new defined term under Article I of OCC's By-Laws, which is the Definitions section. The term "Guaranty Substitution Payment" would be defined to mean: "a payment that may be made by [OCC] to [NSCC] under the terms of an agreement between them, as described in Rule 901, so that [NSCC] will not reject settlement obligations for CCC-eligible⁵² securities that are directed by [OCC] for settlement through the facilities of [NSCC] on account of a Clearing Member that has been suspended, as described in Rule 1102, and for which [NSCC] has ceased to act."

Chapter IX—Delivery of Underlying Securities and Payment

Certain changes are also proposed to Chapter IX of OCC's Rules. OCC proposes to add parenthetical language to the Introduction section of Chapter IX of OCC's Rules. It would specify that a Guaranty Substitution Payment could be made by OCC to NSCC in connection with OCC's general policy that to the extent a security to be delivered and received is CCC-eligible, OCC will direct the delivery and payment obligations to be settled through the facilities of NSCC where the obligations are physically-settled and arise out of the exercise of stock option contracts or the maturity of stock futures contracts.

Next, OCC proposes to delete certain provisions from Rule 901(b) regarding when a Guaranty Substitution occurs.

Specifically, Rule 901(b) currently provides that unless otherwise agreed between OCC and NSCC, a Guaranty Substitution with respect to settlement obligations for CCC-eligible securities that settle "regular way" under NSCC's Rules and Procedures will occur if: (i) the applicable settlement obligations are reported to and are not rejected by NSCC; (ii) NSCC has not notified OCC that it has ceased to act for the relevant Clearing Member or Appointed Clearing Member; and (iii) the NSCC Clearing Fund requirements of the relevant Clearing Member or Appointed Clearing Member owing to NSCC, as determined in accordance with NSCC's Rules and Procedures, are received by NSCC. These considerations regarding when a Guaranty Substitution occurs are addressed under the terms of the Existing Accord, and they would continue to be relevant considerations regarding when a Guaranty Substitution occurs under the changes that OCC and NSCC are proposing to the Existing Accord. However, because additional considerations would be added to the Guaranty Substitution process in connection with the proposed ability for OCC in certain circumstances to make a Guaranty Substitution Payment to NSCC and also to eliminate the potential for a description of the Guaranty Substitution process in OCC's Rules to become inconsistent with the process that OCC and NSCC have agreed to in the Existing Accord, as it would be amended, OCC is proposing to delete the discussion of these considerations in Rule 901(b) in favor of instead simply cross referencing the terms of the agreement.⁵³

In addition, OCC proposes to add a new paragraph to the end of Rule 901(b) to provide that pursuant to the proposed changes to the Existing Accord, OCC would be permitted to make a Guaranty Substitution Payment to NSCC. The proposed changes would also describe the circumstances in which OCC may make a Guaranty Substitution Payment in connection with settlement obligations of a suspended Clearing Member, and that the amount of the Guaranty Substitution Payment under the terms of the Existing Accord, as amended, would be the amount required by NSCC to satisfy its deficit(s) regarding such Clearing Member's

"Required Fund Deposit" and "Supplemental Liquidity Deposit" as those terms are defined in NSCC's Rules and Procedures.⁵⁴ The changes would provide that any amount of a Guaranty Substitution Payment that NSCC does not use pursuant to its Rules and Procedures would subsequently be returned to OCC under such terms and within such times as are agreed by OCC and NSCC. OCC believes that it is useful to include this description of the proposed process for the Guaranty Substitution Payment and the circumstances in which it may be made so that a user of OCC's publicly available By-Laws and Rules would have sufficient information to understand the existence of the Guaranty Substitution Payment mechanism, the general circumstances in which it may be made and the role that a Guaranty Substitution Payment would play in causing NSCC to accept obligations for CCC-eligible securities for clearance and settlement.

Chapters X and XI—Clearing Fund Contributions and Suspension of a Clearing Member

As generally described above, the proposed changes would also provide that OCC would be permitted to borrow from the OCC Clearing Fund, and also against certain Margin Assets, of a Clearing Member that has been suspended by OCC where that Clearing Member is a Mutually Suspended Member. To implement these changes, OCC is proposing the following amendments to OCC Rule 1006 and Rule 1104.

OCC Rule 1006 addresses the purpose and permitted uses of the OCC Clearing Fund. OCC proposes to make amendments to paragraphs (a) and (f) to permit OCC to utilize assets in the Clearing Fund as a liquidity resource in connection with making a Guaranty Substitution Payment. Currently, OCC Rule 1006(a) states the conditions for use of the OCC Clearing Fund. These provide that the OCC Clearing Fund may be used for borrowings pursuant to OCC Rule 1006(f) or to make good losses or expenses suffered by OCC including: (i) as a result of the failure of any Clearing Member to discharge duly any obligation on or arising from any confirmed trade accepted by OCC, (ii) as a result of the failure of any Clearing Member (including any Appointed Clearing Member) or of CDS (Canada's national securities depository) to perform its obligations under any

⁵¹ OCC would be permitted to borrow from the Clearing Fund and margin of a suspended Clearing Member, over which OCC has a general lien, where that Clearing Member is a Mutually Suspended Member. The change would merely expand the circumstances under which OCC's current By-Laws and Rules permit OCC to borrow Clearing Fund and margin. The change would not affect the treatment of such borrowing under OCC's default waterfall that determines how OCC allocates losses against available financial resources. The Mutually Suspended Member's margin and Clearing Fund collateral would remain first in line to absorb losses.

⁵² The term "CCC-Eligible" as used herein has the meaning provided in OCC's By-Laws, *supra* note 4.

⁵³ For purposes of the proposed rule change process under Exchange Act Section 19(b), the agreement is treated as a rule of a clearing agency under Exchange Act Section 3(a)(27) and therefore any proposed changes to it by OCC are subject to the related rule change process and public notice and comment. OCC therefore believes that addressing the terms in the agreement and cross-referencing the agreement in OCC Rule 901 would not deprive the Commission or the public of notice regarding any future proposed changes.

⁵⁴ See NSCC Rules 4 (defining "Required Fund Deposit") and 4A (defining "Supplemental Liquidity Deposit"), *supra* note 8.

contract or obligation issued, undertaken, or guaranteed by OCC or in respect of which OCC is otherwise liable, (iii) as a result of the failure of any Clearing Member to perform any of its obligations to OCC in respect of the stock loan and borrow positions of such Clearing Member, (iv) in connection with any liquidation of a Clearing Member's open positions, (v) in connection with protective transactions effected for the account of OCC pursuant to Chapter XI of OCC's Rules (delivery of underlying securities and payment), (vi) as a result of the failure of any Clearing Member to make any other required payment or render any other required performance or (vii) as a result of the failure of any bank, securities or commodities clearing organization, or investment counterparty, to perform its obligations to OCC for certain specified reasons.⁵⁵

OCC proposes to renumber clauses (iii) through (vii) in paragraph (a) as (iv) through (viii), and to insert as new clause (iii) a provision that the OCC Clearing Fund may be used "regarding any Guaranty Substitution Payment that [OCC] may make to [NSCC] under an agreement between them, as described in [OCC] Rule 901, so that [NSCC] will not reject settlement obligations for CCC-eligible securities involving a Clearing Member for which [NSCC] has ceased to act and that [OCC] directs to [NSCC] for settlement through its facilities."⁵⁶ OCC also proposes to add parenthetical language to paragraphs (f)(1)(A) and (f)(2)(A)(ii) to further clarify that contributions to the OCC Clearing Fund may be borrowed by OCC for use in connection with making a Guaranty Substitution Payment to NSCC. Any borrowing from the OCC Clearing Fund by OCC to make a Guaranty Substitution Payment to NSCC would be subject to the existing terms of OCC Rule 1006(f)(3) that provide that irrespective of how any such borrowings from the OCC Clearing Fund are applied by OCC, the borrowing for a period not to exceed thirty (30) days will not be deemed to result in charges against the OCC Clearing Fund under OCC's default waterfall for allocating actual losses. For purposes of determining whether a loss resulting from a Guaranty Substitution Payment has occurred, OCC Rule 1006(f)(3) would be amended to provide that the Guaranty Substitution Payment

is deemed to be repaid by OCC at such time as under the Accord that it is NSCC's obligation to return any portion of the Guaranty Substitution Payment that NSCC does not use pursuant to its rules. If, subsequent to the borrowing, OCC determines that the borrowing represents an actual loss or all or any part of the borrowing remains outstanding after thirty (30) days (or on the first Business Day thereafter if the thirtieth calendar day is not a Business Day) then the amount of OCC Clearing Fund assets used in the outstanding borrowing would be an actual loss that OCC would be required to immediately allocate under its By-Laws and Rules.⁵⁷ As noted above, losses resulting from the borrowing of Clearing Fund or Margin Assets as a liquidity resource to facilitate OCC making a Guaranty Substitution Payment would be allocated in the same sequence as any other losses charged to the default waterfall.

Consistent with these changes to permit OCC to use the OCC Clearing Fund as a borrowing resource to make a Guaranty Substitution Payment to NSCC, OCC is also proposing similar changes to OCC Rule 1104 that would permit OCC to borrow certain Margin Assets of a Clearing Member that has been suspended by OCC where that Clearing Member is a Mutually Suspended Member and OCC has a general lien⁵⁸ over the Margin Assets.

Specifically, OCC proposes to add a new paragraph (g) to OCC Rule 1104 that would provide that OCC may use specified Margin Assets of a suspended Clearing Member as a borrowing in order to use such borrowed Margin Assets to make a Guaranty Substitution Payment to NSCC. OCC would be permitted to use Margin Assets from the following accounts of a suspended Common Member: firm lien account and firm non-lien account; separate Market-Maker's account; combined Market-Maker's account; and JBO Participants' account.⁵⁹ OCC is not proposing at this

time to have authority to borrow Margin Assets from other types of accounts over which OCC has a restricted lien⁶⁰ and for which the Margin Assets are security for the particular restricted lien accounts because of additional complexity that OCC believes would be associated with tracking NSCC's use of Margin Assets associated with those accounts and also due to certain regulatory requirements under Commission Rule 15c3-3 that apply to broker-dealer Clearing Members and prohibit the use of customer property of the broker-dealer to support non-customer activities.⁶¹

As with the terms that currently apply to any borrowing from the OCC Clearing Fund pursuant to OCC Rule 1006(f), new paragraph (g) in OCC Rule 1104 would further provide that Margin Assets borrowed by OCC to make a Guaranty Substitution Payment to NSCC would not be deemed to be charges against the margin assets for the relevant account(s) for up to thirty (30) days; however, if all or a part of such borrowing were to be determined by OCC, in its discretion, to represent an actual loss, or if all or a part of the borrowing were to remain outstanding after such thirty (30)-day period, OCC would consider the amount of margin assets used to support OCC's obligations under the outstanding borrowing or transaction as an actual loss and immediately allocate the loss in accordance with OCC's By-Laws and Rules.

OCC anticipates that in a scenario in which it would be permitted make a Guaranty Substitution Payment to NSCC under the proposed changes to the Existing Accord and OCC's By-Laws and Rules, OCC would generally expect to borrow from the Clearing Fund as a primary liquidity resource. OCC could also borrow Margin Assets of the suspended Clearing Member that is a

⁶⁰ Article I, Section 1.R.(8) of OCC's By-Laws states that the "term 'restricted lien' means a security interest of [OCC] in specified assets (including any proceeds thereof) in an account of a Clearing Member with [OCC] as security for the Clearing Member's obligations to [OCC] arising from such account or, to the extent so provided in the By-Laws or Rules, a specified group of accounts that includes such account including, without limitation, obligations in respect of all confirmed trades effected through such account or group of accounts, and exercise notices assigned to such account or group of accounts." See OCC's By-Laws, *supra* note 4.

⁶¹ For example, under the broker-dealer customer reserve account formula to SEC Rule 15c3-3 the broker-dealer takes a debit in the formula under Item 13 for margin that is "required and on deposit with OCC for all option contracts written or purchased in customer accounts." This means that such margin in turn can be used by the broker-dealer Clearing Member as Margin Assets to support the securities customers' account at OCC.

⁵⁵ The terms "Clearing Member" and "Appointed Clearing Member" as used herein have the meanings provided in OCC's By-Laws, *supra* note 4.

⁵⁶ In connection with these amendments, the reference in Rule 1006(b) to "clauses (i) through (vi) of paragraph (a)" would be changed to "clauses (i) through (vii) of paragraph (a)".

⁵⁷ If the defaulting OCC Clearing Member's Margin Assets and OCC Clearing Fund contribution were insufficient to cover the associated losses, OCC would next look to certain OCC financial resources that are available for that purpose (*e.g.*, OCC's corporate contribution and Clearing Fund contributions of non-defaulting OCC Clearing Members).

⁵⁸ Article I, Section 1.G.(1) of OCC's By-Laws states that the "term 'general lien' means a security interest of [OCC] in all or specified assets in a Clearing Member account as security for all of the Clearing Member's obligations to [OCC] regardless of the source or nature of such obligations." See OCC By-Laws, *supra* note 4.

⁵⁹ The Clearing Member accounts referenced herein are described in subparagraphs (a), (b), (c) and (h) of Article VI, Section 3 of OCC's By-Laws. See OCC's By-Laws, *supra* note 4.

Common Member under the proposed terms described above. OCC is not proposing changes that would require a specific borrowing sequence because OCC believes that it is more appropriate to preserve flexibility to borrow from the available OCC Clearing Fund or Margin Assets as OCC determines appropriate under the circumstances.

In addition, OCC proposes to specify in OCC Rule 1107(a)(1) that exercised option contracts and matured, physically-settled stock futures to which the suspended Clearing Member is a party may be settled in accordance with the terms of any agreement between OCC and NSCC governing the settlement of exercised option contracts and matured, physically-settled stock futures of a suspended Clearing Member. In such an event, settlement will be governed by and subject to the agreement between OCC and NSCC and the rules of NSCC.

The purpose of the proposed changes to create the Guaranty Substitution Payment mechanism is to provide OCC and NSCC with an additional default management tool to help manage liquidity and settlement risks that OCC believes would be presented to each covered clearing agency in connection with a Mutually Suspended Member. OCC believes that having the ability to make a Guaranty Substitution Payment to NSCC in regard to any unmet Required Fund Deposit or Supplemental Liquidity Deposit obligations of a Mutually Suspended Member would promote prompt and accurate clearance and settlement in the national system for the settlement of securities transactions by causing NSCC to guarantee certain securities settlement obligations that result from exercised options and matured futures contracts that are cleared and settled by OCC. In the following ways, OCC believes that this would be beneficial to and protective of OCC, NSCC, their participants, and the markets they serve.

First, OCC's ability to make the Guaranty Substitution Payment would ensure that the relevant securities settlement obligations would be accepted by NSCC for clearance and settlement and therefore the size of the related settlement obligations could be decreased from netting through NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation. Second, this outcome would avoid a scenario in which OCC's Guaranty would continue to apply and the settlement obligations would be settled on a broker-to-broker basis between OCC Clearing Members pursuant to the applicable provisions in Chapter IX of OCC's Rules. As noted

above, OCC believes that such a broker-to-broker settlement scenario could result in substantial collateral and liquidity requirements for OCC Clearing Members. OCC believes that these potential collateral and liquidity consequences would be due to the lost benefit of netting of the settlement obligations through NSCC's facilities and also due to the short time (*i.e.*, the T+2 standard settlement cycle) between a rejection by NSCC of the settlement obligations for clearing and the associated settlement date on which settlement would be otherwise required to be made bilaterally by OCC Clearing Members. This scenario also raises the potential for procyclical liquidity demands on OCC Clearing Members and participants during stressed market conditions. Third, OCC will plan to size its liquidity resource requirements to reasonable expectations with a high probability of making a Guaranty Substitution Payment in order to facilitate the settlement of a Mutually Suspended Member's obligations through NSCC. Accounting for net liquidity demands from a Mutually Suspended Member's settlement obligations at the central counterparty-level enhances liquidity in the financial system and promotes the efficient use of capital by reducing the demand for liquidity associated with gross settlement of obligations and enabling the application of resources at both clearing agencies to satisfy the Member's obligation. Fourth, OCC believes that the potential for the size of the settlement obligations to be comparatively larger than the Guaranty Substitution Payment coupled with the short time remaining to settlement could also increase the risk of default by the affected OCC Clearing Members at a time when a Common Member has already been suspended. Therefore, OCC believes that the proposed changes to implement the ability for OCC to make a Guaranty Substitution Payment to NSCC would allow OCC to avoid these risks by causing NSCC to accept the relevant obligations arising from exercised options and matured futures cleared and settled by OCC, as it ordinarily would, and guarantee their settlement, upon OCC making a Guaranty Substitution Payment to NSCC in accordance with the revised Accord.

Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description

OCC proposes to revise the OCC Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description to include the GSP in its liquidity risk

management practices. Overall, the proposed changes would reflect that the GSP functions as an additional liquidity demand type at the Clearing Member Organization ("CMO") Group level.⁶²

OCC would include additional specifics to address the potential increased demand that the inclusion of the GSP may cause in its liquidity risk management practices in the Liquidity Risk Management section of the Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description. Specifically, OCC proposes to amend the Liquidity Demand for Positions Rejected by NSCC subsection, which describes the Existing Accord, including the scenario in which NSCC could choose not to guaranty certain securities settlement obligations arising out of transactions cleared by OCC. This subsection would be retitled as the Liquidity Demand Associated with NSCC Performance of Physical Settlement Activities subsection to more clearly describe its content and incorporate the GSP, as further detailed below. Consistent with the changes to the Existing Accord described above, OCC proposes to clarify that the Accord allows NSCC to reject such obligations if OCC elects to not make a GSP.

OCC proposes a new subsection, titled the Liquidity Demand GSP, to describe the GSP, which NSCC would calculate as defined in the proposed amendments to the Existing Accord. OCC would describe a GSP as a firm specific liquidity demand (*i.e.*, the amount of cash OCC needs to pay NSCC on behalf of the defaulting Common Member). OCC would describe the components of the GSP under the Accord. OCC would explain how it accounts for the liquidity demand associated with a potential GSP. Specifically, OCC would apply an amount to account for a potential GSP obligation for every day on which option expirations occur. This amount would be based on peak GSP amounts from the prior 12 months in a given expiration category for the specific CMO Group for each forecasted liquidity demand calculation. OCC will use a one-year lookback time period to determine the appropriate GSP amount to apply. The one-year lookback allows for the best like-to-like application of a historical GSP as there is a cyclical nature to option standard expirations with quarterly (*i.e.*, March, June, September, and December) and January generally being more impactful than non-quarterly expirations. The one-year lookback also allows behavior changes

⁶² A Clearing Member Group is composed of a set of affiliated OCC Clearing Members.

of a Clearing Member to be recognized within an annual cycle. OCC proposes to utilize a historical GSP based on current system capabilities and data that will be supplied by NSCC.

OCC would use the total amount of Clearing Fund and SLD deficits at NSCC in its calculation to account for its obligation. However, in the event of a default, OCC would be responsible for a proportionate share of both NSCC Clearing Fund deficits (which are analogous to OCC margin deficits) and SLDs that are attributable to OCC E&A activity transmitted to NSCC for settlement, whereas NSCC will be responsible for the portion of the Clearing Fund and SLD deficits associated with activity that NSCC clears that is not transmitted by OCC.

The amount of notional activity sent by OCC to NSCC informs the likelihood of a GSP. Namely, the potential amount of NSCC Clearing Fund and SLD deficits that are allocable to OCC increases as the amount of activity OCC sends to NSCC increases. Since not all types of expirations are the same with respect to the notional amount of activity sent by OCC to NSCC, OCC proposes to use five separate categories of expirations with potentially different GSP amounts to apply. Each day on which expirations occur would fall into one of five categories as follows:

- Standard Monthly Expiration: typically the third Friday of each month from the previous twelve months;
- Non-Standard Monthly Expiration Fridays (“End of Week Expirations”): the last business day of every week, typically a Friday, excluding the third Friday of each month from the previous twelve months;
- End of Month Expirations: the last trading day of every month from the previous twelve months;
- Expirations falling on Bank Holidays where Markets Are Open (“Bank Holiday Expirations”): days where banks are closed but the markets are open from the previous twelve months;⁶³

⁶³ The Bank Holiday category recognizes that for Veterans Day and Columbus Day, the equity and equity derivative markets are open for trading, but the banking system is closed for the day. Since the banking system is closed while the aforementioned markets are open, settlement at NSCC encompasses two days of equity trading and equity derivative E&A activity. As OCC is using NSCC deficit numbers without regard for allocation, there is a possibility of a significant outlying GSP requirement due to the settlement of two days of activity simultaneously. Prudence dictates retaining the capability to risk manage a day with such disparate characteristics differently. Additional supporting data in support of the creation of the Bank Holiday Expiration category is included as Exhibit 3E to File No. SR-OCC-2023-007.

- Remaining Expiration Days (“Daily Expirations”): All other days with an expiration from the previous twelve months that do not fall into any of the categories above (typically most Mondays through Thursdays) from the previous twelve months.

OCC believes these five categories are appropriate after an analysis of notional activity sent to NSCC by OCC.⁶⁴ More specifically, the standard Friday monthly expiration far exceeds the needs associated with any other category.⁶⁵ The remaining categories are intended to capture like time periods that will appropriately account for the GSP.

OCC would apply the peak GSP amounts from the prior twelve months in a given expiration category for the specific CMO Group for each forecasted liquidity demand calculation by adding the GSP amounts to the CMO Group’s other forecasted liquidity demands for the relevant expiration day.⁶⁶ If a Clearing Member defaults, OCC may have to pay a GSP to NSCC on two successive days to facilitate the close-out of the defaulted Clearing Member’s positions. To account for this possibility in its liquidity risk management process, OCC contemplates the payment of a GSP on expirations that result in settlements on the first and second days of the default management process. As described above, this GSP amount may serve to only increase liquidity demands.⁶⁷

Furthermore, as stated in the new Liquidity Demand GSP subsection, OCC would apply a floor to certain expirations. At a minimum, the GSPs applied to the End of Week, End of Month, and Bank Holiday Expirations will be no lower than the peak of the Daily Expirations category. If a GSP pertaining to the End of Week, End of Month, and Bank Holiday Expiration category is higher than the peak of the Daily Expirations category, then OCC

⁶⁴ OCC provided its analysis of notional activity sent to NSCC by OCC in support of the creation of the five categories as Exhibit 3E to File No. SR-OCC-2023-007. This Exhibit 3E sets forth data related to OCC’s liquidity stress testing, including Available Liquidity Resources, Minimum Cash Requirement thresholds, and/or liquidity breaches, for Sufficiency and Adequacy scenarios with and without the inclusion of the GSP.

⁶⁵ For example, the average notional transfer for Remaining Expiration Days is approximately 10% the size of Standard Expiration.

⁶⁶ As an example, if the applicable GSP is \$100 and the (current) stressed liquidity demand is \$150 for a Clearing Member Group, the result after the application of the GSP for that Clearing Member Group would be a combined liquidity requirement of \$250 versus \$150 currently.

⁶⁷ OCC provided its analysis of the impact of the GSP, including with respect to calls for collateral and liquidity demands as Exhibit 3E to File No. SR-OCC-2023-007.

will apply that higher GSP. Standard Monthly Expirations will be floored by End of Week, End of Month, and Daily Expirations. If a GSP pertaining to any of these categories is higher than the Standard Monthly Expiration category, then OCC will apply that higher GSP. OCC would set out formulas representing the floors for the Standard Monthly, End of Week, End of Month, and Bank Holiday Expirations. Finally, OCC also proposes a minor change to clarify that it would attempt to effect alternative settlement if OCC elected not to make a GSP.⁶⁸

Liquidity Risk Management Framework

OCC proposes changes to the Liquidity Risk Management Framework to incorporate the GSP. In the Liquidity Risk Identification section, OCC would specify that, in the situation where a member defaults immediately preceding, or during the expiration, of physically-settled E&A activity, OCC may elect to make a GSP to NSCC to compel NSCC to accept and process the E&A activity. If OCC elects to not make a GSP, OCC would complete settlement of the defaulted Clearing Member’s E&A transactions through its current process. Relatedly, OCC would include a minor clarification to a footnote in this section to note that NSCC is not acting on behalf of a defaulting Clearing Member “in this situation.”

(2) Statutory Basis

OCC believes the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, OCC believes the proposed changes are consistent with Section 17A(b)(3)(F) of the Act.⁶⁹ Section 17A(b)(3)(F)⁷⁰ of the 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, in general, to protect investors and the public interest. As described above, OCC believes that modifying its stress testing procedures to enhance its ability to call for additional liquidity resources and having the ability to make a Guaranty Substitution Payment to NSCC with respect to any unmet obligations of a Mutually Suspended Member would promote prompt and accurate clearance and settlement because it would ensure

⁶⁸ This clarification would maintain OCC’s current process for settling transactions not processed through NSCC, and does not represent the adoption of a new process or settlement method.

⁶⁹ 15 U.S.C. 78q-1(b)(3)(F).

⁷⁰ 15 U.S.C. 78q-1(b)(3)(F).

that NSCC accepts the relevant securities settlement obligations for clearance and settlement and therefore the size of the related settlement obligations for both the Mutually Suspended Member and its assigned delivery counterparties could be decreased from netting through NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation. This would also avoid a scenario in which OCC's Guaranty would continue to apply and the settlement obligations would be settled on a broker-to-broker basis between OCC Clearing Members, which OCC believes could result in substantial collateral and liquidity requirements for OCC Clearing Members and that, in turn, could also increase a risk of default by the affected OCC Clearing Members at a time when a Common Member has already been suspended. For these reasons, OCC believes that the proposed changes would be beneficial to and protective of OCC, NSCC, their participants, and the markets that they serve and that the proposed changes are therefore designed, in general, to protect investors and the public interest.

OCC believes that the proposed changes are also consistent with the SEC rules that apply to OCC as a covered clearing agency.⁷¹ In particular, SEC Rule 17Ad-22(e)(20) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor and manage risks related to any link that OCC establishes with one or more other clearing agencies, financial market utilities, or trading markets.⁷² As described in OCC's publicly available disclosure framework for financial market infrastructures,⁷³ the Existing Accord between OCC and NSCC is one such link. As described above, OCC believes (i) the proposed modifications to OCC's stress testing procedures that are designed to enhance its ability to call for additional liquidity resources, and (ii) that implementation of the ability for OCC to make a Guaranty Substitution Payment to NSCC in the relevant circumstances involving a Mutually Suspended Member would help manage the risks presented to OCC and its Clearing Members by the settlement link with NSCC because the Guaranty Substitution Payment would ensure that the relevant securities settlement obligations would be

accepted by NSCC for clearance and settlement and therefore the size of the related settlement obligations could be decreased from netting through NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation.

For this same reason, OCC also believes that the proposed changes are consistent with the requirements of SEC Rules 17Ad-22(e)(3) and (7).⁷⁴ SEC Rule 17Ad-22(e)(3) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing, among other things, liquidity, credit and other risks that arise in or are borne by OCC.⁷⁵ SEC Rule 17Ad-22(e)(7) requires OCC, in relevant part, to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor and manage the liquidity risk that arises in or is borne by OCC and to, among other things, address foreseeable liquidity shortfalls that would not be covered by OCC's liquid resources.⁷⁶ As noted, OCC believes the proposed stress testing enhancements and the ability to make a Guaranty Substitution Payment to NSCC would allow OCC to better manage liquidity and credit risks related to the settlement link with NSCC by ensuring that the relevant securities settlement obligations would be accepted by NSCC for clearance and settlement. It would avoid a scenario in which OCC's Guaranty would continue to apply and the settlement obligations would be settled on a broker-to-broker basis between OCC Clearing Members, which OCC believes could result in substantial collateral and liquidity requirements for OCC Clearing Members that, in turn, could also increase a risk of default by the affected OCC Clearing Members, particularly in circumstances where the prior suspension of a Mutually Suspended Member relates to broader stress in the financial system. Moreover, the incorporation of the Guarantee Substitution Payment into OCC's liquidity risk management practices would enhance OCC's ability to maintain additional liquidity resources to effect the settlement of exercise and assignment activity in the event of a Common Member default, and therefore, potentially increasing the promotion of market stability.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act⁷⁷ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposal would impose any burden on competition. The proposed changes would implement changes that would permit OCC in certain circumstances to make a Guaranty Substitution Payment to NSCC so that the NSCC Guaranty would take effect for the Defaulted NSCC Member Transactions and the OCC Guaranty would end. The proposed changes would not inhibit access to OCC's services in any way, applies to all Clearing Members and does not disadvantage or favor any particular user in relationship to another user. Accordingly, OCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.⁷⁸

⁷⁷ 15 U.S.C. 78q-1(b)(3)(I).

⁷⁸ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

⁷¹ 17 CFR 240.17Ad-22(a)(5).

⁷² 17 CFR 240.17Ad-22(e)(20).

⁷³ See The Options Clearing Corporation Disclosure Framework for Financial Market Infrastructures, pg. 108, (2022), available at <https://www.theocc.com/risk-management/pfmi-disclosures>.

⁷⁴ 17 CFR 240.17Ad-22(e)(3), (7).

⁷⁵ 17 CFR 240.17Ad-22(e)(3).

⁷⁶ 17 CFR 240.17Ad-22(e)(7).

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-OCC-2023-007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2023-007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

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-2023-007 and should be submitted on or before September 20, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-18673 Filed 8-29-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98214; File No. SR-OCC-2023-801]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Extension of Review Period of Advance Notice Concerning Modifications to the Amended and Restated Stock Options and Futures Settlement Agreement Between the Options Clearing Corporation and the National Securities Clearing Corporation

August 24, 2023.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 ("Clearing Supervision Act")¹ and Rule 19b-4(n)(1)(i)² under the Securities Exchange Act of 1934 ("Exchange Act"),³ notice is hereby given that on August 10, 2023, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("SEC" or "Commission") an advance notice as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons and to extend the review period of the advance notice.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is submitted by OCC in connection with a proposed change to its operations to (1) modify the Amended and Restated Stock Options and Futures Settlement Agreement dated August 5, 2017 between OCC and National Securities Clearing Corporation ("NSCC," and together with OCC, the "Clearing Agencies") ("Existing Accord")⁴ and (2)

make certain revisions to OCC By-Laws, OCC Rules,⁵ OCC's Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description and OCC's Liquidity Risk Management Framework in connection with the proposed modifications to the Existing Accord, as described in greater detail below.⁶

The proposed changes would permit OCC to elect to make a cash payment to NSCC following the default of a common clearing participant that would cause NSCC's central counterparty trade guaranty to attach to certain obligations of that participant, as described in greater detail below.

The proposed changes are included in Exhibits 5A and 5B and confidential Exhibits 5C, 5D, and 5E to File No. SR-OCC-2023-801. Material proposed to be added is underlined and material proposed to be deleted is marked in strikethrough text.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A) and (B) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed changes, and none have been received.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

Description of Proposed Change **Background**

OCC is filing this advance notice to (1) modify the Existing Accord between OCC and NSCC and (2) make certain revisions to OCC By-Laws, OCC Rules, OCC's Comprehensive Stress Testing & Clearing Fund Methodology, and

⁷⁹ 17 CFR 200.30-3(a)(12).

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(1)(i).

³ 15 U.S.C. 78a *et seq.*

⁴ The Existing Accord was previously approved by the Commission. See Securities Exchange Act Release Nos. 81266, 81260 (July 31, 2017) (File Nos. SR-NSCC-2017-007; SR-OCC-2017-013), 82 FR 36484 (Aug. 4, 2017).

⁵ OCC By-Laws are available at https://www.theocc.com/getmedia/3309eceb-56cf-48fc-b3b3-498669a24572/occ_bylaws.pdf and OCC Rules are available at https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf.

⁶ NSCC also has filed a proposed rule change with the Commission in connection with this proposal. See SR-NSCC-2023-007.

Liquidity Risk Management Description and OCC's Liquidity Risk Management Framework in connection with the proposed modifications to the Existing Accord, as described in greater detail below. The proposed changes would permit OCC to elect to make a cash payment to NSCC following the default of a common clearing participant that would cause NSCC's central counterparty trade guaranty to attach to certain obligations of that participant, as described in greater detail below.

i. Executive Summary

NSCC is a clearing agency that provides clearing, settlement, risk management, and central counterparty services for trades involving equity securities. OCC is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, including options that contemplate the physical delivery of equities cleared by NSCC in exchange for cash ("physically settled" options).⁷ OCC also clears certain futures contracts that, at maturity, require the delivery of equity securities cleared by NSCC in exchange for cash. As a result, the exercise/assignment of certain options or maturation of certain futures cleared by OCC effectively results in stock settlement obligations. NSCC and OCC maintain a legal agreement, generally referred to by the parties as the "Accord" agreement, that governs the processing of such physically settled options and futures cleared by OCC that result in transactions in underlying equity securities to be cleared by NSCC (*i.e.*, the Existing Accord). The Existing Accord establishes terms under which NSCC accepts for clearing certain securities transactions that result from the exercise and assignment of relevant options contracts and the maturity of futures contracts that are cleared and settled by OCC.⁸ It also establishes the time when OCC's settlement guaranty in respect of those transactions ends and NSCC's settlement guaranty begins.

The Existing Accord allows for a scenario in which NSCC could choose not to guarantee the settlement of such

securities arising out of transactions. Specifically, NSCC is not obligated to guarantee settlement until its member has met its collateral requirements at NSCC. If NSCC chooses not to guarantee settlement, OCC would engage in an alternate method of settlement outside of NSCC. This scenario presents two primary problems. First, the cash required for OCC and its Clearing Members in certain market conditions to facilitate settlement outside of NSCC could be significantly more than the amount required if NSCC were to guarantee the relevant transactions. This is because settlement of the transactions in the underlying equity securities outside of NSCC would mean that they would no longer receive the benefit of netting through the facilities of NSCC. In such a scenario, the additional collateral required from Clearing Members to support OCC's continuing settlement guarantee would also have to be sufficiently liquid to properly manage the risks associated with those transactions being due on the second business day following the option exercise or the relevant futures contract maturity date.

Based on an analysis of scenarios using historical data where it was assumed that OCC could not settle transactions through the facilities of NSCC, the worst-case outcome resulted in extreme liquidity demands of over \$300 billion for OCC to effect settlement via an alternative method, *e.g.*, by way of gross broker-to-broker settlement, as discussed in more detail below. OCC Clearing Members, by way of their contributions to the OCC Clearing Fund, would bear the brunt of this demand. Furthermore, there is no guarantee that OCC Clearing Members could fund the entire amount of any similar real-life scenarios. By contrast, projected GSPs, defined below, identified during the study ranged from approximately \$419 million to over \$6 billion, also as discussed in more detail below.

The second primary problem relates to the significant operational complexities if settlement occurs outside of NSCC. More specifically, netting through NSCC reduces the volume and value of settlement obligations. For example, in 2022 it is estimated that netting through NSCC's continuous net settlement ("CNS") accounting system⁹ reduced the value of CNS settlement obligations by approximately 98% or \$510 trillion from \$519 trillion to \$9 trillion. If

settlement occurred outside of NSCC, on a broker-to-broker basis between OCC Clearing Members, for example, shares would not be netted and Clearing Members would have to coordinate directly with each other to settle the relevant transactions. The operational complexities and uncertainty associated with alternate means of settlement would impact every market participant involved in a settlement of OCC-related transactions.

To address these problems, the Clearing Agencies are proposing to amend and restate the Existing Accord and make related changes to their respective rules that would allow OCC to elect to make a cash payment to NSCC following the default of a Common Member¹⁰ that would cause NSCC to guarantee settlement of that Common Member's transactions and, therefore, cause those transactions to be settled through processing by NSCC. As part of this proposal, OCC also will enhance its daily liquidity stress testing processes and procedures to account for the possibility of OCC making such a payment to NSCC in the event of a Common Member default. By making these enhancements to its stress testing, OCC could include the liquid resources necessary to make the payment in its resource planning. The Clearing Agencies believe that by NSCC accepting such a payment from OCC, the operational efficiencies and reduced costs related to the settlement of transactions through NSCC would limit market disruption following a Common Member default because settlement through NSCC following such a default would be less operationally complex and would be expected to require less liquidity and other collateral from market participants than the processes available to OCC for closing out positions. Additionally, proposed enhancements by OCC to its liquidity stress testing would add assurances that OCC could make such a payment in the event of a Common Member default. The Clearing Agencies believe that their respective clearing members and all other participants in the markets for which OCC provides clearance and settlement will benefit from OCC's ability to choose to make a cash payment to effect settlement through the facilities of NSCC. This change will

⁷ The term "physically-settled" as used throughout the OCC Rulebook refers to cleared contracts that settle into their underlying interest (*i.e.*, options or futures contracts that are not cash-settled). When a contract settles into its underlying interest, shares of stock are sent, *i.e.*, delivered, to contract holders who have the right to receive the shares from contract holders who are obligated to deliver the shares at the time of exercise/assignment in the case of an option and maturity in the case of a future.

⁸ Under the Existing Accord, such options and futures are defined as "E&A/Delivery Transactions", which refers to "Exercise & Assignment Delivery Transactions."

⁹ See Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation) of the NSCC Rules. See NSCC's Rules, available at https://www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf.

¹⁰ A firm that is both an OCC Clearing Member and an NSCC Member or is an OCC Clearing Member that has designated an NSCC Member to act on its behalf is referred to herein as a "Common Member." The term "Clearing Member" as used herein has the meaning provided in OCC's By-Laws. See OCC's By-Laws, *supra*, note 5. The term "Member" as used herein has the meaning provided in NSCC's Rules. See NSCC's Rules, *supra* note 9.

provide more certainty around certain default scenarios and would blunt the financial and operational burdens market participants could experience in the case of most clearing member defaults.¹¹

ii. Background

OCC acts as a central counterparty clearing agency for U.S.-listed options and futures on a number of underlying financial assets including common stocks, currencies and stock indices. In connection with these services, OCC provides the OCC Guaranty pursuant to its By-Laws and Rules. NSCC acts as a central counterparty clearing agency for certain equity securities, corporate and municipal debt, exchange traded funds and unit investment trusts that are eligible for its services. Eligible trading activity may be processed through NSCC's CNS system¹² or through its Balance Order Account system,¹³ where all eligible compared and recorded transactions for a particular settlement date are netted by issue into one net long (buy), net short (sell) or flat position. As a result, for each day with activity, each Member has a single deliver or receive obligation for each issue in which it has activity. In connection with these services, NSCC also provides the NSCC Guaranty pursuant to Addendum K of the NSCC Rules.

OCC's Rules provide that delivery of, and payment for, securities underlying certain exercised stock options and matured single stock futures that are physically settled are generally effected through the facilities of NSCC and are not settled through OCC's facilities.¹⁴ OCC and NSCC executed the Existing Accord to facilitate, via NSCC's systems, the physical settlement of securities arising out of options and futures cleared by OCC. OCC Clearing Members that clear and settle physically settled options and futures transactions through OCC also are required under OCC's Rules¹⁵ to be Members of NSCC or to have appointed or nominated a Member of NSCC to act on its behalf. As noted above, these firms are referred to as

"Common Members" in the Existing Accord.

iii. Summary of the Existing Accord

The Existing Accord governs the transfer between OCC and NSCC of responsibility for settlement obligations that involve a delivery and receipt of stock in the settlement of physically settled options and futures that are cleared and settled by OCC and for which the underlying securities are eligible for clearing through the facilities of NSCC ("E&A/Delivery Transactions"). It also establishes the time when OCC's settlement guarantee (the "OCC Guaranty") ends and NSCC's settlement guarantee (the "NSCC Guaranty")¹⁶ begins with respect to E&A/Delivery Transactions. However, in the case of a Common Member default¹⁷ NSCC can reject these settlement obligations, in which case the settlement guaranty will not transfer from OCC to NSCC and OCC would not have a right to settle the transactions through the facilities of NSCC. Instead, OCC would have to engage in alternative methods of settlement that have the potential to create significant liquidity and collateral requirements for both OCC and its non-defaulting Clearing Members.¹⁸ More specifically, this could involve broker-to-broker settlement between OCC Clearing Members.¹⁹ This settlement method is operationally complex because it requires bilateral coordination directly between numerous Clearing Members rather than relying on NSCC to facilitate multilateral netting to settle the relevant

settlement obligations. As described above, it also potentially could result in significant liquidity and collateral requirements for both OCC and its non-defaulting Clearing Members because the transactions will not be netted through the facilities of NSCC. Alternatively, where NSCC accepts the E&A/Delivery Transactions from OCC, the OCC Guaranty ends and the NSCC Guaranty takes effect. The transactions are then netted through NSCC's systems, which allows settlement obligations for the same settlement date to be netted into a single deliver or receive obligation. This netting reduces the costs associated with securities transfers by reducing the number of securities movements required for settlement and further reduces operational and market risk. The benefits of such netting by NSCC may be significant with respect to the large volumes of E&A/Delivery Transactions processed during monthly options expiry periods.

Pursuant to the Existing Accord, on each trading day NSCC delivers to OCC a file that identifies the securities, including stocks, exchange-traded funds and exchange-traded notes, that are eligible (1) to settle through NSCC and (2) to be delivered in settlement of (i) exercises and assignments of stock options cleared and settled by OCC or (ii) delivery obligations from maturing stock futures cleared and settled by OCC. OCC, in turn, delivers to NSCC a file identifying securities to be delivered, or received, for physical settlement in connection with OCC transactions.²⁰

After NSCC receives the list of eligible transactions from OCC, and NSCC has received all required deposits to the NSCC Clearing Fund from all Common Members taking into consideration amounts required to physically settle the OCC transactions, the OCC Guaranty would end and the NSCC Guaranty would begin with respect to physical settlement of the eligible OCC-related transactions. At this point, NSCC is solely responsible for settling the transactions.^{21 22}

²⁰ Each day that both OCC and NSCC are open for accepting trades for clearing is referred to as an "Activity Date" in the Existing Accord. Securities eligible for settlement at NSCC are referred to collectively as "Eligible Securities" in the Existing Accord. Eligible securities are settled at NSCC through NSCC's CNS Accounting Operation or NSCC's Balance Order Accounting Operation.

²¹ The term "NSCC Clearing Fund" as used herein has the same meaning as the term "Clearing Fund" as provided in the NSCC Rules. Procedure XV of the NSCC Rules provides that all NSCC Clearing Fund requirements and other deposits must be made within one hour of demand, unless NSCC determines otherwise, *supra* note 9.

²² This is referred to in the Existing Accord as the "Guaranty Substitution Time," and the process of

¹¹ OCC provided its analysis of the financial impact of alternate means of settlement as Exhibit 3A to File No. SR-OCC-2023-801.

¹² See Rule 11 (CNS System) and Procedure VII (CNS Accounting Operation) of the NSCC Rules, *supra* note 9.

¹³ See Rule 8 (Balance Order and Foreign Security Systems) and Procedure V (Balance Order Accounting Operation) of the NSCC Rules, *supra* note 9.

¹⁴ See Chapter IX of OCC's Rules (Delivery of Underlying Securities and Payment), *supra* note 5.

¹⁵ See OCC Rule 901, *supra* note 5.

¹⁶ See Addendum K and Procedure III of the NSCC Rules, *supra* note 9.

¹⁷ A Common Member that has been suspended by OCC or for which NSCC has ceased to act is referred to as a "Mutually Suspended Member."

¹⁸ For example, OCC evaluated certain Clearing Member default scenarios in which OCC assumed that NSCC would not accept the settlement obligations under the Existing Accord, including the default of a large Clearing Member coinciding with a monthly options expiration. OCC has estimated that in such a Clearing Member default scenario, the aggregate liquidity burden on OCC in connection with obligations having to be settled on a gross broker-to-broker basis could reach a significantly high level. For example, in January 2022, the largest gross broker-to-broker settlement amount in the case of a larger Clearing Member default would have resulted in liquidity needs of approximately \$384,635,833,942. OCC provided the data and analysis as Exhibit 3A to File No. SR-OCC-2023-801.

¹⁹ In broker-to-broker settlement, Clearing Member parties are responsible for coordinating settlement—delivery and payment—among themselves on a transaction-by-transaction basis. Once transactions settle, the parties also have an obligation to affirmatively notify OCC so that OCC can close out the transactions. If either one of or both of the parties do not notify OCC, the transaction will remain open on OCC's books indefinitely until the time both parties have provided notice of settlement to OCC.

Each day, NSCC is required to promptly notify OCC at the time the NSCC Guaranty takes effect. If NSCC rejects OCC's transactions due to an improper submission²³ or if NSCC "ceases to act" for a Common Member,²⁴ NSCC's Guaranty will not take effect for the affected transactions pursuant to the NSCC Rules.

NSCC is required to promptly notify OCC if it ceases to act for a Common Member. Upon receiving such a notice, OCC would not continue to submit to NSCC any further unsettled transactions that involve such Common Member, unless authorized representatives of both OCC and NSCC otherwise consent. OCC would, however, deliver to NSCC a list of all transactions that have already been submitted to NSCC and that involve such Common Member. The NSCC Guaranty ordinarily would not take effect with respect to transactions for a Common Member for which NSCC has ceased to act, unless both Clearing Agencies agree otherwise. As such, NSCC does not have any existing contractual obligation to guarantee such Common Member's transactions. To the extent the NSCC Guaranty does not take effect, OCC's Guaranty would continue to apply, and, as described above, OCC would remain responsible for effecting the settlement of such Common Member's transactions pursuant to OCC's By-Laws and Rules.

As noted above, the Existing Accord does provide that the Clearing Agencies may agree to permit additional transactions for a Common Member default ("Defaulted NSCC Member Transactions") to be processed by NSCC while subject to the NSCC Guaranty. This optional feature, however, creates uncertainty for the Clearing Agencies and market participants about how Defaulted NSCC Member Transactions may be processed following a Common Member default and also does not provide NSCC with the ability to collect collateral from OCC that it may need to

close out these additional transactions. While the optional feature would remain in the agreement as part of this proposal, the proposed changes to the Existing Accord, as described below, could significantly reduce the likelihood that it would be utilized.

Proposed Change

i. Proposed Changes to the Existing Accord

The proposed changes to the Existing Accord would permit OCC to make a cash payment, referred to as the "Guaranty Substitution Payment" or "GSP," to NSCC. This cash payment could occur on either or both of the day that the Common Clearing Member becomes a Mutually Suspended Member and on the next business day. Upon NSCC's receipt of the Guaranty Substitution Payment from OCC, the NSCC Guaranty would take effect for the Common Member's transactions, and they would be accepted by NSCC for clearance and settlement.²⁵ OCC could use all Clearing Member contributions to the OCC Clearing Fund²⁶ and certain Margin Assets²⁷ of a defaulted Clearing Member to pay the GSP, as described in more detail below.

NSCC would calculate the Guaranty Substitution Payment as the sum of the Mutually Suspended Member's unpaid required deposit to the NSCC Clearing Fund ("Required Fund Deposit")²⁸ and the unpaid Supplemental Liquidity Deposit²⁹ obligation that is attributable to E&A/Delivery Transactions. The proposed changes to the Existing Accord define how NSCC would calculate the Guaranty Substitution Payment.

More specifically, NSCC would first determine how much of the member's unpaid Clearing Fund requirement would be included in the GSP. NSCC would look at the day-over-day change in gross market value of the Mutually Suspended Member's positions as well as day-over-day change in the member's

NSCC Clearing Fund requirements. Based on such changes, NSCC would identify how much of the change in the Clearing Fund requirement was attributable to E&A/Delivery Transactions coming from OCC. If 100 percent of the day-over-day change in the NSCC Clearing Fund requirement is attributable to activity coming from OCC, then the GSP would include 100 percent of the member's NSCC Clearing Fund requirement. If less than 100 percent of the change is attributable to activity coming from OCC, then the GSP would include that percent of the member's unpaid NSCC Clearing Fund requirement attributable to activity coming from OCC. NSCC would then determine the portion of the member's unpaid SLD obligation that is attributable to E&A/Delivery Transactions. As noted above, the GSP would be the sum of these two amounts. A member's NSCC Clearing Fund requirement and SLD obligation at NSCC are designed to address the credit and liquidity risks that a member poses to NSCC. The GSP calculation is intended to assess how much of a member's obligations arise out of activity coming from OCC so that the amount paid by OCC is commensurate with the risk to NSCC of guarantying such activity.

To permit OCC to anticipate the potential resources it would need to pay the GSP for a Mutually Suspended Member, each business day, NSCC would provide OCC with (1) Required Fund Deposit and Supplemental Liquidity Deposit obligations, as calculated pursuant to the NSCC Rules, and (2) the gross market value of the E&A/Delivery Transactions and the gross market value of total Net Unsettled Positions (as such term is defined in the NSCC Rules). On options expiry days that fall on a Friday, NSCC would also provide OCC with information regarding liquidity needs and resources, and any intraday SLD requirements of Common Members. Such information would be delivered pursuant to the ongoing information sharing obligations under the Existing Accord (as proposed to be amended) and the Service Level Agreement ("SLA") to which both NSCC and OCC are a party pursuant to Section 2 of the Existing Accord.³⁰ The SLA addresses specifics regarding the time, form, and manner of various required notifications and actions described in the Accord and also

the substitution of the NSCC Guaranty for the OCC Guaranty in respect of E&A/Delivery Transactions is referred to as "Guaranty Substitution."

²³ Guaranty Substitution by NSCC (discussed further below) does not occur with respect to an E&A/Delivery Transaction that is not submitted to NSCC in the proper format or that involves a security that is not identified as an Eligible Security on the then-current NSCC Eligibility Master File.

²⁴ Under NSCC's Rules, a default would generally be referred to as a "cease to act" and could encompass a number of circumstances, such as an NSCC Member's failure to make a Required Fund Deposit in a timely fashion. See NSCC Rule 46 (Restrictions on Access to Services), *supra* note 9. An NSCC Member for which it has ceased to act is referred to in the Existing Accord as a "Defaulting NSCC Member." Transactions associated with a Defaulting NSCC Member are referred to as "Defaulted NSCC Member Transactions" in the Existing Accord.

²⁵ Acceptance of such transactions by NSCC would be subject to NSCC's standard validation criteria for incoming trades. See NSCC Rule 7, *supra* note 9.

²⁶ The term "OCC Clearing Fund" as used herein has the same meaning as the term "Clearing Fund" in OCC's By-Laws, *supra* note 5.

²⁷ The term "Margin Assets" as used herein has the same meaning as provided in OCC's By-Laws, *supra* note 5.

²⁸ The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules, *see supra* note 9.

²⁹ Under the NSCC Rules, NSCC collects additional cash deposits from those Members who would generate the largest settlement debits in stressed market conditions, referred to as "Supplemental Liquidity Deposits" or "SLD". See Rule 4A of the NSCC Rules, *supra* note 9.

³⁰ OCC provided the revised SLA to the Commission as Exhibit 3C to File No. SR-OCC-2023-801.

includes information applicable under the Accord.

NSCC and OCC believe the proposed calculation of the Required Fund Deposit portion of the GSP is appropriate because it is designed to provide a reasonable proxy for the impact of the Mutually Suspended Member's E&A/Delivery Transactions on its Required Fund Deposit. While impact study data did show that the proposed calculation could result in a GSP that overestimates or underestimates the Required Fund Deposit attributable to the Mutually Suspended Member's E&A/Delivery Transactions,³¹ current technology constraints prohibit NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member.³²

Implementing the ability for OCC to make the GSP and cause the E&A/Delivery Transactions to be cleared and settled through NSCC would promote the ability of OCC and NSCC to be efficient and effective in meeting the requirements of the markets they serve. This is because data demonstrates that the expected size of the GSP would be smaller than the amount of cash that would otherwise be needed by OCC and its Clearing Members to facilitate settlement outside of NSCC. More specifically, based on a historical study of alternate means of settlement available to OCC from September 2021 through September 2022, in the event that NSCC did not accept E&A/Delivery Transactions, the worst-case scenario peak liquidity need OCC identified was \$384,635,833,942 for settlement to occur on a gross broker-to-broker basis. OCC estimates that the corresponding GSP in this scenario would have been \$863,619,056. OCC also analyzed several other large liquidity demand amounts that were identified during the study if OCC effected settlement on a

gross broker-to-broker basis.³³ These liquidity demand amounts and the largest liquidity demand amount OCC observed of \$384,635,833,942 substantially exceed the amount of liquid resources currently available to OCC.³⁴ By contrast, projected GSPs identified during the study ranged from \$419,297,734 to \$6,281,228,428. For each of these projected GSP amounts, OCC observed that the Margin Assets and OCC Clearing Fund contributions that would have been required of Clearing Members in these scenarios would have been sufficient to satisfy the amount of the projected GSPs.

To help address the current technology constraint that prohibits NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member, proposed Section 6(b)(i) of the Existing Accord and related Section 7(d) of the SLA would provide that with respect to a Mutually Suspended Member, either NSCC or OCC may require that the Required Fund Deposit portion of the GSP be re-calculated by calculating the Required Fund Deposit for the Mutually Suspended Member both before and after the delivery of the E&A/Delivery Transactions and utilize the precise amount that is attributable to that activity in the final GSP. If such a recalculation is required, the result would replace the Required Fund Deposit component of the GSP that was initially calculated. The SLD component of the GSP would be unchanged by such recalculation.

As the above demonstrates, the GSP is intended to address the significant collateral and liquidity requirements that could be required of OCC Clearing Members in the event of a Common Member default.

Allowing OCC to make a GSP payment also is intended to allow for settlement processing to take place through the facilities of NSCC to retain operational efficiencies associated with the settlement process. Alternative settlement means such as broker-to-broker settlement add operational burdens, because transactions would need to be settled individually on one-off bases. In contrast, NSCC's netting reduces the volume and value of settlement obligations that would need to be closed out in the market.³⁵

Because the clearance and settlement of obligations through NSCC's facilities following a Common Member default, including netting of E&A/Delivery Transactions with a Common Member's positions at NSCC, would avoid these potentially significant operational burdens for OCC and its Clearing Members, OCC and NSCC believe that the proposed changes would limit market disruption relating to a Common Member default. NSCC netting significantly reduces the total number of obligations that require the exchange of money for settlement. Allowing more activity to be processed through NSCC's netting systems would minimize risk associated with the close out of those transactions following the default of a Common Member.

Amending the Existing Accord to define the terms and conditions under which Guaranty Substitution may occur, at OCC's election, with respect to Defaulted NSCC Member Transactions after a Common Member becomes a Mutually Suspended Member will also provide more certainty to both the Clearing Agencies and market participants generally about how a Mutually Suspended Member's Defaulted NSCC Member Transactions may be processed.

NSCC and OCC have agreed it is appropriate to limit the availability of the proposed provision to the day of the Common Member default and the next business day because, based on historical simulations of cease to act events involving Common Members, most activity of a Mutually Suspended Member is closed out on those days.³⁶ Furthermore, the benefits of netting through NSCC's systems would be reduced for any activity submitted to NSCC after that time.

To implement these proposed changes to the Existing Accord, OCC and NSCC propose to make the following changes.

Section 1—Definitions

First, new definitions would be added, and existing definitions would be amended in Section 1, which is the Definitions section.

The new defined terms would be as follows.

- The term "Close Out Transaction" would be defined to mean "the liquidation, termination or acceleration

where, for example \$519 trillion in trades could be netted down to approximately \$9 trillion in net settlements.

³⁶ OCC provided data regarding such events in a Exhibit 3B to File No. SR-OCC-2023-801. The information contained therein includes the assumptions and timelines leading up to the declaration of a default for a Common Member and the anticipated timing of OCC's payment of the GSP.

³¹ The impact study was conducted at the Commission's request to cover a three-day period and reviewed the ten Common Members with the largest Required Fund Deposits attributable to the Mutually Suspended Member's E&A/Delivery Transactions. Over the 30 instances in the study, approximately 15 instances resulted in an underestimate of the Required Fund Deposit by an average of approximately \$112,900,926, four instances where the proxy calculation was the same as the Required Fund Deposit, and eleven instances of an overestimate of the Required Fund Deposit by an average of approximately \$59,654,583. See Exhibit 3D to File No. SR-OCC-2023-801 for additional detail related to the referenced study.

³² OCC and NSCC have agreed that performing the necessary technology build at this time would delay the implementation of this proposal. Therefore, NSCC would consider incorporating those technology updates into future revisions to the Accord, for example in connection with a move to a shorter settlement cycle in the U.S. equities markets.

³³ See Exhibit 3A to File No. SR-OCC-2023-801 for additional detail related to the referenced study.

³⁴ As of March 31, 2023, OCC held approximately \$10.37 billion in qualifying liquid resources. See *OCC Quantitative Disclosure*, January–March 2023, available at <https://www.theocc.com/risk-management/pfmi-disclosures>.

³⁵ CNS reduces the value of obligations that require financial settlement by approximately 98%,

of one or more exercised or matured Stock Options³⁷ or Stock Futures³⁸ contracts, securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, master netting agreements or similar agreements of a Mutually Suspended Member pursuant to OCC Rules 901, 1006 and 1101 through 1111 (including but not limited to Rules 1104 and 1107) and/or NSCC Rule 18.” This proposed definition would make it clear that the payment of the Guaranty Substitution Payment and NSCC’s subsequent acceptance of Defaulted NSCC Member Transactions for clearance and settlement are intended to fall within the “safe harbors” provided in the Bankruptcy Code,³⁹ the Securities Investor Protection Act,⁴⁰ and other similar laws.

- The term “Guaranty Substitution Payment” would be defined to mean “an amount calculated by NSCC in accordance with the calculations set forth in Appendix A [to the Existing Accord (as proposed to be amended)], to include two components: (i) a portion of the Mutually Suspended Member’s Required Fund Deposit deficit to NSCC at the time of the cease to act; and (ii) a portion of the Mutually Suspended Member’s unpaid Supplemental Liquidity Deposit obligation at the time of the cease to act.”

- The term “Mutually Suspended Member” would mean “any OCC Participating Member⁴¹ that has been suspended by OCC that is also an NSCC Participating Member⁴² for which NSCC has ceased to act.”

³⁷ The term “Stock Options” is defined in the Existing Accord within the definition of “Eligible Securities,” and refers to options issued by OCC.

³⁸ The term “Stock Futures” is defined in the Existing Accord within the definition of “Eligible Securities,” and refers to stock futures contracts cleared by OCC.

³⁹ 11 U.S.C. 101 *et seq.*, including §§ 362(b)(6), (7), (17), (25) and (27) (exceptions to the automatic stay), §§ 546(e)–(g) and (j) (limitations on avoiding powers), and §§ 555–556 and 559–562 (contractual right to liquidate, terminate or accelerate certain contracts).

⁴⁰ 15 U.S.C. 78aaa–III, including § 78eee(b)(2)(C) (exceptions to the stay).

⁴¹ The term “OCC Participating Member” is defined in the Existing Accord to mean “(i) a Common Member; (ii) an OCC Clearing Member that is an ‘Appointing Clearing Member’ (as defined in Article I of OCC’s By-Laws) and has appointed an Appointed Clearing Member that is an NSCC Member to effect settlement of E&A/Delivery Transactions through NSCC on the Appointing Clearing Member’s behalf; (iii) an OCC Clearing Member that is an Appointed Clearing Member; or (iv) a Canadian Clearing Member.” No changes are proposed to this definition.

⁴² The term “NSCC Participating Member” is defined in the Existing Accord to mean “(i) a Common Member; (ii) an NSCC Member that is an ‘Appointed Clearing Member’ (as defined in Article I of OCC’s By-Laws); or (iii) [or Canadian

- The term “Required Fund Deposit” would have the meaning “provided in Rule 4 of NSCC’s Rules and Procedures (or any replacement or substitute rule), the version of which, with respect to any transaction or obligation incurred that is the subject of this Agreement, is in effect at the time of such transaction or incurrence of obligation.”

- The term “Supplemental Liquidity Deposit” would have the meaning “provided in Rule 4A of NSCC’s Rules and Procedures (or any replacement or substitute rule), the version of which, with respect to any transaction or obligation incurred that is the subject of this Agreement, is in effect at the time of such transaction or incurrence of obligation.”

The defined terms that would be amended in Section 1 of the Existing Accord are as follows.

- The definition for the term “E&A/Delivery Transaction” generally contemplates a transaction that involves a delivery and receipt of stock in the settlement of physically settled options and futures that are cleared and settled by OCC and for which the underlying securities are eligible for clearing through the facilities of NSCC. The definition would be amended to make clear that it would apply in respect of a “Close Out Transaction” of a “Mutually Suspended Member” as those terms are proposed to be defined (described above).

- The definition for the term “Eligible Securities” generally contemplates the securities that are eligible to be used for physical settlement under the Existing Accord. The term would be modified to clarify that this may include, for example, equities, exchange-traded funds and exchange-traded notes that are underlying securities for options issued by OCC.

Section 6—Default by an NSCC Participating Member or OCC Participating Member

Section 6 of the Existing Accord provides that NSCC is required to provide certain notice to OCC in circumstances in which NSCC has ceased to act for a Common Member. Currently, Section 6(A)(ii) of the Existing Accord also requires NSCC to notify OCC if a Common Member has failed to satisfy its Clearing Fund obligations to NSCC, but for which NSCC has not yet ceased to act. In practice, this provision would trigger a number of obligations (described below)

Depository for Securities, or “CDS”). For the avoidance of doubt, the Clearing Agencies agree that CDS is an NSCC Member for purposes of this Agreement.” No changes are proposed to this definition.

when a Common Member fails to satisfy its NSCC Clearing Fund obligations for any reason, including those due to an operational delay. Therefore, OCC and NSCC are proposing to remove the notification requirement under Section 6(A)(ii) from the Existing Accord. Under Section 7(d) of the Existing Accord, NSCC and OCC are required to provide each other with general surveillance information regarding Common Members, which includes information regarding any Common Member that is considered by the other party to be in distress. Therefore, if a Common Member has failed to satisfy its NSCC Clearing Fund obligations and NSCC believes this failure is due to, for example, financial distress and not, for example, due to a known operational delay, and NSCC has not yet ceased to act for that Common Member, such notification to OCC would still occur but would be done pursuant to Section 7(d) of the Existing Accord (as proposed to be amended), and not Section 6(A)(ii). Notifications under Section 6 of the Existing Accord (as proposed to be amended) would be limited to instances when NSCC has actually ceased to act for a Common Member pursuant to the NSCC Rules.⁴³

Following notice by NSCC that it has ceased to act for a Common Member, OCC is obligated in turn to deliver to NSCC a list of all E&A/Delivery Transactions (excluding certain transactions for which Guaranty Substitution does not occur) involving the Common Member.⁴⁴ This provision would be amended to clarify that it applies in respect of such E&A/Delivery Transactions for the Common Member for which the NSCC Guaranty has not yet attached—meaning that Guaranty Substitution has not yet occurred.

As described above in the summary of the Existing Accord, where NSCC has ceased to act for a Common Member, the Existing Accord refers to the Common Member as the Defaulting NSCC Member and also refers to the relevant E&A/Delivery Transactions in connection with that Defaulting NSCC Member for which a Guaranty Substitution has not yet occurred as Defaulted NSCC Member Transactions.

If the Defaulting NSCC Member is also suspended by OCC, it would be covered by the proposed definition that is described above for a Mutually Suspended Member. For such a

⁴³ See Rule 46 (Restrictions on Access to Services) of the NSCC Rules, *supra* note 9.

⁴⁴ The section of the Existing Accord that addresses circumstances in which NSCC ceases to act and/or an NSCC Member defaults is currently part of Section 6(a). It would be re-designated as Section 6(b) for organizational purposes.

Mutually Suspended Member, the proposed changes in Section 6(b) would provide that NSCC, by a time agreed upon by the parties, would provide OCC with the amount of the Guaranty Substitution Payment as calculated by NSCC and related documentation regarding the calculation. The Guaranty Substitution Payment would be calculated pursuant to NSCC's Rules as that portion of the unmet Required Fund Deposit⁴⁵ and Supplemental Liquidity Deposit⁴⁶ obligations of the Mutually Suspended Member attributable to the Defaulted NSCC Member Transactions. By a time agreed upon by the parties,⁴⁷ OCC would then be required to either notify NSCC of its intent to make the full amount of the Guaranty Substitution Payment to NSCC or notify NSCC that it will not make the Guaranty Substitution Payment. If OCC makes the full amount of the Guaranty Substitution Payment, NSCC's guaranty would take effect at the time of NSCC's receipt of that payment and the OCC Guaranty would end.

The proposed changes would further provide that if OCC does not suspend the Common Member (such that the Common Member would therefore not meet the proposed definition of a Mutually Suspended Member) or if OCC elects to not make the full amount of the Guaranty Substitution Payment to NSCC, then all of the Defaulted NSCC Member Transactions would be exited from NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation, as applicable, and Guaranty Substitution would not occur in respect thereof. Therefore, NSCC would continue to have no obligation to guarantee or settle the Defaulted NSCC Member Transactions, and the OCC Guaranty would continue to apply to them pursuant to OCC's By-Laws and Rules.⁴⁸

Proposed changes to the Existing Accord would also address the application of any Guaranty Substitution Payment by NSCC. Specifically, new Section 6(d) would

provide that any Guaranty Substitution Payment made by OCC may be used by NSCC to satisfy any liability or obligation of the Mutually Suspended Clearing Member to NSCC on account of transactions involving the Mutually Suspended Clearing Member for which the NSCC Guaranty applies and to the extent that any amount of assets otherwise held by NSCC for the account of the Mutually Suspended Member (including any Required Fund Deposit or Supplemental Liquidity Deposit) are insufficient to satisfy its obligations related to transactions for which the NSCC Guaranty applies. Proposed changes to Section 6(d) would further provide for the return to OCC of any unused portion of the GSP. With regard to the portion of the Guaranty Substitution Payment that corresponds to a member's Supplemental Liquidity Deposit obligation, NSCC must return any unused amount to OCC within fourteen (14) days following the conclusion of NSCC's settlement, close-out and/or liquidation. With regard to the portion of the Guaranty Substitution Payment that corresponds to a Required Fund Deposit, NSCC must return any unused amount to OCC under terms agreed to by the parties.⁴⁹

Other Proposed Changes

Certain other technical changes are also proposed to the Existing Accord to conform it to the proposed changes described above. For example, the preamble and the "whereas" clauses in the Preliminary Statement would be amended to clarify that the agreement is an amended and restated agreement and to summarize that the agreement would be modified to contemplate the Guaranty Substitution Payment structure. Section 1(c), which addresses the terms in the Existing Accord that are defined by reference to NSCC's Rules and Procedures and OCC's By-Laws and Rules would be modified to state that such terms would have the meaning then in effect at the time of any transaction or obligation that is covered by the agreement rather than stating that such terms have the meaning given to them as of the effective date of the agreement. This change is proposed to help ensure that the meaning of such terms in the agreement will not become inconsistent with the meaning in the NSCC Rules and/or OCC By-Laws and Rules, as they may be modified through

proposed rule changes with the Commission.

Technical changes would be made to Sections 3(d) and (e) of the Existing Accord to provide that those provisions would not apply in the event new Section 6(b) described above, is triggered. Section 3(d) generally provides that OCC will no longer submit E&A/Delivery Transactions to NSCC involving a suspended OCC Participating Member.⁵⁰ Similarly, Section 3(e) generally provides that OCC will no longer submit E&A/Delivery Transactions to NSCC involving an NSCC Participating Member⁵¹ for which NSCC has ceased to act. A proposed change would also be made to Section 5 of the Existing Accord to modify a reference to Section 5 of Article VI of OCC's By-Laws to instead provide that the updated cross-reference should be to Chapter IV of OCC's Rules.

Section 5 would also be amended to clarify that Guaranty Substitution occurs when NSCC has received both the Required Fund Deposit and Supplemental Liquidity Deposit, as calculated by NSCC in its sole discretion, from Common Members. The addition of the collection of the Supplemental Liquidity Deposit to the definition of the Guaranty Substitution Time in this Section 5 would reflect OCC and NSCC's agreement that both amounts are components of the Guaranty Substitution Payment (as described above) and would make this definition consistent with that agreement.

In Section 7 of the Existing Accord, proposed changes would be made to provide that NSCC would provide to OCC information regarding a Common Member's Required Fund Deposit and Supplemental Liquidity Deposit obligations, to include the Supplemental Liquidity Deposit obligation in this notice requirement, and additionally that NSCC would provide OCC with information regarding the potential Guaranty Substitution Payment for the Common Member. On an options expiration date that is a Friday, NSCC would, by close of business on that day, also provide to OCC information regarding the intra-day liquidity requirement, intra-day liquidity resources and intra-day calls for a Common Member that is subject to a Supplemental Liquidity Deposit at NSCC.

Finally, Section 14 of the Existing Accord would be modernized to provide

⁴⁵ The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules, *see supra* note 9.

⁴⁶ The Supplemental Liquidity Deposit is calculated pursuant to Rule 4A (Supplemental Liquidity Deposits) of the NSCC Rules, *see supra* note 9.

⁴⁷ The time by which OCC would be required to notify NSCC of its intent would be defined in the Service Level Agreement. As of the time of this filing, the parties intend to set that time as one hour after OCC's receipt of the calculated Guaranty Substitution Payment from NSCC.

⁴⁸ Under the current and proposed terms of the Existing Accord, NSCC would be permitted to voluntarily guaranty and settle the Defaulted NSCC Member Transactions.

⁴⁹ Such amounts would be returned to OCC as appropriate and in accordance with a Netting Contract and Limited Cross-Guaranty, by and among the Depository Trust Company, Fixed Income Clearing Corporation, NSCC and OCC, dated as of January 1, 2003, as amended.

⁵⁰ *See supra* note 41 defining OCC Participating Member.

⁵¹ *See supra* note 42 defining NSCC Participating Member.

that notices between the parties would be provided by email rather than by hand, overnight delivery service or first-class mail.

ii. Proposed Changes to OCC By-Laws and Rules

General Description

OCC is also proposing certain changes to its By-Laws and Rules that are designed to complement the proposed changes described above regarding the Existing Accord. These proposed changes to the By-Laws and Rules are described below, and they generally cover the following four areas. First, the proposed changes would define Guaranty Substitution Payment. Second, the proposed changes would describe the circumstances under which OCC could make a Guaranty Substitution Payment to NSCC. Third, the proposed changes would specify what financial resources could be used by OCC to make the Guaranty Substitution Payment.⁵² Fourth, the proposed changes to OCC's Comprehensive Stress Testing and Clearing Fund Methodology, and Liquidity Risk Management Description would outline enhanced stress testing incorporating the GSP and OCC's ability to call for additional resources from Clearing Members. OCC also is proposing changes to OCC's Liquidity Risk Management Framework to account for OCC's ability to make the GSP.

Article I—Definitions

OCC proposes to add "Guaranty Substitution Payment" as a new defined term under Article I of OCC's By-Laws, which is the Definitions section. The term "Guaranty Substitution Payment" would be defined to mean: "a payment that may be made by [OCC] to [NSCC] under the terms of an agreement between them, as described in Rule 901, so that [NSCC] will not reject settlement obligations for CCC-eligible⁵³ securities that are directed by [OCC] for settlement through the facilities of [NSCC] on account of a Clearing Member that has been suspended, as described in Rule

1102, and for which [NSCC] has ceased to act."

Chapter IX—Delivery of Underlying Securities and Payment

Certain changes are also proposed to Chapter IX of OCC's Rules. OCC proposes to add parenthetical language to the Introduction section of Chapter IX of OCC's Rules. It would specify that a Guaranty Substitution Payment could be made by OCC to NSCC in connection with OCC's general policy that to the extent a security to be delivered and received is CCC-eligible, OCC will direct the delivery and payment obligations to be settled through the facilities of NSCC where the obligations are physically-settled and arise out of the exercise of stock option contracts or the maturity of stock futures contracts.

Next, OCC proposes to delete certain provisions from Rule 901(b) regarding when a Guaranty Substitution occurs. Specifically, Rule 901(b) currently provides that unless otherwise agreed between OCC and NSCC, a Guaranty Substitution with respect to settlement obligations for CCC-eligible securities that settle "regular way" under NSCC's Rules and Procedures will occur if: (i) the applicable settlement obligations are reported to and are not rejected by NSCC; (ii) NSCC has not notified OCC that it has ceased to act for the relevant Clearing Member or Appointed Clearing Member; and (iii) the NSCC Clearing Fund requirements of the relevant Clearing Member or Appointed Clearing Member owing to NSCC, as determined in accordance with NSCC's Rules and Procedures, are received by NSCC. These considerations regarding when a Guaranty Substitution occurs are addressed under the terms of the Existing Accord, and they would continue to be relevant considerations regarding when a Guaranty Substitution occurs under the changes that OCC and NSCC are proposing to the Existing Accord. However, because additional considerations would be added to the Guaranty Substitution process in connection with the proposed ability for OCC in certain circumstances to make a Guaranty Substitution Payment to NSCC and also to eliminate the potential for a description of the Guaranty Substitution process in OCC's Rules to become inconsistent with the process that OCC and NSCC have agreed to in the Existing Accord, as it would be amended, OCC is proposing to delete the discussion of these considerations in Rule 901(b) in favor of instead simply cross referencing the terms of the agreement.⁵⁴

In addition, OCC proposes to add a new paragraph to the end of Rule 901(b) to provide that pursuant to the proposed changes to the Existing Accord, OCC would be permitted to make a Guaranty Substitution Payment to NSCC. The proposed changes would also describe the circumstances in which OCC may make a Guaranty Substitution Payment in connection with settlement obligations of a suspended Clearing Member, and that the amount of the Guaranty Substitution Payment under the terms of the Existing Accord, as amended, would be the amount required by NSCC to satisfy its deficit(s) regarding such Clearing Member's "Required Fund Deposit" and "Supplemental Liquidity Deposit" as those terms are defined in NSCC's Rules and Procedures.⁵⁵ The changes would provide that any amount of a Guaranty Substitution Payment that NSCC does not use pursuant to its Rules and Procedures would subsequently be returned to OCC under such terms and within such times as are agreed by OCC and NSCC. OCC believes that it is useful to include this description of the proposed process for the Guaranty Substitution Payment and the circumstances in which it may be made so that a user of OCC's publicly available By-Laws and Rules would have sufficient information to understand the existence of the Guaranty Substitution Payment mechanism, the general circumstances in which it may be made and the role that a Guaranty Substitution Payment would play in causing NSCC to accept obligations for CCC-eligible securities for clearance and settlement.

Chapters X and XI—Clearing Fund Contributions and Suspension of a Clearing Member

As generally described above, the proposed changes would also provide that OCC would be permitted to borrow from the OCC Clearing Fund and also against certain Margin Assets of a Clearing Member that has been suspended by OCC where that Clearing Member is a Mutually Suspended Member. To implement these changes, OCC is proposing the following

agreement is treated as a rule of a clearing agency under Exchange Act Section 3(a)(27) and therefore any proposed changes to it by OCC are subject to the related rule change process and public notice and comment. OCC therefore believes that addressing the terms in the agreement and cross-referencing the agreement in OCC Rule 901 would not deprive the Commission or the public of notice regarding any future proposed changes.

⁵⁵ See NSCC Rules 4 (defining "Required Fund Deposit") and 4A (defining "Supplemental Liquidity Deposit"), *supra* note 9.

⁵² OCC would be permitted to borrow from the Clearing Fund and margin of a suspended Clearing Member, over which OCC has a general lien, where that Clearing Member is a Mutually Suspended Member. The change would merely expand the circumstances under which OCC's current By-Laws and Rules permit OCC to borrow Clearing Fund and margin. The change would not affect the treatment of such borrowing under OCC's default waterfall that determines how OCC allocates losses against available financial resources. The Mutually Suspended Member's margin and Clearing Fund collateral would remain first in line to absorb losses.

⁵³ The term "CCC-Eligible" as used herein has the meaning provided in OCC's By-Laws, *supra* note 5.

⁵⁴ For purposes of the proposed rule change process under Exchange Act Section 19(b), the

amendments to OCC Rule 1006 and Rule 1104.

OCC Rule 1006 addresses the purpose and permitted uses of the OCC Clearing Fund. OCC proposes to make amendments to paragraphs (a) and (f) to permit OCC to utilize assets in the Clearing Fund as a liquidity resource in connection with making a Guaranty Substitution Payment. Currently, OCC Rule 1006(a) states the conditions for use of the OCC Clearing Fund. These provide that the OCC Clearing Fund may be used for borrowings pursuant to OCC Rule 1006(f) or to make good losses or expenses suffered by OCC including: (i) as a result of the failure of any Clearing Member to discharge duly any obligation on or arising from any confirmed trade accepted by OCC, (ii) as a result of the failure of any Clearing Member (including any Appointed Clearing Member) or of CDS (Canada's national securities depository) to perform its obligations under any contract or obligation issued, undertaken, or guaranteed by OCC or in respect of which OCC is otherwise liable, (iii) as a result of the failure of any Clearing Member to perform any of its obligations to OCC in respect of the stock loan and borrow positions of such Clearing Member, (iv) in connection with any liquidation of a Clearing Member's open positions, (v) in connection with protective transactions effected for the account of OCC pursuant to Chapter XI of OCC's Rules (delivery of underlying securities and payment), (vi) as a result of the failure of any Clearing Member to make any other required payment or render any other required performance or (vii) as a result of the failure of any bank, securities or commodities clearing organization, or investment counterparty, to perform its obligations to OCC for certain specified reasons.⁵⁶

OCC proposes to renumber clauses (iii) through (vii) in paragraph (a) as (iv) through (viii), and to insert as new clause (iii) a provision that the OCC Clearing Fund may be used "regarding any Guaranty Substitution Payment that [OCC] may make to [NSCC] under an agreement between them, as described in [OCC] Rule 901, so that [NSCC] will not reject settlement obligations for CCC-eligible securities involving a Clearing Member for which [NSCC] has ceased to act and that [OCC] directs to [NSCC] for settlement through its facilities."⁵⁷ OCC also proposes to add

parenthetical language to paragraphs (f)(1)(A) and (f)(2)(A)(ii) to further clarify that contributions to the OCC Clearing Fund may be borrowed by OCC for use in connection with making a Guaranty Substitution Payment to NSCC. Any borrowing from the OCC Clearing Fund by OCC to make a Guaranty Substitution Payment to NSCC would be subject to the existing terms of OCC Rule 1006(f)(3) that provide that irrespective of how any such borrowings from the OCC Clearing Fund are applied by OCC, the borrowing for a period not to exceed thirty (30) days will not be deemed to result in charges against the OCC Clearing Fund under OCC's default waterfall for allocating actual losses. For purposes of determining whether a loss resulting from a Guaranty Substitution Payment has occurred, OCC Rule 1006(f)(3) would be amended to provide that the Guaranty Substitution Payment is deemed to be repaid by OCC at such time as under the Accord that it is NSCC's obligation to return any portion of the Guaranty Substitution Payment that NSCC does not use pursuant to its rules. If, subsequent to the borrowing, OCC determines that the borrowing represents an actual loss or all or any part of the borrowing remains outstanding after thirty (30) days (or on the first Business Day thereafter if the thirtieth calendar day is not a Business Day) then the amount of OCC Clearing Fund assets used in the outstanding borrowing would be an actual loss that OCC would be required to immediately allocate under its By-Laws and Rules.⁵⁸ As noted above, losses resulting from the borrowing of Clearing Fund or Margin Assets as a liquidity resource to facilitate OCC making a Guaranty Substitution Payment would be allocated in the same sequence as any other losses charged to the default waterfall.

Consistent with these changes to permit OCC to use the OCC Clearing Fund as a borrowing resource to make a Guaranty Substitution Payment to NSCC, OCC is also proposing similar changes to OCC Rule 1104 that would permit OCC to borrow certain Margin Assets of a Clearing Member that has been suspended by OCC where that Clearing Member is a Mutually

of paragraph (a)" would be changed to "clauses (i) through (vii) of paragraph (a)."

⁵⁶ If the defaulting OCC Clearing Member's Margin Assets and OCC Clearing Fund contribution were insufficient to cover the associated losses, OCC would next look to certain OCC financial resources that are available for that purpose (e.g., OCC's corporate contribution and Clearing Fund contributions of non-defaulting OCC Clearing Members).

Suspended Member and OCC has a general lien⁵⁹ over the Margin Assets.

Specifically, OCC proposes to add a new paragraph (g) to OCC Rule 1104 that would provide that OCC may use specified Margin Assets of a suspended Clearing Member as a borrowing in order to use such borrowed Margin Assets to make a Guaranty Substitution Payment to NSCC. OCC would be permitted to use Margin Assets from the following accounts of a suspended Common Member: firm lien account and firm non-lien account; separate Market-Maker's account; combined Market-Maker's account; and JBO Participants' account.⁶⁰ OCC is not proposing at this time to have authority to borrow Margin Assets from other types of accounts over which OCC has a restricted lien⁶¹ and for which the Margin Assets are security for the particular restricted lien accounts because of additional complexity that OCC believes would be associated with tracking NSCC's use of Margin Assets associated with those accounts and also due to certain regulatory requirements under Commission Rule 15c3-3 that apply to broker-dealer Clearing Members and prohibit the use of customer property of the broker-dealer to support non-customer activities.⁶²

As with the terms that currently apply to any borrowing from the OCC Clearing Fund pursuant to OCC Rule 1006(f), new paragraph (g) in OCC Rule 1104 would further provide that Margin Assets borrowed by OCC to make a Guaranty Substitution Payment to NSCC

⁵⁹ Article I, Section 1.G.(1) of OCC's By-Laws states that the "term 'general lien' means a security interest of [OCC] in all or specified assets in a Clearing Member account as security for all of the Clearing Member's obligations to [OCC] regardless of the source or nature of such obligations." See OCC By-Laws, *supra* note 5.

⁶⁰ The Clearing Member accounts referenced herein are described in subparagraphs (a), (b), (c) and (h) of Article VI, Section 3 of OCC's By-Laws. See OCC's By-Laws, *supra* note 5.

⁶¹ Article I, Section 1.R.(8) of OCC's By-Laws states that the "term 'restricted lien' means a security interest of [OCC] in specified assets (including any proceeds thereof) in an account of a Clearing Member with [OCC] as security for the Clearing Member's obligations to [OCC] arising from such account or, to the extent so provided in the By-Laws or Rules, a specified group of accounts that includes such account including, without limitation, obligations in respect of all confirmed trades effected through such account or group of accounts, and exercise notices assigned to such account or group of accounts." See OCC's By-Laws, *supra* note 5.

⁶² For example, under the broker-dealer customer reserve account formula to SEC Rule 15c3-3 the broker-dealer takes a debit in the formula under Item 13 for margin that is "required and on deposit with OCC for all option contracts written or purchased in customer accounts." This means that such margin in turn can be used by the broker-dealer Clearing Member as Margin Assets to support the securities customers' account at OCC.

⁵⁶ The terms "Clearing Member" and "Appointed Clearing Member" as used herein have the meanings provided in OCC's By-Laws, *supra* note 5.

⁵⁷ In connection with these amendments, the reference in Rule 1006(b) to "clauses (i) through (vi)

would not be deemed to be charges against the margin assets for the relevant account(s) for up to thirty (30) days; however, if all or a part of such borrowing were to be determined by OCC, in its discretion, to represent an actual loss, or if all or a part of the borrowing were to remain outstanding after such thirty (30)-day period, OCC would consider the amount of margin assets used to support OCC's obligations under the outstanding borrowing or transaction as an actual loss and immediately allocate the loss in accordance with OCC's By-Laws and Rules.

OCC anticipates that in a scenario in which it would be permitted make a Guaranty Substitution Payment to NSCC under the proposed changes to the Existing Accord and OCC's By-Laws and Rules, OCC would generally expect to borrow from the Clearing Fund as a primary liquidity resource. OCC could also borrow Margin Assets of the suspended Clearing Member that is a Common Member under the proposed terms described above. OCC is not proposing changes that would require a specific borrowing sequence because OCC believes that it is more appropriate to preserve flexibility to borrow from the available OCC Clearing Fund or Margin Assets as OCC determines appropriate under the circumstances.

In addition, OCC proposes to specify in OCC Rule 1107(a)(1) that exercised option contracts and matured, physically-settled stock futures to which the suspended Clearing Member is a party may be settled in accordance with the terms of any agreement between OCC and NSCC governing the settlement of exercised option contracts and matured, physically-settled stock futures of a suspended Clearing Member. In such an event, settlement will be governed by and subject to the agreement between OCC and NSCC and the rules of NSCC.

The purpose of the proposed changes to create the Guaranty Substitution Payment mechanism is to provide OCC and NSCC with an additional default management tool to help manage liquidity and settlement risks that OCC believes would be presented to each covered clearing agency in connection with a Mutually Suspended Member. OCC believes that having the ability to make a Guaranty Substitution Payment to NSCC in regard to any unmet Required Fund Deposit or Supplemental Liquidity Deposit obligations of a Mutually Suspended Member would promote prompt and accurate clearance and settlement in the national system for the settlement of securities transactions by causing NSCC to

guarantee certain securities settlement obligations that result from exercised options and matured futures contracts that are cleared and settled by OCC. In the following ways, OCC believes that this would be beneficial to and protective of OCC, NSCC, their participants, and the markets they serve.

First, OCC's ability to make the Guaranty Substitution Payment would ensure that the relevant securities settlement obligations would be accepted by NSCC for clearance and settlement and therefore the size of the related settlement obligations could be decreased from netting through NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation. Second, this outcome would avoid a scenario in which OCC's Guaranty would continue to apply and the settlement obligations would be settled on a broker-to-broker basis between OCC Clearing Members pursuant to the applicable provisions in Chapter IX of OCC's Rules. As noted above, OCC believes that such a broker-to-broker settlement scenario could result in substantial collateral and liquidity requirements for OCC Clearing Members. OCC believes that these potential collateral and liquidity consequences would be due to the lost benefit of netting of the settlement obligations through NSCC's facilities and also due to the short time (*i.e.*, the T+2 standard settlement cycle) between a rejection by NSCC of the settlement obligations for clearing and the associated settlement date on which settlement would be otherwise required to be made bilaterally by OCC Clearing Members. This scenario also raises the potential for procyclical liquidity demands on OCC Clearing Members and participants during stressed market conditions. Third, OCC will plan to size its liquidity resource requirements to reasonable expectations with a high probability of making a Guaranty Substitution Payment in order to facilitate the settlement of a Mutually Suspended Member's obligations through NSCC. Accounting for net liquidity demands from a Mutually Suspended Member's settlement obligations at the central counterparty-level enhances liquidity in the financial system and promotes the efficient use of capital by reducing the demand for liquidity associated with gross settlement of obligations and enabling the application of resources at both clearing agencies to satisfy the Member's obligation. Fourth, OCC believes that the potential for the size of the settlement obligations to be comparatively larger than the Guaranty

Substitution Payment coupled with the short time remaining to settlement could also increase the risk of default by the affected OCC Clearing Members at a time when a Common Member has already been suspended. Therefore, OCC believes that the proposed changes to implement the ability for OCC to make a Guaranty Substitution Payment to NSCC would allow OCC to avoid these risks by causing NSCC to accept the relevant obligations arising from exercised options and matured futures cleared and settled by OCC, as it ordinarily would, and guarantee their settlement, upon OCC making a Guaranty Substitution Payment to NSCC in accordance with the revised Accord.

Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description

OCC proposes to revise the OCC Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description to include the GSP in its liquidity risk management practices. Overall, the proposed changes would reflect that the GSP functions as an additional liquidity demand type at the Clearing Member Organization ("CMO") Group level.⁶³

OCC would include additional specifics to address the potential increased demand that the inclusion of the GSP may cause in its liquidity risk management practices in the Liquidity Risk Management section of the Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description. Specifically, OCC proposes to amend the Liquidity Demand for Positions Rejected by NSCC subsection, which describes the Existing Accord, including the scenario in which NSCC could choose not to guaranty certain securities settlement obligations arising out of transactions cleared by OCC. This subsection would be retitled as the Liquidity Demand Associated with NSCC Performance of Physical Settlement Activities subsection to more clearly describe its content and incorporate the GSP, as further detailed below. Consistent with the changes to the Existing Accord described above, OCC proposes to clarify that the Accord allows NSCC to reject such obligations if OCC elects to not make a GSP.

OCC proposes a new subsection, titled the Liquidity Demand GSP, to describe the GSP, which NSCC would calculate as defined in the proposed amendments to the Existing Accord. OCC would describe a GSP as a firm specific

⁶³ A Clearing Member Group is composed of a set of affiliated OCC Clearing Members.

liquidity demand (*i.e.*, the amount of cash OCC needs to pay NSCC on behalf of the defaulting Common Member). OCC would describe the components of the GSP under the Accord. OCC would explain how it accounts for the liquidity demand associated with a potential GSP. Specifically, OCC would apply an amount to account for a potential GSP obligation for every day on which option expirations occur. This amount would be based on peak GSP amounts from the prior 12 months in a given expiration category for the specific CMO Group for each forecasted liquidity demand calculation. OCC will use a one-year lookback time period to determine the appropriate GSP amount to apply. The one-year lookback allows for the best like-to-like application of a historical GSP as there is a cyclical nature to option standard expirations with quarterly (*i.e.*, March, June, September, and December) and January generally being more impactful than non-quarterly expirations. The one-year lookback also allows behavior changes of a Clearing Member to be recognized within an annual cycle. OCC proposes to utilize a historical GSP based on current system capabilities and data that will be supplied by NSCC.

OCC would use the total amount of Clearing Fund and SLD deficits at NSCC in its calculation to account for its obligation. However, in the event of a default, OCC would be responsible for a proportionate share of both NSCC Clearing Fund deficits (which are analogous to OCC margin deficits) and SLDs that are attributable to OCC E&A activity transmitted to NSCC for settlement, whereas NSCC will be responsible for the portion of the Clearing Fund and SLD deficits associated with activity that NSCC clears that is not transmitted by OCC.

The amount of notional activity sent by OCC to NSCC informs the likelihood of a GSP. Namely, the potential amount of NSCC Clearing Fund and SLD deficits that are allocable to OCC increases as the amount of activity OCC sends to NSCC increases. Since not all types of expirations are the same with respect to the notional amount of activity sent by OCC to NSCC, OCC proposes to use five separate categories of expirations with potentially different GSP amounts to apply. Each day on which expirations occur would fall into one of five categories as follows:

- Standard Monthly Expiration: typically the third Friday of each month from the previous twelve months;
- Non-Standard Monthly Expiration Fridays (“End of Week Expirations”): the last business day of every week, typically a Friday, excluding the third

Friday of each month from the previous twelve months;

- End of Month Expirations: the last trading day of every month from the previous twelve months;
- Expirations falling on Bank Holidays where Markets Are Open (“Bank Holiday Expirations”): days where banks are closed but the markets are open from the previous twelve months;⁶⁴
- Remaining Expiration Days (“Daily Expirations”): All other days with an expiration from the previous twelve months that do not fall into any of the categories above (typically most Mondays through Thursdays) from the previous twelve months.

OCC believes these five categories are appropriate after an analysis of notional activity sent to NSCC by OCC.⁶⁵ More specifically, the standard Friday monthly expiration far exceeds the needs associated with any other category.⁶⁶ The remaining categories are intended to capture like time periods that will appropriately account for the GSP.

OCC would apply the peak GSP amounts from the prior twelve months in a given expiration category for the specific CMO Group for each forecasted liquidity demand calculation by adding the GSP amounts to the CMO Group’s other forecasted liquidity demands for the relevant expiration day.⁶⁷ If a Clearing Member defaults, OCC may have to pay a GSP to NSCC on two successive days to facilitate the close-

out of the defaulted Clearing Member’s positions. To account for this possibility in its liquidity risk management process, OCC contemplates the payment of a GSP on expirations that result in settlements on the first and second days of the default management process. As described above, this GSP amount may serve to only increase liquidity demands.⁶⁸

Furthermore, as stated in the new Liquidity Demand GSP subsection, OCC would apply a floor to certain expirations. At a minimum, the GSPs applied to the End of Week, End of Month, and Bank Holiday Expirations will be no lower than the peak of the Daily Expirations category. If a GSP pertaining to the End of Week, End of Month, and Bank Holiday Expiration category is higher than the peak of the Daily Expirations category, then OCC will apply that higher GSP. Standard Monthly Expirations will be floored by End of Week, End of Month, and Daily Expirations. If a GSP pertaining to any of these categories is higher than the Standard Monthly Expiration category, then OCC will apply that higher GSP. OCC would set out formulas representing the floors for the Standard Monthly, End of Week, End of Month, and Bank Holiday Expirations. Finally, OCC also proposes a minor change to clarify that it would attempt to effect alternative settlement if OCC elected not to make a GSP.⁶⁹

Liquidity Risk Management Framework

OCC proposes changes to the Liquidity Risk Management Framework to incorporate the GSP. In the Liquidity Risk Identification section, OCC would specify that, in the situation where a member defaults immediately preceding, or during the expiration, of physically-settled E&A activity, OCC may elect to make a GSP to NSCC to compel NSCC to accept and process the E&A activity. If OCC elects to not make a GSP, OCC would complete settlement of the defaulted Clearing Member’s E&A transactions through its current process. Relatedly, OCC would include a minor clarification to a footnote in this section to note that NSCC is not acting on behalf of a defaulting Clearing Member “in this situation.”

⁶⁴ The Bank Holiday category recognizes that for Veterans Day and Columbus Day, the equity and equity derivative markets are open for trading, but the banking system is closed for the day. Since the banking system is closed while the aforementioned markets are open, settlement at NSCC encompasses two days of equity trading and equity derivative E&A activity. As OCC is using NSCC deficit numbers without regard for allocation, there is a possibility of a significant outlying GSP requirement due to the settlement of two days of activity simultaneously. Prudence dictates retaining the capability to risk manage a day with such disparate characteristics differently. Additional supporting data in support of the creation of the Bank Holiday Expiration category is included as Exhibit 3E to File No. SR–OCC–2023–801.

⁶⁵ OCC provided its analysis of notional activity sent to NSCC by OCC in support of the creation of the five categories as Exhibit 3E to File No. SR–OCC–2023–801. This Exhibit 3E sets forth data related to OCC’s liquidity stress testing, including Available Liquidity Resources, Minimum Cash Requirement thresholds, and/or liquidity breaches, for Sufficiency and Adequacy scenarios with and without the inclusion of the GSP.

⁶⁶ For example, the average notional transfer for Remaining Expiration Days is approximately 10% the size of Standard Expiration.

⁶⁷ As an example, if the applicable GSP is \$100 and the (current) stressed liquidity demand is \$150 for a Clearing Member Group, the result after the application of the GSP for that Clearing Member Group would be a combined liquidity requirement of \$250 versus \$150 currently.

⁶⁸ OCC provided its analysis of the impact of the GSP, including with respect to calls for collateral and liquidity demands as Exhibit 3E to File No. SR–OCC–2023–801.

⁶⁹ This clarification would maintain OCC’s current process for settling transactions not processed through NSCC and does not represent the adoption of a new process or settlement method.

Anticipated Effect on and Management of Risk

OCC believes that the proposed changes would reduce the nature and level of risk presented by OCC because the purpose of the proposed changes to enhance its stress testing processes and create the Guaranty Substitution Payment mechanism is to provide OCC and NSCC with additional default management tools to help manage liquidity and settlement risks that OCC believes would be presented to each covered clearing agency in connection with a Mutually Suspended Member. OCC believes that having the ability to make a Guaranty Substitution Payment to NSCC in regard to any unmet Required Fund Deposit or Supplemental Liquidity Deposit obligations of a Mutually Suspended Member would promote prompt and accurate clearance and settlement in the national system for the settlement of securities transactions by causing NSCC to guarantee certain securities settlement obligations that result from exercised options and matured futures contracts that are cleared and settled by OCC. OCC further believes that enhancing its stress testing processes will help to ensure that it maintains the resources to make such a payment. In the following ways, OCC believes that this would be beneficial to and protective of OCC, NSCC, their participants, and the markets they serve.

First, OCC's ability to make the Guaranty Substitution Payment would ensure that the relevant securities settlement obligations would be accepted by NSCC for clearance and settlement and therefore the size of the related settlement obligations could be decreased from netting through NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation. Second, this outcome would avoid a scenario in which OCC's Guaranty would continue to apply and the settlement obligations would be settled on a broker-to-broker basis between OCC Clearing Members pursuant to the applicable provisions in Chapter IX of OCC's Rules. As noted above, OCC believes that such a broker-to-broker settlement scenario could result in substantial collateral and liquidity requirements for OCC Clearing Members. OCC believes that these potential collateral and liquidity consequences would be due to the lost benefit of netting of the settlement obligations through NSCC's facilities and also due to the short time (*i.e.*, the T+2 standard settlement cycle) between a rejection by NSCC of the settlement obligations for clearing and the

associated settlement date on which settlement would be otherwise required to be made bilaterally by OCC Clearing Members. This scenario also raises the potential for procyclical liquidity demands on OCC Clearing Members and participants during stressed market conditions. Third, OCC will plan to size its liquidity resource requirements to reasonable expectations with a high probability of making a Guaranty Substitution Payment in order to facilitate the settlement of a Mutually Suspended Member's obligations through NSCC. Accounting for net liquidity demands from a Mutually Suspended Member's settlement obligations at the central counterparty-level enhances liquidity in the financial system and promotes the efficient use of capital by reducing the demand for liquidity associated with gross settlement of obligations and enabling the application of resources at both clearing agencies to satisfy the Member's obligation. Fourth, OCC believes that the potential for the size of the settlement obligations to be comparatively larger than the Guaranty Substitution Payment coupled with the short time remaining to settlement could also increase the risk of default by the affected OCC Clearing Members at a time when a Common Member has already been suspended. Therefore, OCC believes that the proposed changes to implement the ability for OCC to make a Guaranty Substitution Payment to NSCC would allow OCC to avoid these risks by causing NSCC to accept the relevant obligations arising from exercised options and matured futures cleared and settled by OCC, as it ordinarily would, and guarantee their settlement, upon OCC making a Guaranty Substitution Payment to NSCC in accordance with the revised Accord.

Consistency With the Payment, Clearing and Settlement Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.⁷⁰ Section 805(a)(2) of the Clearing Supervision Act⁷¹ also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is

the supervisory agency. Section 805(b) of the Clearing Supervision Act⁷² states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Exchange Act in furtherance of these objectives and principles.⁷³ Rule 17Ad-22 requires registered clearing agencies, like OCC, to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.⁷⁴ Therefore, the Commission has stated⁷⁵ that it believes it is appropriate to review changes proposed in advance notices against Rule 17Ad-22 and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.⁷⁶

OCC believes the proposed changes are consistent with Section 805(b)(1) of the Clearing Supervision Act⁷⁷ because they would promote the reduction of risks to OCC, its Clearing Members and the markets OCC serves. As described above, OCC believes that the proposed enhancements to its stress testing processes and having the ability to make a Guaranty Substitution Payment to NSCC with respect to any unmet obligations of a Mutually Suspended Member would promote the reduction of risk because it would ensure that OCC maintains sufficient liquidity resources and that the relevant securities settlement obligations would be accepted by NSCC for clearance and settlement and therefore the size of the related settlement obligations for both the Mutually Suspended Member and its assigned delivery counterparties could be decreased from netting through

⁷² 12 U.S.C. 5464(b).

⁷³ 17 CFR 240.17Ad-22. See Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11) ("Clearing Agency Standards"); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7 17 CFR 240.17Ad-22. See Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11) ("Clearing Agency Standards"); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016).

⁷⁴ 17 CFR 240.17Ad-22.

⁷⁵ See, e.g., Exchange Act Release No. 89039, 85 FR at 36446.

⁷⁶ 12 U.S.C. 5464(b).

⁷⁷ 12 U.S.C. 5464(b)(1).

⁷⁰ 12 U.S.C. 5461(b).

⁷¹ 12 U.S.C. 5464(a)(2).

NSCC's CNS Accounting Operation and/or NSCC's Balance Order Accounting Operation. This would also avoid a scenario in which OCC's Guaranty would continue to apply and the settlement obligations would be settled on a broker-to-broker basis between OCC Clearing Members, which OCC believes could result in substantial collateral and liquidity requirements for OCC Clearing Members and that, in turn, could also increase a risk of default by the affected OCC Clearing Members at a time when a Common Member has already been suspended. For these reasons, OCC believes that the proposed changes: (i) are designed to promote robust risk management; (ii) are consistent with promoting safety and soundness; and (iii) are consistent with reducing systemic risks and promoting the stability of the broader financial system.

OCC believes that the proposed changes are also consistent with the SEC rules that apply to OCC as a covered clearing agency.⁷⁸ In particular, SEC Rule 17Ad-22(e)(20) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor and manage risks related to any link that OCC establishes with one or more other clearing agencies, financial market utilities, or trading markets.⁷⁹ As described in OCC's publicly available disclosure framework for financial market infrastructures,⁸⁰ the Existing Accord between OCC and NSCC is one such link. As described above, OCC believes (i) the proposed modifications to OCC's stress testing procedures that are designed to enhance its ability to call for additional liquidity resources, and (ii) the implementation of the ability for OCC to make a Guaranty Substitution Payment to NSCC in the relevant circumstances involving a Mutually Suspended Member would help manage the risks presented to OCC and its Clearing Members by the settlement link with NSCC because the Guaranty Substitution Payment would ensure that the relevant securities settlement obligations would be accepted by NSCC for clearance and settlement and therefore the size of the related settlement obligations could be decreased from netting through NSCC's CNS Accounting Operation and/or

NSCC's Balance Order Accounting Operation.

For this same reason, OCC also believes that the proposed changes are consistent with the requirements of SEC Rules 17Ad-22(e)(3) and (7).⁸¹ SEC Rule 17Ad-22(e)(3) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing, among other things, liquidity, credit and other risks that arise in or are borne by OCC.⁸² SEC Rule 17Ad-22(e)(7) requires OCC, in relevant part, to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor and manage the liquidity risk that arises in or is borne by OCC and to, among other things, address foreseeable liquidity shortfalls that would not be covered by OCC's liquid resources.⁸³ As noted, OCC believes the proposed stress testing enhancements and the ability to make a Guaranty Substitution Payment to NSCC would allow OCC to better manage liquidity and credit risks related to the settlement link with NSCC by ensuring that the relevant securities settlement obligations would be accepted by NSCC for clearance and settlement. It would avoid a scenario in which OCC's Guaranty would continue to apply and the settlement obligations would be settled on a broker-to-broker basis between OCC Clearing Members, which OCC believes could result in substantial collateral and liquidity requirements for OCC Clearing Members that, in turn, could also increase a risk of default by the affected OCC Clearing Members, particularly in circumstances where the prior suspension of a Mutually Suspended Member relates to broader stress in the financial system. Moreover, the incorporation of the Guarantee Substitution Payment into OCC's liquidity risk management practices would enhance OCC's ability to maintain additional liquidity resources to effect the settlement of exercise and assignment activity in the event of a Common Member default, and therefore, potentially increase the promotion of market stability.

III. Date of Effectiveness of the Advance Notice

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with

the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission or the Board of Governors of the Federal Reserve System providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission. The clearing agency shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision 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-2023-801 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.
- All submissions should refer to File Number SR-OCC-2023-801. 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that

⁷⁸ 17 CFR 240.17Ad-22(a)(5).

⁷⁹ 17 CFR 240.17Ad-22(e)(20).

⁸⁰ See The Options Clearing Corporation Disclosure Framework for Financial Market Infrastructures, pg. 108, (2022), available at <https://www.theocc.com/risk-management/pfmi-disclosures>.

⁸¹ 17 CFR 240.17Ad-22(e)(3), (7).

⁸² 17 CFR 240.17Ad-22(e)(3).

⁸³ 17 CFR 240.17Ad-22(e)(7).

are filed with the Commission, and all written communications relating to the advance notice 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 self-regulatory organization.

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-2023-801 and should be submitted on or before September 20, 2023.

V. Date of Timing for Commission Action

Section 806(e)(1)(G) of the Clearing Supervision Act provides that OCC may implement the changes if it has not received an objection to the proposed changes within 60 days of the later of (i) the date that the Commission receives an advance notice or (ii) the date that any additional information requested by the Commission is received,⁸⁴ unless extended as described below.

Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.⁸⁵

Here, as the Commission has not requested any additional information, the date that is 60 days after OCC filed the advance notice with the Commission is October 9, 2023. However, the Commission finds the issues raised by the advance notice complex because OCC proposes changes that touch on a core aspect of the link between infrastructures supporting the options and spot markets represented in the Accord as well as requiring the estimation of risk arising out of exercise and assignment activity as compared to the risk arising out of other activity cleared by NSCC. Further, the proposal

involves changes to OCC's liquidity stress testing framework. The Commission also finds the issues raised by the advance notice novel because the proposal represents a material change to the structure to the default management practices defined in the Accord. Therefore, the Commission finds it appropriate to extend the review period of the advance notice for an additional 60 days under Section 806(e)(1)(H) of the Clearing Supervision Act.⁸⁶

Accordingly, the Commission, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,⁸⁷ extends the review period for an additional 60 days so that the Commission shall have until December 8, 2023 to issue an objection or non-objection to advance notice SR-OCC-2023-801.

All submissions should refer to File Number SR-OCC-2023-801 and should be submitted on or before September 20, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸⁸

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-18672 Filed 8-29-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98217; File No. SR-ICEEU-2023-011]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Wind Down Framework and Plan

August 24, 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 11, 2023, ICE Clear Europe Limited ("ICE Clear Europe" or the "Clearing House") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II and III below, which Items have been primarily prepared by ICE Clear Europe. On August 22, 2023, ICE Clear Europe filed Amendment No. 1 to the proposed rule change to make certain changes to the Exhibit 5.³ The

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ 17 CFR 200.30-3(a)(91) and 17 CFR 200.30-3(a)(94).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 updates the Exhibit 5 to correct the presentation of three of the proposed

Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 (hereafter "the proposed rule change"), from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe proposes to amend its Wind Down Framework and Plan (to be renamed the "Wind Down Plan") (the "Plan")⁴ to address the operation of a wind-down planning committee, update certain procedures and make certain other clarifications relating to the potential winding down for the Clearing House.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to amend its Wind Down Framework and Plan to make certain updates and enhancements. The proposed changes would rename the plan as the "Wind Down Plan" and make conforming changes throughout. The amendments would remove the Overview section and the Context section as those sections contain background information that is not necessary to the Plan as well as certain unnecessary references to regulatory requirements and particular regulators in certain jurisdictions. A new executive summary section would restate the purposes and objectives of the Plan as setting out relevant information, steps to take and options available with respect to winding down the business and compliance with all relevant regulatory obligations with

changes to the Wind Down Framework and Plan that were filed with the Commission on August 11, 2023. The proposed rule change includes an Exhibit 4. Exhibit 4 shows the change that Amendment No. 1 makes to the Exhibit 5.

⁴ Capitalized terms used but not defined herein have the meanings specified in the Wind Down Framework and Plan or, if not defined therein, the ICE Clear Europe Clearing Rules.

⁸⁴ 12 U.S.C. 5465(e)(1)(G).

⁸⁵ 12 U.S.C. 5465(e)(1)(H).

respect to wind-down. The amendment would remove as unnecessary a non-exclusive description of certain circumstances that might necessitate wind-down and a statement of the benefits of the successful operation of the Clearing House's Recovery Plan. A reference to certain specific approval requirements under EMIR that are no longer applicable to ICE Clear Europe has been removed, and reference to other EMIR requirements would be clarified to refer to such legislation as on-shored in the United Kingdom under applicable legislation following the withdrawal of the United Kingdom from the European Union.

The summary of the Plan would be revised to provide that in considering exiting of contractual obligations in the case of wind-down, the Clearing House would also consider other services that it may be providing (including intra-group services). The discussion of the structure of the Plan would remove as unnecessary a statement that the Plan reflects feedback that was received from certain regulators. A reference to consultation with other relevant stakeholders before making final decisions in connection with execution of the Plan would be revised to state that such consultation is likely rather than necessary in all cases, to reflect that different forms and extents of consultation with particular stakeholders may be appropriate for different circumstances and proposed actions. The proposed amendments would move into the summary a section relating to the execution of the plan, which discusses the establishment and responsibilities of the Wind Down Planning Committee. The amendments would describe the potential membership of the committee, which would be considered to include a chair by a non-executive director and senior officers and other advisors as appropriate.

In the discussion of planning options, certain non-substantive clarifications would be made as to the choice between transfer of clearing to another CCP or termination of clearing. References to "Continuing CDS Rule Provisions" applying, including in lieu of Rule 105(c) of the Clearing Rules, in the context of CDS product category termination would be removed as such provisions have been previously deleted from the Rules. The discussion of analysis, consultation and planning would update the composition of the Planning Committee (as discussed above) and clarify that the impact of plans on stakeholders other than members should be considered. The amendments would also clarify that in

considering alternative CCPs, the committee would consider such matters as jurisdictional complications, materially differing membership requirements and the factoring of relevant regulatory processes into the proposed timelines. The amendments would remove a consideration as to whether members would accept a particular contract not being available for clearing at the time of transfer, as the Clearing House believes transfer would likely not be feasible in that scenario. Similarly, for the termination option, the amendments would add a reference to consideration of whether regulators would likely accept the termination and the timeline for the related regulatory process.

The amendments would also state that the Clearing House would assess the impact of services received and provided and describe certain of the factors that are relevant, including timing and cost. The amendments would also state an assumption that ICE Clear Europe can continue to call and receive margin and otherwise operate during the wind-down period. However, the amended Plan would acknowledge that in the event of an unplanned disruption from a Clearing Member default, or in the event of a material nondefault event or loss, revised timelines and other actions may be required.

The amendments would make a number of clarifications to the discussion of execution plans in the context of the transfer of F&O clearing. Changes to the list of assumptions and activities of the Execution Plans as well as timelines for transfer would note jurisdictional considerations and the fact that ICE Clear Europe currently clears a diverse profile of products (which may necessitate transfer of different products to different alternative CCPs). In this regard, the amendments would remove an assumption that there would be a maximum of two recipient clearing house for situations. In the situation where the transferee clearing house does not clear a relevant contract, and development of such clearing is not possible within an acceptable timeframe, the amendments would remove a statement suggesting that transfer would be delayed until clearing is available. ICE Clear Europe does not believe such a delay would be feasible, and accordingly the relevant positions in that contract would be terminated. References to the novation agreement to be used in a transfer would be amended to address transfer of related collateral in addition to positions. Similarly, the amended Plan would, in the scenario of

a transfer to another clearing house, address the testing of collateral migration (in addition to position migration) and provide for the transfer of all relevant collateral (not only margin) to the recipient clearing house, in addition to the clearing members positions. Additional changes would update references to Clearing House position management and other systems such as FEC and ECS (or successors to such systems). The anticipated timeline for the transfer of F&O markets clearing to recipient clearing houses would be revised to be approximately six months (instead of no more than six months), in recognition of the difficulty of predicting a maximum timeline. In addition, the Clearing House has acknowledged that the timeline may be affected because the diverse product groups currently cleared, may need to involve more than one recipient clearing house in a transfer. Amendments would make other minor non-substantive changes.

In the context of termination, the amendments would clarify certain arrangements around notice to Clearing Members, consistent with the Rules. The amendments would contemplate a Withdrawal Date to be designated by the Clearing House pursuant to the Rules, rather than assuming a period of 5 months, to allow for more flexibility for the timeframe to reflect the particular circumstances of the termination. (In ICE Clear Europe's view, the time period will not necessarily be exactly five months, and that time period would better be described as an approximation.) The proposed amendments would also adopt a revised maturity profile for different product groups based on expiration date. The maturity profile may be materially different between product groups; thus it is appropriate for the Plan to consider the profile based on the relevant group. The amendments would revise percentage of the total open contracts expected to wind down naturally via an expiration date within three months from 35% to 30% based on the revised maturity profile. The changes would also clarify that new trades would be accepted until the Withdrawal Date, with the expectation that they serve to reduce risk and reduce open interest. The amendments would provide additional clarifications about the process of terminating an open position at a Withdrawal Date, in accordance with the Rules. The amendments will also clarify the process by which clearing members can close out open positions themselves prior to the Withdrawal Date, as well as clarify that

all related margin (and not merely initial margin) would be returned at contract termination, consistent with the Rules and Procedures. With respect to the timeline for termination, the amendments would clarify that the anticipated timeline is approximately (rather than exactly) five months, reflecting the fact that the actual timeline may depend on the particular positions of Clearing Members at the time. As discussed above, the amendments would note that a differing maturity profile for contracts may require a different approach or timeline by product group (even though the termination process is common across all maturities and product groups). Conforming and clarifying changes would be made to the lists of assumptions and activities and the timeline in this section.

Similar clarifications would be made to sections of the Plan relating to transfer and/or termination of the CDS clearing business. These would include references to consideration of jurisdictional issues, recognition that in the case of transfer an alternative CCP may have different membership requirements, recognition of the regulatory and new product approval processes that may apply, clarification that termination through re-bilateralisation may (rather than will) occur if an alternative CCP is not available in an acceptable timeframe, clarification that in certain transfer scenarios backloading of terminated contracts once a new CCP is ready could (rather than would) be done, and clarification that all relevant collateral (and not just margin) will be transferred to recipient clearing house, among others. The amendments would also revise the expected timeline for a transfer to be approximately 6 months, rather than no more than six months, in recognition of the difficulty of predicting a maximum timeline. The amendments would note that the timeline is likely to be affected by whether the open positions can be transferred to a single clearing house, or whether a transfer to multiple clearing houses would be required. In several places, the timeline for termination, wind-down or re-bilateralisation of CDS clearing would similarly be described as approximately five months rather than exactly five months. In the discussion of continuation of CDS clearing services until the time of termination, a clarification would be made that such clearing would continue on the basis of reducing open interest (as opposed to reducing volume).

In the discussion of terminating service arrangements, the notice

timeline would be revised to be approximately (rather than exactly) 6 months and also to state that appropriate notice would be given for termination of employee contracts. The amendments would note that the list of relevant services and contracts is a summary, and that the Clearing House maintains a more complete inventory of this service arrangements that should be referenced in wind-down planning. As amended, the Plan would also note that IT services and licenses are largely provided by other ICE Clear Europe affiliates and that IT services provided by third parties generally are not expected to have a material impact to wind-down planning. The changes to the summary table would consolidate the treatment of several clearing services agreements with different affiliated ICE markets into a single category for consistency. The amendments would also clarify that exit provisions regarding the use of buildings and building facilities provided by affiliates are not part of intra-group agreements, but would rather be managed by the relevant boards and management of the entities involved. Other changes would include the addition of the Clearing and Settlement Services Agreement with Intercontinental Exchange Holdings, the replacement of Dutch National Bank with European Central Bank to reflect the use of the latter as a concentration bank, the change in reference to the “relevant ICE Exchanges,” and the change in the Clearing and Settlement Services Agreements notice time period from 12 months to 24 months. Certain non-substantive drafting clarifications would also be made.

ICE Clear Europe has also proposed to update the description of the Clearing House’s current liquidity profile in order to be consistent with (and explicitly reference) the Clearing House’s current Liquidity and Investment Management Policy. (Relevant sections of the Liquidity and Investment Policy define the objective and key strategy for the investment of Cash. As per the policy, ICE Clear Europe aims to only invest in cash or highly liquid financial instruments with minimal market and credit risk and which are capable of being liquidated quickly and with minimal losses). Among other changes, the amendments would clarify that collateral held as cash from Clearing Members should be immediately accessible or available at short notice, with the vast majority of funds being invested in high-quality short-term instruments in accordance. (Specific references to a maximum maturity and weighted average life

would be removed). Outright purchases should be limited to high quality and liquid government debt that can be liquidated on short notice in the secondary market. Amendments would also address availability of non-cash assets for liquidity needs, consistent with liquidity policies, and reference the Clearing House’s liquidity stress testing.

Consistent with the changes discussed above, the overall conclusions for the Plan would be revised to reflect that the lengthiest time anticipated for wind-down would be approximately (rather than exactly) six months. Additionally, the proposed amendments would note that this estimate could be affected by various external factors, including the potential need to transfer positions to multiple clearing venues given the Clearing House’s product scope, which could be more complicated (and take more time) than a transfer to a single venue. The impact of regulatory approvals and processes could also affect the timeline.

The discussion of governance and oversight in the Plan would be replaced with a new Document Governance and Exception Handling section that is consistent with other Clearing House policies recently adopted or modified.⁵ This section would describe the responsibilities for the document owners in accordance with ICEU’s governance processes, as well as breach management, exception handling, and document governance.

The proposed changes also make a number of non-substantive changes to the Plan throughout such as formatting and typographical and similar corrections.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Plan are consistent with the requirements of Section 17A of the Securities Exchange Act of 1934⁶ (“Act”) and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁷ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of

⁵ See, e.g., The Counterparty Credit Risk Policy and Procedures as described in Exchange Act Release No. 34–97169, SR ICEEU–2023–004 (March 20, 2023) 88 FR 17886 (March 24, 2023); the Investment Management Procedures as described in Exchange Act Release No. 34–97528, SR ICEEU–2023–009 (May 19, 2023) 88 FR 33949 (May 25, 2023); the Futures and Options Default Management Policy as described in Exchange Act Release No. 34–97383, SR ICEEU–2023–012 (Apr. 26, 2023) 88 FR 27539 (May 2, 2023).

⁶ 15 U.S.C. 78q–1.

⁷ 15 U.S.C. 78q–1(b)(3)(F).

securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed changes to the Plan are intended to update and clarify the Plan, including to address more clearly the operation of the planning committee. The amendments would also update expected procedures relating to transfer or termination of the F&O and CDS clearing businesses, respectively, in order to provide appropriate flexibility and better take into account certain characteristics of the products cleared. The amendments will help the Clearing House facilitate an orderly transition or shut-down of a clearing business in the event it is unable to continue operations. As a result, in ICE Clear Europe's view, the amendments would be consistent with the prompt and accurate clearance and settlement of the contracts, the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest, consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁸

Rule 17Ad-22(e)(2) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] provide for governance arrangements that are clear and transparent”⁹ and “[s]pecify clear and direct lines of responsibility.”¹⁰ The amendments to the Plan would more clearly state the responsibilities of the Clearing House's planning committee, management and the Board in relation to the Plan. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(2).¹¹

The proposed amendments are also consistent with Rule 17Ad-22(e)(17)(i), which provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] manage the covered clearing agency's operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies,

procedures, and controls.”¹² As discussed above, the amendments update and clarify various aspects of the wind-down Plan to enhance the planning process and take into account the characteristics of the cleared products in planning procedures for transfer or termination. These amendments are intended to help mitigate the impact to market participants of a potential wind-down. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad-22(e)(17)(i).¹³

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments are being adopted to update and clarify the Plan, all of which relate to the Clearing House's processes for the wind down of the Clearing House in the unlikely event that the recovery plan does not succeed in restoring normal operations after significant loss events or the Clearing House decides for business reasons it no longer wishes to operate. ICE Clear Europe does not believe the amendments would affect in the ordinary course of business the costs of clearing, the ability of market participants to access clearing, or the market for clearing services generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period

to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>) or
- Send an email to rule-comments@sec.gov. Please include file number SR-ICEEU-2023-011 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-ICEEU-2023-011. 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 such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>.

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

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 17 CFR 240.17 Ad-22(e)(2)(i).

¹⁰ 17 CFR 240.17 Ad-22(e)(2)(v).

¹¹ 17 CFR 240.17 Ad-22(e)(2).

¹² 17 CFR 240.17 Ad-22(e)(17)(i).

¹³ 17 CFR 240.17 Ad-22(e)(17)(i).

publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-ICEEU-2023-011 and should be submitted on or before September 20, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-18676 Filed 8-29-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98216; File No. SR-CBOE-2023-041]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rules in Connection With the Number of Legs of a Complex Order That May Be Entered on a Single Order Ticket at the Time of Systemization

August 24, 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 17, 2023, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) 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 Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 Rules in connection with the number of legs of a complex order that may be entered on a single order ticket at the time of systemization. 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 amend its Rules in connection with the number of legs of a complex order that may be entered on a single order ticket at the time of systemization, for certain complex order types.

Specifically, Rule 5.7(f) currently provides that each order, cancellation of, or change to an order transmitted to the Exchange must be “systematized” in a format approved by the Exchange, either before it is sent to the Exchange or upon receipt on the Exchange’s trading floor. An order is systematized if (1) the order is sent electronically to the Exchange or (2) the order that is sent to the Exchange non-electronically (e.g., telephone orders) is input electronically into the Exchange’s systems contemporaneously upon receipt on the Exchange, and prior to representation of the order. Any proprietary system approved by the Exchange on the Exchange’s trading floor that receives orders is considered an Exchange system for purposes of this Rule.⁵ Regarding the systemization of complex orders, Rule 5.7(f)(4) particularly provides that complex orders of 16 legs or less (one leg of which may be for an underlying security or security future, as applicable) must be entered on a single order ticket at time of systemization. If permitted by the Exchange, complex orders of more than 16 legs (one leg of which may be for an underlying security or security future, as applicable) may be split across multiple order tickets, if the Trading

Permit Holder representing the complex order uses the fewest order tickets necessary to systematize the order and identifies for the Exchange the order tickets that are part of the same complex order (in a form and manner prescribed by the Exchange).

The Exchange notes that it adopted the 16-leg maximum per order ticket in 2021 as a result of Exchange system limitations.⁶ At that time, the Exchange could only support the processing of up to 16 legs on a single order ticket for representation and execution in open outcry as a complex order. Prior to that, in 2015, the Exchange had adopted a 12-leg maximum per order ticket.⁷ The Exchange understands from Trading Permit Holders (“TPHs”) that some orders they receive do have more than 16 legs, and many order entry and execution systems Floor Broker TPHs use on the trading floor, including Silexx,⁸ can support up to 100 legs. If a Floor Broker TPH receives a complex order for more than 16 legs for execution on the trading floor, it currently must break up the order into multiple tickets in accordance with Rule 5.7(f)(4). The Exchange has enhanced its System to be able to support a greater number of legs per order ticket on the trading floor. As such, the Exchange proposes to amend Rule 5.7(f)(4) to increase the 16 leg maximum per single order ticket to a maximum of 100 legs per single order ticket at time of systemization, except for those complex orders designated as Electronic Only, which will continue to be subject to the current 16 leg limitation.⁹

Pursuant to proposed Rule 5.7(f)(4), complex orders of 100 legs or less (one

⁶ See Securities Exchange Act Release No. 34-92116 (June 7, 2021), 86 FR 31361 (June 11, 2021) (SR-CBOE-2021-036), which implemented the 16 leg per order requirement in current Rule 5.7(f)(4).

⁷ See Securities Exchange Act Release No. 74169 (January 29, 2015), 80 FR 6145 (February 4, 2015) (SR-CBOE-2015-011), which implemented the previous 12 leg per order requirement.

⁸ Each Floor Broker TPH has a Silexx workstation, which can be used to systematize orders. Therefore, each Floor Broker TPH will be able to immediately comply with the proposed rule change. The Silexx platform consists of a “front-end” order entry and management trading platform (also referred to as the “Silexx terminal”) for listed stocks and options that supports both simple and complex orders, and a “back-end” platform which provides a connection to the infrastructure network. From the Silexx platform (i.e., the collective front-end and back-end platform), a Silexx user has the capability to, among other things, send option orders to U.S. options exchanges and send stock orders to U.S. stock exchanges (and other trading centers). The Silexx platform is designed so that a user may enter orders into the platform to send to an executing broker (including TPHs) of its choice with connectivity to the platform, which broker will then send the orders to Cboe Options (if the broker is a TPH) or other U.S. exchanges (and trading centers) in accordance with the user’s instructions.

⁹ See proposed Rule 5.7(f)(4).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Rule 5.7.03.

leg of which may be for an underlying security or security future, as applicable), except for those complex orders designated as Electronic Only, must be entered on a single order ticket at time of systemization and orders of more than 100 legs may be split across multiple order tickets.¹⁰ The TPH representing the complex order must continue to use the fewest order tickets necessary to systematize the order and to identify for the Exchange the order tickets that are part of the same complex order.¹¹

Due to Exchange system limitations that may prevent a complex order with more than a certain number of legs from being entered on a single order ticket for representation and execution in open outcry, inefficiencies exist in the processing and tracking of such orders, as they currently must be entered on multiple tickets. The single order ticket leg increase to 100 legs for floor orders is intended to provide consistency in processing and enhance the Exchange's audit trail by reducing the number of

tickets required for larger complex orders. Notwithstanding the necessity of order ticket leg maximums given Exchange system limitations, the Exchange notes that splitting an order across multiple order tickets takes additional time, can leave room for error, and requires additional TPH and Exchange regulatory surveillance administrative resources, as a TPH must identify for the Exchange the order tickets that are part of the same complex order (in a form and manner prescribed by the Exchange). The Exchange notes that complex orders with more than 16 legs may be sent to Floor Brokers on the Exchange's trading floor non-electronically (e.g., via telephone or instant message) or electronically through order entry and routing systems that may support fewer than 16 legs (some as few as 4 legs) on a single order ticket. As the proposed rule change only applies to the systemization of orders prior to representation of the order on the trading floor, the Floor Broker (which is a TPH) will be required to enter these multi-legged orders on a single order ticket. As noted above, each Floor Broker TPH has a Silexx workstation, which already supports up to 100 legs on a single ticket, thus permitting each Floor Broker TPH to immediately comply with the proposed rule change.¹² Therefore, only alternative systems Floor Brokers may use on the Exchange's trading floor for systemization would need to be updated to allow for the input of orders with up to 100 legs on a single order ticket (if they are not already capable of allowing up to 100 legs on a single order ticket). The proposed rule change is designed to reduce the number of complex orders that TPHs need to break up into multiple order tickets, and ultimately allows TPHs to more effectively and efficiently systematize complex orders for execution in open outcry, and improves regulatory surveillance and tracking of such orders. Complex orders that are submitted for electronic processing will continue to be subject to the current 16 legs requirement.

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.¹³ Specifically, the Exchange believes the proposed rule change is consistent with the Section

6(b)(5)¹⁴ 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)¹⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will allow TPHs to submit order tickets for their open outcry complex orders (including SPX Combo Orders) in a manner that is more compatible with the processing capacity that the Exchange and available order entry systems are able to support, thus reducing the number of complex orders that need to be broken up into multiple order tickets. By allowing TPHs to more effectively and efficiently systematize complex orders with a large amount of legs for execution in open outcry within the processing capacity limits of the order entry systems they use, the Exchange believes the proposed rule change removes impediments to and perfects the mechanism of a free and open market and national market system. The Exchange notes that the proposed rule change does not impact the current manner in which TPHs may represent a complex order in open outcry, nor does it impact the permissible ratios of complex orders. Further, those complex orders designated as Electronic Only will continue to be subject to the current 16 legs requirement.¹⁶ The proposed rule change merely increases the leg limit per single order ticket for non-Electronic Only complex orders, which may increase trading efficiencies for TPHs by allowing TPHs to reduce the number of order tickets submitted for their larger complex orders,¹⁷ while continuing to provide consistency in processing and further enhancing the Exchange's audit trail (as fewer orders will require multiple tickets). This, in turn, serves to

¹⁰ To the extent a TPH wants to represent and execute a complex order (including SPX Combo Orders) in open outcry, the order must be entered (i.e., systematized) on a single order ticket and cannot, as proposed, exceed 100 legs or, if for more than 100 legs, entered on fewest order tickets necessary (linked in a form and manner prescribed by the Exchange). As similarly noted in the 2021 filing that implemented the 16 leg per order requirement currently reflected in Rule 5.7(f)(4), TPHs will not be required to make changes to their own or third-party vendor's order entry and execution systems. The Exchange is aware that each Floor Broker TPH currently has a Silexx terminal, which supports up to 100 legs on a single order ticket for purposes of systemization. The Exchange notes that Floor Broker TPHs may voluntarily choose to use other order entry and execution systems for systematization, some of which the Exchange understands already support systemization of up to 100 legs on a single order ticket. If the TPH intends to represent and execute complex orders with more than 16 legs (i.e., complex orders with 17 to 100 legs) on another order entry and execution system that cannot presently support up to 100 legs, then the TPH will need to enhance its existing system or utilize another order entry and execution system that supports the open outcry processing of such orders on a single order ticket. See also *supra* note 6. However, because all Floor Broker TPHs currently have Silexx terminals (in addition to potentially third-party terminals) on which they can systematize orders they receive via phone, IM or a system that supports fewer legs, all Floor Broker TPHs have immediate access to an order entry and execution system on the trading floor to systematize up to 100 legs on a single ticket for representation on the trading floor in compliance with the proposed rule change, making significant advanced notice of the proposed rule change unnecessary.

¹¹ The Exchange proposes to make a corresponding change to paragraph (3) under the definition of SPX Combo Order in Rule 5.6(c), which currently reflects the same 16 leg maximum per single order ticket at time of systemization, to increase the permissible number of legs on the same order ticket to 100. An "SPX Combo Order" is an order to purchase or sell one or more SPX option series and the offsetting number of SPX combinations defined by the delta. See Rule 5.6(c).

¹² See *supra* note 8.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ *Id.*

¹⁶ As set forth in Rule 5.33(g), the Exchange's System may only electronically execute complex orders with up to 16 legs, and firms interested in electronic processing of their orders are not impacted by this change.

¹⁷ See also *supra* note 9. [sic]

protect investors by promoting transparency, assisting in surveillance, and providing the Exchange the ability to better enforce compliance by its TPHs with the Act and the 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 does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because a maximum number of legs per single order ticket will continue to apply equally to all market participants that systematize complex orders (including SPX Combo Orders) for execution in open outcry. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change is not competitive in nature nor does it relate to trading on the Exchange. Rather, it relates solely to the manner in which market participants systematize complex orders for trading on the Exchange's trading floor.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹ 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2023-041 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-2023-041. 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication

submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2023-041 and should be submitted on or before September 20, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-18675 Filed 8-29-23; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

National Women's Business Council; Notice of Public Meeting

AGENCY: Small Business Administration, National Women's Business Council (NWBC).

ACTION: Notice of open public meeting.

DATES: The public meeting will be held on Wednesday, September 13, 2023, from 1:30 p.m. to 3:30 p.m. EDT.

ADDRESSES: This meeting is in-person. For those attending in-person, the event location will be shared on the Eventbrite.

FOR FURTHER INFORMATION CONTACT: For more information, please visit the NWBC website at www.nwbc.gov, email info@nwbc.gov or call Jordan Chapman (NWBC Communications Specialist) at (202) 941-6001.

The meeting is open to the public; however, advance notice of attendance is requested. To RSVP, please visit the NWBC website at www.nwbc.gov. The "Public Meetings" section under "Events" will feature a link to register on Eventbrite.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, NWBC announces its final public meeting of Fiscal Year 2023. The 1988 Women's Business Ownership Act established NWBC to serve as an independent source of advice and policy recommendations to the President, Congress, and the Administrator of the U.S. Small Business Administration (SBA) on issues of importance to women entrepreneurs. This meeting will allow the Council to recap its activity and engagement over the course of Fiscal Year 2023. Each of the Council's three subcommittees (Access to Capital & Opportunity, Women in STEM, and Inclusive Entrepreneurial Ecosystems) will present their policy recommendations to the full body for

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁰ 17 CFR 200.30-3(a)(12).

deliberation and vote. Guest remarks are also expected to be delivered.

Accommodation for ASL and translation services can be provided during the September Public Meeting if requested prior to August 30, 2023. The Eventbrite registration page will include an opportunity to request such, but individuals may also email *info@nwbc.gov* with subject line—“[Name/ Organization] Accommodation for 09/13/23 Public Meeting”.

Dated: August 24, 2023.

Andrienne Johnson,
Committee Management Officer.

[FR Doc. 2023–18663 Filed 8–29–23; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice: 12160]

Overseas Security Advisory Council (OSAC) Meeting Notice

ACTION: Closed meeting.

The Department of State announces the meeting of the U.S. State Department's Overseas Security Advisory Council on September 20, 2023. Pursuant to section 10(d) of the Federal Advisory Committee Act (5 U.S.C. appendix), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures, will involve extensive discussion of trade secrets and proprietary commercial information that is privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agenda will include updated committee reports, global threat overviews, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Ellen Tannor, Overseas Security Advisory Council, U.S. Department of State, Washington, DC 20522–2008, phone: 571–345–2223 email: *TannorE@state.gov*.

Authority: 5 U.S.C. 1009 and 22 U.S.C. 2651a.

Ellen Tannor,
Executive Director, Overseas Security Advisory Council, Department of State.

[FR Doc. 2023–18724 Filed 8–29–23; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2023–0775; Summary Notice No. 2023–32]

Petition for Exemption; Summary of Petition Received; Boeing Executive Flight Operations

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 19, 2023.

ADDRESSES: Send comments identified by docket number FAA–2023–0775 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: Andrew Thai at (202) 267–0175, 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.

Angela O. Anderson,
Director, Regulatory Support Division, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2023–0775.

Petitioner: Boeing Executive Flight Operations.

Section(s) of 14 CFR Affected: Part 91, Appendix A, Sec. A91.4–4, Title 4, Section Rule (a) Paragraph 3.

Description of Relief Sought: Boeing Executive Flight Operations is requesting an exemption from the requirement that bench checks for each listed instrument and item of equipment that is specified in Section 2(a) be conducted within 12 calendar months after the date of the previous bench check for the applicable installed Low Landing Minimum (CAT II) equipment and components.

[FR Doc. 2023–18650 Filed 8–29–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering, and Development Advisory Committee; Notice of Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Research, Engineering, and Development Advisory Committee (REDAC).

DATES: The meeting occurs on October 4, 2023, from 10 a.m.–5 p.m. EST. Interested parties must request accommodations for a disability by September 18, 2023. Individuals requesting to speak during the meeting must submit a written copy of their remarks to DOT by September 18, 2023. Requests for review of written materials

for discussion during the meeting must arrive no later than September 18, 2023.

ADDRESSES: The meeting format is a hybrid setting to permit virtual participation. Requesting registrants will receive virtual attendance information. The meeting location is the Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. A detailed agenda is available on the REDAC internet website at <http://www.faa.gov/go/redac> at least one week before the meeting, along with copies of the meeting minutes after the meeting.

FOR FURTHER INFORMATION CONTACT: Chinita Roundtree-Coleman, REDAC PM/Lead, FAA/U.S. Department of Transportation, at chinita.roundtree-coleman@faa.gov or (609) 485-7149 or (609) 569-3729. The person listed in this section should receive any committee related requests.

SUPPLEMENTARY INFORMATION:

I. Background

The REDAC was created under the Federal Advisory Committee Act, in accordance with Public Law (Pub. L.) 100-591 (1988) and Public Law 101-508 (1990), to provide advice and recommendations to the FAA Administrator in support of the Agency's Research and Development (R&D) portfolio.

II. Agenda

At the meeting, the agenda will cover the following topics:

- FAA R&D Strategies, Initiatives, and Planning
- Impacts of emerging technologies, new entrant vehicles, and dynamic operations within the National Airspace System

III. Public Participation

DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Forty-five (45) minutes are allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make

statements is greater than can be reasonably accommodated during the meeting, the FAA may conduct a lottery to determine the speakers. Speakers are asked to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to REDAC members before the deadline listed in the **DATES** section. All prepared remarks submitted on time will be accepted and considered as part of the meeting's record. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC.

Chinita Roundtree-Coleman,
REDAC PM/Lead, Federal Aviation
Administration.

[FR Doc. 2023-18749 Filed 8-29-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2023-0011]

Agency Information Collection Activities; Notice and Request for Comment; Examine Issues With Prosecuting Driving-Under-the-Influence-of-Drugs (DUID) Cases

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for public comment on proposed collection of information.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a new information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval regarding prosecution of driving-under-the-influence-of-drugs (DUID) cases.

DATES: Comments must be received on or before October 30, 2023.

ADDRESSES: You may submit comments identified by Docket No. NHTSA-2023-0011 using any of the following methods:

- **Electronic submissions:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Fax:** 1-202-493-2251.

- **Mail or Hand Delivery:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9322 before coming.

Instructions: All submissions must include the agency name and the docket number for this Notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <https://www.transportation.gov/privacy>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Ms. Amy Berning, Contracting Officer's Representative, Office of Behavioral Safety Research (NPD-310), (202) 366-5587, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (i) whether the proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) how to enhance the quality, utility, and clarity of the information to be collected; and (iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: Examine Issues with Prosecuting Driving-Under-the-Influence-of-Drugs (DUID) Cases.

OMB Control Number: New.

Form Numbers: NHTSA Form 1703 and NHTSA Form 1704.

Type of Request: New information collection.

Type of Review Requested: Regular.

Requested Expiration Date of

Approval: 3 years from date of approval.

Summary of the Collection of Information: NHTSA is seeking approval to conduct interviews with State and local officials and others involved in prosecution and defense of drugs and driving offenses (DUID), to examine the challenges faced within the criminal justice system during the and to identify potential solutions to those challenges. Interviews will be conducted by telephone, virtual web meeting, or in-person with justice system professionals who have served or worked on DUID cases including prosecutors, Traffic Safety Resource Prosecutors (TSRPs), prosecutor coordinators, judges, Drug Recognition Experts (DREs), law enforcement officers with Advanced Roadside Impaired Driving Enforcement (ARIDE) training, officers with Standardized Field Sobriety Testing (SFST) training, toxicologists, defense attorneys, and former jurors. Up to 221 interviews will be conducted. Participation by respondents will be voluntary. The interviews with prosecutors will be 60 minutes. The interviews with TSRPs, prosecutor coordinators, judges, and DREs and other law enforcement officers will be 30 minutes. The

interviews with toxicologists, defense attorneys, and former jurors will be 20 minutes.

Description of the Need for the Information and Proposed Use of the Information

NHTSA was established to reduce deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research for the development of traffic safety programs. Title 23, United States Code, chapter 4, section 403 gives the Secretary of Transportation (NHTSA by delegation) authorization to use funds appropriated to conduct research and development activities. The agency develops, promotes, and implements educational, engineering, and enforcement programs with the goal of ending preventable tragedies and reducing economic costs associated with vehicle use and highway travel. Drug-impaired driving is a long-standing highway safety problem. Drug-impaired driving arrests and prosecutions can be complex. The possibility of drug combinations, and evidence from forensic toxicology add to the complexity.

The laws in the States where the offense occurred make a difference in whether, and what offense can be charged by prosecutors. For example, State laws vary on a range of issues such as statutory definitions of being impaired or being under the influence, how control of a vehicle is defined, if there are implied consent laws, the type of testing allowed, *per se* limits for selected drugs or no *per se* limits for drugs other than alcohol, varying concentration levels in States with *per se* laws, and whether alcohol or drug impaired driving are separate offenses for charging purposes. A prosecutor must consider these specific aspects of law in determining how to move forward with a case. In addition, at each step of the process, there are other factors such as evidence collection that influence decision-making and present challenges that must be addressed.

NHTSA will use the information to produce a technical report that presents the results of the study. The technical report will provide aggregate summary identification of challenges prosecutors face in DUID cases and potential solutions including lessons learned. The technical report will not include any personally identifiable information (PII). Possible solutions to prosecutorial

challenges that may be identified by State officials include legislation, training, policy, programs, and practices. The technical report will be shared with State highway safety offices, State and local governments, statewide prosecutor organizations, and those who are assigned to DUID cases including prosecutors, law enforcement, toxicologists, defense attorneys, and the judiciary.

This study will examine the range of challenges faced by prosecutors in DUID cases and will explore potential solutions. The resulting outcome will provide prosecutors and others in the criminal justice system improved ability to overcome challenges. With this assistance, the project goal is to enhance the handling of DUID cases, and to reduce drug impaired driving and prevent the loss of life on the nation's roadways due to drug impairment.

Frequency of Collection: This is a one-time collection.

Affected Public: The respondents will be criminal justice professionals from up to 40 states who handle or have handled DUID cases. Between one and ten of each of the following will be selected: prosecutors, TSRPs, prosecutor coordinators, judges, Drug Recognition Experts (DREs), law enforcement officers (with SFST or ARIDE certification), toxicologists, defense attorneys or public defenders, and former jurors. Respondents may also be referred from other respondents for their expertise.

Estimated Number of Respondents: There will be a total of up to 221 semi-structured interviews using NHTSA Form 1703 and NHTSA Form 1704 across these justice professionals, with emphasis on conducting interviews with more prosecutors who handle DUID cases.

Estimated Total Annual Burden Hours: The total amount of burden is 148 hours. The expected completion time for the interview is 60 minutes with prosecutors. The expected completion time for the interview is 30 minutes for TSRPs, prosecutor coordinators, judges, DREs and SFST and ARIDE trained law enforcement officers. The expected completion time for the interview with toxicologists, defense attorneys, and jurors is 20 minutes.

Estimated Total Annual Burden Cost: The total amount of burden cost to respondents is estimated to be \$9,304 (see Table 1).

TABLE 1—CALCULATION OF TOTAL BURDEN HOURS AND ESTIMATED COSTS BY TYPE OF RESPONDENT

Type of respondent	Number of respondents*	Minutes per respondent	Estimated wage per hour*****	Total estimated burden hours	Total estimated cost
Prosecutors Contacted	93	2	\$71.17	3.1	\$220.63
Prosecutors Recruited	70	60	71.17	69.75	4,964.11
TSRPs** Contacted	53	2	71.17	1.77	125.73
TSRPs** Recruited	40	30	71.17	19.88	1,414.50
Prosecutor Coordinators Contacted	13	2	69.46	0.43	30.10
Prosecutor Coordinators Recruited	10	30	69.46	4.88	338.62
Judges Contacted	20	2	68.52	0.67	45.68
Judges Recruited	15	30	68.52	7.50	513.90
Drug Recognition Experts (DREs) and Law Enforcement Officers Contacted	59	2	34.02	1.97	66.91
Drug Recognition Experts (DREs) and Law Enforcement Officers Recruited	44	30	34.02	22.13	752.69
Toxicologist Contacted	24	2	42.85	0.80	34.28
Toxicologist Recruited	18	20	42.85	6.00	257.10
Defense Attorneys*** Contacted	20	2	71.17	0.67	47.45
Defense Attorneys Recruited	15	20	71.17	5.00	355.85
Jurors who have served on DUID juries**** Contacted	13	2	36.99	0.43	16.03
Jurors who have served on DUID juries Recruited	10	20	36.99	3.25	120.22
Total Contacted	295	.....	.....	10	586.80
Total Recruited	221	.....	.....	138	8,716.99
Total .....	.....	.....	.....	148.21	9,303.79

* A response rate of 75% is used for calculations. This is based on a NHTSA study where similar types of professionals were contracted about their work related to traffic safety.

** Traffic Safety Resource Prosecutors (TSRP)

*** Including public defenders and staff at the National Traffic Law Center and National Judicial College.

**** As identified by prosecutors during interviews.

***** US Department of Labor, Bureau of Labor Statistics (accessed September 2022). September 2022 National Occupational Employment and Wage Estimates—Mean Hourly Wage (All Occupations). http://www.bls.gov/oes/current/oes_nat.htm.

Participation in this study is voluntary and there are no costs to respondents beyond the time spent in the interview and reviewing the interview notes. Participants will incur no burden related to annual reporting or record keeping due to the collection of this new information.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (i) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (ii) the accuracy of the Department's estimate of the burden of the proposed information collection; (iii) ways to enhance the quality, utility and clarity of the information to be collected; and (iv) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as

amended; 49 CFR 1.49; and DOT Order 1351.29A.

Nanda Narayanan Srinivasan,
Associate Administrator, Research and Program Development.

[FR Doc. 2023-18654 Filed 8-29-23; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

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 one or more 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 Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (www.treasury.gov/ofac).

Notice of OFAC Actions

On August 24, 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 authorities listed below.

Individuals

1. NYAMVUMBA, Andrew (a.k.a. NYAMVUMBA, Andre), Kibagabaga Plot 9917, Nyarutarama, Kigali, Rwanda; DOB 01 Jan 1973; POB Kigali, Rwanda; alt. POB

Kampala, Uganda; nationality Rwanda; citizen Rwanda; Gender Male; Passport RW01472 (Rwanda) (individual) [DRCONGO].

Designated pursuant to section 1(a)(ii)(E) of Executive Order 13413 of October 27, 2006, "Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo," as amended by Executive Order 13671 of July 8, 2014, "Taking Additional Steps To Address the National Emergency With Respect to the Conflict in the Democratic Republic of the Congo" for being a leader of an entity, including any armed group, that has, or whose members have been responsible for or complicit in, or have engaged in, directly or indirectly, actions or policies that threaten the peace, security or stability of the DRC.

2. PROTOGENE, Ruvugayimikore (a.k.a. MIDENDE, Zorro; a.k.a. RUHINDA, Gaby), Nyiragongo, North Kivu, Congo, Democratic Republic of the; DOB 1970; alt. DOB 1968 to 1969; POB Karandaryi Cell, Mwiyanike Sector, Karago Commune, Gisenyi Prefecture, Rwanda; alt. POB Nyabihu District, Western Province, Rwanda; nationality Rwanda; Gender Male (individual) [DRCONGO] (Linked To: FORCES DEMOCRATIQUES DE LIBERATION DU RWANDA).

Designated pursuant to section 1(a)(ii)(E) of Executive Order 13413 of October 27, 2006, "Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo," as amended by Executive Order 13671 of July 8, 2014, "Taking Additional Steps To Address the National Emergency With Respect to the Conflict in the Democratic Republic of the Congo" for being a leader of an entity whose property and interests in property are blocked pursuant to E.O. 13413, as amended by E.O. 13671.

3. BYAMUNGU, Bernard (a.k.a. MHESHE, Bernard Byamungu), Congo, Democratic Republic of the; DOB 10 Oct 1974; POB Ziralo, Democratic Republic of the Congo; nationality Congo, Democratic Republic of the; Gender Male (individual) [DRCONGO] (Linked To: M23).

Designated pursuant to section 1(a)(ii)(E) of Executive Order 13413 of October 27, 2006, "Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo," as amended by Executive Order 13671 of July 8, 2014, "Taking Additional Steps To Address the National Emergency With Respect to the Conflict in the Democratic Republic of the Congo" for being a leader of an entity whose property and interests in property are blocked pursuant to E.O. 13413, as amended by E.O. 13671.

4. TOKOLONGA, Salomon (a.k.a. BENDET, Salomon Tokolonga), Congo, Democratic Republic of the; DOB 17 Apr 1972; POB Kishandja, Democratic Republic of the Congo; nationality Congo, Democratic Republic of the; Gender Male (individual) [DRCONGO].

Designated pursuant to section 1(a)(ii)(E) of Executive Order 13413 of October 27, 2006, "Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo," as amended by Executive Order 13671 of July 8,

2014, "Taking Additional Steps To Address the National Emergency With Respect to the Conflict in the Democratic Republic of the Congo" for being a leader of an entity, including any armed group, that has, or whose members have been responsible for or complicit in, or have engaged in, directly or indirectly, actions or policies that threaten the peace, security or stability of the DRC.

5. HAKIZIMANA, Apollinaire (a.k.a. LEPIC, Amikwe; a.k.a. "POETE"), Rutshuru, North Kivu, Congo, Democratic Republic of the; DOB 1964; POB Rugogwe Cell, Mwiyanike Sector, Karago Commune, Gisenyi Prefecture, Rwanda; alt. POB Rubavu District, Western Province, Rwanda; nationality Rwanda; Gender Male (individual) [DRCONGO] (Linked To: FORCES DEMOCRATIQUES DE LIBERATION DU RWANDA).

Designated pursuant to section 1(a)(ii)(E) of Executive Order 13413 of October 27, 2006, "Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo," as amended by Executive Order 13671 of July 8, 2014, "Taking Additional Steps To Address the National Emergency With Respect to the Conflict in the Democratic Republic of the Congo" for being a leader of an entity whose property and interests in property are blocked pursuant to E.O. 13413, as amended by E.O. 13671.

6. UWIMBABAZI, Sebastien (a.k.a. KIMENYI, Gilbert; a.k.a. KIMENYI, Nyembo; a.k.a. "MANZI"; a.k.a. "NYEMBO"), Rutshuru, North Kivu, Congo, Democratic Republic of the; DOB 1968; POB Gatoki Cell, Murunda Sector, Rutsiro Commune, Kibuye Prefecture, Rwanda; alt. POB Rutsiro District, Western Province, Rwanda; nationality Rwanda; Gender Male (individual) [DRCONGO] (Linked To: FORCES DEMOCRATIQUES DE LIBERATION DU RWANDA).

Designated pursuant to section 1(a)(ii)(E) of Executive Order 13413 of October 27, 2006, "Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo," as amended by Executive Order 13671 of July 8, 2014, "Taking Additional Steps To Address the National Emergency With Respect to the Conflict in the Democratic Republic of the Congo" for being a leader of an entity whose property and interests in property are blocked pursuant to E.O. 13413, as amended by E.O. 13671.

Dated: August 24, 2023.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023-18750 Filed 8-29-23; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service (IRS) Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before September 29, 2023 to be assured of consideration.

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:

Copies of the submissions may be obtained from Melody Braswell by emailing PRA@treasury.gov, calling (202) 622-1035, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

1. *Title:* U.S. Income Tax Return for Estates and Trusts.

OMB Number: 1545-0092.

Form Number: Form 1041 and associated schedules.

Abstract: Internal Revenue Code section 6012 requires that an annual income tax return be filed for estates and trusts. The IRS uses the data to determine that the estates, trusts, and beneficiaries filed the proper returns and paid the correct tax.

Current Actions: There are changes to the existing collection. (1) Form 1041 removed lines for obsolete credits, added lines for new credits, and separated checkboxes and sublines into separate lines for clarity; (2) obsolete information collections were removed; and (3) the estimated number of responses was updated to reflect current filings and future estimates.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profits; and Individuals and households.

Estimated Number of Responses: 11,330,423.

Estimated Time per Respondent: 31 hours, 30 minutes.

Estimated Total Annual Burden Hours: 356,948,857.

2. *Titles:* Form 4422—Application for Certificate Discharging Property Subject to Estate Tax Lien and Form 15056—Escrow Agreement for Estates.

OMB Number: 1545–0328.

Form Numbers: 4422 and 15056.

Abstract: Form 4422 is completed by either an executor, administrator, or other interested party for requesting release of any or all property of an estate from the Estate Tax Lien. Form 15056 is a contractual agreement between three parties (the IRS, Taxpayer, and Escrow agent) to hold funds from property sales subject to the Federal estate tax lien. The only information it requires is a quarterly statement reflecting the balance in the escrow account as proof that the funds are being held in accordance with the agreement.

Current Actions: There are no changes being made to the forms at this time. However, the estimated number of responses are decreased due to the most current filing data.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, farms, Federal Government, State, local, or Tribal gov't.

Form 4422:

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 500.

Form 15056:

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 10.

3. *Title:* Statement of Payments Received.

OMB Number: 1545–0364.

Form Number: 4669.

Abstract: Form 4669 is used by payors in specific situations to request relief from payment of certain required taxes. A payor who fails to withhold certain required taxes from a payee may be entitled to relief, under sections 3402(d), 3102(f)(3), 1463 or Regulations section 1.1474–4. To apply for relief, a payor must show that the payee reported the payments and paid the corresponding tax. To secure relief as

described above, a payor must obtain a separate, completed Form 4669 from each payee for each year relief is requested.

Current Actions: There are no changes to burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 85,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 21,250 hours.

4. *Title:* Export Exemption Certificate.

OMB Number: 1545–0685.

Form Number: Form 1363.

Abstract: Internal Revenue Code section 427(b)(2) exempts exported property from the excise tax on transportation of property. Regulation § 49.4271–1(d)(2) authorizes the filing of Form 1363 by the shipper to request tax exemption for a shipment or a series of shipments. The information on the form is used by the IRS to verify shipments of property made tax-free.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100,000.

Estimated Time per Respondent: 4 Hours, 15 minutes.

Estimated Total Annual Burden Hours: 425,000.

5. *Title:* Application for Enrollment, Application for Renewal of Enrollment, and Regulations Governing the Performance of Actuarial Services Under the Employee Retirement Income Security Act of 1972.

OMB Number: 1545–0951.

Form and Regulation Number: 5434, 5434–A, and TD 9517/REG–159704–03.

Abstract: Form 5434 is used to apply for enrollment to perform actuarial services under the Employee Retirement income Security Act of 1974 (ERISA). Form 5434–A is used to renew enrollment every three years to perform actuarial services under (ERISA). The information is used by the Joint Board for the Enrollment of Actuaries to determine the eligibility of the applicant to perform actuarial services. The regulations require that records be kept that verify satisfaction of requirements, and certificates of completion education requirements.

Current Actions: There are no changes to the forms or regulations at this time. However, the agency is updating the number of respondents based on its most recent filing data.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals and households.

Form 5434:

Estimated Number of Respondents: 150.

Estimated Time per Respondent: 1 hour.

Estimated Annual Burden Hours: 150.

Form 5434 A:

Estimated Number of Respondents: 1,166.

Estimated Time per Respondent: .50 hour.

Estimated Annual Burden Hours: 600.

TD 9517/REG–159704–03:

Estimated Number of Respondents/Recordkeepers: 3,500.

Estimated Time per Respondent: .25 hour.

Estimated Annual burden hours: 875.

Total Estimated Annual Burden: 1,625 hours.

6. *Title:* Requirements for Investments to Qualify under section 936(d)(4) as Investments in Qualified Caribbean Basin Countries.

OMB Number: 1545–1138.

Regulation Project Number: TD 8350.

Abstract: This document contains final regulations that provide guidance relating to the requirements that must be met for an investment to qualify under Internal Revenue code section 936(d)(4) as an investment in qualified Caribbean Basin countries. The collection of information is required by the Internal Revenue Service to verify that an investment qualifies under IRC section 936(d)(4). The respondents will be possession corporations, certain financial institutions located in Puerto Rico, and borrowers of funds covered by this regulation.

Current Actions: There are no changes in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 30 hrs.

Estimated Total Annual Burden Hours: 1,500.

7. *Title:* Notification of Distribution from a Generation-Skipping Trust.

OMB Number: 1545–1143.

Form Number: 706–GS(D–1).

Abstract: Trustees use Form 706–GS(D–1) to report certain distributions from a trust that are subject to the generation-skipping transfer (GST) tax. The skip person distributee uses the information to figure any GST tax due on the distribution. The IRS uses the

information to verify that the tax has been properly computed.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 13,000.

Estimated Time per Respondent: 4.36 hours.

Estimated Total Annual Burden Hours: 56,680.

8. Title: Tax Information Authorization and IRS Disclosure Authorization for Victims of Identity Theft.

OMB Number: 1545–1165.

Form Number: Form 8821 and Form 8821–A.

Abstract: Form 8821 is used to appoint someone to receive or inspect certain tax information. The information on the form is used to identify appointees and to ensure that confidential tax information is not disclosed to unauthorized persons. Form 8821–A is an authorization signed by a taxpayer for the IRS to disclose returns and return information to state or local law enforcement in the event of a possible identity theft.

Current Actions: There are no changes being made to the forms at this time. However, the agency has updated the respondent estimates based on the most recent filing data.

Type of Review: Extension of a previously approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not for profit institutions, and farms.

Form 8821:

Estimated Number of Respondents: 3,393,083.

Estimated Time per Respondent: 1 hour, 3 minutes.

Form 8821–A:

Estimated Number of Respondents: 182.

Estimated Time per Respondent: 9 minutes.

Estimated Total Annual Burden Hours: 3,562,764 hours.

9. Title: Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or Claim for Refund.

OMB Number: 1545–1231.

Regulation Project Number: IA–38–90 (TD 9436–final).

Abstract: These regulations set forth rules under section 6694 of the Internal Revenue Code regarding the penalty for understatement of a taxpayer's liability on a Federal income tax return or claim for refund. In certain circumstances, the

preparer may avoid the penalty by disclosing on a Form 8275 or by advising the taxpayer or another preparer that disclosure is necessary.

Current Actions: There are no changes to burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 127,800,734.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 10,224,059 hours.

10. Title: Capitalization of Interest.

OMB Number: 1545–1265.

Regulation Project Number: TD 8584.

Abstract: Internal Revenue Code section 263A(f) requires taxpayers to estimate the length of the production period and total cost of tangible personal property to determine if interest capitalization is required. This regulation requires taxpayers to maintain contemporaneous written records of production period estimates, to file a ruling request to segregate activities in applying the interest capitalization rules, and to request the consent of the Commissioner to change their methods of accounting for the capitalization of interest.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 500,050.

Estimated Time per Respondent: 14 minutes.

Estimated Total Annual Burden Hours: 116,767.

11. Title: Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and 367(e)(2).

OMB Number: 1545–1487.

Regulation Project Number: TD 9704.

Abstract: Section 367(e)(1) provides that, to the extent provided in regulations, a domestic corporation must recognize gain on a section 355 distribution of stock or securities to a foreign person. Section 367(e)(2) provides that section 337(a) and (b)(1) does not apply to a section 332 distribution by a domestic corporation to a foreign parent corporation that owns 80 percent of the domestic liquidating corporation (as described in section 337(c)). Section 6038B(a) requires a U.S. person who transfers property to a foreign corporation in an exchange described in sections 332 or

355, among other sections, to furnish to the Secretary of the Treasury certain information with respect to the transfer, as provided in regulations.

The final regulations under section 367(e)(1) require gain recognition only for distributions of the stock or securities of foreign corporations to foreign persons. The final regulations under section 367(e)(2) generally require gain recognition when a domestic corporation liquidates into its foreign parent corporation; the regulations generally do not require gain recognition when a foreign corporation liquidates into its foreign parent corporation.

Document (TD 9704) contains final and temporary regulations relating to the consequences to U.S. and foreign persons for failing to satisfy reporting obligations associated with certain transfers of property to foreign corporations in nonrecognition exchanges. TD 9704 permits transferors to remedy “not willful” failures to file, and “not willful” failures to comply with the terms of, liquidation documents required under section 367(e)(2). In addition, it modifies the reporting obligations under section 6038B associated with transfers that are subject to section 367(e)(2). Further, TD 9704 provides similar rules for certain transfers that are subject to section 367(a). The regulations are necessary to update the rules that apply when a U.S. or foreign person fails to file required documents or statements or satisfy reporting obligations. The regulations affect U.S. and foreign persons that transfer property to foreign corporations in certain non-recognition exchanges.

Current Actions: There are no changes being made to the regulations at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 414.

Estimated Time per Respondent: 5 hours, 58 minutes.

Estimated Total Annual Burden Hours: 2,471 hours.

12. Title: Tip Reporting Alternative Commitment (TRAC) Agreement for Use in the Cosmetology and Barber Industry.

OMB Number: 1545–1529.

Announcement Numbers: 2000–21 and 2001–01.

Abstract: Announcement 2000–21, 2000–19 I.R.B. 983, and Announcement 2001–1, 2001–2 I.R.B. 277, contain information required by the Internal Revenue Service in its tax compliance efforts to assist employers and their employees in understanding and

complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There are no changes in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other-for-profit organizations.

Estimated Number of Respondents: 4,600.

Estimated Time per Respondent: 9 hrs, 22 mins.

Estimated Total Annual Burden Hours: 43,073.

13. *Title:* Student Loan Interest Statement.

OMB Number: 1545–1576.

Form Number: 1098–E.

Abstract: Section 6050S(b)(2) of the Internal Revenue Code requires persons (financial institutions, governmental units, etc.) to report \$600 or more of interest paid on student loans to the IRS and the students. Form 1098–E is used for this purpose.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and State, local or Tribal governments.

Estimated Number of Respondents: 10,093,249.

Estimated Time per Respondent: 7 min.

Estimated Total Annual Burden Hours: 1,211,190.

14. *Title:* Probable or Prospective Reserves Safe Harbor.

OMB Number: 1545–1861.

Revenue Procedure Number: 2004–19.

Abstract: Revenue Procedure 2004–19 requires a taxpayer to file an election statement with the Service if the taxpayer wants to use the safe harbor to estimate the taxpayers' oil and gas properties' probable or prospective reserves for purposes of computing cost depletion under § 611 of the Internal Revenue Code.

Current Actions: There are no changes to burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 50 hours.

15. *Title:* Information Regarding Request for Refund of Social Security

Tax Erroneously Withheld on Wages Received by a Nonresident Alien on an F, J, or M Type Visa.

OMB Number: 1545–1862.

Form Number: Form 8316.

Abstract: Certain foreign students and other nonresident visitors are exempt from FICA tax for services performed as specified in the Immigration and Naturalization Act. Applicants for refund of this FICA tax withheld by their employer must complete Form 8316 to verify that they are entitled to a refund of the FICA, that the employer has not paid back any part of the tax withheld, and that the taxpayer has attempted to secure a refund from his/her employer.

Current Actions: There are no changes being made to this form at this time, however and increase in the estimated number of responses will result in a burden increase of 625 hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals and households.

Estimated Number of Respondents: 25,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 6,250.

16. *Title:* Directed Withholding and Deposit Verification, and Application for Central Withholding Agreement Less than \$10,000.

OMB Number: 1545–2102.

Form Number: Form 13920 and 13930.

Abstract: Central Withholding Agreement (CWA) is a tool that can help nonresident entertainers and athletes who plan to work in the United States and provides for withholdings at a graduated rate. Form 13930 will be used by an individual who wishes to have a Central Withholding Agreement (CWA). Starting October 1, 2018, NRAAEs must have U.S. gross income of at least \$10,000 (including income estimated on the CWA application budget) before the NRAAE is eligible to apply for a withholding agreement using Form 13930. The Internal Revenue Service has temporarily waived the income requirement for which form to use when applying for a CWA. Form 13930–A is currently unavailable. While the waiver is in effect, individuals with income below \$10,000 can apply for a CWA using Form 13930. Form 13920 is used by withholding agents to verify to IRS that required deposits were made and give the amount of such deposits.

Current Actions: Form 13930–A is being removed from the above OMB approval number.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, farms and non-profit institutions.

Form 13930:

Estimated Number of Responses: 3,000.

Estimated Time per Response: 12 hours.

Form 13920:

Estimated Number of Responses: 8,100.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours (2 forms): 38,700 hours.

17. *Title:* Disaster Relief.

OMB Number: 1545–2237.

Revenue Procedure Number: 2014–49.

Abstract: This revenue procedure establishes a procedure for temporary relief from certain requirements of § 42 of the Internal Revenue Code for owners of low-income buildings (Owners) and housing credit agencies of States or possessions of the United States (Agencies) affected by major disaster areas declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (Stafford Act).

Current Actions: There are no changes in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households.

Estimated Number of Respondents: 3,500.

Estimated Time per Respondent: 30 mins.

Estimated Total Annual Burden Hours: 1,750.

18. *Title:* Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 1545–2256.

Abstract: This collection of information is necessary to enable the IRS to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with IRS programs.

Current Actions: The IRS will be conducting different opinion surveys, focus group sessions, think-aloud interviews, and usability studies regarding cognitive research surrounding forms submission or IRS system/product development.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households, and business or other for-profit organizations.

Estimated Number of Responses: 24,636.

Estimated Time per Respondent: 15 minutes to 1.05 hours.

Estimated Total Annual Burden Hours: 10,000.

19. Title: Research Applied Analytics & Statistics (RAAS) Comprehensive Taxpayer Attitude Survey.

OMB Number: 1545–2288.

Document Number(s): None.

Abstract: The Internal Revenue Service (IRS) conducts the Comprehensive Taxpayer Attitude Survey as part of the Service-wide effort to maintain a system of balanced organizational performance measures

mandated by the IRS Restructuring and Reform Act (RRA) of 1998. This is also a result of Executive Order 12862 that requires all Government agencies to survey their customers. The IRS' office of Research Applied Analytics & Statistics (RAAS) is sponsoring this annual survey (formerly conducted by the IRS Oversight Board) with the objective of better understanding what influences taxpayers' tax compliance, their opinions of the IRS, and their customer service preferences, as well as how these taxpayer views change over time.

Current Actions: To request a reinstatement of OMB approval.

Type of Review: Reinstatement of a previously approved information collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 32,450.

Estimated Number of Responses: 1,298.

Estimated Time per Response/ Respondent: 1.5 min. (screened), 3 min. (participants).

Estimated Total Annual Burden Hours: 1,308.

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

Melody Braswell,

Treasury PRA Clearance Officer.

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Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Increased Credit or Deduction Amounts for Satisfying Certain Prevailing
Wage and Registered Apprenticeship Requirements; Notice

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1****[REG–100908–23]****RIN 1545–BQ54****Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking and public hearing.

SUMMARY: This document contains proposed regulations regarding increased credit or deduction amounts available for taxpayers satisfying prevailing wage and registered apprenticeship (collectively, PWA) requirements established by the Inflation Reduction Act of 2022 (IRA). These proposed regulations would affect taxpayers intending to satisfy the PWA requirements for increased Federal income tax credits or deductions. These proposed regulations would also affect taxpayers intending to satisfy the prevailing wage requirements for increased Federal income tax credit amounts that do not have associated apprenticeship requirements. Additionally, these proposed regulations would affect taxpayers who initially fail to satisfy the PWA or prevailing wage requirements and subsequently comply with the correction and penalty procedures in order to be deemed to satisfy the PWA or prevailing wage requirements. Finally, the proposed regulations address specific PWA or prevailing wage recordkeeping and reporting requirements. The proposed regulations would affect taxpayers intending to claim increased credit or deduction amounts pursuant to the IRA, including those intending to make elective payment elections for available credit amounts, and those intending to transfer increased credit amounts. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by October 30, 2023. A public hearing on these proposed regulations is scheduled to be held on November 21, 2023, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by October 30, 2023. If no outlines are received by October

30, 2023, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on November 17, 2023. The public hearing will be made accessible to people with disabilities. Requests for special assistance during the hearing must be received by November 16, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG–100908–23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS’s public docket. Send paper submissions to: CC:PA:LPD:PR (REG–100908–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317–6853 (not a toll-free number); concerning submissions of comments or the public hearing, Vivian Hayes at (202) 317–6901 (not a toll-free number) or by email to publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:**Background****I. Overview**

This document contains proposed regulations to amend the Income Tax Regulations (26 CFR part 1) under sections 30C, 45, 45L, 45U, 45V, 45Y, 45Z, 48C, 48E, and 179D of the Internal Revenue Code (Code) and proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 45Q and 48 (proposed regulations). The Inflation Reduction Act of 2022 (IRA), Public Law 117–169, 136 Stat. 1818 (August 16, 2022), amended sections 30C, 45, 45L, 45Q, 48, 48C, and 179D to provide increased credit or deduction amounts for taxpayers who satisfy certain requirements and added sections 45U, 45V, 45Y, 45Z, and 48E to the Code to provide new credits, which also contain provisions for increased credit amounts for taxpayers who satisfy certain requirements. Increased credit amounts are available under sections 30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C, and 48E,

and an increased deduction is available under section 179D, for taxpayers satisfying certain prevailing wage and registered apprenticeship (PWA) requirements. Increased credit amounts are available under sections 45L and 45U for taxpayers satisfying certain prevailing wage requirements.¹ The IRA includes correction and penalty provisions available in certain situations if taxpayers have failed to satisfy the PWA requirements, and they are not otherwise eligible for the increased credit or deduction because they do not qualify for an exception.

The increased credit amounts are also generally available under sections 45, 45Y, 48, and 48E with respect to certain facilities with a maximum net output (or capacity for energy storage technology under section 48E) of less than one megawatt (One Megawatt Exception). Additionally, increased credit and deduction amounts are available under sections 30C, 45, 45Q, 45V, 45Y, 48, 48E and 179D if beginning of installation or beginning of construction (BOC) occurs before January 29, 2023 (BOC Exception).

II. Prior Guidance

On October 24, 2022, the Treasury Department and the IRS issued Notice 2022–51, 2022–43 I.R.B. 331, requesting comments on aspects of the increased credits and deduction amounts enacted by the IRA, including the PWA provisions. Section 3.01 of Notice 2022–51 requested comments regarding the applicability of subchapter IV of chapter 31 of title 40 of the United States Code, which is commonly known as the Davis-Bacon Act; the special correction and penalty procedures generally provided for under section 45(b)(7)(B); any documentation or substantiation that should be required to show compliance with the prevailing wage requirements; and any other topics relating to the prevailing wage requirements that may require guidance. Section 3.02 of Notice 2022–51 requested comments addressing factors to be considered in regard to the appropriate duration of employment of individuals for construction, alteration, or repair work for purposes of the Participation Requirement; clarification regarding the Good Faith Effort Exception; factors to be considered in administering and promoting compliance with the Good

¹ The increased credit provisions in sections 45L and 45U do not contain apprenticeship requirements. For simplicity, where possible, the preamble to the proposed regulations uses the acronym PWA to refer to the prevailing wage and apprenticeship requirements generally, including the prevailing wage requirements in sections 45L and 45U.

Faith Effort Exception; whether methods exist to facilitate reporting requirements for the Good Faith Effort Exception; documentation or substantiation taxpayers maintain or could create to demonstrate compliance with the apprenticeship requirements or the Good Faith Effort Exception; and any other topics relating to the apprenticeship requirements that may require guidance. Comments received in response to Notice 2022–51 were considered in the drafting of these proposed regulations.

On November 30, 2022, the Treasury Department and the IRS published Notice 2022–61, 87 FR 73580, corrected in 87 FR 75141 (Dec. 7, 2022). Notice 2022–61 provided guidance on the PWA requirements that generally apply under sections 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, and 48E, and 179D. Additionally, Notice 2022–61 established the 60-day period described in sections 30C(g)(1)(C)(i), 45(b)(6)(B)(ii), 45Q(h)(2), 45V(e)(2)(A)(i), 45Y(a)(2)(B)(ii), 48(a)(9)(B)(ii), 48E(a)(2)(A)(ii)(II) and (a)(2)(B)(ii)(II), and 179D(b)(3)(B)(i). Specifically, Notice 2022–61 started the 60-day period applicable for determining if taxpayers qualify for the increased credit or deduction amounts by satisfying the BOC Exception. To be eligible for the BOC Exception, as indicated in Notice 2022–61, taxpayers must have begun construction or installation of a facility (as defined in Notice 2022–61) before January 29, 2023. Finally, Notice 2022–61 provided guidance for determining the beginning of construction under sections 30C, 45, 45Q, 45V, 45Y, 48, and 48E, and the beginning of installation under section 179D.

III. Inflation Reduction Act

A. In General

Prior to enactment of the IRA, the Code provided for certain temporary credits and deductions with respect to energy related facilities, projects, equipment, and investments under sections 30C, 45, 45L, 45Q, 48, 48C, and 179D. Congress had extended these provisions multiple times and for varying types of qualified facilities, energy projects, equipment, and investments. The IRA further amended these sections, generally adjusting the credit or deduction amounts, expiration dates, and qualifying activities. Under the IRA, Congress also enacted new credits under sections 45U, 45V, 45Y, 45Z, (production tax credits) and 48E (investment tax credit).

The IRA provides increased credit or deduction amounts that generally apply

for taxpayers who satisfy (i) certain PWA requirements regarding the construction, installation, alteration, or repair of a qualified facility, qualified property, qualified project, or qualified equipment, or with respect to certain facilities, (ii) the One Megawatt Exception, or (iii) the BOC Exception. Generally, if a taxpayer satisfies the PWA requirements or meets the One Megawatt Exception or the BOC Exception, the amount of credit or deduction determined is equal to the otherwise determined amount of the underlying credit or deduction multiplied by five.

B. PWA Provisions

1. In General

The principal PWA requirements are set forth in section 45(b)(6), (7), and (8). In general, section 45(b)(6) provides the increased credit amount for taxpayers satisfying the PWA requirements or meeting one of the exceptions, section 45(b)(7) provides the prevailing wage requirements (Prevailing Wage Requirements), and section 45(b)(8) provides the apprenticeship requirements (Apprenticeship Requirements).²

Section 45 provides a credit for taxpayers producing and selling electricity from renewable resources to unrelated persons during the taxable year (section 45 credit). The section 45 credit is generally equal to 0.3 cents multiplied by the kilowatt hours of electricity (i) produced by the taxpayer from qualified energy resources and at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and (ii) sold by the taxpayer to an unrelated person during the taxable year. If a taxpayer satisfies the PWA requirements, the One Megawatt Exception, or the BOC Exception, then the credit determined under section 45(a) for electricity produced at a qualified facility is multiplied by five.

2. Prevailing Wage Requirements

Under section 45(b)(6), in the case of a qualified facility that satisfies the PWA requirements of section 45(b)(7) and (b)(8), the One Megawatt Exception, or the BOC Exception, the credit under

section 45(a) “shall be equal to such amount multiplied by five.” Section 45(b)(7)(A) provides that with respect to any qualified facility, the taxpayer shall ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in—(i) the construction of such facility, and (ii) with respect to any taxable year, for any portion of such taxable year that is within the 10-year period beginning on the date the qualified facility is originally placed in service, the alteration or repair of such facility, shall be paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code.

3. Correction and Penalty Related to Failure To Satisfy Prevailing Wage Requirements

Under section 45(b)(7)(B), a taxpayer who is not eligible for the One Megawatt Exception or the BOC Exception and fails to satisfy the Prevailing Wage Requirements under section 45(b)(7)(A) is “deemed” to have satisfied those requirements if, for “any laborer or mechanic who was paid wages at a rate below the [required prevailing rate] for any period” during any year of the construction, alteration, or repair of the facility, the taxpayer makes a correction payment to the laborer or mechanic and pays a penalty to the Secretary of the Treasury or her delegate (Secretary). Under section 45(b)(7)(B)(i)(I), the amount of the correction payment is the sum of (i) the difference between the amount of wages paid to the laborer or mechanic during the period and the amount of wages required to be paid to the laborer or mechanic during that period in order to meet the Prevailing Wage Requirements; and (ii) interest on the amount under (i) at the underpayment rate established under section 6621 (determined by substituting “6 percentage points” for “3 percentage points” in section 6621(a)(2)) for the applicable period.

Under section 45(b)(7)(B)(i)(II), the amount of the penalty is “\$5,000 multiplied by the total number of laborers and mechanics who were paid wages at a rate below the [prevailing wage] rate described in [section 45(b)(7)(A)] for any period” during the year. Deficiency procedures do not apply “with respect to the assessment or collection” of this penalty pursuant to section 45(b)(7)(B)(ii).

² The prevailing wage requirements in sections 30C(g), 45L(g), 45Q(h), 45U(d), 45V(e), 48(a)(10), 48C(e), and 179D(b) are substantially similar to the requirements provided under section 45(b)(7). Sections 45Y(g)(9) and 45Z(f)(6)(A) adopt by cross-reference the Prevailing Wage Requirements under section 45(b)(7). Section 48E(d)(3) adopts by cross-reference the Prevailing Wage Requirements under section 48(a)(10). Section 48(a)(10) provides for a special 5-year recapture rule that applies for purposes of the prevailing wage requirements with respect to sections 48 and 48E.

Under section 45(b)(7)(B)(iii), if the Secretary determines that the failure to satisfy the Prevailing Wage Requirements is due to “intentional disregard” of those requirements, then the correction payment to the laborer or mechanic is three times the amount that would otherwise be determined under section 45(b)(7)(B)(i)(I), and \$10,000 is substituted for \$5,000 in calculating the penalty under section 45(b)(7)(B)(i)(II).

Section 45(b)(7)(B)(iv) provides that, “pursuant to rules issued by the Secretary, in the case of a final determination by the Secretary with respect to any failure . . . to satisfy [the Prevailing Wage Requirements],” the correction and penalty provisions do not apply, “unless the payments . . . are made by the taxpayer on or before the date which is 180 days after the date of such determination.”

4. Apprenticeship Requirements

Under section 45(b)(8), in order to satisfy the Apprenticeship Requirements, certain requirements with respect to labor hours, apprentice-to-journeyworker ratios, and participation by apprentices must be satisfied.³

a. Labor Hours Requirement

Section 45(b)(8)(A)(i) provides that “[t]axpayers shall ensure that, with respect to construction of any qualified facility, not less than the applicable percentage of the total labor hours of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) with respect to such facility shall, subject to [section 45(b)(8)(B)] be performed by qualified apprentices” (Labor Hours Requirement).

For purposes of the Labor Hours Requirement, section 45(b)(8)(A)(ii) provides that the applicable percentage is: (i) in the case of a qualified facility the construction of which begins before January 1, 2023, 10 percent, (ii) in the case of a qualified facility the construction of which begins after December 31, 2022, and before January 1, 2024, 12.5 percent, and (iii) in the case of a qualified facility the construction of which begins after December 31, 2023, 15 percent.

Section 45(b)(8)(E)(i) defines “labor hours” as the “total number of hours devoted to the performance of construction, alteration, or repair work by any individual employed by the taxpayer or by any contractor or

subcontractor, and includ[ing] any hours worked by foremen, superintendents, owners, or persons employed in a bona fide executive, administrative, or professional capacity (within the meaning of those terms in part 541 of title 29, Code of Federal Regulations).” Section 45(b)(8)(E)(ii) defines “qualified apprentice” as “an individual who is employed by the taxpayer or by any contractor or subcontractor and who is participating in a registered apprenticeship program, as defined in section 3131(e)(3)(B).” Section 3131(e)(3)(B) defines a registered apprenticeship program as an apprenticeship program registered under the Act of August 16, 1937 (commonly known as the National Apprenticeship Act, 50 Stat. 664, chapter 663, 29 U.S.C. 50 *et seq.*) that meets the standards of subpart A of part 29 and part 30 of title 29 of the Code of Federal Regulations.⁴

b. Ratio Requirement

Under section 45(b)(8)(B), the Labor Hours Requirement is subject to any applicable requirements for apprentice-to-journeyworker ratios of the U.S. Department of Labor (DOL) or the applicable State apprenticeship agency (Ratio Requirement).

c. Participation Requirement

Under section 45(b)(8)(C), each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility must employ one or more qualified apprentices to perform such work (Participation Requirement).

5. Exceptions to Apprenticeship Requirements

a. In General

Under section 45(b)(8)(D)(i), a taxpayer is not treated as failing to satisfy the Apprenticeship Requirements in section 45(b)(8) if: (i) the taxpayer satisfies the requirements described in section 45(b)(8)(D)(ii) (Good Faith Effort Exception), or (ii) in the case of any failure by the taxpayer to satisfy the Labor Hours Requirement under section 45(b)(8)(A) and the Participation Requirement under section 45(b)(8)(C), the taxpayer makes a penalty payment to the Secretary (Apprenticeship Cure Provision).

b. Good Faith Effort Exception

Under the Good Faith Effort Exception provided by section 45(b)(8)(D)(ii), a taxpayer is deemed to have satisfied the Apprenticeship Requirements with respect to a qualified facility if the taxpayer has requested qualified apprentices from a registered apprenticeship program, as defined in section 3131(e)(3)(B), and: (i) such request has been denied, provided that such denial is not the result of a refusal by the taxpayer or any contractors or subcontractors engaged in the performance of construction, alteration, or repair work with respect to such qualified facility to comply with the established standards and requirements of the registered apprenticeship program, or (ii) the registered apprenticeship program fails to respond to such request within five business days after the date on which such registered apprenticeship program received such request.

c. Apprenticeship Cure Provision

Under section 45(b)(8)(D)(i)(II), if the Good Faith Effort Exception does not apply, then the taxpayer will not be treated as failing to satisfy the Labor Hours Requirement or the Participation Requirement if the taxpayer makes a penalty payment to the Secretary in an amount equal to the product of \$50 multiplied by the total labor hours for which the Labor Hours Requirement or the Participation Requirement was not satisfied with respect to the construction, alteration, or repair work on the qualified facility. Under section 45(b)(8)(D)(iii), if the Secretary determines that the failure was due to intentional disregard of the Labor Hours Requirement or Participation Requirement, then the penalty amount increases to \$500 multiplied by the total labor hours for which the requirement was not satisfied.

C. One Megawatt Exception

Under the One Megawatt Exception in section 45(b)(6)(B)(i), a qualified facility that has a maximum net output of less than one megawatt (as measured in alternating current) is eligible for the increased credit amount. A qualified facility’s nameplate capacity determines whether the facility meets the One Megawatt Exception. Similar exceptions apply for a qualified facility under sections 45Y(a)(2)(B)(i) and 48E(a)(2)(A)(ii)(I) with a maximum net output of less than one megawatt (as measured in alternating current); a qualified project under section 48(a)(9)(B)(i) with a maximum net output of less than one megawatt of

³ Sections 30C(g)(3), 45Q(h)(4), 45V(e)(4), 45Y(g)(10), 45Z(f)(7), 48(a)(11), 48C(e)(6), 48E(d)(4), and 179D(b)(5) cross-reference the apprenticeship requirements in section 45(b)(8). Sections 45L and 45U do not have apprenticeship requirements.

⁴ Effective November 25, 2022, 29 CFR part 29 is no longer divided into subparts A and B because subpart B (Industry Recognized Apprenticeship Programs) was rescinded in a final rule published on September 26, 2022 (87 FR 58269).

electrical (as measured in alternating current) or thermal energy; and energy storage technology under section 48E(a)(2)(B)(ii)(I) with a capacity of less than one megawatt.

D. Beginning of Construction Exception

Under the BOC Exception in section 45(b)(6)(B)(ii), a qualified facility the construction of which began prior to the date that is 60 days after the Secretary publishes guidance with respect to the requirements of section 45(b)(7)(A) and (8) is eligible for the increased credit amount in section 45(b)(6). On November 30, 2022, the IRS and the Treasury Department published Notice 2022–61, providing guidance with respect to the PWA requirements in section 45(b)(7)(A) and (8), including initial guidance for determining the beginning of construction for section 45 and other credits and the beginning of installation under section 179D. Therefore, if a taxpayer began construction or installation of a facility⁵ before January 29, 2023, then the taxpayer is eligible for the increased credit amount without satisfying the PWA requirements, provided the taxpayer is otherwise eligible for the credit. Similar exceptions apply under sections 30C, 45Q, 45V, 45Y, 48, 48E, and 179D.

For purposes of determining when construction or installation begins, Notice 2022–61 incorporates by reference the notices issued under sections 45, 45Q, and 48 (collectively, IRS Notices).⁶ The IRS Notices describe two methods of establishing that construction of a facility has begun: (i) starting physical work of a significant nature (Physical Work Test), and (ii) paying or incurring five percent or more of the total cost of the facility (Five Percent Safe Harbor).

The IRS Notices, as clarified and modified by Notice 2021–41, 2021–29 I.R.B. 17, provide that for purposes of the Physical Work Test and Five Percent Safe Harbor, taxpayers must demonstrate either continuous construction or continuous efforts (Continuity Requirement) regardless of whether the Physical Work Test or the Five Percent Safe Harbor was used to establish the beginning of construction. Whether a taxpayer meets the Continuity Requirement under either test is determined by the relevant facts and circumstances.

The IRS Notices, as subsequently clarified and modified, also provide for a “Continuity Safe Harbor” under which a taxpayer will be deemed to satisfy the Continuity Requirement provided a qualified facility is placed in service no more than four calendar years after the calendar year during which construction of the qualified facility began for purposes of sections 45 and 48, and no more than six calendar years after the calendar year during which construction of the qualified facility or carbon capture equipment began for purposes of section 45Q. For purposes of the Continuity Safe Harbor, certain offshore projects and projects built on Federal land under sections 45 and 48 satisfy the Continuity Requirement if such a project is placed into service no more than 10 calendar years after the calendar year during which construction of the project began.

Until the Treasury Department and the IRS issue further guidance on determining when construction or installation begins, taxpayers may continue to rely on the guidance provided in Notice 2022–61 and the IRS Notices. Specifically, to determine when construction begins for purposes of sections 30C, 45V, 45Y, and 48E, principles similar to those under Notice 2013–29 regarding the Physical Work Test and Five Percent Safe Harbor apply, and taxpayers satisfying either test will be considered to have begun construction. In addition, principles similar to those provided in the IRS Notices regarding the Continuity Requirement for purposes of sections 30C, 45V, 45Y, and 48E apply. Whether a taxpayer meets the Continuity Requirement under either test is determined by the relevant facts and circumstances. Similar principles to those under section 3 of Notice 2016–31 regarding the Continuity Safe Harbor also apply for purposes of sections 30C, 45V, 45Y, and 48E. Taxpayers may rely on the Continuity Safe Harbor with respect to those sections, provided the facility is placed in service no more than four calendar years after the calendar year during which construction began.

For purposes of section 179D, installation of energy efficient commercial building property has begun if a taxpayer generally satisfies principles similar to the two tests described in section 2.02 of Notice 2022–61 regarding the beginning of construction under Notice 2013–29 (Physical Work Test and Five Percent Safe Harbor). The relevant facts and circumstances will ultimately determine whether a taxpayer has begun installation.

For purposes of sections 45, 45Q, and 48, the IRS Notices will continue to apply under each respective Code section, including application of the Physical Work Test and Five Percent Safe Harbor, and the rules regarding the Continuity Requirement and Continuity Safe Harbors.

IV. Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 3141 *et seq.*) (DBA), enacted in 1931, requires the payment of minimum prevailing wages determined by the DOL to laborers and mechanics working on contracts entered into by Federal agencies and the District of Columbia that are in excess of \$2,000 and are for the construction, alteration, or repair of public buildings and public works. The Copeland Act, Public Law 73–324 (40 U.S.C. 3145), was enacted in 1934 to add a requirement that contractors working on contracts covered by the DBA submit weekly certified payroll records to the contracting agency for work performed on the contract. Congress has included DBA requirements in other laws, often referred to as the Davis-Bacon Related Acts (Related Acts), under which Federal agencies provide assistance for construction projects through grants, loans, insurance, and other methods.

The Wage and Hour Division of the DOL is responsible for administering the DBA and has adopted regulations for the determination of prevailing wages as well as compliance with and enforcement of DBA labor standards requirements under 29 CFR parts 1, 3, and 5.

Section 3142 of the DBA requires that Federal agencies entering into contracts covered by the DBA include the requirements of the DBA in the contract, including the requirement to incorporate the applicable wage determinations that set forth the prevailing wages to be paid to laborers and mechanics performing work, and the Copeland Act, 40 U.S.C. 3145, sets forth the requirement to submit certified weekly payroll records to the contracting Federal agency. Under regulations implementing the DBA (29 CFR parts 1 and 5), the contracting agency and the Wage and Hour Division have responsibility to ensure compliance with prevailing wage requirements by engaging in periodic audits or investigations of contracts, including examination of payroll data.

The Wage and Hour Division determines the wage rates that are “prevailing” for purposes of section 3142(b) of the DBA for each classification of covered laborers and mechanics on similar projects in the

⁵ Notice 2022–61 defines “facility” as qualified facility, property, project, or equipment.

⁶ Notice 2013–29, 2013–20 I.R.B. 1085 (section 45); Notice 2020–12, 2020–11 I.R.B. 495 (section 45Q); Notice 2018–59, 2018–28 I.R.B. 196 (section 48).

geographic area in which work is to be performed. A prevailing wage is the combination of the basic hourly rate and any fringe benefit rate listed on the wage determination. The Wage and Hour Division generally makes its determinations of the prevailing rates based on survey information provided by contractors and other interested parties. The prevailing wage determinations made by the Wage and Hour Division are published on the DOL-approved website for wage determinations (currently <https://www.sam.gov>).

Under the DBA, contracting agencies follow specified procedures for incorporating wage determinations into covered contracts. The applicable prevailing wage determination generally applies for the duration of the contract.

In accordance with the DBA, certain apprentices may be paid wages at a lower wage rate than journeyworker laborers and mechanics. Under 29 CFR 5.5(a)(4), an apprentice from a registered apprentice program may be paid at not less than the rate specified in the registered program for the apprentice's level of progress in the apprenticeship program, expressed as a percentage of the journeyworker hourly rate specified in the applicable wage determination. Apprentices may also be paid bona fide fringe benefits in accordance with the provisions of the registered apprenticeship program, but if the registered apprenticeship program does not specify bona fide fringe benefits, apprentices must be paid the full amount of bona fide fringe benefits listed on the wage determination for the applicable classification.

Sections 3143 and 3144 of the DBA also provide for certain enforcement authority and remedies to ensure compliance with payment of prevailing wage rates. When a contracting agency or the Wage and Hour Division finds there has been an underpayment of wages, the contracting agency and the Wage and Hour Division can seek to recover the underpayments from the contractor responsible, including but not limited to the prime contractor. If the underpayment of wages to laborers and mechanics is not promptly remedied, then the contracting agency may withhold payments that are otherwise due under the contract or under another contract with the same prime contractor in order to compensate the laborers and mechanics for the underpayments. Contractors who have been found to have disregarded their obligations to employees and subcontractors, including by violating prevailing wage requirements, may also be subject to debarment from future

Federal contracts under 40 U.S.C. 3144(b) and 29 CFR 5.12.

Explanation of Provisions

I. Overview

A. Incorporation of Certain DBA Guidance

Under section 45(b)(7)(A), the increased credit is available with respect to a qualified facility if a taxpayer ensures that laborers and mechanics are “paid wages at rates not less than the prevailing rates . . . in accordance with [the DBA].” The phrase “in accordance with” means “in agreement or harmony with; in conformity to; according to.”⁷ In interpreting the “in accordance with” language, the Treasury Department and the IRS propose to incorporate in these regulations certain requirements of the DBA that are relevant for the purposes of section 45(b)(7)(A) and the intent of the IRA, and that are necessary for, and consistent with, sound tax administration.

Under the DBA, a contractor must agree to pay prevailing wages at the commencement of the project as a condition of a Federal contract award. Conversely, under section 45, the requirements related to payment of prevailing wages are generally triggered at the beginning of construction and continue during the entire course of a project, but the requirement becomes binding only when a tax return claiming the increased credit is filed. The Code does not require taxpayers who do not seek an increased credit under section 45(b)(6) to pay prevailing wages in the construction, alteration, or repair of a facility.

The proposed regulations seek to strike the appropriate balance in determining when DBA requirements are relevant for purposes of the PWA requirements and when they are not. The proposed regulations would incorporate DBA statutory and regulatory guidance that is relevant for purposes of claiming the increased tax credit and consistent with sound tax administration. For example, the proposed regulations would largely adopt DBA guidance relating to wage determinations and the meaning of pertinent terms such as “laborer” and “mechanic”; “construction, alteration, or repair”; “wages”; and “employed”. The proposed regulations would not adopt DBA guidance if the result of

doing so would not be in furtherance of sound tax administration or the aims of the IRA. For example, the proposed regulations would not incorporate the rules under the DBA regarding provisions required to be included in contracts, those provisions related to the reporting of certified payroll records by contractors to contracting agencies, and the various enforcement processes that are available to the DOL and the contracting agencies to address noncompliance. Additionally, the DBA's \$2,000 monetary coverage threshold has not been incorporated.⁸

The statutory language of the IRA does not reflect any intent to include exceptions from the PWA requirements, other than the One Megawatt Exception and the BOC Exception. Consequently, the Treasury Department and the IRS have not proposed a rule exempting Tribal governments or the Tennessee Valley Authority (TVA) from the PWA requirements in section 45. The Treasury Department and the IRS request comments on the need for any exceptions, including for Tribal governments or the TVA, from the PWA requirements in addition to those expressly described in the statute. Such comments should detail the specific circumstances requiring the proposed exception as well as how its design would limit its application only to those circumstances.

In addition, the Treasury Department and the IRS will hold Tribal consultation specifically to address the prevailing wage and apprenticeship requirements in these proposed regulations, which will inform the development of the final regulations. See part VI. of the Special Analyses section.

B. Applicability of PWA Requirements to the Taxpayer

The proposed regulations would provide that in order to earn the increased credit under section 45(b)(6) by satisfying the PWA requirements, the taxpayer would be solely responsible for: (i) ensuring that the relevant laborers and mechanics are paid wages not less than the prevailing rate whether employed directly by the taxpayer, or by a contractor, or a subcontractor, and (ii) ensuring that the Apprenticeship Requirements are satisfied. The proposed regulations would also provide that the taxpayer would be solely responsible for the PWA recordkeeping requirements, the

⁷ In accordance with, Oxford English Dictionary, <https://www.oed.com/search/dictionary/?scope=Entries&q=in+accordance+with> (last visited Aug. 8, 2023); see *Accordance*, Merriam-Webster's Collegiate Dictionary (11th ed. 2006) (“agreement, conformity”).

⁸ The Treasury Department and the IRS interpret the One Megawatt Exception as addressing small business taxpayers who would be excluded under the \$2,000 minimum contract requirement under the DBA.

correction and penalty provisions under the Prevailing Wage Requirements, and the Good Faith Effort Exception and penalty provisions under the Apprenticeship Requirements.

However, nothing in these proposed regulations is intended to supersede requirements that might otherwise apply to a taxpayer, contractor, or subcontractor by State or Federal law.

Generally, the proposed regulations would define the term “taxpayer” to mean any taxpayer as defined in section 7701(a)(14), including applicable entities described in section 6417(d)(1)(A). This will generally be the entity that claims the credit (as increased under section 45(b)(6)), or makes an election under section 6417 with respect to such credit amount on a Federal income tax return. The section 45 credit, including the increased credit amount available under section 45(b)(6), is an eligible credit subject to the newly enacted section 6418. Section 6418 allows “eligible taxpayers” to elect to transfer certain credits to unrelated taxpayers rather than using the credits against their Federal income tax liabilities. In the case of credits transferred under section 6418, these proposed regulations would provide that the term “taxpayer” also means the eligible taxpayer that determines the eligible credit to be transferred and makes a transfer election under section 6418 to transfer any specified credit portion (including 100 percent) of an eligible credit determined with respect to any eligible credit property of such eligible taxpayer for any taxable year.

Section 6418(a) provides that, in the case of an eligible taxpayer that elects to transfer all (or any specified portion) of an eligible credit determined with respect to the taxpayer for any taxable year to an unrelated transferee taxpayer, the transferee taxpayer specified in such election (and not the eligible taxpayer) is treated as the taxpayer with respect to such credit (or such portion thereof).

The Treasury Department and the IRS published proposed regulations in the **Federal Register** (88 FR 40496 (June 21, 2023)) that would implement the statutory provisions of section 6418 (6418 Proposed Regulations). As explained in the 6418 Proposed Regulations, the Treasury Department and the IRS view inclusion of the word “determined” as instructive. Only credits determined with respect to an eligible taxpayer can be transferred by the eligible taxpayer. The 6418 Proposed Regulations would provide that Code sections relating to the determination of an eligible credit, such as sections 49 and 50(b), generally impact the amount of an eligible credit

that an eligible taxpayer can transfer. A transferee taxpayer is generally not subject to those Code sections, but a transferee taxpayer is subject to Code sections that would limit the amount of an eligible credit that is allowed, such as sections 38(c) and 469. In making a transfer election, the 6418 Proposed Regulations also would require an eligible taxpayer to report the determined credit as part of the taxpayer’s return, including filing properly completed credit source forms, a properly completed Form 3800, *General Business Credit*, and a schedule showing the amount of eligible credit transferred for each eligible credit property.

The 6418 Proposed Regulations also would apply with respect to the entire credit determined under section 45, where the amount of credit determined would include increased credit amounts available under section 45(b)(6). As the rules for determining an eligible credit apply to the eligible taxpayer and not the transferee taxpayer under section 6418, these proposed regulations would provide consistency with respect to the rules relating to the determination of the section 45 credit. Thus, while a transferee taxpayer would claim a transferred eligible credit (or portion thereof) on a tax return, the requirements of section 45 relevant to determining the credit, including the correction and penalty provisions described in section 45(b)(7)(B) and 45(b)(8)(D), would remain with the eligible taxpayer who determined the credit. The Treasury Department and the IRS request comments on the application of the PWA penalty and cure provisions, including to transferees and eligible taxpayers, in the context of transferred credits.

II. Prevailing Wage Requirements Under Section 45(b)(7)(A)

A. In General

Section 45(b)(7)(A) requires that taxpayers who are seeking an increased credit ensure that laborers and mechanics employed by the taxpayer, or any contractor or subcontractor in the construction, alteration, or repair of a facility are paid wages at rates that are not less than the prevailing rates determined by the DOL in accordance with the DBA.⁹ The proposed regulations would provide that a taxpayer would satisfy the Prevailing Wage Requirements with respect to the

⁹ The requirement to pay prevailing wages with respect to alteration or repair applies for any portion of a taxable year that is within the 10-year period beginning on the date the qualified facility is placed in service.

construction, alteration, or repair of a facility by ensuring that all laborers and mechanics employed by the taxpayer, or any contractor or subcontractor, in the construction, alteration, or repair of a facility are paid wages at rates that are not less than the prevailing rates determined by the DOL in accordance with the DBA.

The proposed regulations would largely incorporate the definitions of contractor and subcontractor from the DBA and would provide that: (i) a contractor would be any person that enters into a contract with the taxpayer for the construction, alteration, or repair of a qualified facility, and (ii) a subcontractor would be any contractor that agrees to perform or be responsible for the performance of any part of a contract entered into with the taxpayer (or contractor) with respect to the construction, alteration, or repair of a facility.

Consistent with the DBA and 29 CFR 5.2, and solely for purposes of the Prevailing Wage Requirements, the proposed regulations would provide that a laborer or mechanic would be considered employed by the taxpayer, contractor, or subcontractor if the individual performs the duties of a laborer or mechanic for the taxpayer, contractor, or subcontractor (as applicable), regardless of whether the individual would be characterized as an employee or an independent contractor for other Federal tax purposes. The definition of employed for purposes of the Prevailing Wage Requirements would generally be different and broader than the definition used elsewhere in the Code, for example with respect to employment taxes, as well as the associated reporting and withholding obligations. Laborers and mechanics who are independent contractors for employment tax purposes may be considered employed for purposes of the Prevailing Wage Requirements. Whether an individual is considered employed for purposes of the Prevailing Wage Requirements and these proposed regulations is not relevant when determining whether an individual is an employee or an independent contractor for other Federal tax purposes.

B. Determining the Prevailing Wage Rate

1. In General

Under the proposed regulations, prevailing wage rates would be determined by the DOL in accordance with the DBA when they are issued and published by the DOL as a general wage determination or when issued to a taxpayer as part of a supplemental wage

determination or pursuant to a request for a wage rate for an additional classification. The proposed regulations would require taxpayers to use the general wage determination in effect when the construction of the facility begins but would not require taxpayers to update the applicable prevailing wage rates during construction of the facility in the event a new general wage determination is published by the DOL after construction of the facility begins. However, a new general wage determination would be required to be used when a contract is changed to include additional, substantial construction, alteration, or repair work not within the scope of work of the original contract, or to require work to be performed for an additional time period not originally obligated, including where an option to extend the term of a contract for the construction, alteration, or repair is exercised. This is consistent with DOL guidance under the DBA, which generally requires the contracting agency to incorporate the applicable wage determinations as part of the contract that is awarded to the contractor with the applicable rates valid through the duration of the contract. The proposed regulations also would provide that taxpayers would need to update the applicable wage rate(s), as necessary, with respect to any alteration or repair of a facility that begins after the facility has been placed in service. Taxpayers would do this by ensuring that wages are paid for such alteration or repair based on the general wage determination in effect when the alteration or repair begins.

2. General Wage Determinations

The proposed regulations would provide that a general wage determination would be one issued and published by the DOL that includes a list of wage and bona fide fringe benefit rates determined to be prevailing for laborers and mechanics for the various classifications of work performed with respect to a specified type of construction in a geographic area. Generally, the DOL determines the prevailing rate based on wage rate data submitted by contractors, contractors' associations, labor organizations, public officials, and other interested parties. In general, the proposed regulations would provide that taxpayers would need to use the general wage determination(s) published by the DOL under the DBA on a DOL approved website, to determine the applicable prevailing wage rates. The current approved website for publishing general wage determinations is <https://www.sam.gov>.

The proposed regulations would largely incorporate the definition of wages from 29 CFR 5.2 for the Prevailing Wage Requirements. Under 29 CFR 5.2, wages are defined as the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. Whether amounts are wages for purposes of the Prevailing Wage Requirements is not relevant in determining whether amounts are wages or compensation for other Federal tax purposes.

3. Supplemental Wage Determinations and Rates for Additional Classifications

The proposed regulations would provide special procedures for the limited circumstances in which a general wage determination does not provide an applicable wage rate(s) for the work to be performed on the facility. These circumstances include when no general wage determination has been issued for the geographic area or for the specified type of construction, or when the Secretary of Labor has issued a general wage determination for the relevant geographic area and type of construction, but one or more labor classifications necessary for the construction, alteration, or repair work that will be done on the facility by laborers or mechanics is not listed as part of that determination. The proposed regulations would provide that under these circumstances, a taxpayer, contractor, or subcontractor would need to request a supplemental wage determination or request a prevailing wage rate for an additional classification from the DOL. A taxpayer satisfies section 45(b)(7)(A) by ensuring that laborers and mechanics are paid wages at rates not less than the rates determined by the DOL pursuant to a request for a supplemental wage determination or pursuant to a request for a prevailing wage rate for an additional classification.

The DOL has advised the Treasury Department and the IRS that most taxpayers will likely not need to use the process for requesting a supplemental wage determination or request a rate for an additional classification because of the availability of general wage determinations. The request for a

prevailing wage rate for an additional classification would only be appropriate when the work to be performed by the classification is not performed by a classification in the applicable general wage determination and the classification is used in the area by the construction industry. In addition, a prevailing wage rate for an additional classification would only be approved when the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the general wage determination. A request for a prevailing wage rate for additional classification would not be permitted to be used to split, subdivide, or otherwise avoid application of classifications listed in a general wage determination. Under the proposed regulations, the procedures for requesting a supplemental wage determination or a prevailing wage rate for an additional classification from the DOL would correspond to the provisions of 29 CFR 1.5(b) and 5.5(a)(1)(iii).

The Treasury Department and the IRS expect that the construction of some facilities may span two or more adjacent geographic areas, and more than one general wage determination could apply to the facility. In such circumstances, a taxpayer would be able to satisfy the Prevailing Wage Requirements by ensuring that laborers and mechanics are paid wages at the highest rate for each classification provided under the general wage determinations. A taxpayer would also be permitted to request a supplemental wage determination with respect to the facility and pay the rates determined by the DOL pursuant to the request.

The proposed regulations would also provide a special rule for qualified facilities located offshore so taxpayers would not need to request a supplemental wage determination for offshore facilities. In lieu of requesting a supplemental wage determination for a facility located in an offshore area within the outer continental shelf of the United States, a taxpayer, contractor, or subcontractor would be permitted to rely on the general wage determination for the relevant category of construction that is applicable in the geographic area closest to the area in which the qualified facility will be located.

The process for requesting a supplemental wage determination or a prevailing wage rate for an additional classification provided for in the proposed regulations would be consistent with the process described in Notice 2022–61 while addressing the different context of the PWA regime wherein taxpayers, contractors, and

subcontractors, rather than a contracting agency, will seek additional wage rates for purposes of complying with the Prevailing Wage Requirements of section 45. Under the DBA, the request for a project wage determination applicable under 29 CFR 1.5(b) or for a conformance under 29 CFR 5.5(a)(1)(iii) is made by the contracting agency rather than the contractor and will often occur after the contracting agency and the contractor have conferred about the need for the project wage determination or for the conformance of an additional classification. Because there is no contracting agency in the tax credit regime, the proposed regulations would set forth an analogous process for taxpayers, contractors, and subcontractors to request a supplemental wage determination, or a request for a prevailing wage rate for an additional classification, by submitting the request and supporting material directly to the Wage and Hour Division of the DOL.

The proposed regulations would provide that the request for a supplemental wage determination or a request for a prevailing wage rate for an additional classification would need to include information consistent with the information that is required to be provided by a contracting agency when requesting a project wage determination or a conformance for purposes of the DBA. This information would include a description of the type of work to be performed, the geographic area where the facility is located, the start date for the construction, alteration, or repair of the facility, the labor classification(s) needed for performance of the work on the facility for which wage rates are not available on an applicable general wage determination, pertinent wage payment information that may be available with respect to the classifications, and any information the taxpayer wants the DOL to consider for determining the applicable classifications and prevailing wage rates. After review, the Wage and Hour Division will notify the taxpayer as to the labor classifications and wage rates to be used for the type of work in question in the geographic area in which the facility is located.

The proposed regulations would adopt, by cross reference, the review and appeal procedures available to any interested party under the DBA with respect to wage determinations generally. Any interested party would be able to seek reconsideration and review of a supplemental wage determination, or a prevailing wage rate for an additional classification, by the DOL Administrator of the Wage and Hour Division and appeal any decision

of the Administrator of the Wage and Hour Division to the DOL Administrative Review Board.

In general, the Treasury Department and the IRS expect that supplemental wage determinations and requests for prevailing wage rates for an additional classification will be requested no more than 90 days prior to the beginning of the construction, alteration, or repair of the facility, as applicable. However, the Treasury Department and the IRS recognize that taxpayers may not reasonably determine until after construction, alteration, or repair begins that a supplemental wage determination or request for a prevailing wage rate for an additional classification is necessary. In these instances, the Treasury Department and the IRS would expect taxpayers, contractors, or subcontractors to make a request as soon as practicable after determining the need for a supplemental wage determination or prevailing wage rate for additional classifications. The proposed regulations would provide that when a supplemental wage determination or a prevailing wage rate for an additional classification is issued by the DOL after construction, alteration, or repair of the facility has begun, the applicable prevailing rates would apply retroactively to the date that the applicable construction, alteration, or repair work that is the subject of the request began. The taxpayer would be required to ensure that wages (including bona fide fringe benefits where appropriate) are paid at appropriate prevailing wage rates to all laborers and mechanics performing work on the project from the first day on which work is performed in the classification. The Treasury Department and the IRS request comments on the proposed procedures for requesting supplemental wage determinations and prevailing wage rates for additional classifications.

C. Paying Wages in Accordance With an Applicable Wage Determination

1. In General

Under the proposed regulations, the applicable wage determination for a type of construction in a geographic area would provide the prevailing wage rates that apply to laborers or mechanics for the construction, alteration, or repair of a facility in that geographic area. The proposed regulations would provide that for purposes of satisfying the Prevailing Wage Requirements, all laborers and mechanics would need to be paid in the time and manner consistent with the regular payroll practices of the taxpayer, contractor, or subcontractor, as applicable. For

purposes of satisfying section 45(b)(7)(A), the proposed regulations would provide that a taxpayer would need to ensure that the wages paid to laborers and mechanics employed by the taxpayer, contractor, or subcontractor on the construction, alteration, or repair of the facility must be “not less than the prevailing rates . . . in the locality in which such facility is located.” The proposed regulations would define the terms: (i) laborer and mechanic, (ii) types of construction, (iii) construction, alteration, or repair, and (iv) locality, generally consistent with the DBA definitions.

The proposed regulations would define the terms “laborer” and “mechanic” as those individuals whose duties are manual or physical in nature. Laborers and mechanics would include apprentices and helpers. Working forepersons who devote more than 20 percent of their time during a workweek to laborer or mechanic duties and who do not meet the criteria for exemption under 29 CFR part 541 would also be considered laborers and mechanics for the time spent conducting laborer and mechanic duties. However, laborers and mechanics would not include individuals whose duties are primarily administrative, executive, or clerical, and persons employed in a bona fide executive, administrative, or professional capacity as those terms are defined in 29 CFR part 541. The Treasury Department and the IRS request comments on the treatment of working forepersons or owners performing the duties of laborers and mechanics under certain circumstances, and other executive or administrative personnel who also perform duties of a manual or physical nature, in the construction, alteration, or repair of a qualified facility.

The proposed regulations would provide that the type of construction would be the general category of construction as established by the DOL for the publication of general wage determinations. Specific types of construction currently include building, residential, heavy, and highway. The Treasury Department and the IRS contemplate that the construction, alteration, or repair of most facilities eligible for the increased credit under section 45(b)(6) would be either building or heavy construction.

The proposed regulations would provide that the term construction, alteration, or repair would generally mean construction, prosecution, completion, or repair as provided under 29 CFR 5.2. Under this definition, construction, alteration, or repair would

mean all types of work performed at the location of the facility and includes, but is not limited to: constructing, altering, remodeling, installing of items fabricated offsite; painting and decorating; and manufacturing or furnishing of materials, articles, and supplies or equipment at the location of the facility. Additionally, the proposed regulations would provide that construction, alteration, or repair would not include maintenance work that occurs after the facility is placed in service. Under the proposed regulations, maintenance would be work that is ordinary and regular in nature and designed to maintain existing functionality of a facility as opposed to an isolated or infrequent repair of a facility to restore specific functionality or adapt it for a different or improved use. Further, the proposed regulations would provide that this definition of construction, alteration, or repair would be solely for purposes of the PWA requirements and has no bearing on any other provision under the Code, including any determination of construction, alteration, repair, or maintenance under section 162 or 263.

The proposed regulations would provide that a locality or geographic area would be the county, independent city, or other civil subdivision of the State in which the facility or secondary site is located. Geographic area would also include offshore areas, including areas located within the outer continental shelf of the United States, and the U.S. territories. If construction, alteration, or repair is performed in multiple counties, independent cities, or other civil subdivisions, then the geographic area would also include all counties, independent cities, or other civil subdivisions in which the work will be performed.

Under section 45(b)(7)(A)(ii), the prevailing wage rates that are required to be paid with respect to such construction, alteration, or repair are determined by reference to “the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located.” The proposed regulations would also use the DBA’s “site of the work” definition to clarify the scope of the requirement under section 45(b)(7)(A) to pay prevailing wage rates. Under the DBA, the requirement to pay prevailing wages is limited by statute to laborers and mechanics “employed directly on the site of the work.” 40 U.S.C. 3142. By comparison, section 45(b)(7)(A)(i) and (ii) requires the payment of prevailing wages generally in the “construction of [a qualified] facility” and the “alteration

or repair of such facility.” Over the years, the DOL has updated its rules to address developments in the construction industry that have enabled contractors to build large portions of a building or project on one or more secondary sites away from the primary site of the work. The DBA rules now provide that a secondary construction site is considered part of the site of the work, if a significant portion of a building or work is constructed at the secondary site for specific use in the designated building or work and the site either was established specifically for the performance of the covered contract or project or dedicated exclusively, or nearly so, to the covered contract or project. 29 CFR 5.2.

The Treasury Department and the IRS view the DBA’s site of the work requirement to be helpful for purposes of interpreting the language in section 45(b)(7)(A) that the applicable prevailing wage rates for the construction, alteration, or repair of the facility are rates not less than those prevailing “in the locality in which such facility is located.” As with certain construction subject to the DBA, the Treasury Department and the IRS expect that taxpayers similarly may use multiple construction sites in the construction, alteration, or repair of a facility and in certain cases prefabricate large portions of the facility offsite for later installation at the facility’s location. Some of these secondary sites will be dedicated solely to the construction of a facility while others may service multiple clients and facilities. While the language of section 45(b)(7)(A) could be interpreted to support an expansive reading of construction such that all construction of a facility, wherever located and however small, is subject to the Prevailing Wage Requirements, such a reading would result in significantly broader coverage than under the DBA and likely would entail substantial compliance costs and discourage taxpayers from seeking the increased credits or deduction available under the IRA. Thus, the Treasury Department and the IRS understand the DBA approach to “site of the work” to strike an appropriate balance between the requirements of section 45(b)(7)(A) and existing construction practices and thus propose to largely adopt the DBA approach for purposes of defining the scope of the Prevailing Wage Requirements.

Therefore, under the proposed regulations, taxpayers would be subject to the requirement to ensure that laborers and mechanics are paid not less than prevailing wage rates with respect

to the construction, alteration, or repair at the locality in which the facility is located, which would be defined to include any secondary sites where a significant portion of the construction, alteration, or repair of the facility occurs, provided that the secondary site either was established specifically for, or dedicated exclusively for a specific period of time to, the construction, alteration, or repair of the facility.

Under 29 CFR 1.6(b)(1), the prevailing wage rate that applies to laborers or mechanics engaged in the construction, alteration, or repair work at a secondary site is determined by the geographic area of the secondary site. The proposed regulations would similarly provide that when a secondary site is established specifically for, or dedicated exclusively for a specific period of time to, the construction, alteration, or repair of the facility, the prevailing wage rate applicable to laborers and mechanics engaged in the construction, alteration, or repair of the facility at the secondary site would be determined by the applicable wage rate for that laborer or mechanic classification based on the geographic area of the secondary site.

2. Wages for Apprentices

Section 45(b)(8)(E)(ii) provides generally that a qualified apprentice is an individual who is employed by the taxpayer, contractor, or subcontractor and who is participating in a registered apprenticeship program, as defined in section 3131(e)(3)(B). For purposes of the DBA, an apprentice may also include an individual in the first 90 days of probationary employment as an apprentice in a registered apprenticeship program, who is not individually registered in the program, but who has been certified by the DOL’s Office of Apprenticeship or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

A registered apprenticeship program is a program that has been registered by the DOL’s Office of Apprenticeship or a recognized State apprenticeship agency, pursuant to the basic standards and requirements in 29 CFR parts 29 and 30. Program registration is evidenced by a Certificate of Registration or other written indicia of registration.

The proposed regulations would adopt 29 CFR 5.5(a)(4)(i) allowing the payment of wages that differ from the applicable prevailing wage rate to apprentices who are participating in a registered apprenticeship program. The proposed regulations would also provide that the calculation of the

apprentice wage rate would be in accordance with 29 CFR 5.5(a)(4)(i).

For purposes of determining whether apprentices may be paid the apprentice wage rate rather than the full prevailing wage for other laborers and mechanics of the same classification, the proposed regulations would provide the apprentice must be participating in a registered apprentice program as demonstrated by a written apprenticeship agreement with the registered apprenticeship program containing the terms and conditions of the employment and training of the apprentice. The terms and conditions of the agreement would be required to comply with 29 CFR 29.7. The registered apprenticeship program would be required to be registered with the DOL or a recognized State apprenticeship agency in accordance with 29 CFR parts 29 and 30. If the apprentice is working in a classification that is not in an occupation that is part of the registered apprenticeship program, to satisfy the Prevailing Wage Requirements, the apprentice would need to be paid the full prevailing wage for laborers or mechanics for that classification in that location.

The proposed regulations would provide that taxpayers and contractors or subcontractors who employ apprentices who are not in a registered apprenticeship program or who employ apprentices in excess of applicable ratios permitted by the registered apprenticeship program would need to pay those apprentices the full prevailing wage rate listed for the classification of the work performed in the applicable wage determination.

D. Correction and Penalty Provisions

1. General Rule

Under section 45(b)(7)(B)(i) and the proposed regulations, taxpayers would cure a failure to meet the Prevailing Wage Requirements by making the correction and penalty payments described in Section III.B.3. Section 45(b)(7)(B)(i) provides that “[i]n the case of any taxpayer which fails to satisfy the requirement under subparagraph (A) . . . such taxpayer shall be deemed to have satisfied such requirement under such subparagraph with respect to such facility for any year if, with respect to any laborer or mechanic who was paid wages at a rate below the [prevailing rate] for any period during such year,” the taxpayer makes the applicable correction payments and pays the penalty. The phrase “[i]n the case of any taxpayer which fails to satisfy the requirement under subparagraph (A) . . . for any period” suggests that a

failure to pay prevailing wages immediately triggers the applicability of the correction and penalty provisions if the increased credit is claimed on a return after a facility is placed in service. The proposed regulations would require the payment of prevailing wages at the time work is performed with respect to the construction, alteration, or repair of a facility in order to claim the increased credit. The proposed regulations would also provide that the requirement becomes binding only when the increased credit is claimed on a return. This is consistent with tax administration regarding the underlying credit.

Thus, the correction and penalty payment requirements of section 45(b)(7)(B)(i) would become applicable to a taxpayer upon the occurrence of the taxpayer’s failure to satisfy the Prevailing Wage Requirements of section 45(b)(7)(A), which occurs whenever wages are paid to a laborer or mechanic below the prevailing wage rates. That failures will occur, and the obligation to make correction and penalty payments will have arisen, during the course of the construction, alteration, or repair of a qualified facility must be viewed in the context of taxpayers not needing to satisfy the Prevailing Wage Requirements in the absence of an increased credit being claimed on a return. Thus, the proposed regulations would provide that the obligation to make correction payments and pay the penalty would not become binding until a return is filed claiming the increased credit, and the proposed regulations would not require payment of the correction payment or the penalty until the time the increased credit is claimed. The earliest time that a taxpayer can make a penalty payment to the IRS is at the time of filing a tax return claiming the increased credit. However, taxpayers would retain the option of making correction payments to laborers and mechanics at any time after the initial payments were made and in advance of the filing of a tax return claiming the increased credit in order to limit the amount of additional interest the taxpayer must pay at the elevated rates set forth in section 45(b)(7)(B)(i)(I)(bb).

In general, taxpayers would be obligated to make any necessary correction payments to any laborer and mechanic on or before the date a return is filed claiming an increased credit amount. A taxpayer would also be obligated to make any penalty payments owed with respect to a failure to meet the Prevailing Wage Requirements at the time a return is filed claiming the increased credit amount. Under the

proposed regulations, whether taxpayers make the necessary correction payments and pay the penalty amounts promptly is one of the facts and circumstances that would be considered for purposes of the increased penalties for intentional disregard. The proposed regulations would also provide a deadline for a taxpayer’s ability to use the correction and penalty provisions to rectify a failure to comply with the Prevailing Wage Requirements when the IRS makes a final determination that a taxpayer has failed to satisfy the Prevailing Wage Requirements. Under section 45(b)(7)(B)(iv), once the IRS makes a final determination that a taxpayer has failed to satisfy the Prevailing Wage Requirements, the taxpayer must make the correction and penalty payments within 180 days after the final determination to be eligible to for the increased credit. The proposed regulations would clarify that this final determination would come in the form of a notice sent by the IRS.

As provided in section 45(b)(7)(B)(ii), under the proposed regulations, deficiency procedures would not apply to any penalty payment required to be made in connection with a failure to meet the Prevailing Wage Requirements. The proposed regulations would clarify that although deficiency procedures would not apply to the penalty payment, deficiency procedures would apply to any determination by the IRS disallowing a taxpayer’s claim for the increased credit.

2. Special Circumstances Involving Correction and Penalty Payments

Section 45(b)(7)(B)(i) states that a taxpayer will be deemed to satisfy the prevailing wage requirement “if, with respect to any laborer or mechanic who was paid wages at a rate below the rate described in such subparagraph for any period during such year, such taxpayer—makes payment to such laborer or mechanic . . .” in the amount of the correction payment and makes the required penalty payment to the IRS. The Treasury Department and the IRS are aware that the construction of a qualified facility may occur over the course of several years and some taxpayers who fail to meet the Prevailing Wage Requirements may be unable to locate all laborers and mechanics to which the correction payment must be made. However, section 45(b)(7)(B)(i) does not excuse taxpayers from the requirement to make the correction payment, even if the taxpayer is unable to locate the laborer or mechanic. The proposed regulations would not provide for an exception to the statutory requirement.

The Treasury Department and the IRS expect that taxpayers will be able to establish correction payments even when a former laborer or mechanic cannot be located. In general, States have developed specific rules for the payment of wages to former laborers and mechanics who cannot be located. These rules can include diligence requirements to locate the laborer or mechanic, information reporting obligations to relevant State agencies on the amount of unclaimed wages, and requirements to remit any unclaimed wage amounts to State control as unclaimed property after defined holding periods. Taxpayers may also be able to establish correction payments were made by demonstrating compliance with any withholding and information reporting requirements with respect to the payments. The Treasury Department and the IRS request public comments concerning appropriate rules for situations in which laborers and mechanics who are owed wages cannot be located and how taxpayers may establish that they have made the correction payment described in section 45(b)(7)(B)(i)(I).

The Treasury Department and the IRS expect that some taxpayers will have made requests to the DOL for a supplemental wage determination or a prevailing wage rate for an additional classification. It is possible that the DOL's response to these requests will not be issued until after laborers and mechanics have started working on the facility. The laborers and mechanics who are the subject of the requests will have already been engaged in the construction, alteration, or repair, and may have already been paid wages below the rates later determined to be prevailing by the DOL. In this circumstance, the proposed regulations would provide that the taxpayer would not be considered to have failed to meet the Prevailing Wage Requirements with respect to any mechanics or laborers whose wage rate was subject to the request and who were paid below the prevailing wage rate before the determination by the DOL if the taxpayer requests the supplemental wage determination or prevailing wage rate for an additional classification before the beginning of construction (or as soon as practicable after the start of construction) and makes a correction payment within 30 days of the determination to each laborer or mechanic equal to the difference between the amount of wages paid to such laborer or mechanic before the determination and the amount of wages required by the Prevailing Wage

Requirements to be paid to such laborer or mechanic during such period. This exception is intended to mitigate a rule that would require taxpayers to make correction and penalty payments for failures to pay a prevailing wage rate that could not be timely determined by the taxpayer.

As previously described, for purposes of transfers pursuant to section 6418, the proposed regulations would clarify that the requirement to make correction and penalty payments would continue to apply to an eligible taxpayer who (i) transfers an increased credit amount under section 45(b)(6) as part of a specified credit portion and (ii) fails to meet the prevailing wage requirement of section 45(b)(7)(A) with respect to such increased credit amount. Additionally, the proposed regulations would provide that the obligation to satisfy the Prevailing Wage Requirements would not become binding on an eligible taxpayer until the earlier of: (i) the filing of the eligible taxpayer's return for the taxable year for which the specified credit portion is determined with respect to the eligible taxpayer, or (ii) the filing of the return of the transferee taxpayer for the year in which the specified credit portion is taken into account.

The proposed regulations would also provide that a taxpayer who determines the underlying credit amount would have no obligation to comply with the correction and penalty provisions if the IRS later determines that the taxpayer was not entitled to the increased credit amount. Additionally, if the taxpayer does not correct and, therefore, is not subsequently granted the increased credit amount, no penalty is assessed under section 45(b)(7)(B).

3. Intentional Disregard

Section 45(b)(7)(B)(iii) provides that if the failure to ensure that the laborers and mechanics are paid at the prevailing wage rate is found to be due to intentional disregard, then the amount of the correction payment is tripled and the amount of the penalty payment is doubled. The proposed regulations would provide that failures to meet the Prevailing Wage Requirements would be due to intentional disregard if they are knowing or willful, which is a determination that must be made by considering all relevant facts and circumstances. The proposed regulations would provide a non-exhaustive list of facts that may be relevant to this determination.

The proposed regulations would explain that the facts and circumstances would include consideration of whether the failure was part of a pattern of

conduct and whether the taxpayer has been required to pay the penalty in previous years. The Treasury Department and the IRS believe that failures that occur despite a taxpayer exercising reasonable diligence weigh against a finding of a knowing or willful failure. Under the proposed regulations, taxpayers would demonstrate reasonable diligence by taking appropriate steps to determine the applicable classifications and wage rates and by seeking to promptly correct any failures when discovered. Last, the proposed regulations would seek to draw from behavior that is generally required of contractors under the DBA and that the Treasury Department and the IRS believe would be best practices of taxpayers seeking to comply with the Prevailing Wage Requirements. These behaviors would include posting prevailing wage rates in a prominent place for the duration of the construction, alteration, or repair or otherwise notifying employees of the applicable prevailing wage rates; incorporating provisions in any contracts entered with contractors that require payment of prevailing wage rates by the contractors and any subcontractors; and undertaking quarterly, or more frequent, reviews of wages paid to laborers and mechanics to ensure that prevailing wages are being paid. The Treasury Department and the IRS request comments on additional criteria that might be used as part of a facts and circumstances analysis of intentional disregard in this context.

The proposed regulations would also provide that there would be a rebuttable presumption against a finding of intentional disregard if the taxpayer makes the correction and penalty payments before receiving a notice of an examination with respect to a return that claimed the underlying increased credit. The presumption of no intentional disregard would be intended to encourage taxpayers who discover a failure to meet the Prevailing Wage Requirements after filing a return to use the correction and penalty provisions promptly.

The Treasury Department and the IRS request comments on intentional disregard, including but not limited to additional criteria that might be used as part of a facts and circumstances analysis of intentional disregard and the applicability of a presumption against a finding of intentional disregard in certain situations.

4. Penalty Waiver

In general, the IRS may exercise its discretion to waive or decline to assert penalties in the interest of sound tax

administration. The proposed regulations would use that discretion to provide limited penalty waivers for instances in which the failures to pay prevailing wages to laborers and mechanics for the construction, alteration, or repair of a facility were small in amount or occurred in a limited number of pay periods. The Treasury Department and the IRS would use the waiver authority in a manner that assists taxpayers seeking to be eligible for the increased credit while remaining consistent with the statutory requirement to ensure that laborers and mechanics are paid at prevailing wage rates.

The Treasury Department and the IRS understand that taxpayers intending to pay prevailing wage rates may make payroll errors. These errors are likely to range in scope and frequency. It is also possible that taxpayers may make classification errors with respect to work that is performed by certain laborers or mechanics. The proposed regulations would seek to account for these likelihoods while continuing to ensure that laborers and mechanics are paid according to the applicable prevailing wage rates.

The proposed regulations would provide that the penalty payment requirement would be waived with respect to the construction, alteration, or repair performed by a laborer or mechanic during a calendar year if (i) the taxpayer makes the required correction payment (back wages and interest) by the earlier of (a) 30 days after the taxpayer became aware of the error or (b) the date on which the tax return claiming the increased credit is filed; and (ii) either: (a) the laborer or mechanic is paid below the prevailing wage rate for not more than 10 percent of all pay periods of the calendar year (or part thereof) during which the laborer or mechanic worked on the construction, alteration, or repair of the facility; or (b) the difference between the amount the laborer or mechanic was paid for the calendar year (or part thereof) during which the laborer or mechanic worked on the construction, alteration, or repair of the facility and the amount required to be paid by the Prevailing Wage Requirements for the calendar year is not greater than 2.5 percent of the amount required under the Prevailing Wage Requirements. The proposed regulations would use calendar years to measure any failures because taxpayers, contractors, and subcontractors performing construction may have different taxable years and laborers and mechanics are generally paid on a calendar year basis. The Treasury Department and the IRS

request comments on the proposed use of calendar years in place of taxable years for this purpose.

Pre-hire project labor agreements may be used to incentivize stronger labor standards and worker protections in the types of construction projects for which taxpayers may seek the increased credit, and having a project labor agreement in place may also help ensure compliance with PWA requirements. For these reasons, the proposed regulations would also provide that the penalty payment requirement would not apply with respect to a laborer or mechanic employed under a project labor agreement that meets certain requirements and any correction payment owed to the laborer or mechanic is paid on or before a return is filed claiming an increased credit amount. The Treasury Department and the IRS request comments on the proposed treatment of project labor agreements, other ways taxpayers might use project labor agreements to meet the PWA requirements, and the definition of a qualifying project labor agreement.

The proposed regulations would use the IRS's general enforcement discretion to allow taxpayers to correct limited failures to pay prevailing wages if the taxpayers pay the mechanics and laborers back wages and interest in a timely manner before the increased credit is claimed. The proposed regulations would not provide for waiver of the penalty after a return has been filed claiming the increased credit. The proposed regulations would seek to create incentives for taxpayers to self-correct and promptly pay prevailing wages.

III. Apprenticeship Requirements

A. In General

To satisfy the requirements of section 45(b)(8), taxpayers must ensure that, with respect to the construction of any qualified facility, the Labor Hours Requirement, Ratio Requirement, and Participation Requirement are satisfied. The proposed regulations would clarify the interaction among these requirements. The proposed regulations would explain that the Labor Hours Requirement generally would be subject to the Ratio Requirement. The proposed regulations would further explain that the Participation Requirement would apply in addition to the Labor Hour Requirement and the Ratio Requirement. Therefore, in order to meet the requirements of section 45(b)(8), a taxpayer generally would be subject to all three components of the Apprenticeship Requirements. If a taxpayer satisfies the applicable Labor

Hours Requirement but fails the Participation Requirement, then the taxpayer would not be eligible for the increased credit unless the taxpayer complies with the penalty provisions of section 45(b)(8)(D) with respect to the total hours that are not met with respect to the Participation Requirement or meets the Good Faith Effort Exception.

1. Labor Hours Requirement

The proposed regulations would reiterate that under the Labor Hours Requirement, the taxpayer must ensure that the "applicable percentage" of the total labor hours are performed by qualified apprentices.

The Treasury Department and the IRS understand that certain jurisdictions and trades have developed pre-apprenticeship programs that are designed to help individuals prepare for and succeed in registered apprenticeship programs but that are not registered with the DOL under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat. 664, chapter 663; 29 U.S.C. 50 *et seq.*). Section 45(b)(8)(E)(ii) defines a qualified apprentice as an individual who is employed by the taxpayer or by any contractor or subcontractor and who is participating in a registered apprenticeship program, which is defined in section 3131(e)(3)(B) as apprenticeship programs that are registered under the National Apprenticeship Act. Thus, under the proposed regulations, pre-apprenticeship programs would not qualify as registered apprenticeship programs for purposes of section 45(b)(8) and hours worked as part of a pre-apprenticeship program would not count towards the Labor Hour Requirement.

2. Ratio Requirement

Under the Ratio Requirement, a taxpayer must ensure that any applicable apprenticeship-to-journeyworker ratio is satisfied. Section 45(b)(8)(B) provides that the applicable apprenticeship-to-journeyworker ratio is determined by reference to the ratios of the DOL or the applicable State apprenticeship agency. Under 29 CFR part 29, registered apprenticeship programs prescribe a numeric ratio of apprentices to journeyworkers in their standards of apprenticeship. This ratio is intended to ensure that there are enough journeyworkers to oversee the work of apprentices. The Treasury Department and the IRS understand that the DOL and State apprenticeship agencies review and approve the prescribed ratio requirements.

As stated in Notice 2022–61, the applicable ratios set by registered apprenticeship programs generally apply on a daily basis. The proposed regulations reiterate this requirement and would provide that the applicable ratio established by the apprenticeship program would need to be satisfied each day during construction, alteration, or repair of the qualified facility for which apprentice labor hours are being claimed. This means that the number of apprentices would not be permitted to exceed the number set forth in the ratio because the ratio sets the minimum number of journeyworkers needed for each apprentice, to ensure adequate safety and supervision. For example, for a 1:1 apprentice to journeyworker ratio, having two apprentices and three journeyworkers on a given day would satisfy the ratio requirement whereas having three apprentices and two journeyworkers on a given day would not.

The proposed regulations would provide that if the Ratio Requirement is not met on any day, then registered apprentices in excess of the applicable ratio who perform work on a facility would be required to be paid the full prevailing wage rate for the hours worked for purposes of the Prevailing Wage Requirement. Additionally, the hours worked by the apprentices on a day where the applicable ratio was not satisfied would not be counted as apprentice hours for purposes of calculating the applicable percentage under the Labor Hours Requirement.

For purposes of the Ratio Requirement, the proposed regulations would adopt the DOL definition of journeyworker in 29 CFR 29.2, which defines a journeyworker as a laborer or mechanic who has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation. A mentor, technician, specialist, or other skilled individual who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training may also be a journeyworker. The Treasury Department and the IRS request comments on the application of the Ratio Requirement for purposes of satisfying the Apprenticeship Requirement.

3. Participation Requirement

The Treasury Department and the IRS propose to interpret the Participation Requirement as designed to prevent taxpayers from satisfying the Labor Hours Requirement by only hiring

apprentices to perform one type of work and instead encourages taxpayers to use apprentices across the full range of work performed with respect to the facility. The proposed regulations would clarify that the Participation Requirement would be satisfied as long as the taxpayer, contractor, or subcontractor employs one or more apprentices to perform work on the facility and would not be a daily requirement. The proposed regulations would also clarify that it would be the responsibility of the taxpayer to ensure that any contractor or subcontractor performing work on the facility with four or more employees who perform such work on the facility has hired one or more apprentices in accordance with the Participation Requirement of section 45(b)(8)(C). Taxpayers who fail to meet the Participation Requirement would be subject to the penalty provisions of section 45(b)(8)(D) even if the taxpayer otherwise satisfies the applicable Labor Hours Requirement unless the Good Faith Effort Exception applies.

B. Exceptions

1. In General

Section 45(b)(8)(D) and the proposed regulations would allow taxpayers who fail to meet the Apprenticeship Requirements to nonetheless qualify for the increased credit by curing their failures. To cure a failure to meet the Apprenticeship Requirements, taxpayers would be required to satisfy the Good Faith Effort Exception from the Apprenticeship Requirements or pay a penalty if they do not qualify for the Good Faith Effort Exception.

2. Good Faith Effort Exception

Section 45(b)(8)(D)(ii) provides that taxpayers are deemed to satisfy the Apprenticeship Requirements if they have requested qualified apprentices from a registered apprenticeship program and such request has been denied for reasons other than the taxpayer, contractor, or subcontractor's refusal to comply with the program's standards and requirements or if the program fails to respond within five business days of receiving a request. Notice 2022–61 provided that taxpayers could satisfy the Good Faith Effort Exception if the taxpayer requested qualified apprentices "in accordance with usual and customary business practices for registered apprenticeship programs in a particular industry."

The Treasury Department and the IRS believe that additional guidance explaining the "usual and customary" standard would be useful. The proposed regulations would require the taxpayer,

contractor, or subcontractor to make a written request to at least one registered apprenticeship program that has a geographic area of operation that includes the location of the facility, or that can reasonably be expected to provide apprentices to the location of the facility, trains apprentices in the occupation(s) needed by the taxpayer, contractors, or subcontractors performing construction, alteration, or repair with respect to the facility, and has a usual and customary business practice of entering into agreements with employers for the placement of apprentices in the occupation for which they are training, pursuant to its standards and requirements.

The Treasury Department and the IRS anticipate that a taxpayer may need to submit a request to more than one apprenticeship program in order to meet the Good Faith Effort Exception based on the size of the project, the number of contractors or subcontractors and the anticipated number of labor hours for which apprentices are needed. Although it may be possible for a taxpayer to meet all of its Labor Hours Requirement from one apprenticeship program, it is likely that given the multiple occupations involved in the construction, alteration, or repair of a qualified facility, the taxpayer would need to request apprentices from more than one apprenticeship program in order to satisfy the Labor Hours Requirement and the Participation Requirement with respect to that facility. This is in part because a registered apprenticeship program typically trains apprentices in a single occupation, whereas more than one occupation may be needed to meet the Labor Hours Requirement and the Participation Requirement. A taxpayer, contractor, or subcontractor would be expected to estimate the number of apprentices needed and the occupations for which they are needed and to submit its request for apprentices accordingly.

The proposed regulations would require the written request to include information concerning the dates of employment, the occupation or classification needed, the location and type of work to be performed, the number of apprentices needed, the number of hours the apprentices will work, and the name and contact information of the person requesting the apprentices. The written request would also be required to include a statement that the request for apprentices is made with an intent to employ apprentices in the occupation for which they are being trained and in accordance with the requirements and standards of the registered apprenticeship program. The Good Faith Effort Exception's

requirement to request qualified apprentices from a registered apprenticeship program would necessitate that the taxpayer ascertain its workforce needs to determine how many qualified apprentices it needs to employ in order to meet the Apprenticeship Requirements, identify registered apprenticeship programs in the occupations needed by the taxpayer and its contractors and subcontractors, and demonstrate capacity to employ apprentices in the occupations for which apprentices are requested.

A denial of a request by a taxpayer, contractor, or subcontractor for a qualified apprentice would not automatically qualify the taxpayer for the Good Faith Effort Exception. The proposed regulations would require the taxpayer, contractor, or subcontractor to submit an additional request within 120 days of a previously denied request. The proposed regulations would also clarify that a denial of a request means that the registered apprenticeship program denied the request in its entirety. A registered apprenticeship program's response that it could partially fulfill the request in the occupation(s) for which it trains apprentices would not constitute a denial of the request with respect to the parts of the request that could be fulfilled.

Under the proposed regulations, the Good Faith Effort Exception would be specific to the request for apprentices made by the taxpayer, contractor, or subcontractor, including the number of apprentice hours for which the request for apprentices has been made to a registered apprenticeship program. Thus, the Good Faith Effort Exception would apply to the specific portion of the request for apprentices that was denied or not responded to and would be subject to the requirement to submit an additional request after 120 days. The Treasury Department and the IRS request comments on this proposed approach.

Consistent with section 45(b)(8)(D)(ii)(I), the proposed regulations would require that the request cannot have been denied because of a refusal of the taxpayer or any contractor or subcontractor to comply with the requirements and standards of the apprenticeship program. For example, if a registered apprenticeship program requires a requesting employer to enter into an agreement with the registered apprenticeship program, then a denial of the request because the employer refused to enter into the agreement would not be a valid denial for purposes of the Good Faith Effort Exception. Section 45(b)(8)(D)(ii) provides that

taxpayers may also be deemed to satisfy the Good Faith Effort Exception if a registered apprenticeship program fails to respond to a request for a qualified apprentice. The proposed regulations explain that an acknowledgement of receipt by a registered apprenticeship program would constitute a response for purposes of section 45(b)(8)(D)(ii)(II), and a taxpayer would be unable to rely upon the Good Faith Effort Exception in such circumstances.

The Treasury Department and the IRS understand that apprenticeship programs are not uniform across industries and localities, including the manner and processes by which apprentices may be requested and supplied for purposes of satisfying the Apprenticeship Requirements. The Treasury Department and the IRS also understand that in many cases employers are sponsors of registered apprenticeship programs and directly employ apprentices. In those instances, a taxpayer, contractor, or subcontractor would likely obtain apprentices to meet the labor hours and participation requirements through their own registered apprenticeship programs rather than requesting apprentices from other registered apprenticeship programs.

In addition, the Treasury Department and the IRS are aware that the DOL's Office of Apprenticeship, as well as State apprenticeship agencies, routinely provide technical expertise on registered apprenticeship program matters, including identifying registered apprenticeship programs, and assisting employers seeking to register their own programs.¹⁰ The Treasury Department and the IRS request comments on whether and how the proposed Good Faith Effort Exception might take into account a situation where a taxpayer contacts the DOL's Office of Apprenticeship or the appropriate State apprenticeship agency regarding their apprenticeship request, in addition to contacting a specific registered apprenticeship program or programs. The Treasury Department and the IRS also request comments on how the proposed Good Faith Effort Exception will align with current practices with respect to utilization of apprentices in the construction, alteration, or repair of facilities. In particular, the Treasury Department and the IRS request comments on the role of collective bargaining agreements, project labor agreements, and other agreements to

satisfy the request for apprentices under the Good Faith Effort Exception.

3. Opportunity To Cure

If a taxpayer does not qualify for the Good Faith Effort Exception under section 45(b)(8)(D)(ii), section 45(b)(8)(D)(i)(II) provides that the taxpayer is not treated as failing to satisfy the requirements of section 45(b)(8)(A) and (C) if the taxpayer pays a penalty to the Secretary. The proposed regulations explain that, with respect to failures to satisfy the Labor Hours Requirement or the Participation Requirement, the amount of the penalty would be equal to \$50 multiplied by the total labor hours for which the taxpayer failed to meet the Labor Hours Requirement and the Participation Requirement. The proposed regulations would provide that the total labor hours by which the taxpayer failed to meet the Labor Hours Requirement would be calculated by subtracting the total labor hours worked by all qualified apprentices consistent with the Ratio Requirement from the total labor hours that should have been worked by qualified apprentices under section 45(b)(8)(A)(ii) to satisfy the applicable percentage.

Section 45(b)(8)(C) does not specify the number of hours that apprentices must work to satisfy the Participation Requirement. The proposed regulations would address this issue by providing that the number of labor hours that an apprentice was required to work for purposes of calculating the penalty for failing to satisfy the Participation Requirement would be equal to the total number of labor hours performed for the taxpayer, contractor, or subcontractor during construction, alteration, or repair of the facility divided by the total number of individuals employed by that taxpayer, contractor, or subcontractor who performed construction, alteration, or repair work on the facility. This calculation would be specific to the taxpayer, contractor, or subcontractor who failed to meet the Participation Requirement. For example, if the taxpayer failed to meet the Participation Requirement, then the penalty would be calculated with reference to the total number of labor hours performed only by those individuals who worked directly for the taxpayer, and would not include the labor hours worked by any individuals who worked directly for a contractor or subcontractor that satisfied the Participation Requirement.

If the taxpayer failed to meet both the Labor Hours Requirement and the Participation Requirement, the penalty would equal the sum of the penalty for the failure to meet the Labor Hours

¹⁰ Information is available at <https://www.apprenticeship.gov/about-us/apprenticeship-system>.

Requirement plus the penalty for failure to meet the Participation Requirement.

If the failure to meet the Labor Hours Requirement or the Participation Requirement is determined to be the result of intentional disregard, then the amount of the penalty payment is enhanced tenfold—from \$50 to \$500 per labor hour. The proposed regulations would provide that failures to meet the Apprenticeship Requirements would be due to intentional disregard if they are knowing or willful, considering all relevant facts and circumstances. The proposed regulations would provide a non-exhaustive list of facts and circumstances that may be relevant to determining whether the failure was knowing or willful.

The proposed regulations would also provide the penalty payment requirement for failures to meet the Labor Hours Requirement or the Participation Requirement would not apply if there is in place a project labor agreement that meets certain requirements.

The proposed regulations also state that there would be a rebuttable presumption against a finding of intentional disregard if the taxpayer makes the penalty payments before receiving a notice of an examination with respect to the claim for the increased credit. The presumption of no intentional disregard is intended to incentivize taxpayers who initially fail to meet the Apprenticeship Requirements to make use of the cure provision promptly.

Consistent with the correction and penalty payments under the Prevailing Wage Requirements, the hiring of qualified apprentices is a factor in the taxpayer's eligibility for the increased credit and therefore applicable to determining the credit. Additionally, although the Apprenticeship Requirements must be satisfied contemporaneously with the construction, alteration, or repair of the qualified facility and before the filing of the taxpayer's tax return, the obligation to meet the Apprenticeship Requirements is not binding on the eligible taxpayer until the earlier of: (i) the filing of the eligible taxpayer's return for the taxable year for which the specified credit portion is determined with respect to the eligible taxpayer, or (ii) the filing of the return of the transferee taxpayer for the year in which the specified credit portion is taken into account. As a result, the proposed regulations would provide that a penalty payment that is required to retain the increased credit because of the failure of the eligible taxpayer to satisfy the Apprenticeship

Requirements would remain the responsibility of the eligible taxpayer following a transfer of a specified credit portion pursuant to section 6418.

IV. Other Code Sections Applying PWA Provisions for Increased Credit and Deduction Amounts

A. Section 30C

Section 30C provides a credit for the cost of any qualified alternative fuel vehicle refueling property placed in service during the taxable year. For properties placed in service before January 1, 2023, the credit is equal to 30 percent. For properties placed in service after December 31, 2022, the credit is equal to 30 percent (6 percent for property of a character subject to depreciation). If a taxpayer satisfies the PWA requirements or the BOC Exception, then the credit determined under section 30C(a) for any qualified alternative fuel vehicle refueling property of a character subject to an allowance for depreciation that is part of such project is multiplied by five.

To satisfy the Prevailing Wage Requirements under section 30C(g)(2)(A), a taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of any qualified alternative fuel vehicle refueling property that is part of such project are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which the project is located. Section 30C(g)(2)(B) provides that rules similar to section 45(b)(7)(B) apply for purposes of the correction and penalty related to the failure to satisfy the Prevailing Wage Requirements. Section 30C(g)(3) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The proposed regulations would provide that if a taxpayer satisfies the PWA requirements, then the credit determined under section 30C(a) for any qualified alternative fuel vehicle refueling property of a character subject to an allowance for depreciation that is part of such project would be multiplied by five.

B. Section 45L

Section 45L provides a credit for a qualified new energy efficient home (qualified home) that is constructed by an eligible contractor and acquired by a person from that eligible contractor for use as a residence during the taxable year. Under section 45L(b)(2), a qualified home is a dwelling unit located in the United States, the

construction of which is substantially completed after August 8, 2005, and that meets the energy saving requirements of section 45L(c). Under section 45L(b)(1), an eligible contractor is the person who constructed the qualified home, or in the case of a qualified home that is a manufactured home, the manufactured home producer of that home. For a qualified home acquired after December 31, 2022, and before January 1, 2033, that is part of a building eligible to participate in the Energy Star Multifamily New Construction Program and meets the energy saving requirements under section 45L(c)(1)(A), the credit is \$500 (\$2,500 if the taxpayer satisfies the Prevailing Wage Requirements). For a qualified home acquired after December 31, 2022, and before January 1, 2033, that is part of a building eligible to participate in the Energy Star Multifamily New Construction Program and meets the energy saving requirements under section 45L(c)(1)(B), the credit is \$1,000 (\$5,000 if the taxpayer satisfies the Prevailing Wage Requirements).

To satisfy the Prevailing Wage Requirements under section 45L(g)(2)(A), a taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of any qualified home described in section 45L(a)(2)(B) are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which the qualified home is located. Section 45L(g)(2)(B) provides that rules similar to section 45(b)(7)(B) apply for purposes of the correction and penalty related to the failure to satisfy the Prevailing Wage Requirements. There are no Apprenticeship Requirements with respect to section 45L.

The proposed regulations would provide that if a taxpayer satisfies the Prevailing Wage Requirements, then for a qualified home that is part of a building eligible to participate in the Energy Star Multifamily New Construction Program acquired after December 31, 2022, and before January 1, 2033, the credit would be \$2,500 if the qualified home meets the energy saving requirements under section 45L(c)(1)(A), and the credit would be \$5,000 if the qualified home meets the energy saving requirements under section 45L(c)(1)(B).

C. Section 45Q

Section 45Q provides a credit for the capture and sequestration of qualified carbon oxide. The credit is the sum of the specified dollar amount, as provided

by section 45Q(a) or (b), multiplied by the metric ton of each qualified carbon oxide specified under section 45Q(a). If a taxpayer satisfies the PWA requirements or the BOC Exception with respect to any qualified facility or any carbon capture equipment placed in service at that facility, then the credit determined under section 45Q(a) is multiplied by five. For carbon capture equipment that will be placed in service at a qualified facility the construction of which begins on or after January 29, 2023, the section 45Q(a) credit is multiplied by five only if the PWA requirements are satisfied with respect to both the qualified facility and the carbon capture equipment. For carbon capture equipment the construction of which begins on or after January 29, 2023 that will be placed in service at a qualified facility the construction of which began before January 29, 2023, the PWA requirements apply only to the carbon capture equipment.

To satisfy the Prevailing Wage Requirements under section 45Q(h)(3)(A), the attributable taxpayer described in section 45Q(f)(3)(A) and § 1.45Q–1(h)(1) must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in: (i) the construction of any qualified facility and any carbon capture equipment placed in service at that facility, and (ii) the alteration or repair of that facility or equipment (with respect to any taxable year, for any portion of such taxable year that is within the 12-year period beginning on the date the facility or equipment is originally placed in service), are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which that facility and equipment are located. Section 45Q(h)(3)(B) provides that rules similar to section 45(b)(7)(B) apply for purposes of the correction and penalty related to the failure to satisfy the Prevailing Wage Requirements. Section 45Q(h)(4) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The proposed regulations would provide rules based on the statutory rules.

D. Section 45U

Section 45U provides a credit for electricity produced by the taxpayer at a qualified nuclear power facility and sold by the taxpayer to an unrelated person during the taxable year. Generally, for taxable years beginning after December 31, 2023, the credit is equal to the amount by which the product of 0.3 cents multiplied by the

kilowatt hours of electricity produced by the taxpayer at a qualified nuclear power facility and sold by the taxpayer to an unrelated person during the taxable year, exceeds the applicable “reduction amount” for such taxable year that is determined under section 45U(b)(2). If a taxpayer satisfies the Prevailing Wage Requirements, then the credit determined under section 45U(a) for a qualified nuclear power facility is multiplied by five.

To satisfy the Prevailing Wage Requirements under section 45U(d)(2)(A), a taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the alteration or repair of any qualified nuclear power facility are paid wages at rates not less than the prevailing rates for alteration or repair of a similar character in the locality in which that facility is located. Section 45U(d)(2)(B) provides that rules similar to section 45(b)(7)(B) apply for purposes of the correction and penalty related to the failure to satisfy the Prevailing Wage Requirements. There are no Apprenticeship Requirements with respect to section 45U.

The proposed regulations would provide that if a taxpayer satisfies the Prevailing Wage Requirements, then the credit determined under section 45U(a) for any qualified nuclear power facility would be multiplied by five.

E. Section 45V

Section 45V provides a credit for the production of qualified clean hydrogen by the taxpayer during the taxable year at a qualified clean hydrogen production facility during the 10-year period beginning on the date the facility was originally placed in service. In general, for hydrogen produced after December 31, 2022, the credit is the product of the kilograms of qualified clean hydrogen produced multiplied by the applicable amount. The applicable amount is equal to the applicable percentage of \$0.60, which is determined under section 45V(b)(2). If a taxpayer satisfies either the PWA requirements, or the BOC Exception and the Prevailing Wage Requirements for alterations or repairs occurring after January 29, 2023, then the credit amount determined under section 45V(a) for any qualified clean hydrogen produced by the taxpayer during the taxable year at a qualified clean hydrogen production facility is multiplied by five. A taxpayer must satisfy the Prevailing Wage Requirements with respect to an alteration or repair that occurs after January 29, 2023, notwithstanding the

BOC Exception regarding the construction of that qualified facility.

To satisfy the Prevailing Wage Requirements under section 45V(e)(3)(A), a taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in: (i) the construction of any qualified clean hydrogen production facility, and (ii) the alteration or repair of that facility (with respect to any taxable year, for any portion of such taxable year that is within the 10-year credit period beginning on the date that the facility was originally placed in service),¹¹ are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which that facility is located. Section 45V(e)(3)(B) provides that rules similar to section 45(b)(7)(B) apply for purposes of the correction and penalty related to the failure to satisfy the Prevailing Wage Requirements. Section 45V(e)(4) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The proposed regulations would provide that if a taxpayer satisfies either the PWA requirements, or the BOC Exception and the Prevailing Wage Requirements for alterations or repairs occurring after January 29, 2023, then the credit amount determined under section 45V(a) for any qualified clean hydrogen produced by the taxpayer during the taxable year at a qualified clean hydrogen production facility would be multiplied by five.

F. Section 45Y

Section 45Y provides a credit for clean electricity produced by the taxpayer at a qualified facility and sold to an unrelated person, or in the case of a qualified facility which is equipped with a metering device which is owned and operated by an unrelated person, sold, consumed, or stored by the taxpayer during the taxable year, for facilities placed in service after December 31, 2024. Generally, the credit for any taxable year is the product of the kilowatt hours of electricity multiplied by 0.3 cents. If a taxpayer satisfies the PWA requirements, the One Megawatt

¹¹ Section 45V(e)(3)(A)(ii) requires the payment of wages at prevailing rates “with respect to any taxable year, for any portion of such taxable year which is within the period described in subsection (a)(2)”, with respect to the alteration or repair of such facility. There is no “period described in subsection (a)(2).” The Treasury Department and the IRS propose to interpret the reference to “subsection (a)(2)” as a reference to section 45V(a)(1) where the 10-year credit period is identified, and the proposed regulations would apply to the period described in section 45V(a)(1).

Exception, or the BOC Exception, the applicable amount under section 45Y(a)(2) equals 1.5 cents.

Section 45Y(g)(9) provides that rules similar to section 45(b)(7) apply for purposes of the Prevailing Wage Requirements. Section 45Y(g)(10) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The proposed regulations would provide that if a taxpayer satisfies the PWA requirements, then the applicable amount under section 45Y(a)(2) would equal 1.5 cents.

G. Section 45Z

Section 45Z provides a credit for clean transportation fuel produced by the taxpayer at a qualified facility after December 31, 2024, and sold to an unrelated person in a manner described in section 45Z(a)(4). Generally, the credit is the product of the applicable amount (determined under section 45Z(a)(2)) per gallon(s) of transportation fuel multiplied by the emission factor for the fuel (determined under section 45Z(b)). If a taxpayer satisfies the PWA requirements (modified for qualified facilities placed in service before January 1, 2025), then the applicable amount determined under section 45Z(a)(2)(B) is \$1.00, otherwise the applicable amount is 20 cents.

In general, section 45Z(f)(6)(A) provides that rules similar to section 45(b)(7) apply for purposes of the Prevailing Wage Requirements. However, section 45Z(f)(6)(B) provides a special rule for qualified facilities placed in service before January 1, 2025. Under section 45Z(f)(6)(B), the Prevailing Wage Requirements do not apply with respect to construction of that facility but do apply to the alteration or repair of that facility with respect to any taxable year beginning after December 31, 2024, for which the section 45Z credit is allowed with respect to that facility. Section 45Z(f)(7) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The proposed regulations would provide that if a taxpayer satisfies the PWA requirements, then the applicable amount determined under section 45Z(a)(2)(B) would equal \$1.00.

H. Section 48

Section 48 provides a credit for an energy property placed in service during a taxable year. For properties placed in service after December 31, 2022, the credit is generally six percent of the basis of property described in section 48(a)(2)(A)(i) and two percent of the basis of property described in section

48(a)(2)(A)(ii). If a taxpayer satisfies the PWA requirements, the One Megawatt Exception, or the BOC Exception, then the credit determined under section 48(a) for the basis of each energy property placed in service during the taxable year is multiplied by five.

To satisfy the Prevailing Wage Requirements under section 48(a)(10)(A), a taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in: (i) the construction of any energy project, and (ii) the alteration or repair of that energy project (for the five-year period beginning on the date such project is originally placed in service), are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which that energy project is located. Section 48(a)(10)(B) provides that rules similar to section 45(b)(7)(B) apply for purposes of the correction and penalty related to the failure to satisfy the Prevailing Wage Requirements. Section 48(a)(10)(C) provides a special recapture rule with respect to alterations or repairs that occur during the five-year period after the energy project is placed in service if that taxpayer does not satisfy the Prevailing Wage Requirements. In general, the section 48(a)(10)(C) recapture is determined under similar rules to those provided for in section 50. Subject to the section 48(a)(10)(C) recapture, the taxpayer is deemed at the time the qualified energy project is placed in service to satisfy the Prevailing Wage Requirements for alterations or repairs for the five-year period beginning after such project is originally placed in service. Section 48(a)(11) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The proposed regulations would provide that if a taxpayer satisfies the PWA requirements, then the credit determined under section 48 for any qualified energy project would be multiplied by five.

I. Section 48C

Section 48C provides a credit for a qualified investment in a qualifying advanced energy project for that taxable year (Section 48C Credit). The IRA added section 48C(e) to the Code, extending the Section 48C Credit to provide an additional Section 48C Credit allocation of \$10 billion. Generally, the credit amount for Section 48C Credits allocated pursuant to section 48C(e) is equal to six percent of the basis of the eligible property. If a taxpayer satisfies the PWA

requirements, then the credit amount determined under section 48C(a) is 30 percent.

To satisfy the Prevailing Wage Requirements under section 48C(e)(5)(A), a taxpayer must ensure that with respect to a qualifying advanced energy project, any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the re-equipping, expansion, or establishment of a manufacturing facility are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which the project is located. Section 48C(e)(5)(B) provides that rules similar to section 45(b)(7)(B) apply for purposes of the correction and penalty related to the failure to satisfy the Prevailing Wage Requirements. Section 48C(e)(6) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The Treasury Department and the IRS issued Notice 2023–18, 2023–10 I.R.B. 508, and Notice 2023–44, 2023–25 I.R.B. 924, to provide guidance under section 48C(e). These notices provide a process for the IRS to allocate Section 48C Credits. To prevent an overallocation of Section 48C Credits, section 5.07 of Notice 2023–18 requires a taxpayer that applies for a Section 48C Credit allocation at the 30 percent credit amount to confirm that the taxpayer intends to satisfy the PWA requirements. Section 5.07 of Notice 2023–18 additionally requires that when the taxpayer provides notification that it placed the project in service, the taxpayer must also confirm that it satisfied the PWA requirements.

The proposed regulations would provide that if a taxpayer satisfies both the PWA requirements and the PWA confirmation requirements provided in Notice 2023–18 (or any subsequent guidance), then the credit amount for Section 48C Credits allocated pursuant to section 48C(e) would be equal to 30 percent.

J. Section 48E

Section 48E provides a clean electricity investment credit for the investment in qualified facilities and energy storage technology placed in service for the taxable year after December 31, 2024. The credit is generally six percent of the qualified investment. If a taxpayer satisfies the PWA requirements, the One Megawatt Exception, or the BOC Exception, then the credit amount determined under section 48E(a) for a qualified investment is 30 percent.

Section 48E(d)(3) provides that rules similar to section 48(a)(10) apply for purposes of the Prevailing Wage Requirements. Section 48E(d)(4) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The proposed regulations would provide that if a taxpayer satisfies the PWA requirements, then the credit amount determined under section 48E(a) for a qualified investment would be equal to 30 percent.

K. Section 179D

Section 179D(a) provides a deduction for the cost of energy efficient commercial building property placed in service during the taxable year. Section 179D(f) provides an alternative deduction for energy efficient building retrofit property (alternative deduction). For taxable years beginning after December 31, 2022, section 179D(b) provides that the deduction cannot exceed the excess (if any) of the product of the applicable dollar value, and the square footage of the building, over the aggregate amount of deductions under section 179D(a) and section 179D(f) with respect to the building for the three taxable years immediately preceding the taxable year (or for any taxable year ending during the four-taxable-year period ending with such taxable year, if the deduction is allowed to a person other than the taxpayer). The alternative deduction is an amount equal to the lesser of the “excess” described in section 179D(b) (determined by substituting “energy use intensity” for “total annual energy and power costs”) or the aggregate adjusted basis (determined after taking into account all adjustments with respect to the taxable year other than the reduction under section 179D(e)) of energy efficient building retrofit property placed in service by the taxpayer pursuant to a qualified retrofit plan. The applicable dollar value is \$0.50 increased by \$0.02 (but not above \$1.00) for each percentage point by which the total annual energy and power costs (or energy use intensity, in the case of the alternative deduction) for the building are certified to be reduced by a percentage greater than 25 percent. If a taxpayer satisfies the PWA requirements or the beginning of installation exception, then the applicable dollar value of the deduction determined under section 179D(b)(2) is \$2.50 increased by \$0.10 (but not above \$5.00).

To satisfy the Prevailing Wage Requirements under section 179D(b)(4)(A), a taxpayer must ensure that any laborers and mechanics

employed by the taxpayer or any contractor or subcontractor in the installation of any property are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which the property is located. Section 179D(b)(4)(B) provides that rules similar to section 45(b)(7)(B) apply for purposes of the correction and penalty related to the failure to satisfy the Prevailing Wage Requirements. Section 179D(b)(5) provides that rules similar to section 45(b)(8) apply for purposes of the Apprenticeship Requirements.

The proposed regulations would provide that if a taxpayer satisfies the PWA requirements, then the applicable dollar value of the deduction determined under section 179D(b)(2) would be \$2.50 increased by \$0.10 (but not above \$5.00).

V. Recordkeeping Requirements

A. In General

Section 45(b)(12) authorizes the Secretary to issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of section 45(b), including regulations or other guidance that provide requirements for recordkeeping or information reporting for purposes of administering the requirements of section 45(b).

Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records as the Secretary may from time to time prescribe. Section 1.6001–1(a) provides that any person subject to income tax must keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax. Section 1.6001–1(e) provides that the books and records required by § 1.6001–1 must be retained so long as the contents thereof may become material in the administration of any Internal Revenue law.

B. Recordkeeping With Respect to Prevailing Wage Requirements

The Copeland Act requires contractors and subcontractors subject to the DBA to submit certified weekly payroll records reflective of work performed on a covered contract to the contracting agency. This requirement to comply with the DBA is statutory and inherent in the award of a contract and the submission of weekly payroll records becomes part of the terms of the awarded contract. In contrast, under

section 45(b)(7)(A), although the requirement to pay prevailing wages is triggered by the beginning of construction and continues over the entire course of a project, the requirement to pay prevailing wages becomes binding only when a tax return claiming the increased credit is filed. Thus, because the increased credit is not claimed until the time of filing a return, which will only occur after a qualified facility is placed in service, the proposed regulations would not adopt the Copeland Act requirement to report payroll records to the IRS on a weekly basis in advance of claiming an increased credit. The Treasury Department and the IRS understand that adoption of the Copeland Act reporting regime for purposes of section 45(b)(7)(A) would not assist the IRS with administering the provision.

Instead, the proposed regulations would provide that taxpayers would be required to establish compliance with the Prevailing Wage Requirements at the time a return claiming the increased credit is filed. The proposed regulations would provide that a taxpayer would be required to do so on such forms and in such manner as the Commissioner provides in IRS forms, publications, or other guidance. The Treasury Department and the IRS expect that taxpayers will be required to report at the time of filing a return the following information: (i) the location and type of qualified facility; (ii) the applicable wage determinations for the type and location of the facility; (iii) the wages paid (including any correction payments) and hours worked for each of the laborer or mechanic classifications engaged in the construction, alteration, or repair of the facility; (iv) the number of workers who received correction payments; (v) the wages paid and hours worked by qualified apprentices for each of the laborer or mechanic classifications engaged in the construction, alteration, or repair of the facility; (vi) the total labor hours for the construction, alteration, or repair of the facility by any laborer or mechanic employed by the taxpayer or any contractor or subcontractor; and (vii) the total credit claimed.

The DBA has comprehensive recordkeeping requirements that assist the DOL in its oversight of Prevailing Wage Requirements. The DBA recordkeeping regime is consistent with what the IRS would ordinarily expect taxpayers to preserve to be able to substantiate that the Prevailing Wage Requirements have been satisfied. The proposed regulations would impose recordkeeping requirements that are generally consistent with the

recordkeeping requirements under the DBA regime for purposes of the Prevailing Wage Requirements.

The proposed regulations would require taxpayers to maintain and preserve sufficient records to establish compliance with the requirement that all laborers and mechanics were paid wages at rates not less than the applicable prevailing rates. Records sufficient to establish compliance would include payroll records that reflect the hours worked in each classification and the wages paid to each laborer and mechanic performing construction, alteration, or repair work on the facility (including any correction payments made to each laborer and mechanic). The Treasury Department and the IRS expect that most taxpayers will use contractors and subcontractors in the construction, alteration, or repair of facilities and that construction may occur for several years before a facility is placed in service. The proposed regulations would provide that it would be the responsibility of the taxpayer to maintain payroll records that reflect the wages paid to laborers and mechanics engaged in the construction, alteration, or repair of the qualified facility, regardless of whether the laborers and mechanics are employed by the taxpayer, a contractor, or a subcontractor. The proposed regulations would also impose recordkeeping requirements related to correction and penalty payments.

The proposed regulations include a non-exhaustive list of facts and circumstances that would be relevant to the IRS in determining whether a failure to meet the Prevailing Wage Requirements was due to intentional disregard. To demonstrate that a failure was not due to intentional disregard, taxpayers would need to maintain and preserve records sufficient to document the failure and the actions they took to prevent, mitigate, or remedy the failure (for example, records demonstrating that the taxpayer regularly reviewed payroll practices, included requirements to pay prevailing wages in contracts with contractors, and posted prevailing wage rates in a prominent place on the job site).

The proposed regulations would also waive penalties for certain limited failures. To the extent taxpayers intend to rely on these penalty waiver provisions, they would need to maintain records sufficient to demonstrate when a failure occurred and proof that the taxpayer made the required correction payment.

C. Recordkeeping With Respect to Apprenticeship Requirements

The proposed regulations would require taxpayers subject to the Apprenticeship Requirements to maintain sufficient records to establish compliance with the Labor Hours Requirement, Ratio Requirement, and Participation Requirement. Records sufficient to establish compliance with the Apprenticeship Requirements include copies of any written requests for apprentices by the taxpayer, contractor, or subcontractor, any agreement entered by the taxpayer, contractor, or subcontractor with a registered apprenticeship program, documents reflecting any registered apprenticeship program sponsored by the taxpayer, contractor, or subcontractor, documents verifying participation in a registered apprenticeship program by each apprentice, records reflecting the required ratio of apprentices to journeyworkers prescribed by each registered apprenticeship program from which qualified apprentices are employed, records reflecting the daily ratio of apprentices to journeyworkers, and the payroll records for any work performed by apprentices. The proposed regulations provide that it would be the responsibility of the taxpayer to maintain the relevant records for each apprentice engaged in the construction, alteration, or repair on the qualified facility, regardless of whether the apprentice is employed by the taxpayer, a contractor, or a subcontractor.

D. Recordkeeping for Credits Transferred Under Section 6418

Because an eligible taxpayer determines any increased credit amount applicable to the prevailing wage and apprenticeship requirements, the general recordkeeping requirements under these proposed regulations would remain with an eligible taxpayer who transfers a specified credit portion that includes an increased credit amount. The increased credit amount that is determined by an eligible taxpayer would be reported on the applicable forms on the return of the eligible taxpayer. The minimum required documentation to be provided to the transferee taxpayer is a separate requirement under the 6418 Proposed Regulations that does not impact the requirements in these proposed regulations.

VI. Effect on Other Documents

The provisions of sections 3 and 4 of Notice 2022–61 would be obsoleted for facilities, property, projects, or

equipment the construction, or installation of which begins after the date the Treasury Decision adopting these regulations as final regulations is published in the **Federal Register**. The proposed regulations would not otherwise affect Notice 2022–61.

VII. Proposed Applicability Date

These regulations are proposed to apply to facilities, property, projects, or equipment placed in service in taxable years ending after the date these regulations are published as final in the **Federal Register** and the construction or installation of which begins after the date these regulations are published as final regulations in the **Federal Register**. However, taxpayers may rely on these proposed regulations with respect to construction or installation of a facility, property, project, or equipment beginning on or after January 29, 2023, and on or before the date these regulations are published as final regulations in the **Federal Register**, provided, that beginning after the date that is 60 days after August 29, 2023, taxpayers follow the proposed regulations in their entirety and in a consistent manner.

Special Analyses

I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) generally requires that a federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

The collections of information in these proposed regulations would include reporting, recordkeeping, and third-party disclosure requirements. These collections are required for purposes of claiming an increased credit or deduction amount; and are necessary for the IRS to validate that taxpayers have met the regulatory requirements and are entitled to claim the increased credit amounts. The likely respondents are individual, business, trust and estate filers, and tax exempt organizations.

The proposed regulations would set forth procedures for requesting supplemental wage determinations and wage rates for additional classifications from the DOL. This collection is approved by OMB under the DOL's Control Number 1235–0034. This IRS regulation does not alter any of the DOL collections approved under this control number.

The proposed regulations would include requirements to keep records

sufficient to demonstrate that PWA requirements have been met as detailed in § 1.45–12. For purposes of the PRA, the recordkeeping requirements of § 1.45–12 are considered general tax records. These general tax records are approved annually under 1545–0074 for individuals/sole proprietors, 1545–0123 for business entities, and 1545–0047 for tax-exempt organizations. IRS will seek OMB approval under a new OMB Control number (1545–NEW) for the burden for trust and estate filers.

The proposed regulations would include reporting requirements that taxpayers provide a statement with the tax return that claims an increased credit or deduction amount that includes aggregate information as detailed in § 1.45–12. The Secretary may issue forms and instructions in future guidance for the purpose of meeting these reporting requirements. These reporting requirements will be covered under 1545–0074 for individuals/sole proprietors, 1545–0123 for business entities. IRS will solicit public comments on this requirement and the associated burden for trusts and estates filers as reflected below; and will seek OMB approval under a new OMB Control Number (1545–NEW) for trust and estate filers.

The proposed regulations would include third-party disclosures that include notifying laborers and mechanics of the applicable prevailing wage rates as detailed in § 1.45–7. The proposed regulations would also include third party disclosures for taxpayers requesting the dispatch of apprentices from a registered apprenticeship program as detailed in § 1.45–8. IRS will solicit public comment on this requirement and associated burden for all filers reflected below; and will seek OMB approval under a new OMB Control Number (1545–NEW) for all filers for the disclosure requirement.

The collections of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to <https://www.reginfo.gov/public/do/PRAMain>, with copies to the Internal Revenue Service. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” then by using the search function. Submit electronic submissions for the proposed information collection to the IRS via

email at pra.comments@irs.gov (indicate REG–100908–23 on the Subject line). Comments on the collection of information should be received by October 30, 2023. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility. The accuracy of the estimated burden associated with the proposed collection of information. How the quality, utility, and clarity of the information to be collected may be enhanced. How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The IRS estimates that 70 trust and estates may claim the increased credit and that it could take approximately 40 hours to compile the data needed for the statement attached to their return.

Estimated total annual reporting and recordkeeping burden for trusts and estates filers: 2,800 hours.

Estimated average annual burden per respondent: 40 hours.

Estimated number of respondents: 70.

Estimated frequency of responses: Annual.

The IRS estimates that 70,000 filers may claim the increased credit and that it could take approximately two hours to display the prevailing wages rates and to request the dispatch of apprentices.

Estimated total annual third-party disclosure burden for all other filers: 140,000 hours.

Estimated average annual burden per respondent: Two hours.

Estimated number of respondents: 70,000.

Estimated frequency of responses: Once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant

economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The Treasury Department and the IRS have not determined whether the proposed rule, when finalized, will likely have a significant economic impact on a substantial number of small entities. This determination requires further study. However, because there is a possibility of significant economic impact on a substantial number of small entities, an IRFA is provided in these proposed regulations. The Treasury Department and the IRS invite comments on both the number of entities affected and the economic impact on small entities. Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small business.

A. Need for and Objectives of the Rule

The proposed regulations would provide guidance to taxpayers intending to satisfy the PWA requirements to qualify for an increased credit or deduction under sections 30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D and for those taxpayers intending to satisfy the Prevailing Wage Requirements to qualify for the increased credit under sections 45L and 45U. The proposed regulations would provide needed guidance for taxpayers on the use of wage determinations issued by the DOL, on the time and manner for reporting compliance with the PWA requirements, as well as needed definitions. The proposed regulations would also provide guidance concerning correction and penalty payments that can be made by taxpayers who initially fail to satisfy the PWA requirements in order to qualify for the increased credit and deduction amounts.

The Treasury Department and the IRS intend and expect that the increased credit amount of five times the base credit for taxpayers that ensure the payment of paying prevailing wages and hiring apprentices in the construction, alteration, or repair of qualified facilities provides financial incentives that will beneficially impact various industries involved in the production of and investment in clean energy. These proposed regulations would provide clarifying guidance that will assist taxpayers seeking to comply with the

statutory prevailing wage and apprenticeship requirements in order to take advantage of the financial incentives. The Treasury Department and IRS expect that the increased credit amounts available to taxpayers as financial incentives will exceed the costs of the additional recordkeeping and reporting obligations that would be imposed on taxpayers by these proposed regulations.

The Treasury Department and the IRS also expect the financial incentives for taxpayers to ensure payment of prevailing wage rates and using apprentices will deliver benefits across the economy by creating increased opportunities for contractors and subcontractors as well as laborers and mechanics to become involved in clean energy production. Allowing these increased credits and an increased deduction for taxpayers who satisfy prevailing wage and apprentice requirements will incentivize expansion of clean energy resources and will reduce economy wide greenhouse gas emissions.

B. Affected Small Entities

The RFA directs agencies to provide a description of, and where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted. The Small Business Administration's Office of Advocacy estimates in its 2023 Frequently Asked Questions that 99.9 percent of American businesses meet its definition of a small business. The applicability of these proposed regulations does not depend on the size of the business, as defined by the Small Business Administration. As described more fully in the preamble to this proposed regulation and in this IRFA, section 45 and these proposed regulations may affect a variety of different entities across several different green energy industries as there are 12 different credits with increased credit amount provisions. Although there is uncertainty as to the exact number of small businesses within this group, the current estimated number of respondents to these proposed rules is 70,000 taxpayers as described in the Paperwork Reduction Act section of the preamble. The Treasury Department and the IRS expect to receive more information on the impact on small businesses through comments on this proposed rule.

C. Impact of the Rules

The proposed regulations provide rules for how taxpayers can satisfy the PWA requirements in order to seek the increased credits under section 45 as well as the increased credit or

deduction available under sections 30C, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D. Taxpayers that seek to claim the increased credit or deduction will have administrative costs related to reading and understanding these proposed rules, as well as increased costs for the recordkeeping and reporting requirements necessary to establish compliance with the PWA requirements. The costs will vary across different-sized taxpayers and across the type of facilities and projects in which such taxpayers are engaged.

The Prevailing Wage Requirements would require the taxpayer to obtain the published wage determination issued by the DOL for the county in which the facility is located. To the extent a wage determination does not include a required classification, or if no wage determination has been published, the taxpayer would be required to contact the DOL to obtain a supplemental wage determination or a wage rate for an additional classification. The taxpayer would be required to ensure that any contractor or subcontractor that works on the construction, alteration, or repair of a facility has paid hourly wages in accordance with the wage determination for each classification required to complete such work. In order to be eligible for certain proposed cure provisions, the taxpayer would be required to know or be able to determine whether the laborers and mechanics employed for construction, alteration, or repair of the facility were paid in accordance with the applicable wage determination. Additionally, the taxpayer would be required to retain records sufficient to establish compliance with these proposed regulations for as long as may be relevant. The Treasury Department and the IRS expect that some of the recordkeeping that would be required under these proposed rules will be consistent with recordkeeping requirements already imposed under the DBA and the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*

For the Apprenticeship Requirements, the taxpayer, contractor, and subcontractor, would be required to contact a registered apprenticeship program for purposes of requesting the dispatch of qualified apprentices to work on the construction, alteration, or repair of the facility. Whether or not the registered apprenticeship program dispatches apprentices, the taxpayer would be required to retain records to establish compliance with these proposed regulations for as long as may be relevant.

The taxpayer claiming the increased credit would be required to report the

payment of prevailing wages and the utilization of apprentices consistent with the forms and instructions of the IRS. Although the Treasury Department and the IRS do not have sufficient data to determine precisely the likely extent of the increased costs of compliance, the estimated burden of complying with the recordkeeping and reporting requirements are described in the Paperwork Reduction Act section of the preamble.

D. Alternatives Considered

The Treasury Department and the IRS considered alternatives to the proposed regulations. The proposed regulations were designed to minimize burdens for taxpayers while ensuring that laborers and mechanics are paid the applicable wage rates and that the IRS has sufficient information to administer the increased credits and deduction provisions. The proposed regulations would not adopt the DBA requirement of submitting weekly certified payroll records to the IRS. The Treasury Department and IRS determined that submission of weekly payroll records to the IRS by taxpayers would not assist the IRS with the efficient administration of the increased credit provisions. The Treasury Department and the IRS also considered a requirement that taxpayers submit payroll records for all laborers and mechanics at the time of filing a return that claims an increased credit. The Treasury Department and the IRS determined that per laborer and per mechanic payroll records would not provide the IRS with useful information and would also involve substantial burdens for taxpayers to report such information.

Comments are requested on the requirements in the proposed regulations, including specifically, whether there are less burdensome alternatives that ensure the IRS has sufficient information to administer the increased credit claimed under section 45 as well as the increased credit and deduction amounts that are claimed under sections 30C, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D.

E. Duplicative, Overlapping, or Conflicting Federal Rules

For energy facilities built under contracts with the Federal Government, or with Federal financial or other assistance provided under a Davis-Bacon Related Act, the proposed regulations may overlap with the rules under the DBA, 29 CFR parts 1, 5, and 7. In all other instances, the proposed regulations would not duplicate, overlap, or conflict with any relevant Federal rules. The Treasury Department

and the IRS invite input from interested members of the public about identifying and avoiding overlapping, duplicative, or conflicting requirements.

III. Section 7805(f)

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

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

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments, and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order.

The Treasury Department and the IRS will hold a consultation with Tribal leaders related to the prevailing wage and apprenticeship requirements in these proposed regulations, which will inform the development of the final regulations.

VII. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be made available at <https://www.regulations.gov>. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for November 21, 2023, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by October 30, 2023. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by October 30, 2023, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email

must contain the regulation number REG-100908-23 and the language TESTIFY in Person. For example, the subject line may say: Request to TESTIFY in Person at Hearing for REG-100908-23.

Individuals who want to testify by telephone at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-100908-23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-100908-23.

Individuals who want to attend the public hearing in person without testifying must also send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number REG-100908-23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing in Person for REG-100908-23. Requests to attend the public hearing must be received by 5:00 p.m. EST on November 17, 2023.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317-6901 (not a toll-free number) by at least November 15, 2023.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal author of these proposed regulations is the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in the development of the proposed regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries for §§ 1.30C–3, 1.45–6 through 1.45–8, 1.45–12, 1.45L–3, 1.45Q–6, 1.45U–3, 1.45V–3, 1.45Y–3, 1.45Z–3, 1.48–13, and 1.179D–3 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
 Section 1.30C–3 also issued under 26 U.S.C. 30.
 * * * * *
 Section 1.45–6 also issued under 26 U.S.C. 45.
 Section 1.45–7 also issued under 26 U.S.C. 45.
 Section 1.45–8 also issued under 26 U.S.C. 45.
 Section 1.45–12 also issued under 26 U.S.C. 45.
 * * * * *
 Section 1.45L–3 also issued under 26 U.S.C. 45L.
 * * * * *
 Section 1.45Q–6 also issued under 26 U.S.C. 45Q.
 Section 1.45U–3 also issued under 26 U.S.C. 45U.
 Section 1.45V–3 also issued under 26 U.S.C. 45V.
 Section 1.45Y–3 also issued under 26 U.S.C. 45Y.
 Section 1.45Z–3 also issued under 26 U.S.C. 45Z.
 * * * * *
 Section 1.48–13 also issued under 26 U.S.C. 48.
 * * * * *
 Section 1.179D–3 also issued under 26 U.S.C. 179D.
 * * * * *

■ **Par. 2.** Sections 1.30C–1 through 1.30C–3 are added to read as follows:

§§ 1.30C–1—1.30C–2 [Reserved]

§ 1.30C–3 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If any qualified alternative fuel vehicle refueling project placed in service during the taxable year satisfies the requirements in paragraph (b) of this section, the credit determined under section 30C(a) for any qualified alternative fuel vehicle refueling property of a character subject to an allowance for depreciation that is part of such project is multiplied by five.

(b) *Qualified project requirements.* A qualified alternative fuel vehicle refueling project satisfies the requirements of this paragraph (b) if it is one of the following—

(1) A project the construction of which began prior to January 29, 2023; or

(2) A project that meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7, the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12.

(c) *Applicability date.* This section applies to projects placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

■ **Par. 3.** Sections 1.45–0 through 1.45–12 are added to read as follows:

Sec.
 * * * * *
 1.45–0 Table of contents.
 1.45–1—1.45–5 [Reserved]
 1.45–6 Increased credit amount.
 1.45–7 Prevailing wage requirements.
 1.45–8 Apprenticeship requirements.
 1.45–9—1.45.11 [Reserved]
 1.45–12 Recordkeeping and reporting.
 * * * * *

§ 1.45–0 Table of contents.

This section lists the table of contents for §§ 1.45–1 through 1.45–12.

§§ 1.45–1—1.45–5 [Reserved]

§ 1.45–6 Increased credit amount.

- (a) In general.
- (b) Qualified facility requirements.
- (c) Definition of nameplate capacity for purposes of determining maximum net output under section 45(b)(6)(B)(i).
- (d) Applicability date.

§ 1.45–7 Prevailing wage requirements.

- (a) In general.
- (b) Wage determinations.
- (c) Curing a failure to satisfy the prevailing wage requirements.
- (d) Definitions.
- (e) Applicability date.

§ 1.45–8 Apprenticeship requirements.

- (a) In general.
- (b) Labor hours requirement.
- (c) Application of apprentice-to-journeyworker ratio.
- (d) Participation requirement.
- (e) Exceptions to the Apprenticeship Requirements.
- (f) Definitions.
- (g) Applicability date.

§§ 1.45–9—1.45–11 [Reserved]

§ 1.45–12 Recordkeeping and reporting.

- (a) In general.
- (b) Recordkeeping for prevailing wage and apprenticeship requirements.
- (c) Recordkeeping for prevailing wage requirements.
- (d) Recordkeeping for apprenticeship requirements.

(e) Applicability date.

§§ 1.45–1—1.45–5 [Reserved]

§ 1.45–6 Increased credit amount.

(a) *In general.* If a qualified facility (as defined in section 45(d)) satisfies the requirements in paragraph (b) of this section, the amount of the renewable electricity production credit determined under section 45(a) (after the application of sections 45(b)(1) through (5)) is equal to the credit determined under section 45(a) multiplied by five.

(b) *Qualified facility requirements.* A qualified facility satisfies the requirements of this paragraph (b) if it is one of the following—

(1) A facility with a maximum net output (as determined under paragraph (c) of this section) of less than one megawatt (as measured in alternating current);

(2) A facility the construction of which began prior to January 29, 2023; or

(3) A facility that meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7, the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12.

(c) *Definition of nameplate capacity for purposes of determining maximum net output under section 45(b)(6)(B)(i).* For purposes of determining whether a facility has a maximum net output of less than one megawatt (as measured in alternating current) for purposes of section 45(b)(6)(B)(i), nameplate capacity is determinative. *Nameplate capacity* for an electrical generating unit means the maximum electrical generating output in megawatts (MW) that the unit is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition provided in 40 CFR 96.202. Where applicable, the International Standard Organization (ISO) conditions are used to measure the maximum electrical generating output or usable energy capacity.

(d) *Applicability date.* This section applies facilities placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

§ 1.45–7 Prevailing wage requirements.

(a) *In general.* In order for the increased credit under section 45(b)(6)(B)(iii) with respect to any qualified facility to be claimed, the taxpayer must satisfy the requirements

of section 45(b)(7) and this section (the “Prevailing Wage Requirements”) by ensuring that all laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction of such facility, and with respect to any taxable year, for any portion of such taxable year that is within the 10-year period beginning on the date the facility was placed in service, the alteration or repair of such facility, are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such facility is located. Prevailing rates are those rates most recently determined by the Secretary of Labor in accordance with 40 U.S.C. chapter 31, subchapter IV (Davis-Bacon Act), and as set forth in paragraphs (b)(2) and (3) of this section. For purposes of determining the increased credit under section 45(b)(6) for a taxable year, the Prevailing Wage Requirements applicable to alteration or repair work with respect to the taxable year(s) in which the alteration or repair of the qualified facility occurs apply. See paragraph (d) of this section for definitions of terms used in this section.

(b) *Wage determinations*—(1) *In general.* A taxpayer satisfies the Prevailing Wage Requirements if the taxpayer ensures that laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction, alteration, or repair of a facility are paid wages at rates not less than those set forth in the applicable wage determination issued by the Secretary of Labor pursuant to 40 U.S.C. 3142, 29 CFR part 1, and other implementing guidance for the specified type of construction in the geographic area where that facility is located. When the construction, alteration, or repair of a facility occurs in more than one geographic area, the taxpayer, contractor, or subcontractor must use the applicable wage determination for the work performed in each geographic area. Subject to the requirements of this section, the applicable wage determination is a general wage determination described in paragraph (b)(2) of this section (including any additional classifications and wage rates described in paragraph (b)(3) of this section), or a supplemental wage determination described in paragraph (b)(3) of this section.

(2) *General wage determinations.* Except as provided in paragraph (b)(3) of this section, to satisfy the Prevailing Wage Requirements described in paragraph (a) of this section, taxpayers must ensure that laborers and mechanics employed by the taxpayer or

any contractor or subcontractor in the construction, alteration, or repair of a facility are paid wages at rates not less than those set forth in the applicable general wage determination(s) published by the U.S. Department of Labor on the approved website. The applicable general wage determination is the wage determination in effect for the specified type of construction in the geographic area when the construction, alteration, or repair of the facility begins.

(3) *Supplemental wage determinations and rates*—(i) *Use of supplemental wage determinations and rates.* In the event the Secretary of Labor has not published a general wage determination for the relevant geographic area and type of construction for the facility, or the Secretary of Labor has issued a general wage determination for the relevant geographic area and type of construction, but one or more labor classifications for the construction, alteration, or repair work that will be done on the facility by laborers or mechanics is not listed, the taxpayer must ensure that laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction, alteration, or repair of a facility are paid wages at rates not less than those set forth in a supplemental wage determination or in an additional classification and wage rate issued to the taxpayer by the U.S. Department of Labor upon request by the taxpayer, contractor, or subcontractor in accordance with paragraph (b)(3)(ii) of this section. A taxpayer, contractor, or subcontractor may also request a supplemental wage determination if the location of the facility involves work by covered laborers and mechanics that spans more than one contiguous geographic areas.

(ii) *Request for supplemental wage determinations and additional classifications and rates*—(A) *Manner of making request.* A taxpayer, contractor, or subcontractor requesting a supplemental wage determination or additional classification and wage rate under paragraph (b)(3)(i) of this section must submit the request to the U.S. Department of Labor at, U.S. Department of Labor, Wage and Hour Division, Branch of Construction Wage Determinations, Washington, DC 20210, by email at IRAPrevailingwage@dol.gov, or such other address as may be prescribed in guidance and instructions issued by the Administrator of the Wage and Hour Division of the U.S. Department of Labor (Wage and Hour Division). A taxpayer, contractor, or subcontractor should make such requests no more than 90 days before

the beginning of construction, alteration, or repair, as appropriate (or as soon as practicable after the start of construction, alteration, or repair, in the instance where the taxpayer, contractor, or subcontractor cannot reasonably determine prior to the start of construction, alteration, or repair that a supplemental wage determination or an additional classification and wage rate is necessary). After review, the Wage and Hour Division will notify the taxpayer, contractor, or subcontractor as to the supplemental wage determination or the labor classifications and wage rates to be used for the type of work in question in the geographic area in which the facility is located.

(B) *Required information.* The request for a supplemental wage determination or additional classification and wage rate must include the following information:

(1) The name of the taxpayer, contractor, or subcontractor requesting the supplemental wage determination or wage rate;

(2) The general wage determination(s), if any, applicable to construction, alteration, or repair of the facility;

(3) A description of the work to be performed, including the type(s) of construction involved and, if the project involves multiple types of construction, information indicating the expected cost breakdown by type of construction;

(4) The geographic area in which the facility is being constructed, altered, or repaired, including the name and address of the facility (if known);

(5) The start date of construction, alteration, or repair at the facility;

(6) The labor classification(s) needed for performance of the work on the facility (excluding those for which wage rates are available on an applicable general wage determination);

(7) The duties to be performed by each such labor classification on the facility;

(8) The proposed wage rate, including any bona fide fringe benefits, for each such labor classification;

(9) Any pertinent wage payment information that may be available;

(10) Any additional relevant information otherwise required by forms and instructions published by the U.S. Department of Labor; and

(11) Any additional information the taxpayer wants the U.S. Department of Labor to consider.

(iii) *Special rule for qualified facilities located offshore.* If a general wage determination is not available, in lieu of requesting a supplemental wage determination for a facility located in an offshore area within the outer continental shelf of the United States, a

taxpayer, contractor, or subcontractor may rely on the general wage determination for the relevant category of construction that is applicable in the geographic area closest to the area in which the qualified facility will be located.

(4) *Reconsideration and review.* A taxpayer may seek reconsideration and review by the Administrator of the Wage and Hour Division of a general wage determination, or a determination issued with respect to a request for a supplemental wage determination or additional classification and wage rate in accordance with the procedures set forth in 29 CFR 1.8 and 5.13 and any subsequent guidance issued by the U.S. Department of Labor. A taxpayer may appeal the decision of the Administrator of the Wage and Hour Division to the U.S. Department of Labor's Administrative Review Board in accordance with the procedures set forth in 29 CFR part 7 and any subsequent guidance issued by the U.S. Department of Labor. Questions regarding wage determinations and rates may be referred to the Administrator of the Wage and Hour Division.

(5) *Timing of wage determination.* The applicable prevailing wage rates on a general wage determination are those in effect at the time construction, alteration, or repair of the facility begins, and generally remain valid for the duration of the work performed with respect to the construction, alteration, or repair of the facility by the taxpayer, contractor, or subcontractor. Taxpayers who perform any alteration or repair of a facility after the facility is placed in service must use the applicable wage determination in effect at the time the alteration or repair work begins. A new wage determination would be required to be used when work on a facility is changed to include additional construction, alteration, or repair work not within the scope of work of the original project, or to require work to be performed for an additional time period not originally obligated, including where an option to extend the term of a contract for the construction, alteration, or repair is exercised. General wage determinations published on the U.S. Department of Labor approved website contain no expiration date and remain valid until revised, superseded, or canceled. Any supplemental wage determination or additional classification and wage rate issued under paragraph (b)(3) of this section applies from the time the taxpayer begins the construction, alteration, or repair of the facility. If a supplemental wage determination or additional classification and wage rate is issued

after construction, alteration, or repair of the facility has begun, the applicable prevailing rates apply retroactively to the date construction began.

(6) *Payment of wages.* All laborers and mechanics working on a qualified facility must be paid in the time and manner consistent with the regular payroll practices of the taxpayer, contractor, or subcontractor. The payment of wages must be made without subsequent deduction or rebate on any account (except such payroll deductions as are required by the law or permitted by regulations issued by the Secretary of Labor), and must consist of the full amount of wages (including bona fide fringe benefits or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor. A taxpayer may discharge its wage obligations for the payment of wages by paying the full amount in cash, by making payments to a bona fide fringe benefit provider or incurring costs for bona fide fringe benefits, or by a combination thereof. The taxpayer is solely responsible for ensuring that laborers and mechanics are paid wages not less than the prevailing rate whether employed directly by the taxpayer, a contractor, or a subcontractor in the construction, alteration, or repair of the facility for purposes of claiming the increased credit under section 45(b)(6). The rules set forth in 29 CFR 5.25 through 5.33, and subsequent guidance issued by the U.S. Department of Labor apply with respect to costs for bona fide fringe benefits that may be credited for purposes of the payment of wages.

(7) *Apprentices—(i) Rate of pay.* Apprentices who perform work with respect to the construction, alteration, or repair of a facility consistent with the requirements of section 45(b)(8) and § 1.45–8 and individuals in the first 90 days of probationary employment as an apprentice in a registered apprenticeship program who have been certified by the U.S. Department of Labor's Office of Apprenticeship or a State apprenticeship agency to be eligible for probationary employment as an apprentice, may be paid at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor's Office of Apprenticeship, or with a State apprenticeship agency recognized by the U.S. Department of Labor's Office of Apprenticeship. Every apprentice must be paid at not less than the rate specified by the registered apprenticeship program for the

apprentice's level of progress, expressed as a percentage of the journeyworker hourly rate specified for the apprentice's classification in the applicable wage determination. If the apprentice is working in a classification that is not part of the occupation of the registered apprenticeship program, the apprentice must be paid at the full applicable wage rate determination for laborers or mechanics working in that classification. Any individual listed on payroll at an apprenticeship wage, who is not registered with a registered apprenticeship program, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed to satisfy the Prevailing Wage Requirements. In the event the U.S. Department of Labor's Office of Apprenticeship or a State apprenticeship agency recognized by the U.S. Department of Labor's Office of Apprenticeship withdraws approval of an apprenticeship program, the taxpayer, contractor, or subcontractor will no longer satisfy the Prevailing Wage Requirements by paying apprentices less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Bona fide fringe benefits.* To satisfy the Prevailing Wage Requirements, apprentices must be paid bona fide fringe benefits in accordance with the provisions of the registered apprenticeship program. If the apprenticeship program does not specify the payment of bona fide fringe benefits, apprentices must be paid the full amount of bona fide fringe benefits listed on the wage determination for the applicable classification in cash or in kind.

(iii) *Apprenticeship ratio.* The allowance for payment of wages to apprentices at rates less than the applicable prevailing wage rates determined by the U.S. Department of Labor is subject to any applicable ratio of apprentices to journeyworkers required under the registered apprenticeship program and consistent with section 45(b)(8)(B) and § 1.45–8. Any apprentice performing work on the job site in excess of the ratio permitted under the registered program or the ratio applicable to the geographic area of the facility pursuant to 29 CFR 5.5(a)(4)(i) must be paid not less than the applicable wage rate on the wage determination for the work actually performed to satisfy the Prevailing Wage Requirements.

(iv) *Reciprocity of ratios and wage rates.* If a taxpayer, contractor, or subcontractor is performing

construction alteration, or repair work on a facility in a geographic area other than the geographic area in which an apprenticeship program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the geographic area in which the construction, alteration, or repair work is being performed must be observed. If there is no applicable ratio or wage rate for the geographic area of the facility, the ratio and wage rate (expressed in percentages of the journeyworker's hourly rate) specified in the registered apprenticeship program standard must be observed.

(c) *Curing a failure to satisfy the prevailing wage requirements*—(1) *In general.* If a taxpayer fails to ensure that all laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the construction, alteration, or repair of a qualified facility are paid wages at rates not less than those set forth in the applicable wage determination(s), such taxpayer will be deemed to have satisfied the Prevailing Wage Requirements with respect to such facility for any year if the taxpayer makes the correction and penalty payments provided in paragraphs (c)(1)(i) and (ii) of this section.

(i) *Correction payment.* The taxpayer must pay any laborer or mechanic who was paid wages at a rate below the rate described in paragraph (b) of this section for any pay period during such year an amount equal to the sum of:

(A) The difference between the amount of wages paid to such laborer or mechanic for all hours worked during such period and the amount of wages required to be paid to such laborer or mechanic pursuant to paragraph (a) of this section for all hours worked during such period; and

(B) Interest on the amount determined under paragraph (c)(1)(i)(A) of this section at the Federal short-term rate as determined under section 6621 but substituting “6 percentage points” for “3 percentage points” in section 6621(a)(2).

(ii) *Penalty payment.* The taxpayer must pay a penalty equal to \$5,000 multiplied by the total number of laborers and mechanics who were paid wages at a rate below the rate described in paragraph (b) of this section for any period during such year.

(iii) *Correction and penalty payments not required if taxpayer ineligible for increased credit under section 45(b)(6)(B)(iii).* If the taxpayer claims the increased credit under section 45(b)(6)(B)(iii) and does not satisfy the Prevailing Wage Requirements for the

claimed increased credit amount, then the obligation to make correction and penalty payments under paragraphs (c)(1)(i) and (ii) of this section applies in order for the taxpayer to retain the credit. If the IRS determines that a taxpayer claiming the increased credit under section 45(b)(6)(B)(iii) failed to meet the Prevailing Wage Requirements and the taxpayer does not make the correction and penalty payments provided in paragraphs (c)(1)(i) and (ii) of this section, then no penalty is assessed under paragraph (c)(1)(ii) of this section, and the taxpayer is not entitled to the increased credit under section 45(b)(6)(B)(iii). Taxpayers that are not entitled to claim the increased credit amount may still be entitled to the base amount of the renewable electricity production credit under section 45(a) if they meet the requirements to claim the credit.

(iv) *Correction and penalty payments in the event of a transfer pursuant to section 6418.* To the extent an eligible taxpayer, as defined in section 6418(f)(2), has determined an increased credit amount under section 45(b)(6) and transferred such increased credit amount as part of a specified credit portion, the obligation to make correction and penalty payments under paragraphs (c)(1)(i) and (ii) of this section remains with the eligible taxpayer. The obligation for an eligible taxpayer to satisfy the Prevailing Wage Requirements becomes binding upon the earlier of the filing of the eligible taxpayer's return for the taxable year for which the specified credit portion is determined with respect to the eligible taxpayer, or the filing of the return of the transferee taxpayer for the year in which the specified credit portion is taken into account. If the IRS determines that the eligible taxpayer failed to meet the Prevailing Wage Requirements and the eligible taxpayer does not then make the correction and penalty payments provided in paragraphs (c)(1)(i) and (ii) of this section, then no penalty is assessed under paragraph (c)(1)(ii) of this section, and the eligible taxpayer is not entitled to the increased credit amount determined under section 45(b)(6)(B)(iii). Section 6418 and the regulations in this part under section 6418 control for determining the impact of an eligible taxpayer's failure to cure on any transferee taxpayer. The eligible taxpayer that is not entitled to claim the increased credit amount may still be entitled to the base amount of the renewable electricity production credit under section 45(a) if they meet the requirements to claim the credit.

(v) *Examples.* The provisions of this paragraph (c)(1) may be illustrated by the following examples, which do not take into account any possible application of the enhanced correction and penalty payment requirements in the case of intentional disregard under paragraph (c)(3) of this section, the exception for wages paid before a determination by the U.S. Department of Labor under paragraph (c)(5) of this section, or the penalty waiver under paragraph (c)(6) of this section. In each example, assume that the taxpayer uses the calendar year as the taxpayer's taxable year.

(A) *Example 1.* Taxpayer A begins construction of a qualified facility on February 3, 2023. The facility is placed in service on October 10, 2023, and A claims the increased credit under section 45(b)(6) on its 2023 tax return. Laborer X was employed in the construction, alteration, or repair of the facility in calendar year 2023 for 20 weeks and was paid on a weekly basis. X was paid wages below the prevailing wage rate for all pay periods in calendar year 2023. All other laborers and mechanics were paid at the prevailing wage rate. The aggregate difference between the amount of wages X was paid and the amount required to be paid under paragraph (a) of this section is \$400 (*i.e.*, X worked 20 weeks during the year and was underpaid by \$20 in each of those weeks). The amount of the correction payment A must make to X is equal to \$400 plus interest from the date of each underpayment at the rate as determined under section 6621 but substituting “6 percentage points” for “3 percentage points” in section 6621(a)(2). The total number of laborers underpaid for any period in 2023 was one, so the total amount of the penalty payment that A must pay to the IRS to retain the increased credit is \$5,000.

(B) *Example 2.* Taxpayer B begins construction of a qualified facility on January 30, 2023. The facility is placed in service on February 2, 2024. Taxpayer B files a claim for the increased credit under section 45(b)(6) with its 2024 tax return. Taxpayer B paid workers on a biweekly basis. Five laborers employed in the construction of the facility were paid wages below the prevailing wage rates in 2023, with the difference between the amount they were paid and the amount of wages required to be paid under paragraph (a) of this section being \$500 per laborer. One of those laborers remained employed in the construction of the facility in 2024 and was paid wages below the prevailing wage rate, with the difference between the amount the laborer was paid and the amount of

wages required to be paid under paragraph (a) of this section being \$100. All other laborers and mechanics involved in the construction, alteration, or repair of the facility were paid at the prevailing wage rates. B must make correction payments of \$500 plus interest from the date of each underpayment at the rate as determined under section 6621 but substituting “6 percentage points” for “3 percentage points” in section 6621(a)(2) to each of the five laborers that were underpaid in 2023, and a correction payment of \$100 plus interest from the date of each underpayment at the rate as determined under section 6621 but substituting “6 percentage points” for “3 percentage points” in section 6621(a)(2) to the laborer that was underpaid in 2024. The total amount of the penalty payment that B must pay to the IRS to retain the increased credit is \$30,000, which includes \$5,000 for each of the laborers underpaid in 2023 and \$5,000 for the one laborer underpaid in 2024.

(C) *Example 3.* Taxpayer B begins construction of a qualified facility on January 30, 2023. The facility is placed in service on February 2, 2024. Taxpayer B files a claim for the increased credit under section 45(b)(6) with its 2024 tax return. Taxpayer B paid workers on a biweekly basis. Laborer X was employed by the taxpayer in the construction of the facility for 22 weeks in 2023 was paid wages below the prevailing wage rates for the first 20 weeks of her employment in the amount of \$500 (*i.e.*, X was underpaid \$50 in each of the 10 biweekly periods). For the last biweekly pay period, Taxpayer B paid X the correct prevailing rate for the work performed during the period, plus \$500 for the amounts that were underpaid in the first 10 periods. All other laborers and mechanics involved in the construction, alteration, or repair of the facility were paid at the prevailing wage rates. Taxpayer B is required to make a correction payment to X in the amount of the interest from the date of each underpayment. To retain the increased credit, B must make a penalty payment of \$5,000 to the IRS with respect to Laborer X.

(2) *Deficiency procedures not to apply.* The penalty payment required by paragraph (c)(1)(ii) of this section may be assessed and collected without regard to the deficiency procedures provided by subchapter B of chapter 63 of the Code. Any determination by the IRS disallowing a claim for the increased credit under section 45(b)(6) will be subject to the deficiency procedures of subchapter B of chapter 63.

(3) *Intentional disregard*—(i) *Application of section 45(b)(7)(B)(iii).* If the IRS determines that any failure to satisfy the Prevailing Wage Requirements in paragraph (a) of this section is due to intentional disregard of the requirement—

(A) The correction payment under paragraph (c)(1)(i) of this section is increased to three times the sum determined in paragraph (c)(1)(i) of this section; and

(B) The penalty payment under paragraph (c)(1)(ii) of this section is increased to \$10,000 multiplied by the total number of laborers and mechanics who were paid wages at a rate below the rate described in paragraph (b) of this section for any period during such year.

(ii) *Meaning of intentional disregard.* A failure to ensure that any laborer or mechanic employed in the construction, alteration, or repair of a qualified facility is paid wages at the prevailing wage rate is due to intentional disregard if it is knowing or willful.

(iii) *Facts and circumstances considered.* The facts and circumstances that are considered in determining whether a failure to satisfy the Prevailing Wage Requirements is due to intentional disregard include, but are not limited to—

(A) Whether the failure was part of a pattern of conduct that includes repeated or systemic failures to ensure that the laborers and mechanics were paid wages at or above the applicable prevailing wage rate;

(B) Whether the taxpayer failed to take steps to determine the applicable classifications of laborers and mechanics;

(C) Whether the taxpayer failed to take steps to determine the applicable prevailing wage rate(s) for laborers and mechanics;

(D) Whether the taxpayer promptly cured any failures to ensure that laborers and mechanics were paid wages not less than the applicable prevailing rates;

(E) Whether the taxpayer has been required to make a penalty payment under paragraph (c)(1)(ii) of this section in previous years;

(F) Whether the taxpayer undertook a quarterly, or more frequent, review of wages paid to mechanics and laborers to ensure that wages not less than the applicable prevailing wage rate were paid;

(G) Whether the taxpayer included provisions in any contracts entered into with contractors that required the contractors and any subcontractors retained by the contractors to pay laborers and mechanics at or above the prevailing wage rates and maintain

records to ensure the taxpayer's compliance with recordkeeping requirements set forth in § 1.45–12;

(H) Whether the taxpayer posted in a prominent place at the facility or otherwise provided written notice to laborers and mechanics during the construction, alteration, or repair of the facility, of the applicable wage rate(s) as determined by the U.S. Department of Labor for all classifications of work to be performed for the construction, alteration, or repair of the facility, and that in order to be eligible to claim certain tax benefits, employers must ensure that laborers and mechanics are paid wages at rates not less than such wage rates; and

(I) Whether the taxpayer had in place procedures whereby laborers and mechanics could report suspected failures to pay prevailing wages and/or suspected failures to classify workers in accordance with the wage determination of workers to appropriate personnel departments or managers without retaliation or adverse action.

(iv) *Rebuttable presumption of no intentional disregard.* If a taxpayer makes the correction and penalty payments required by paragraphs (c)(1)(i) and (ii) of this section before receiving notice of an examination from the IRS with respect to a claim for the increased credit under section 45(b)(6), the taxpayer will be presumed not to have intentionally disregarded the Prevailing Wage Requirements in paragraph (a) of this section.

(4) *Limitation on the availability of cure*—(i) *180-day limit.* In the case of a final determination by the IRS with respect to any failure by the taxpayer to satisfy the Prevailing Wage Requirements in paragraph (a) of this section, the cure provision in paragraph (c)(1) of this section does not apply unless the correction and penalty payments described in paragraphs (c)(1)(i) and (ii) of this section are made by the taxpayer on or before the date that is 180 days after the date of such determination.

(ii) *Final determination.* For purposes of paragraph (c)(4)(i) of this section, a final determination occurs on the date the IRS sends to the taxpayer a notice stating that the taxpayer has failed to satisfy the Prevailing Wage Requirements under paragraph (a) of this section.

(5) *Exception for wages paid before a wage determination by the U.S. Department of Labor.* If a taxpayer has requested a supplemental wage determination or an additional classification and wage rate from the U.S. Department of Labor in accordance with paragraph (b)(3)(ii) of this section

and the U.S. Department of Labor makes a wage determination after the construction, alteration, or repair of the facility has started, the taxpayer will not be considered to have failed to meet the Prevailing Wage Requirements under paragraph (a) of this section with respect to wages paid to any mechanic or laborer whose wage rate was subject to the request and who was paid below the prevailing wage rate before the determination by the U.S. Department of Labor if the taxpayer makes a payment within 30 days of the determination to each laborer or mechanic equal to the difference between the amount of wages paid to such laborer or mechanic before the determination and the amount of wages required to be paid to such laborer or mechanic pursuant to paragraph (a) of this section during such period.

(6) *Waiver of the penalty*—(i) *Availability of waiver.* The penalty payment required by paragraph (c)(1)(ii) of this section to cure a failure to satisfy the Prevailing Wage Requirements in paragraph (a) of this section is waived with respect to a laborer or mechanic employed in the construction, alteration, or repair of a qualified facility during a calendar year if the taxpayer makes the correction payment required by paragraph (c)(1)(i) of this section by the earlier of 30 days after the taxpayer became aware of the error or the date on which the increased credit is claimed under section 45(b)(6), and:

(A) The laborer or mechanic is paid wages at rates less than the amount required to be paid under paragraph (b) of this section for not more than 10 percent of all pay periods of the calendar year (or part thereof) during which the laborer or mechanic was employed in the construction, alteration, or repair of the qualified facility; or

(B) The difference between the amount the laborer or mechanic was paid during the calendar year (or part thereof) and the amount required to be paid under paragraph (b) of this section is not greater than 2.5 percent of the amount required to be paid under paragraph (b) of this section.

(ii) *Project labor agreements.* The penalty payment required by paragraph (c)(1)(ii) of this section to cure a failure to satisfy the Prevailing Wage Requirements in paragraph (a) of this section shall not apply with respect to a laborer or mechanic employed in the construction, alteration, or repair work of a qualified facility if the work is done pursuant to a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for

a specific construction project (Qualifying Project Labor Agreement) and any correction payment owed to any laborer or mechanic is paid on or before the date on which the increased credit is claimed under section 45(b)(6). In order to be considered a Qualifying Project Labor Agreement, such agreement must at a minimum:

(A) Bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;

(B) Contain guarantees against strikes, lockouts, and similar job disruptions;

(C) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

(D) Contain provisions to pay prevailing wages;

(E) Contain provisions for referring and using qualified apprentices consistent with section 45(b)(8)(A) through (C) and guidance issued thereunder; and

(F) Be a collective bargaining agreement with one or more labor organizations (as defined in 29 U.S.C. 152(5)) of which building and construction employees are members, as described in 29 U.S.C. 158(f).

(iii) *Examples.* The provisions of this paragraph (c)(6) may be illustrated by the following examples, which do not take into account any possible application of the enhanced correction and penalty payment requirements in the case of intentional disregard under paragraph (c)(3) of this section or the exception for wages paid before a determination by the U.S. Department of Labor under paragraph (c)(5) of this section. In each example, assume that the taxpayer uses the calendar year as the taxpayer's taxable year.

(A) *Example 1.* Taxpayer A begins construction of a qualified facility on February 1, 2023. The facility is placed in service on October 10, 2023, and A claims the increased credit under section 45(b)(6) on its 2023 tax return filed on April 18, 2024. Taxpayer A employs laborer W in the construction of the facility for a total of 36 weekly pay periods. Taxpayer A pays W at or above the prevailing wage rate for all pay periods except for the pay periods ending on April 8, April 22, and May 20. Under the applicable prevailing wage rate, W should have been paid a total of \$35,000 in 2023, but was instead paid only \$30,000. Taxpayer A ensures that all other laborers and mechanics employed in the construction, alteration, or repair of the facility are paid at the prevailing wage rate.

Taxpayer A becomes aware of the failure on June 1, 2023, and on June 19, 2023, A pays W the correction payment required by paragraph (c)(1)(i) of this section. The penalty waiver applies to A. Although the difference between the amount W was paid in 2023 and the amount required to be paid under the applicable prevailing wage rate was \$5,000, which is 14.29% of the amount required to be paid under the applicable prevailing wage rate, W was paid below the prevailing wage rate for only three out of 36 pay periods, or 8.3%. Furthermore, A made the correction payment within 30 days of discovering the failure on June 1, 2023, and before filing the tax return claiming the increased credit on April 18, 2024.

(B) *Example 2.* Taxpayer B begins construction of a qualified facility on February 1, 2024. The facility is placed in service on October 10, 2024, and B claims the increased credit under section 45(b)(6) on its 2024 tax return filed on April 15, 2025. Taxpayer B hires contractor M to assist in the construction, and contractor M employs laborer X in the construction of the facility for a total of 36 pay periods. M pays X at or above the prevailing wage rate for all pay periods except for the pay periods ending on February 24 and March 2. Under the applicable prevailing wage rate, X should have been paid a total of \$50,000 in 2024, but was instead paid only \$49,000. All other laborers and mechanics employed in the construction, alteration, or repair of the facility are paid at the prevailing wage rate. B learns on January 1, 2025, that X was not paid at the prevailing wage rate, and on January 19, 2025, B pays X the correction payment required by paragraph (c)(1)(i) of this section. The penalty waiver applies to B. Y was paid below the prevailing wage rate for two out of 36 pay periods, or 5.5%, and the difference between the amount X was paid in 2024 and the amount required to be paid under the applicable prevailing wage rate was \$1,000, which is only 2% of the amount required to be paid under the applicable prevailing wage rate. Although B did not learn that that M was paying X below the prevailing wage rate until after the end of the year, once B learned of the underpayment, B made the correction payment within 30 days and before filing the tax return claiming the increased credit on April 15, 2025.

(C) *Example 3.* Taxpayer C begins the construction of a qualified facility on April 5, 2024. The facility is placed in service on December 1, 2024, and C claims the increased credit under section 45(b)(6) on its 2024 tax return filed on April 15, 2025. Taxpayer C

employs laborer Y in the construction of the facility for a total of 35 pay periods. Due to a failure to classify workers in accordance with the wage determination, C pays Y below the prevailing wage rate for all 35 pay periods. Under the applicable prevailing wage rate, Y should have been paid \$65,000 in 2024, but was instead paid only \$63,500. All other laborers and mechanics employed in the construction, alteration, or repair of the facility were paid at the prevailing wage rate. Taxpayer C becomes aware of the failure on January 10, 2025, and on January 20, 2025, C pays Y the correction payment required by paragraph (c)(1)(i) of this section. The penalty waiver applies to C. Although Y was paid below the prevailing wage rate 100% of the pay periods Y worked in 2024, the difference between the amount Y was paid in 2024 and the amount required to be paid under the applicable prevailing wage rate was \$1,500, which is only 2.3% of the amount required to be paid under the applicable prevailing wage rate. Additionally, once C learned of the underpayment, C made the correction payment within 30 days and before filing the tax return claiming for the increased credit on April 15, 2025.

(D) *Example 4.* Taxpayer D begins construction of a qualified facility on August 29, 2024. The facility is placed in service on June 30, 2025, and D claims the increased credit under section 45(b)(6) on its 2025 tax return. Taxpayer D employs laborer Z in the construction of the facility for a total of 25 weekly pay periods in 2025. Taxpayer D pays Z at or above the prevailing wage rate for all pay periods except for the pay periods ending on March 15, May 10, and June 14. Under the applicable prevailing wage rate, Z should have been paid \$25,000 in 2025, but was instead paid only \$20,000. Taxpayer D ensures that all other laborers and mechanics employed in the construction, alteration, or repair of the facility are paid at the prevailing wage rate. Taxpayer D has in place a pre-hire collective bargaining agreement, but the agreement does not contain a provision for referring and using qualified apprentices. Taxpayer D becomes aware of the failure to pay Z at the prevailing wage rate on June 30, 2025, and on July 4, 2025, D pays Z the correction payment required by paragraph (c)(1)(i) of this section. The penalty waiver does not apply to D. The difference between the amount Z was paid in 2025 and the amount required to be paid under the applicable prevailing wage rate was \$5,000, which is 20% of the amount

required to be paid under the applicable prevailing wage rate. Z was paid below the prevailing wage rate for three out of 25 pay periods, or 12%. D does not have in place a qualifying project labor agreement because the pre-hire collective bargaining agreement does not contain a provision for referring and using qualified apprentices as required by paragraph (c)(6)(ii)(E) of this section. Although the correction payment was made within 30 days of discovering the failure on June 30, 2025, and before filing the tax return claiming for the increased credit on April 15, 2026, Taxpayer D failed to satisfy the requirements of paragraphs (c)(6)(i)(A) and (B) or paragraph (c)(6)(ii) of this section.

(d) *Definitions.* Solely for purposes of this section, the following definitions apply:

(1) *Bona fide fringe benefits.* The term *bona fide fringe benefits* means fringe benefits described in 29 CFR part 5. Bona fide fringe benefits include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits (each as described in 29 CFR part 5 and other U.S. Department of Labor guidance). Consistent with 29 CFR 5.29, bona fide fringe benefits do not include benefits required by other Federal, State, or local law.

(2) *Construction, alteration, or repair—(i) In general.* The term *construction, alteration, or repair* generally means construction, prosecution, completion, or repair as defined in 29 CFR 5.2. Construction, alteration, or repair does not include work that is ordinary and regular in nature that is designed to maintain and preserve existing functionalities of a facility after it is placed in service. Work designed to maintain and preserve functionality of a facility after it is placed in service includes basic maintenance such as regular inspections of the facility, regular cleaning and janitorial work, replacing materials with limited lifespans such as filters and light bulbs, and the calibration of any equipment. However, such work that occurs before the facility is placed in service may constitute construction for which prevailing wages must be paid in order to claim the increased credit. Maintenance does not include work that improves a facility, adapts it for a

different use, or restores functionality as a result of inoperability. This definition has no bearing on any other sections of the Code, including any determination of construction, alteration, repair, or maintenance under section 162 or 263.

(ii) *Example.* Taxpayer T employs a contractor X to construct a 500 megawatt solar farm that is a qualified facility under section 45. X employs numerous laborers and mechanics during construction and ensures that wages are paid to the laborers and mechanics at not less than the prevailing rate for the geographic area of the solar farm, as set forth in the applicable wage determination. After the solar farm is placed in service, an inverter malfunctions and requires a replacement part. T employs laborers and mechanics to replace the malfunctioning part to restore the inverter's functionality. The replacement work is not considered ordinary maintenance, and T must ensure those laborers and mechanics engaged in the replacement work are paid wages not less than the prevailing rate for the geographic area of the solar farm to satisfy the Prevailing Wage Requirements.

(3) *Contractor.* The term *contractor* means any person that enters into a contract with the taxpayer for the construction, alteration, or repair of a qualified facility.

(4) *Employed.* The term *employed* means performing the duties of a laborer or mechanic for the taxpayer, contractor, or subcontractor (as applicable), regardless of whether the individual would be characterized as an employee or an independent contractor for other Federal tax purposes.

(5) *General wage determination.* The term *general wage determination* means a wage determination issued by the U.S. Department of Labor and published on the approved website. A general wage determination provides the minimum hourly wage rates (both the basic hourly rate of pay and bona fide fringe benefit rates) that the U.S. Department of Labor has determined are prevailing for laborers and mechanics in specified types of construction in a given geographic area.

(6) *Geographic area and locality.* The terms *geographic area* and *locality* mean the county, independent city, or other civil subdivision of the State in which the facility is located. The terms *geographic area* and *locality* also include areas located offshore of the United States and within the outer continental shelf of the United States and the U.S. territories. If construction, alteration, or repair work is performed in multiple counties, independent

cities, or other civil subdivisions, the geographic area may include all counties, independent cities, or other civil subdivisions in which the work will be performed. The locality in which a facility is located is the primary construction site of the facility, defined as the physical place or places where the facility will be placed in service and remain. The locality of the facility also includes secondary construction site(s), where a significant portion of the facility is constructed, altered, or repaired provided that such construction is for specific use at that facility and does not simply reflect the manufacture or construction of a product made available to the general public, and provided further that the site is either established specifically for, or dedicated exclusively for a specific period of time to, the construction, alteration, or repair of the facility. A significant portion means one or more entire portion(s) or module(s) of the facility, such as a completed room or structure, with minimal construction work remaining other than the installation and/or final assembly of the portions or modules at the place where the facility will be placed in service and remain. A significant portion does not include materials or prefabricated component parts. A specific period of time means a period of weeks, months, or more, and does not include circumstances where a site at which multiple facilities are in progress is shifted exclusively so to a single facility for a few hours or days in order to meet a deadline. The locality of the facility also includes any adjacent or virtually adjacent dedicated support sites, including job headquarters, tool yards, batch plants, borrow pits, and similar facilities of a taxpayer, contractor, or subcontractor that are established specifically for or dedicated exclusively to the construction, alteration, or repair of the facility, and adjacent or virtually adjacent to either a primary construction site or a secondary construction site.

(7) *Laborer and mechanic.* The terms *laborer* and *mechanic* mean those individuals whose duties are manual or physical in nature (including those individuals who use tools or who are performing the work of a trade). The terms *laborer* and *mechanic* include apprentices and helpers. The terms do not apply to individuals whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 are not deemed to be laborers or mechanics.

Working forepersons who devote more than 20 percent of their time during a workweek to laborer or mechanic duties, and who do not meet the criteria for exemption of 29 CFR part 541, are considered laborers and mechanics for the time spent conducting laborer and mechanic duties.

(8) *Subcontractor.* The term *subcontractor* means any contractor that agrees to perform or be responsible for the performance of any part of a contract entered into with the taxpayer (or the taxpayer's contractor) with respect to the construction, alteration, or repair of a facility.

(9) *Taxpayer.* The term *taxpayer* means any taxpayer as defined in section 7701(a)(14), including applicable entities described in section 6417(d)(1)(A). In the case of a credit transferred under section 6418, the term *taxpayer* means the eligible taxpayer that determines the eligible credit to be transferred and makes a transfer election under section 6418 to transfer any specified credit portion (including 100 percent) of an eligible credit determined with respect to any eligible credit property of such eligible taxpayer for any taxable year.

(10) *Type of construction.* The *type of construction* is the general category of construction as established by the U.S. Department of Labor for the publication of general wage determinations. Specific types of construction may include, but are not limited to, building, residential, heavy, and highway.

(11) *Wages.* The term *wages* generally means wages as defined in 29 CFR 5.2. In general, wages means the basic hourly rate of pay; any contribution irrevocably made by a taxpayer, contractor, or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the taxpayer, contractor, or subcontractor that may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, provided the commitment was communicated in writing to the laborers and mechanics affected. Whether amounts are wages for prevailing wage purposes is not relevant in determining whether amounts are wages or compensation for other Federal tax purposes.

(e) *Applicability date.* This section applies to facilities placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

§ 1.45–8 Apprenticeship requirements.

(a) *In general.* Except as provided in paragraph (e) of this section, a taxpayer claiming or transferring (under section 6418) the increased credit amount under section 45(b)(6)(B)(iii) with respect to any qualified facility must satisfy the requirements of section 45(b)(8) and this section (the “Apprenticeship Requirements”). The taxpayer is solely responsible for ensuring that the Apprenticeship Requirements are satisfied. See paragraph (f) of this section for definitions of terms used in this section.

(b) *Labor hours requirement—(1) Percentage of total hours.* A taxpayer claiming or transferring (under section 6418) the increased credit amount under section 45(b)(6) must ensure that qualified apprentices (hired by the taxpayer, contractor, or subcontractor) perform not less than the applicable percentage of the total labor hours of the construction, alteration, or repair work (including work performed by any contractor or subcontractor) of any qualified facility, subject to the apprentice-to-journeyworker ratio described in paragraph (c) of this section.

(2) *Applicable percentage.* For purposes of paragraph (b)(1) of this section, the applicable percentage is—

(i) 10 percent in the case of a qualified facility, the construction of which begins before January 1, 2023;

(ii) 12.5 percent in the case of a qualified facility, the construction of which begins after December 31, 2022, and before January 1, 2024; and

(iii) 15 percent in the case of a qualified facility, the construction of which begins after December 31, 2023.

(c) *Application of apprentice-to-journeyworker ratio—(1) In general.* The labor hours requirement under paragraph (b) of this section is subject to any applicable requirements for apprentice-to-journeyworker ratios of the U.S. Department of Labor or the applicable State apprenticeship agency.

(2) *Ratio.* The allowable ratio of apprentices-to-journeyworkers on the job site in any occupation and its corresponding classification on any day must comply with the applicable apprentice to journeyworker ratio of the registered apprenticeship program in accordance with 29 CFR part 29.

(3) *Failure to meet ratio requirements.* For purposes of section 45(b)(8)(B), if on any day the ratio of apprentices to journeyworkers exceeds the ratio established in accordance with paragraph (c)(2) of this section, and subject to the requirements of the registered apprenticeship program, the labor hours performed by any qualified

apprentice in excess of the ratio may not be counted as hours performed by apprentices for purposes of the labor hours requirement of paragraph (b) of this section.

(d) *Participation requirement.* Each taxpayer, contractor, or subcontractor who employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of a qualified facility must employ one or more qualified apprentices to perform work with respect to the construction, alteration, or repair of the facility.

(e) *Exceptions to the Apprenticeship Requirements.* If a taxpayer fails to satisfy the Apprenticeship Requirements in paragraph (a) of this section with respect to the construction of any qualified facility or with respect to the alteration or repair of a facility, the taxpayer will nonetheless be deemed to have satisfied the Apprenticeship Requirements if the taxpayer has made a good faith effort to meet the Apprenticeship Requirements as described in paragraph (e)(1) of this section (the “Good Faith Effort Exception”) or made the penalty payment provided in paragraph (e)(2) of this section for any failures to which the Good Faith Effort Exception does not apply.

(1) *Good Faith Effort Exception—(i) In general.* A taxpayer is deemed to have satisfied the Apprenticeship Requirements of this section with respect to a request for qualified apprentices if the taxpayer meets the following requirements:

(A) *Request for apprentices.* The taxpayer, contractor, or subcontractor must submit a written request for qualified apprentices to at least one registered apprenticeship program, as defined in paragraph (f)(4) of this section, which has a geographic area of operation that includes the location of the facility, or to a registered apprenticeship program that can reasonably be expected to provide apprentices to the location of the facility; trains apprentices in the occupation(s) needed to perform construction, alteration, or repair with respect to the facility; and has a usual and customary business practice of entering into agreements with employers for the placement of apprentices in the occupation for which they are training, pursuant to its standards and requirements. Such request must be in writing and sent electronically or by registered mail.

(1) *Content of request.* The request of the taxpayer, contractor, or subcontractor must include the proposed dates of employment,

occupation of apprentices needed, location of the work to be performed, number of apprentices needed, the expected number of labor hours to be performed by the apprentices, and the name and contact information of the taxpayer, contractor, or subcontractor requesting employment of apprentices from the registered apprenticeship program. The request must also state that the request for apprentices is made with an intent to employ apprentices in the occupation for which they are being trained and in accordance with the requirements and standards of the registered apprenticeship program.

(2) *Duration of request.* If the taxpayer, contractor, or subcontractor submits a request in accordance with paragraph (e)(1)(i)(A) of this section and the request is denied or not responded to, the taxpayer will be deemed to have exercised a Good Faith Effort with respect to the request for a period of 120 days from the date of the request. The taxpayer will not be deemed to have exercised a Good Faith Effort beyond 120 days of a previously denied request unless the taxpayer submits an additional request.

(B) *Denial of request.* If a taxpayer, contractor, or subcontractor submits a request in accordance with paragraph (e)(1)(i)(A) of this section and the request is denied, the taxpayer will be deemed to satisfy the requirements of section 45(b)(8)(A) through (C), provided that such denial is not the result of a refusal by the taxpayer or any contractors or subcontractors engaged in the performance of construction, alteration, or repair work with respect to such qualified facility to comply with the established standards and requirements of the registered apprenticeship program. The denial of a request is only valid for purposes of establishing a Good Faith Effort with respect to the portion(s) of the request that were denied.

(C) *Failure to respond.* If the registered apprenticeship program fails to respond to a request submitted in accordance with paragraph (e)(1)(i)(A) of this section within five business days after the date on which such registered apprenticeship program received the taxpayer’s (or its contractor or subcontractor) request, then such request is deemed to be denied. Acknowledgement, whether in writing or otherwise, by the registered apprenticeship program of receipt of such request submitted in accordance with paragraph (e)(1)(i)(A) of this section is a sufficient response for purposes of this paragraph (e)(1)(i)(C).

(ii) *Examples.* The provisions of paragraph (e)(1) of this section may be illustrated by the following examples.

(A) *Example 1.* Taxpayer A submits a request to a registered apprenticeship program by email. The registered apprenticeship program responds three days later, but reply emails from the registered apprenticeship program are auto forwarded to taxpayer A’s spam or junk mail folder. Taxpayer A claims that the registered apprenticeship program failed to respond within five business days and claims the good faith effort exception. Taxpayer A would not qualify for the Good Faith Effort Exception of this section because the registered apprenticeship program did respond within five business days.

(B) *Example 2.* Contractor C makes a request for qualified apprentices from a registered apprenticeship program outside the geographic area of the qualified facility and the registered apprenticeship program cannot reasonably be expected to provide apprentices to the location of the facility. As a result, Contractor C’s request is denied. Contractor C’s request would not qualify for the Good Faith Effort Exception of this section because the registered apprenticeship program could not reasonably be expected to provide apprentices to the location of the facility.

(C) *Example 3.* Contractor D submits a request to a registered apprenticeship program. The registered apprenticeship program requires contractors to enter into an agreement to partner with that registered apprenticeship program. Contractor D refuses to enter into the agreement and as a result, the registered apprenticeship program denies the Contractor D’s request. Contractor D’s request would not qualify for the Good Faith Effort Exception of this section because Contractor D refused to comply with the established standards of the registered apprenticeship program.

(D) *Example 4.* Contractor E enters into an agreement with a registered apprenticeship program with standards of apprenticeship for a specific occupation. Contractor E then requests apprentices from that registered apprenticeship program for a different occupation in which they do not have standards of apprenticeship or an agreement. Contractor E’s request would not qualify for the Good Faith Effort Exception of this section.

(E) *Example 5.* Taxpayer F, a tax equity investor in the partnership that owns the facility, makes a request to a registered apprenticeship program. Taxpayer F’s request is denied because it was not made with an intent to employ apprentices in the occupation

for which they are being trained and in accordance with the requirements and standards of the registered apprenticeship program. Rather, the contractor (or subcontractor) that will employ and train the apprentices in the construction, alteration, or repair of the facility is the proper party to request apprentices from the registered apprenticeship program. Taxpayer F's request would not qualify for the Good Faith Effort Exception of this section.

(F) *Example 6.* Contractor G submits a request for apprentices from a registered apprenticeship program. Contractor's request states that it seeks to employ four apprentices for a period of 180 days for a total of 4,160 hours (1,040 hours $\times$ four apprentices). The registered apprenticeship program informs Contractor G that it can supply two apprentices for the 26 weeks and denies the request for the other two apprentices. Contractor G does not submit any additional requests for apprentices from a registered apprenticeship program after 120 days. Contractor G's request would qualify for the Good Faith Effort Exception of 693 hours for each of the two requested apprentices that were denied for the 120 day period after the request was submitted (120/180 $\times$ 1,040 hours = 693 hours for each denied apprentice). The request would not qualify for the Good Faith Effort Exception of this section after 120 days because Contractor G did not submit an additional request with respect to the portion of the request that was denied.

(2) *Penalty payment—(i) In general.* The taxpayer must pay the Internal Revenue Service (IRS) a penalty equal to \$50 multiplied by the total labor hours for which the requirements described in paragraph (b) or (d) of this section were not satisfied with respect to the construction, alteration, or repair work on such qualified facility to retain the increased credit.

(A) *Total labor hours for which the percentage requirement is not met.* For failures to meet the percentage of total labor hours requirement in paragraph (b)(1) of this section, the total labor hours for which the requirement was not satisfied is calculated as the difference between the total labor hours that would be required to meet the applicable percentage under paragraph (b)(2) of this section and the total labor hours actually worked by all qualified apprentices consistent with the applicable ratio of apprentices to journeyworkers.

(B) *Total labor hours for which the participation requirement is not met.* For failures to meet the participation requirement in paragraph (d) of this

section, the total labor hours for which the requirement was not satisfied is calculated as the total labor hours of construction, alteration, or repair worked by all individuals employed by the taxpayer, contractor, or subcontractor who failed to meet the participation requirement of the qualified facility divided by the number of individuals employed by the taxpayer, contractor, or subcontractor who performed construction, alteration, or repair work on the facility.

(C) *Penalty payment not required if taxpayer ineligible for increased credit under section 45(b)(6)(B)(iii).* If the taxpayer claims the increased credit under section 45(b)(6)(B)(iii) and does not satisfy the Apprenticeship Requirements for the claimed increased credit amount, then the obligation to make the penalty payment under paragraph (e)(2)(i) of this section applies. If the IRS determines that a taxpayer claiming the increased credit under section 45(b)(6)(B)(iii) failed to meet the Apprenticeship Requirements and the taxpayer does not make the penalty payment required under this paragraph (e)(2)(i), then no penalty is assessed under this paragraph (e)(2)(i), and the taxpayer is not entitled to the increased credit under section 45(b)(6)(B)(iii). Taxpayers that are not entitled to claim the increased credit amount may still be entitled to the base amount of the renewable electricity production credit under section 45(a) if they meet the requirements to claim the credit.

(D) *Examples.* The provisions of this paragraph (e)(2)(i) may be illustrated by the following examples, which do not take into account any possible application of the exception for Good Faith Effort Exception under paragraph (e)(1) of this section, the enhanced penalty payment requirement in the case of intentional disregard under paragraph (e)(2)(ii) of this section, or the inapplicability of the penalty in the case of a qualifying project labor agreement under paragraph (e)(2)(v) of this section. In each example, assume that the taxpayer uses the calendar year as the taxpayer's taxable year.

(1) *Example 1.* Taxpayer A begins construction of a qualified facility on April 1, 2023. The facility is placed in service on April 1, 2025, and A claims the increased credit on its 2025 tax return. All individuals who performed the construction, alteration, or repair work were employed directly by taxpayer A, including one qualified apprentice. At the time A claims the increased credit, a total of 50,000 labor hours were spent on the construction, alteration, or repair work of the facility,

6,000 of which were performed by qualified apprentices. Taxpayer A has satisfied the participation requirement because A has employed at least one apprentice. Taxpayer A failed to satisfy the percentage requirement under paragraph (b)(2) of this section because less than 12.5% of the total labor hours were performed by qualified apprentices. Qualified apprentices must have performed at least 6,250 labor hours, so the total labor hours by which the percentage requirement was not satisfied is 250. To cure A's failure to meet the percentage requirement, A must pay a penalty of \$12,500.

(2) *Example 2.* Taxpayer B begins construction of a qualified facility on February 10, 2023. The facility is placed in service on February 10, 2026, and B claims the increased credit on its 2026 tax return. B employs 10 individuals to perform construction, alteration, or repair work of the facility, two of whom are qualified apprentices. Taxpayer B also hires contractor M, who employs five individuals to perform construction, alteration, or repair work of the facility, none of whom are qualified apprentices. At the time B claims the increased credit, a total of 50,000 labor hours were spent on the construction, alteration, or repair work of the facility, 6,500 of which were performed by qualified apprentices. Of the total 50,000 labor hours, 33,000 labor hours were performed by individuals employed by B and 17,000 labor hours were performed by individuals employed by M. B has satisfied the percentage requirement under paragraph (b)(2) of this section because more than 12.5% of the total labor hours were performed by qualified apprentices. B failed to satisfy the participation requirement under paragraph (d) of this section because contractor M employed five individuals but no qualified apprentices. The total labor hours for which the participation requirement was not satisfied is 3,400, which is equal to the total labor hours performed by individuals employed by M (17,000) divided by the number of individuals employed by M (five). To cure B's failure to meet the Apprenticeship Requirements, B must pay a penalty of \$170,000.

(3) *Example 3.* Taxpayer C begins construction of a qualified facility on January 1, 2024. The facility is placed in service on January 1, 2025, and C claims the increased credit on its 2025 tax return. C employs 15 individuals to perform construction, alteration, or repair work of the facility, none of whom is a qualified apprentice. Taxpayer C also hires contractor N, who employs five individuals to perform

construction, alteration, or repair work of the facility, one of whom is a qualified apprentice. At the time C claims the increased credit, a total of 20,000 labor hours were spent on the construction, alteration, or repair work of the facility, 1,000 of which were performed by qualified apprentices. Of the 50,000 total labor hours, 15,000 labor hours were performed by individuals employed by C and 5,000 labor hours were performed by individuals employed by N. C failed to satisfy the percentage requirement under paragraph (b)(2) of this section because less than 15% of the total labor hours were performed by qualified apprentices. Qualified apprentices must have performed at least 3,000 labor hours, so the total labor hours by which the percentage requirement was not satisfied is 2,000. C also failed to satisfy the participation requirement under paragraph (d) of this section because C employed 15 individuals but zero qualified apprentices. The total labor hours for which the participation requirement was not satisfied is 1,000, which is equal to the total labor hours performed by individuals employed by C—15,000—divided by the number of individuals employed by C—15. The total labor hours by which C failed to meet the percentage and participation requirements is 3,000. To cure C's failure to meet the Apprenticeship Requirements, C must pay a penalty of \$150,000.

(4) *Example 4.* Taxpayer D begins construction of a qualified facility on April 1, 2023. The facility is placed in service on January 1, 2024, and D files a claim for the increased credit with its 2024 tax return. D does not employ any individuals to perform construction, alteration, or repair work of the facility, but hires contractors O, P, and Q. Contractor O employs 10 journeyworkers who work 10,000 hours and one qualified apprentice who works 400 hours. Contractor P employs four journeyworkers who work 4,000 hours and five qualified apprentices who work 2,000 hours. Contractor Q employs three journeyworkers who work 3,000 hours and one qualified apprentice who works 400 hours. The registered apprenticeship program for all of the apprentices has prescribed a 1:1 apprentice to journeyworker ratio. For each day, all journeyworkers and apprentices employed by the contractors are on the job site. The contractors have satisfied the participation requirement because they each employed one or more qualified apprentices. The total labor hours are 19,800 hours, and the total hours worked by qualified

apprentices are 2,800. However, Contractor P employed one apprentice in excess of the apprentice-to-journeyworker ratio (five qualified apprentices: four journeyworkers) that was prescribed by the apprenticeship program. Because Contractor P employed one apprentice in excess of the apprentice-to-journeyworker ratio, 400 of the apprentice hours worked by Contractor P do not count towards the labor hour requirement. Thus, Taxpayer D has failed to meet the percentage requirement because only 2,400 hours worked by apprentices are counted for purposes of the percentage requirement. The total labor hours by which D failed to meet the percentage requirement is 75 (19,800 total hours $\times$ 12.5% – 2,400 apprentice hours). To cure D's failure to meet the Apprenticeship Requirements, D must pay a penalty of \$3,750.

(ii) *Intentional disregard*—(A) *Application of section 45(b)(8)(D)(iii).* If the IRS determines that any failure to satisfy the Apprenticeship Requirements in paragraph (b) or (d) of this section is due to intentional disregard of those requirements, the amount of the penalty payment under paragraph (e)(2) of this section is increased to \$500 multiplied by the total labor hours for which the requirements described in paragraph (b) or (d) of this section were not satisfied with respect to the construction, alteration, or repair work on such qualified facility.

(B) *Meaning of intentional disregard.* A failure to satisfy the Apprenticeship Requirements of paragraph (b) or (d) of this section is due to intentional disregard if it is knowing or willful.

(C) *Facts and circumstances considered.* The facts and circumstances that are considered in determining whether a failure to satisfy the Apprenticeship Requirements is due to intentional disregard include, but are not limited to—

(1) Whether the failure was part of a pattern of conduct that includes repeated and systemic failures to comply with the Apprenticeship Requirements;

(2) Whether the taxpayer failed to take steps to determine the applicable percentage of labor hours required to be performed by qualified apprentices;

(3) Whether the taxpayer sought to promptly cure any failures;

(4) Whether the taxpayer has been required to make a penalty payment under paragraph (e)(2) of this section in previous years;

(5) Whether the taxpayer included provisions in any contracts entered into with contractors that required the employment of apprentices by the contractor and any subcontractors

consistent with the labor hour requirement of section 45(b)(8)(A) and the participation requirement of section 45(b)(8)(C); and

(6) Whether the taxpayer made no attempt to comply with the Apprenticeship Requirements.

(D) *Rebuttable presumption of no intentional disregard.* If a taxpayer makes the penalty payment required by paragraph (e)(2) of this section before receiving notice of an examination from the IRS with respect to a claim for the increased credit under section 45(b)(6), the taxpayer will be presumed not to have intentionally disregarded the Apprenticeship Requirements in paragraphs (b) and (d) of this section.

(iii) *Deficiency procedures to apply.* The penalty payment required by paragraph (e)(2) of this section is subject to deficiency procedures of subchapter B of chapter 63 of the Code.

(iv) *Penalty payments in the event of a transfer pursuant to section 6418.* To the extent an eligible taxpayer, as defined in section 6418(f)(2), has determined an increased credit amount under section 45(b)(6) and transferred such increased credit amount as part of a specified credit portion, the obligation to make a penalty payment under paragraph (e)(2)(i) of this section remains with the eligible taxpayer. The obligation for an eligible taxpayer to satisfy the Apprenticeship Requirements becomes binding upon the earlier of the filing of the eligible taxpayer's return for the taxable year for which the specified credit portion is determined with respect to the eligible taxpayer, or the filing of the return of the transferee taxpayer for the year in which the specified credit portion is taken into account. If the IRS determines that the eligible taxpayer failed to meet the Apprenticeship Requirements and the eligible taxpayer does not then make the penalty payments provided in paragraph (e)(2)(i) of this section, then no penalty is assessed under paragraph (e)(2)(i) of this section, and the eligible taxpayer is not entitled to the increased credit amount determined under section 45(b)(6)(B)(iii). Section 6418 and the regulations in this part under section 6418 control for determining the impact of an eligible taxpayer's failure to cure on any transferee taxpayer.

(v) *Project labor agreements.* The penalty payment required by paragraph (e)(2)(i) of this section to cure a failure to satisfy the Apprenticeship Requirements in paragraphs (b) and (d) of this section shall not apply with respect to the construction, alteration, or repair work of a qualified facility if the work is done pursuant to a Qualifying

Project Labor Agreement as defined in § 1.45–7(c)(6)(ii).

(f) *Definitions*. Solely for purposes of this section, the following definitions apply:

(1) *Journeyworker*. The term *journeyworker* means an individual who has attained a level of skill, abilities, and competencies recognized within an industry as having mastered the skills and competencies required for the occupation. Use of the term may also refer to a mentor, technician, specialist or other skilled individual who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training.

(2) *Labor hours*. The term *labor hours* means the total number of hours devoted to the performance of construction, alteration, or repair work by any individual employed by the taxpayer or by any contractor or subcontractor. Labor hours do not include hours worked by foremen, superintendents, owners, or persons employed in bona fide executive, administrative, or professional capacities (as defined in 29 CFR part 541).

(3) *Qualified apprentice*. The term *qualified apprentice* means an individual who is employed by the taxpayer or by any contractor or subcontractor who is participating in a registered apprenticeship program. Participating in a registered apprentice program means the apprentice has entered into a written agreement with a registered apprenticeship program containing the terms and conditions of the employment and training of the apprentice and has been registered as an apprentice with the U.S. Department of Labor's Office of Apprenticeship or a State apprenticeship agency during the time period in which work is performed by the apprentice for the taxpayer, contractor, or subcontractor.

(4) *Registered apprenticeship program*. A *registered apprenticeship program* means a program that has been registered by the U.S. Department of Labor's Office of Apprenticeship or a recognized State apprenticeship agency, pursuant to the National Apprenticeship Act and its implementing regulations for registered apprenticeship at 29 CFR parts 29 and 30, as meeting the basic standards and requirements of the Department of Labor for approval of such program for Federal purposes. Registration of a program is evidenced by a Certificate of Registration or other written indicia.

(5) *State apprenticeship agency*. The term *State apprenticeship agency* means

an agency of a State government that has responsibility and accountability for apprenticeship within the State and that has been recognized and authorized by the U.S. Department of Labor's Office of Apprenticeship to register and oversee apprenticeship programs and agreements for Federal purposes.

(6) *Taxpayer*. The term *taxpayer* has the same meaning as in § 1.45–7(d)(9).

(g) *Applicability date*. This section applies to facilities placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

§§ 1.45–9—1.45.11 [Reserved]

§ 1.45–12 Recordkeeping and reporting.

(a) *In general*. The increased credit must be claimed in such form and manner as may be prescribed in Internal Revenue Service forms or instructions or in publications or guidance published in the Internal Revenue Bulletin. See § 601.601 of this chapter. Consistent with sections 45 and 6001, a taxpayer claiming or transferring (under section 6418) an increased credit under section 45(b)(6)(A) must retain records sufficient to establish compliance with the applicable requirements in section 45(b)(6)(B), as applicable. In the case of any increased credit transferred under section 6418, the requirement to maintain and preserve sufficient records demonstrating compliance with the applicable prevailing wage and apprenticeship requirements remains with the eligible taxpayer that determined and transferred the credit. For definitions of terms used in this section, see § 1.45–7(d) with respect to the prevailing wage requirements, and § 1.45–8(f) with respect to the apprenticeship requirements.

(b) *Recordkeeping for prevailing wage and apprenticeship requirements*. With respect to each qualified facility for which a taxpayer is claiming or transferring (under section 6418) an increased credit under section 45(b)(6)(A), unless section 45(b)(6)(B)(i) or 45(b)(6)(B)(ii) applies, the taxpayer must maintain and preserve records sufficient to demonstrate compliance with the applicable prevailing wage and apprenticeship requirements in §§ 1.45–7 and 1.45–8, respectively. At a minimum, those records include payroll records for each laborer and mechanic (including each qualified apprentice) employed by the taxpayer, contractor, or subcontractor in the construction, alteration, or repair of the qualified facility.

(c) *Recordkeeping for prevailing wage requirements*. In addition to payroll records otherwise maintained by the taxpayer, records sufficient to demonstrate compliance with the applicable prevailing wage requirements in § 1.45–7 may include the following information for each laborer and mechanic (including each qualified apprentice) employed by the taxpayer, a contractor, or subcontractor with respect to each qualified facility:

(1) Identifying information, including the name, social security or tax identification number, address, telephone number, and email address;

(2) The location and type of qualified facility;

(3) The labor classification(s) the taxpayer applied to the laborer or mechanic for determining the prevailing wage rate and documentation supporting the applicable classification, including the applicable wage determination;

(3) The hourly rate(s) of wages paid (including rates of contributions or costs for bona fide fringe benefits or cash equivalents thereof) for each applicable labor classification;

(4) Records to support any contribution irrevocably made on behalf of a laborer or mechanic to a trustee or other third person pursuant to a bona fide fringe benefit program, and the rate of costs that were reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a plan or program described in 40 U.S.C. 3141(2)(B), including records demonstrating that the enforceable commitment was provided in writing to the laborers and mechanics affected;

(5) The total number of labor hours worked per pay period;

(6) The total wages paid for each pay period (including identifying any deductions from wages);

(7) Records to support wages paid to any apprentices at less than the applicable prevailing wage rates, including records reflecting the registration of the apprentices with a registered apprenticeship program and the applicable wage rates and apprentice to journeyworker ratios prescribed by the apprenticeship program; and

(8) The amount and timing of any correction payments and documentation reflecting the calculation of the correction payments.

(d) *Recordkeeping for apprenticeship requirements*. Records sufficient to demonstrate compliance with the applicable apprenticeship requirements in § 1.45–8 may include the following information for each apprentice

employed by the taxpayer, a contractor, or subcontractor with respect to each qualified facility:

(1) Any written requests for the employment of apprentices from registered apprenticeship programs, including any contacts with the U.S. Department of Labor's Office of Apprenticeship or a State apprenticeship agency regarding requests for apprentices from registered apprenticeship programs;

(2) Any agreements entered into with registered apprenticeship programs with respect to the construction, alteration, or repair of the facility;

(3) Documents reflecting the standards and requirements of any registered apprenticeship program, including the applicable ratio requirement prescribed by each registered apprenticeship program from which taxpayers, contractors, or subcontractors employ apprentices;

(4) The total number of labor hours worked by apprentices; and

(5) Records reflecting the daily ratio of apprentices to journeyworkers.

(e) *Applicability date.* This section applies to facilities placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

■ **Par. 4.** Sections 1.45L–1 through 1.45L–3 are added to read as follows:

§§ 1.45L–1—1.45L–2 [Reserved]

§ 1.45L–3 Rules relating to the increased credit amount for prevailing wage.

(a) *In general.* With respect to a qualified new energy efficient home described in section 45L(a)(2)(B), the credit determined under section 45L(a)(2)(B)(i) is \$2,500 and the credit determined under section 45L(a)(2)(B)(ii) is \$5,000 if the qualified new energy efficient home described in section 45L(a)(2)(B)—

(1) Meets the requirements under section 45L(c)(1)(A) or 45L(c)(1)(B), as applicable;

(2) Is constructed by an eligible contractor;

(3) Is acquired by a person for use as a residence during the taxable year; and

(4) Satisfies the prevailing wage requirements of section 45(b)(7) and § 1.45–7, and the recordkeeping and reporting requirements of § 1.45–12.

(b) *Definitions.*—(1) *Qualified new energy efficient home.* For purposes of this section, a *qualified new energy efficient home* means a qualified new energy efficient home described in section 45L(b)(2).

(2) *Eligible contractor.* For purposes of this section, an *eligible contractor*

means an eligible contractor described in section 45L(b)(1).

(c) *Applicability date.* This section applies to qualified new energy efficient homes acquired for use in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

■ **Par. 5.** Section 1.45Q–6 is added to read as follows:

§ 1.45Q–6 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If the requirements in paragraph (b) of this section are satisfied with respect to any qualified facility or any carbon capture equipment placed in service at that facility, then the credit determined under section 45Q(a) is multiplied by five.

(b) *Qualified facility and carbon capture equipment requirements.* The requirements of this paragraph (b) are satisfied if any of the following requirements are met—

(1) With respect to a qualified facility the construction of which begins on or after January 29, 2023, and any carbon capture equipment placed in service at such facility, the taxpayer meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7 with respect to such facility and equipment, the apprenticeship requirements of section 45(b)(8) and § 1.45–8 with respect to the construction of such facility and equipment, and the recordkeeping and reporting requirements of § 1.45–12;

(2) With respect to any carbon capture equipment the construction of which begins on or after January 29, 2023, and which is installed at a qualified facility the construction of which began prior to such date, the taxpayer meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7 with respect to such equipment, the apprenticeship requirements of section 45(b)(8) and § 1.45–8 with respect to the construction of such equipment, and the recordkeeping and reporting requirements of § 1.45–12; or

(3) The construction of carbon capture equipment begins prior to January 29, 2023, and such equipment is installed at a qualified facility the construction of which begins prior to January 29, 2023.

(c) *Applicability date.* This section applies to facilities or equipment placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

■ **Par. 6.** Sections 1.45U–1 through 1.45U–3 are added to read as follows:

§§ 1.45U–1—1.45U–2 [Reserved]

§ 1.45U–3 Rules relating to the increased credit amount for prevailing wage.

(a) *In general.* If a qualified nuclear power facility satisfies the prevailing wage requirements of section 45(b)(7) and § 1.45–7 in the alteration or repair of such facility, and the recordkeeping and reporting requirements of § 1.45–12, then the amount of the zero-emission nuclear power production credit for the taxable year is equal to the credit amount determined under section 45U(a) multiplied by five.

(b) *Applicability date.* This section applies to qualified nuclear power facilities that produce and sell electricity during the taxable year and the alteration or repair of which occurs after [date final rule publishes in the **Federal Register**].

■ **Par. 7.** Sections 1.45V–1 through 1.45V–3 are added to read as follows:

§§ 1.45V–1—1.45V–2 [Reserved]

§ 1.45V–3 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If any qualified clean hydrogen production facility satisfies the requirements in paragraph (b) of this section, then the amount of the credit for producing qualified clean hydrogen determined under section 45V(a) with respect to qualified clean hydrogen described in section 45V(b)(2) is equal to the credit amount determined under section 45V(a) multiplied by five.

(b) *Qualified clean hydrogen production facility requirements.* A qualified clean hydrogen production facility satisfies the requirements of this paragraph (b) if it is one of the following—

(1) A facility the construction of which began prior to January 29, 2023, and that meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7 with respect to an alteration or repair of the facility that occurs after January 29, 2023 (to the extent applicable), and that meets the recordkeeping and reporting requirements of § 1.45–12; or

(2) A facility that meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7, the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12.

(c) *Applicability date.* This section applies to facilities placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

■ **Par. 8.** Sections 1.45Y–1 through 1.45Y–3 are added to read as follows:

§§ 1.45Y–1—1.45Y–2 [Reserved]

§ 1.45Y–3 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If any qualified clean electricity production facility satisfies the requirements in paragraph (b) of this section, the amount of the credit for producing clean electricity determined under section 45Y(a)(2) equals 1.5 cents.

(b) *Qualified clean electricity production facility requirements.* A qualified facility satisfies the requirements of this paragraph (b) if it is one of the following—

(1) A facility with a maximum net output of less than one megawatt (as measured in alternating current);

(2) A facility the construction of which began prior to January 29, 2023; or

(3) A facility that meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7, the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12.

(c) *Applicability date.* This section applies to facilities placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

■ **Par. 9.** Sections 1.45Z–1 through 1.45Z–3 are added to read as follows:

§§ 1.45Z–1—1.45Z–2 [Reserved]

§ 1.45Z–3 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If any qualified facility for clean fuel production satisfies the requirements in paragraph (b) of this section, the clean fuel production credit determined under section 45Z(a) is multiplied by five.

(b) *Qualified facility for clean fuel production.* A qualified facility for clean fuel production satisfies the requirements of this paragraph (b) if it is one of the following—

(1) A qualified facility that begins construction on or after January 29, 2023, and is placed in service after December 31, 2024, that meets the prevailing wage requirements of section 45(b)(7) and § 1.45–7, the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12; or

(2) A qualified facility that is placed in service before January 1, 2025, that meets the prevailing wage requirements

of section 45(b)(7) and § 1.45–7, the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12, with respect to any alteration or repair of the facility with respect to any taxable year beginning after December 31, 2024, for which the credit is allowed under section 45Z.

(c) *Applicability date.* This section applies to facilities placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

■ **Par. 10.** Section 1.48–13 is added to read as follows:

§ 1.48–13 Rules relating to the increased credit for prevailing wage and apprenticeship.

(a) *In general.* If a qualified energy project satisfies the requirements in paragraph (b) of this section, the amount of the energy credit determined under section 48(a), after the application of sections 48(a)(1) through (8), and 48(a)(15), is equal to the credit determined under section 48(a) (section 48 credit) multiplied by five.

(b) *Qualified energy project requirements.* A qualified energy project satisfies the requirements of this paragraph (b) if it is one of the following—

(1) A project with a maximum net output of less than one megawatt (as measured in alternating current) or thermal energy;

(2) A project the construction of which began prior to January 29, 2023; or

(3) A project that meets the prevailing wage requirements of section 48(a)(10)(A) and § 1.45–7(b)–(d), the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12.

(c) *Special rule applicable to general prevailing wage requirements—*(1) *In general.* In addition to satisfying the prevailing wage requirements under § 1.45–7(b) through (d), a taxpayer must ensure that any laborers and mechanics employed (within the meaning of § 1.45–7) by the taxpayer or any contractor or subcontractor in the construction of such energy project, and for the five-year period beginning on the date such project is placed in service, the alteration or repair of such project, are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such project is located as most recently

determined by the Secretary of Labor, in accordance with 40 U.S.C. chapter 31, subchapter IV. Subject to recapture under paragraph (c)(3) of this section, for purposes of determining the increased credit amount under section 48(a)(9)(B)(iii), the taxpayer is deemed to satisfy the prevailing wage requirements at the time such project is placed in service.

(2) *Exception.* For purposes of satisfying the wage requirements of paragraph (b)(3) of this section, § 1.45–7(a) does not apply.

(3) *Recapture.* The increased section 48 credit amount is subject to recapture for any project that does not satisfy the prevailing wage requirements in § 1.45–7 with respect to an alteration or repair of such project for the five-year period beginning on the date such project is originally placed in service (but which does not cease to be investment credit property within the meaning of section 50(a) of the Code).

(d) *Applicability date.* This section applies to projects placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

■ **Par. 11.** Sections 1.48C–1 through 1.48C–3 are added to read as follows:

§§ 1.48C–1—1.48C–2 [Reserved]

§ 1.48C–3 Rules relating to the increased credit amount for prevailing wage and apprenticeship.

(a) *In general.* If any qualifying advanced energy project satisfies the prevailing wage requirements of section 45(b)(7) and § 1.45–7, the apprenticeship requirements of section 45(b)(8) and § 1.45–8, and the recordkeeping and reporting requirements of § 1.45–12, the qualifying advanced energy project credit determined under section 48C(a) for any taxable year with respect to credits allocated pursuant to section 48C(e) is an amount equal to 30 percent of the qualified investment for the taxable year.

(b) *Applicability date.* This section applies to qualifying advanced energy projects placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

■ **Par. 12.** Sections 1.48E–1 through 1.48E–3 are added to read as follows:

§§ 1.48E-1—1.48E-2 [Reserved]**§ 1.48E-3 Rules relating to the increased credit for prevailing wage and apprenticeship.**

(a) *In general.* If any clean electricity investment with respect to a qualified facility or energy storage technology satisfies the requirements in paragraph (b) of this section, the applicable percentage of the qualified clean electricity investment credit determined under section 48E(a) for the taxable year equals 30 percent.

(b) *Qualified clean electricity investment requirements.* A qualified clean electricity investment satisfies the requirements of this paragraph (b) if it is one of the following—

(1) A facility with a maximum net output of less than one megawatt (as measured in alternating current);

(2) A facility the construction of which began prior to January 29, 2023;

(3) A facility that meets the prevailing wage requirements of § 1.48-13(c), the apprenticeship requirements of section 45(b)(8) and § 1.45-8, and the recordkeeping and reporting requirements of § 1.45-12;

(4) Energy storage technology with a capacity of less than one megawatt;

(5) Energy storage technology the construction of which began prior to January 29, 2023; or

(6) Energy storage technology that satisfies the prevailing wage requirements of § 1.48-13(c), the apprenticeship requirements of section 45(b)(8) and § 1.45-8, and the recordkeeping and reporting requirements of § 1.45-12.

(c) *Applicability date.* This section applies to facilities and energy storage technologies placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the construction of which begins after [date final rule publishes in the **Federal Register**].

■ **Par. 13.** Sections 1.179D-1 through 1.179D-3 are added to read as follows:

§§ 1.179D-1—1.179D-2 [Reserved]**§ 1.179D-3 Rules relating to the increased deduction for prevailing wage and apprenticeship.**

(a) *In general.* If any energy efficient commercial building property, energy efficient building retrofit property, or property installed pursuant to a qualified retrofit plan satisfies the requirements in paragraph (b) of this section, the applicable dollar value for determining the maximum amount of

the deduction under section 179D(b)(2) is multiplied by five.

(b) *Certain energy efficient commercial building property requirements.* Energy efficient commercial building property, energy efficient building retrofit property, or property installed pursuant to a qualified retrofit plan satisfies the requirements of this paragraph (b) if it is one of the following—

(1) Property the installation of which began prior to January 29, 2023; or

(2) Property that meets the prevailing wage requirements of section 45(b)(7) and § 1.45-7, the apprenticeship requirements of section 45(b)(8) and § 1.45-8, and the recordkeeping and reporting requirements of § 1.45-12.

(c) *Applicability date.* This section applies to property placed in service in taxable years ending after [date final rule publishes in the **Federal Register**], and the installation of which begins after [date final rule publishes in the **Federal Register**].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

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Part III

Department of Homeland Security

6 CFR Part 37

Minimum Standards for Driver's Licenses and Identification Cards
Acceptable by Federal Agencies for Official Purposes; Waiver for Mobile
Driver's Licenses; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 37

[Docket No. TSA–2023–0002]

RIN 1652–AA76

Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Waiver for Mobile Driver's Licenses

AGENCY: Transportation Security Administration, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Transportation Security Administration (TSA) is proposing to amend the REAL ID regulations to waive, on a temporary and State-by-State basis, the regulatory requirement that mobile or digital driver's licenses or identification cards (collectively “mobile driver's licenses” or “mDLs”) must be compliant with REAL ID requirements to be accepted by Federal agencies for official purposes, as defined by the REAL ID Act, when full enforcement of the REAL ID Act and regulations begins on May 7, 2025.

DATES: Interested persons are invited to submit comments on or before October 16, 2023.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system. To avoid duplication, please use only one of the following methods:

- *Electronic Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS.

- *Fax:* (202) 493–2251.

See the **SUPPLEMENTARY INFORMATION** section for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT:

George Petersen, Senior Program Manager, REAL ID Program, Enrollment Services and Vetting Programs, Transportation Security Administration; telephone: (571) 227–2215; email: george.petersen@tsa.dhs.gov.

Please do not submit comments to these addresses.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

TSA invites interested persons to participate in this NPRM by submitting written comments, including relevant data. Comments that will provide the most assistance to TSA will reference a specific portion of this proposed rule, explain the reason for any suggestion or recommended change, and include data, information, or authority that supports such suggestion or recommended change.

Submitting Comments

With each comment, please identify the docket number at the beginning of your comments. You may submit comments and material electronically, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or in person, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you would like TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard or envelope on which the docket number appears and we will mail it to you.

All comments, except those that include confidential or SSI¹ will be posted to <https://www.regulations.gov>, and will include any personal information you have provided. Should you wish your personally identifiable information redacted prior to filing in the docket, please clearly indicate this request in your submission. TSA will consider all comments that are in the docket on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and SSI Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit

such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in the **FOR FURTHER INFORMATION CONTACT** section. TSA will take the following actions for all submissions containing SSI:

- TSA will not place comments containing SSI in the public docket and will handle them with applicable safeguards and restrictions on access.
- TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket explaining that commenters have submitted such documents.
- TSA may include a redacted version of the comment in the public docket.
- TSA will treat requests to examine or copy information that is not in the public docket as any other request under the Freedom of Information Act (5 U.S.C. 552) and the Department of Homeland Security (DHS) Freedom of Information Act regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual, association, business entity, labor union, *etc.*, who submitted the comment. For more about privacy and the docket, review the Privacy and Security Notice for the FDMS at <https://www.regulations.gov/privacy-notice>, as well as the System of Records Notice DOT/ALL 14—Federal Docket Management System (73 FR 3316, January 17, 2008) and the System of Records Notice DHS/ALL 044—eRulemaking (85 FR 14226, March 11, 2020).

You may review TSA's electronic public docket at <https://www.regulations.gov>. In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility between 9 a.m. and 5 p.m., Monday through Friday, excluding legal holidays, or call (202) 366–9826. This DOT facility is located in the West Building Ground Floor, Room W12–140 at 1200 New Jersey Avenue SE, Washington, DC 20590.

¹ “Sensitive Security Information” or “SSI” is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

Availability of Rulemaking Document

You can find an electronic copy of this rulemaking using the internet by accessing the Government Publishing Office's web page at <https://www.govinfo.gov/app/collection/FR/> to view the daily published **Federal Register** edition or accessing the Office of the Federal Register's web page at <https://www.federalregister.gov>. Copies are also available by contacting the individual identified for "General Questions" in the **FOR FURTHER INFORMATION CONTACT** section.

Abbreviations and Terms Used in This Document

AAMVA—American Association of Motor Vehicle Administrators
 CA/Browser Forum—Certification Authority Browser Forum
 CISA—Cybersecurity and Infrastructure Security Agency
 DHS—U.S. Department of Homeland Security
 DID—Decentralized Identifiers
 FIPS—Federal Information Processing Standards
 HSM—Hardware security module
 IEC—International Electrotechnical Commission
 ISO—International Organization for Standardization
 mDL—mobile driver's licenses and mobile identification cards
 NIST—National Institute for Standards and Technology
 NPRM—Notice of proposed rulemaking
 PUB—Publication
 RFI—Request for Information
 SP—Special Publication
 TSA—Transportation Security Administration
 VC—Verifiable Credentials
 VCDM—Verifiable Credentials Data Model
 W3C—World Wide Web Consortium

Table of Contents

- I. Executive Summary
 - A. Purpose of the Regulatory Action
 - B. Overview of the Proposed Rule
 - C. Need for a Multi-Phased Rulemaking
- II. Background
 - A. REAL ID Act, Regulations, and Applicability to mDLs
 - B. Request for Information
 - C. mDL Overview
 - D. Current and Emerging Industry Standards and Government Guidelines for mDLs
 - E. DHS Involvement in mDLs
- III. Summary of the Proposed Rule
 - A. Overview
 - B. Specific Provisions
 - C. Impacted Stakeholders
 - D. Use Cases Affected by This Proposed Rule
- IV. Discussion of Public Comments in the RFI
- V. Consultation With States, Non-Governmental Organizations, and the Department of Transportation
- VI. Regulatory Analyses
 - A. Economic Impact Analyses
 - B. Paperwork Reduction Act

- C. Federalism (E.O. 13132)
- D. Customer Service (E.O. 14058)
- E. Energy Impact Analysis (E.O. 13211)
- F. Environmental Analysis
- VII. Specific Questions

I. Executive Summary

A. Purpose of the Regulatory Action

This proposed rule is part of an incremental, multi-phased rulemaking that will culminate in the promulgation of comprehensive requirements for State issuance of REAL ID²-compliant mobile driver's licenses and mobile identification cards (collectively "mDLs"). In this first phase, TSA is proposing two changes to the current regulations in 6 CFR part 37, "REAL ID Driver's Licenses and Identification Cards." First, TSA is proposing to add definitions for, among others, mobile driver's licenses and mobile identification cards. These definitions provide a precise explanation of those terms as referenced in the REAL ID Act, which applies to only State-issued driver's licenses and state-issued identification cards.³ Any other types of identification cards, such as those issued by a Federal agency, or commercial, educational, or non-profit entity, are beyond the scope of the Act and regulations. The definition of "mDL" as used in this rulemaking is limited to the REAL Act and regulations and should not be confused with "mDLs" as defined by other entities, or with State-issued mDLs that are not intended to comply with the REAL ID Act.

Second, TSA is proposing to establish a temporary waiver process that would permit Federal agencies to accept mDLs for official purposes,⁴ as defined in the REAL ID Act and regulations, on an interim basis when enforcement begins

on May 7, 2025,⁵ but only if all of the following conditions are met: (1) the mDL holder has been issued a valid and unexpired REAL ID-compliant physical driver's license or identification card from the same State that issued the mDL; (2) TSA has determined the issuing State to be REAL ID-compliant; and (3) TSA has issued a waiver to the State. To qualify for the waiver, this proposed rule would require States to submit an application demonstrating that they meet specified requirements, drawn from 19 industry and government standards guidelines. The rulemaking proposes to incorporate by reference (IBR) those standards and guidelines, which cover technical areas such as mDL communication, digital identity, encryption, cybersecurity, and network/information system security and privacy.

As noted above, this proposed rule is part of an incremental rulemaking that would temporarily permit Federal agencies to accept mDLs for official purposes until TSA issues a subsequent rule that would set comprehensive requirements for mDLs. TSA believes it is premature to issue such requirements before the May 7, 2025, deadline due to the need for emerging industry standards and government guidelines to be finalized (discussed in more detail in Part II.D., below).

The need for this rulemaking arises from TSA's desire to accommodate and foster the rapid pace of mDL innovation, while ensuring the intent of the REAL ID Act and regulations are met. Secure driver's licenses and identification cards are a vital component of our national security framework. The REAL ID Act of 2005 addressed the 9/11 Commission's recommendation that the Federal Government "set standards for the issuance of sources of identification, such as driver's licenses." Under the REAL ID Act and regulations, a Federal agency may not accept for any official purpose a State-issued driver's license or identification card, either physical or an mDL, that does not meet specified requirements, as detailed in the REAL ID regulations (*see* part II.A., below, for more discussion on these requirements).

Although the current regulatory provisions do not include requirements that would enable States to issue REAL ID-compliant mDLs, several States are already investing significant resources to develop mDLs based on varying and often proprietary standards, many of which may lack the security, privacy,

² The REAL ID Act of 2005, Division B of the FY05 Emergency Supplemental Appropriations Act, as amended, Public Law 109–13, 119 Stat. 302. Effective May 22, 2023, authority to administer the REAL ID program was delegated from the Secretary of Homeland Security to the Administrator of TSA pursuant to DHS Delegation No. 7060.2.1.

³ *See id.* section 201 (defining a "driver's license" to include "driver's licenses stored or accessed via electronic means, such as mobile or digital driver's licenses, which have been issued in accordance with regulations prescribed by the Secretary"; mirroring definition for "identification card").

⁴ The REAL ID Act defines official purposes as including but not limited to accessing Federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and any other purposes that the Secretary shall determine. *See id.* Notably, because the Secretary has not determined any other official purposes, the REAL ID Act and regulations do not apply to Federal acceptance of driver's licenses and identification cards for other purposes, such as applying for Federal benefits programs, submitting immigration documents, or other Federal programs.

⁵ 88 FR 14473 (Mar. 9, 2023); DHS Press Release, DHS Announces Extension of REAL ID Full Enforcement Deadline (Dec. 5, 2022), <https://www.dhs.gov/news/2022/12/05/dhs-announces-extension-real-id-full-enforcement-deadline>.

and interoperability features necessary for Federal acceptance for official purposes. The rulemaking would encourage the development of mDLs with a higher level of security, privacy, and interoperability.

Absent the proposed rule, individual States may choose insufficient mDL security and privacy safeguards that fail to meet the security purposes of REAL ID requirements and the privacy needs of users. The proposed rule would address these considerations by enabling TSA to grant a waiver to States whose mDLs TSA determines provide sufficient safeguards for security and privacy, pending completion of emerging standards. Without timely guidance from the Federal government regarding potential requirements for developing a REAL ID-compliant mDL, States risk investing in mDLs that are not aligned with emerging industry standards and government guidelines that may be IBR'd in a future rulemaking. States, therefore, may become locked-in to existing solutions and could face a substantial burden to redevelop products acceptable to Federal agencies under this future rulemaking.

Many stakeholders have already expressed these concerns to TSA. In response to an April 2021 Department of Homeland Security (DHS) Request for Information (RFI),⁶ issued to inform a future rulemaking that would set technical requirements and security standards for mDLs, one commenter cautioned that the absence of a common standard “could lead to fragmentation of the market, a decrease in trust, non-interoperable solutions, and a global diminishing benefit of the mDL concept.”⁷ Similarly, another commenter warned that “[w]ithout clear, uniform, flexible standards that will encourage widespread public and private sector use of mDLs, mDLs will likely create confusion and struggle to gain a foothold in being accepted.”⁸

Although this proposed rule would not set standards for the issuance of REAL ID-compliant mDLs, it does establish minimum requirements that States must meet to be granted a waiver. These proposed minimum standards and requirements would ensure that States' investments in mDLs provide minimum privacy and security safeguards consistent with information currently known to the TSA.

B. Overview of the Proposed Rule

As further discussed in part II.A., below, mDLs cannot be accepted by Federal agencies for official purposes when REAL ID full enforcement begins on May 7, 2025, unless 6 CFR part 37 is amended to address mDLs. This proposed rule would establish a process for waiving, on a temporary and State-by-State basis, the current prohibition on Federal acceptance of mDLs for official purposes, and enable Federal agencies to accept mDLs on an interim basis while the industry matures to a point sufficient to enable TSA to develop more comprehensive mDL regulatory requirements.

The current regulations prohibit Federal agencies from accepting non-compliant driver's licenses and identification cards, including both physical cards and mDLs, when REAL ID enforcement begins on May 7, 2025. Any modification of this regulatory provision must occur through rulemaking (or legislation). Until and unless TSA promulgates comprehensive mDL regulations that enable States to develop and issue REAL ID-compliant mDLs, mDLs cannot be developed to comply with REAL ID, and Federal agencies therefore cannot accept mDLs for official purposes after REAL ID enforcement begins on May 7, 2025. The proposed rule would allow the Federal government to accept mDLs on an interim basis, but only if all of the following conditions are met: (1) the mDL holder has been issued a valid and unexpired REAL ID-compliant physical driver's license or identification card, (2) TSA has determined the issuing State to be REAL ID-compliant, and (3) TSA has issued a waiver to such State based on that State's compliance with minimum privacy, safety, and interoperability requirements proposed in this rulemaking. Please see Part II.A., below, for an explanation of the REAL ID requirement that both cards and issuing States must be REAL ID compliant.

C. Need for a Multi-Phased Rulemaking

TSA recognizes both that regulations can influence long-term industry research and investment decisions and that premature regulations can distort the choices of technologies adopted, which can be costly to undo. As noted above, there are clear reasons for TSA to issue requirements for mDLs. First, there is a growing demand for and interest in mDLs due to their potential benefits of increased convenience, security, and privacy. Second, to meet this demand, States are beginning to invest in the infrastructure and

programs to issue mDLs. Third, in the absence of Federal regulations and guidelines as outlined in this rulemaking, States may make unsuitable investments and issue mDLs that Federal agencies cannot accept. Fourth, adoption and use of mDLs could be thwarted if current regulations are not amended to accommodate mDLs when REAL ID enforcement begins on May 7, 2025.

At the same time, however, TSA believes it is premature to issue final, comprehensive requirements for mDLs given the rapid pace of innovation in this nascent market, and the multiple emerging industry and government standards and guidelines necessary to ensure mDL privacy and security that are still in development. From comments submitted in response to the RFI, TSA recognizes that technology and stakeholder positions in this industry are diverse and evolving. TSA also conducted a comprehensive analysis of industry and Government standards and guidance, and the types of technology currently available. Based on this analysis, a few international industry standards applicable to mDLs are available,⁹ while most are years away from publication. Accordingly, TSA has concluded that it is premature to promulgate comprehensive requirements for mDLs while those standards are emerging, because of the risk of unintended consequences, such as chilling innovation and competition in the marketplace, and “locking-in” stakeholders to certain technologies.

Although TSA believes it is premature to establish comprehensive requirements at this time, TSA believes it is appropriate to use its regulatory authority to establish a waiver process with clear standards and requirements to facilitate the acceptance of mDLs while the industry matures and moves to accepted standards. Therefore, TSA has decided to proceed with a multi-phased rulemaking approach. Initial efforts focused on research and gathering information from interested stakeholders, commencing with publication of the pre-rulemaking RFI that was intended to inform any subsequent rulemaking. “Phase 1,” the current phase, would establish a temporary waiver process. This waiver process would enable secure use of mDLs when REAL ID enforcement begins on May 7, 2025, while providing TSA additional operational experience and data from TSA, which will accept mDLs during the waiver period before eventually issuing comprehensive regulations. The proposed rule is

⁶ See 86 FR 20320 (April 19, 2021).

⁷ Comment by American Association of Motor Vehicle Administrators.

⁸ Comment by DocuSign.

⁹ See Part II.D.

intended to serve as a regulatory bridge for this emerging technology.

Following publication of industry standards currently under development, TSA anticipates conducting a “Phase 2” rulemaking that would repeal the temporary waiver provisions, including appendix A to subpart A of the part (discussed in Part III.B.4.iv., below) established in Phase 1 and establish more comprehensive requirements enabling States to issue mDLs that comply with REAL ID requirements. At this time, TSA anticipates the Phase 2 rulemaking would IBR pertinent parts of some emerging standards (pending review of those final, published documents) regarding specific requirements for security, privacy, and interoperability, and distinguish between existing regulatory requirements that apply only to mDLs versus physical cards. Comments received in Phase 1, experience and data gained from temporary Federal mDL acceptance under a waiver, TSA testing of mDL acceptance at TSA airport security checkpoints, and publication of emerging standards, will inform the Phase 2 rulemaking. As one commenter¹⁰ urged, DHS is taking “a slow and careful approach” to regulation in order to fully understand the implications of mDLs.

This iterative rulemaking approach supports Executive Order (E.O.) 14058 of December 13, 2021 (Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government), by using “technology to modernize Government and implement services that are simple to use, accessible, equitable, protective, transparent, and responsive for all people of the United States.”¹¹ As highlighted above and discussed in more detail below, allowing acceptance of mDLs issued by States that meet the waiver requirements would enable the public to more immediately realize potential benefits of mDLs, including greater convenience, security, and privacy. See Part II.C.4, below, for more discussion on these benefits.

II. Background

A. REAL ID Act, Regulations, and Applicability to mDLs

The REAL ID Act of 2005 sets minimum requirements for State-issued driver’s licenses and identification cards accepted by Federal agencies for official purposes, including accessing Federal facilities, boarding federally regulated commercial aircraft, entering nuclear

power plants, and any other purposes that the Secretary shall determine.¹² The Act defines “driver’s licenses” and “identification cards” strictly as State-issued documents,¹³ and the implementing regulations, 6 CFR part 37, further refine the definition of “identification card” as “a document made or issued by or under the authority of a State Department of Motor Vehicles or State office with equivalent function.”¹⁴ Therefore, the REAL ID Act and regulations do not apply to identification cards that are not made or issued under a State authority, such as cards issued by a Federal agency or any commercial, educational, or non-profit entity.

On January 29, 2008, DHS published a final rule implementing the Act’s requirements.¹⁵ That rule included both a State compliance deadline¹⁶ and a schedule describing when individuals must obtain a compliant driver’s license or identification card intended for use for official purposes.¹⁷ DHS refers to these two deadlines as “State-based” and “card-based” enforcement, respectively (or “full enforcement” collectively). For State-based enforcement, 6 CFR 37.65(a) prohibits Federal agencies from accepting cards issued by States and territories that are not compliant with the REAL ID standards.¹⁸ DHS incrementally enforced the State-based deadline in phases, with the last phase beginning January 22, 2018. Since this date, many Federal agencies have accepted all valid driver’s licenses and identification cards issued by REAL ID-compliant States or States with an extension or under compliance review from DHS.

Card-based enforcement begins on May 7, 2025.¹⁹ On this date, Federal agencies will be prohibited from accepting for official purposes a State-

or territory-issued driver’s license or identification card for official purposes unless the card is compliant with the REAL ID Act and regulations.²⁰

On December 21, 2020, Congress passed the REAL ID Modernization Act²¹ to amend the REAL ID Act to reflect new technologies that did not exist when the law was enacted more than 15 years ago. Among other updates,²² the REAL ID Modernization Act clarified that mDLs are subject to REAL ID requirements by amending the definitions of “driver’s license” and “identification card” to specifically include mDLs that have been issued in accordance with regulations prescribed by the Secretary.²³ The REAL ID regulations therefore must be updated to distinguish which existing requirements in 6 CFR 37 apply to mDLs versus physical cards, and to include additional requirements to ensure that mDLs meet equivalent levels of security currently imposed on REAL ID-compliant physical cards and are otherwise secure. An mDL cannot be REAL ID-compliant until TSA establishes REAL ID requirements in regulations and States issue mDLs compliant with those requirements. As a result of this requirement, mDLs must also be REAL ID-compliant to be accepted when card-based enforcement begins on May 7, 2025.

B. Request for Information

In April 2021, DHS issued an RFI announcing DHS’s intent to commence future rulemaking to set the minimum technical requirements and security standards for mDLs to enable Federal agencies to accept mDLs for official purposes. The RFI requested comments and information to inform DHS’s rulemaking.²⁴ In June 2021, DHS held a public meeting to provide an additional forum for comment.²⁵ In response to comments at the public meeting concerning the importance of public access to an industry-developed standard referenced in the RFI, DHS subsequently published a notification in the **Federal Register** to facilitate access to the standard.²⁶ DHS also conducted

¹² The REAL ID Act of 2005—Division B of the FY05 Emergency Supplemental Appropriations Act, as amended, Public Law 109–13, 119 Stat. 302.

¹³ *Id.* at sec. 201.

¹⁴ 6 CFR 37.3.

¹⁵ Minimum Standards for Driver’s Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Final Rule, 73 FR 5272 (Jan. 29, 2008); codified at 6 CFR part 37 (2008 final rule). DHS subsequently issued six other final rules and interim final rules amending the regulations, including changes to compliance deadlines and State extension submission dates. See 74 FR 49308 (Sep. 28, 2009), 74 FR 68477 (Dec. 28, 2009) (final rule, stay), 76 FR 12269 (Mar. 7, 2011), 79 FR 77836 (Dec. 29, 2014); 84 FR 55017 (Oct. 15, 2019); 86 FR 23237 (May 3, 2021). In addition to final rules, DHS also published two Information Collection Requests in the **Federal Register** in 2016 and 2022. See 81 FR 8736 (Feb. 22, 2016) and 87 FR 23878 (Apr. 21, 2022).

¹⁶ See 6 CFR 37.51(a).

¹⁷ See 6 CFR 37.5(b).

¹⁸ See 6 CFR 37.65(a).

¹⁹ See 6 CFR 37.5(b).

²⁰ See *id.*

²¹ REAL ID Modernization Act, Title X of Division U of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 2304.

²² TSA is conducting a separate rulemaking to implement other sections of the REAL ID Modernization Act.

²³ Sec. 1001 of the REAL ID Modernization Act, Title X of Division U of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 2304.

²⁴ 86 FR 20320 (April 19, 2021).

²⁵ 86 FR 31987 (June 16, 2021).

²⁶ 86 FR 51625 (Sept. 16, 2021).

¹⁰ See comment from Electronic Privacy Information Center.

¹¹ Published at 86 FR 71357 (Dec. 16, 2021).

extensive outreach and engagement with affected stakeholders, including States, industry, and individuals. DHS also conducted a roundtable discussion on privacy considerations with non-profit organizations representing varied interests.

The RFI requested comments on 13 specific topics, including: potential security risks arising from mDL usage and mitigating solutions, potential privacy concerns or benefits associated with mDL transactions, the maturity of certain industry standards and the appropriateness of DHS's adoption of them, costs to individuals to obtain mDLs, and various technical topics associated with mDL issuance and communications. In response, DHS received about 60 comments. Please see Part IV, below, for a detailed discussion of the comments received, which are also referenced throughout this preamble.

C. mDL Overview

1. mDLs Generally

Driven by increasing public demand for more convenient, secure, and privacy-enhancing forms of identification, many States have invested significantly and rapidly in recent years to develop mDL technology. An mDL is generally recognized as the digital representation of an individual's identity information contained on a State-issued physical driver's license or identification card.²⁷

²⁷ A technical description of mDLs as envisioned by the American Association of Motor Vehicle Administrators may be found at <https://www.aamva.org/Mobile-Driver's-License/>.

An mDL may be stored on a diverse range of portable or mobile electronic devices, such as smartphones, smartwatches, and storage devices containing memory. Like a physical card, mDL data originates from identity information about an individual that is maintained in the database of a State driver's licensing agency.

Unlike physical driver's licenses that are read and verified visually through human inspection of physical security features, an mDL is read and verified electronically using a device known simply as a "reader" (discussed in Part II.C.2., below). Physical cards employ physical security features to deter fraud and tampering, such as "easily identifiable visual or tactile [security] features" on the surface of a card.²⁸ An mDL, in contrast, combats fraud through the use of digital security features that are not recognizable through human inspection. For example, mDLs usually rely on digital security through use of asymmetric cryptography/public key infrastructure (PKI). As discussed in the RFI,²⁹ Asymmetric cryptography generates a pair of encryption "keys" to encrypt and decrypt protected data. One key, a "public key," is distributed publicly, while the other key, a "private key," is held by the State driver's licensing agency (*i.e.*, a Department of Motor Vehicles, or "DMV"). When a DMV issues an mDL to an individual (see Fig. 1, below, communication no. 1), the DMV uses its private key to digitally "sign" the mDL data. A Federal agency validates the integrity of the

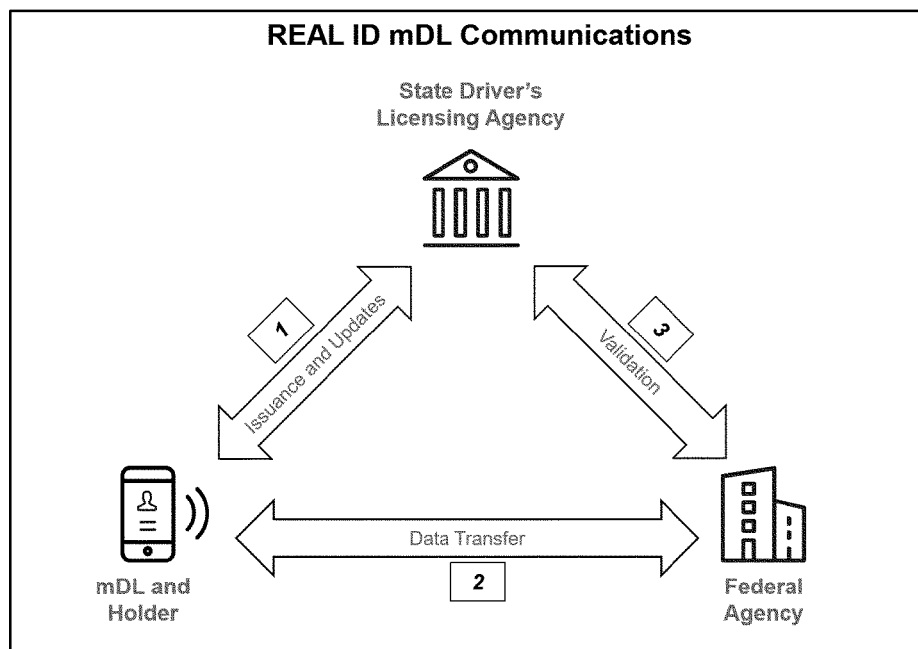
²⁸ 6 CFR 37.15(c) and 37.17(h).

²⁹ See 86 FR 20320, 20324 (April 19, 2021).

mDL data by obtaining the DMV's public key to verify the digital signature (see Fig. 1: mDL Secure Communications). Private keys and digital signatures are elements of data encryption that protect against unauthorized access, tampering, and fraud.

Generally, mDL-based identity verification under REAL ID would involve a triad of secure communications between a State driver's licensing agency, an mDL holder, and a Federal agency. Specifically, and as shown in Fig. 1, below, the following three communications would occur: (1) Issuance and Updates: the DMV would issue or "provision" an mDL onto a mobile device of the person requesting the mDL (who then becomes the mDL holder), (2) Data Transfer: the mDL holder would authorize release of relevant data from the device to a Federal agency, which would use a reader to retrieve data, and (3) Validation: the Federal agency would use a reader, to confirm that the data originated from the issuing DMV and is unchanged, by verifying the DMV's public key. Although not depicted in Fig. 1, the Federal agency would also validate (via human inspection or facial matching software) that the mDL belongs to the individual presenting it by comparing the individual's live appearance to the photo retrieved by the reader. Standardized communication interfaces are necessary to enable Federal agencies to exchange information with all 56 U.S. States and territories that issue mDLs.

Fig. 1: mDL Secure Communications



2. mDL Readers

Any Federal agency that chooses to accept mDLs for REAL ID official purposes would need to procure and use readers to validate an mDL holder's identity data from their mobile device and establish trust that the mDL is secure by using private-public key data encryption. Non-Federal agencies, such as State agencies, businesses, and other entities who choose to accept mDLs for uses beyond the scope of REAL ID are not governed by the REAL ID Act or regulations and therefore would make their own independent decisions concerning reading mDLs and reader procurement.³⁰ The reader would confirm that the mDL holder's identity data is valid by performing the following steps: establishing a secure digital connection with an mDL holder's mobile device, receiving the required mDL information for identity verification, verifying its authenticity and integrity by validating the driver's licensing agency's digital signature of the mDL data, and confirming that the mobile device possesses the unique device key corresponding to the mDL at the time of issuance.

³⁰ Non-Federal agencies and other entities who choose to accept mDLs for uses beyond the scope of REAL ID should also recognize the need for a reader to ensure the validity of the mDL. Any verifying entity can validate in the same manner as a Federal agency if they implement the standardized communication interface requirements specified in this proposed rule, which would require investment to develop the necessary IT infrastructure and related processes.

An mDL reader can take multiple forms, ranging from software to hardware. In its simplest form, an mDL reader can be an app installed on a smartphone or other mobile device. A reader could also be a dedicated device. This is expected to be a low-cost solution that could be added to existing smartphones carried by a verifying entity's employee. While reader development is ongoing in the industry, TSA understands that companies are already beginning to offer verification apps for free on their commercial app stores. As reader technology continues to evolve, there will likely be wide range of reader options with various capabilities and associated price points.³¹

3. State mDL Issuance

As noted above, mDL-issuance is proliferating rapidly among States, with nearly half of all States piloting, issuing, or considering mDLs. As of the date of

³¹ Readers for mDLs have specific requirements and at this time are not interchangeable with readers for other types of Federal cards, such as the Transportation Worker Identification Credential (TWIC). Although TSA is evaluating some mDLs at select airport security checkpoints (see Part II.E.), cost estimates for readers used in the evaluations are not available because those readers are non-commercially available prototypes designed specifically for integration into TSA-specific IT infrastructure that few, if any, other Federal agencies use. In addition, mDL readers are evolving and entities who accept mDLs would participate voluntarily. Accordingly, associated reader costs are not quantified at this time but TSA intends to gain a greater understanding of any costs to procure reader equipment as the technology continues to evolve.

this NPRM, at least eight States (Arizona, Colorado, Delaware, Louisiana, Maryland, Mississippi, Oklahoma, and Utah) are issuing mDLs, and three States (Florida, Iowa, and Virginia) are currently piloting or have piloted mDLs. Additionally, at least 17 States (California, District of Columbia, Georgia, Hawaii, Illinois, Indiana, Kentucky, Michigan, Missouri, New Jersey, New York, North Dakota, Pennsylvania, Puerto Rico, Tennessee, Texas, and Wyoming) have indicated they are studying mDLs or considering enabling legislation.

Based on its analysis of the current environment, TSA believes that States are issuing mDLs using widely varying technology solutions, resulting in a fragmented environment rather than a common standard for issuance and use. The various States issuing or piloting mDLs are believed to be using technology solutions provided by multiple vendors, and it is not clear whether such technological diversity provides the safeguards and interoperability necessary for Federal acceptance. For example, in September 2021 and March 2022, Apple announced³² that it was working with 13 States (Arizona, Colorado, Connecticut, Georgia, Hawaii, Iowa, Kentucky, Maryland, Mississippi, Ohio,

³² <https://www.apple.com/newsroom/2021/09/apple-announces-first-states-to-adopt-drivers-licenses-and-state-ids-in-wallet/>; <https://www.apple.com/newsroom/2022/03/apple-launches-the-first-drivers-license-and-state-id-in-wallet-with-arizona/>.

Oklahoma, Puerto Rico, and Utah) to enable their mDLs to be provisioned into Apple's Wallet app. Google and GET Group North America have made similar announcements.³³ States choosing a variety of technology solutions, which could result in non-standard, non-compatible technologies, which raises additional questions concerning the Federal government's ability to accept the mDLs for Federal purposes.

Although detailed mDL adoption statistics are unavailable, anecdotal information and fragmented reporting indicates that mDLs are rapidly gaining public acceptance. For example, Louisiana has recently reported that over one million residents (representing more than 20% of its population) have installed Louisiana's mDL app on their mobile devices.

4. Potential Benefits of mDLs

An mDL has potential benefits for all stakeholders. For Federal agencies that require REAL ID-compliant IDs for official purposes, mDLs may provide efficiency and security enhancements. Compared to physical cards, which rely on manual inspection of physical security features on the surface of a card designed to deter tampering and fraud, mDLs rely on digital security features that are immune to many vulnerabilities of physical security features. For individuals, some commenters noted that mDLs may provide a more secure, convenient, privacy-enhancing, and "touchless" method of identity verification compared to physical IDs.³⁴ Among other privacy-enhancing features, the holder of an mDL could control what data fields are released. For example, if an mDL is used for identity purposes with a Federal agency, the holder could restrict the agency to receiving only the data necessary and required by the agency to verify the individual's identity. Potential hygiene benefits also derive from the contact-free method of ID verification enabled by mDLs. An mDL holder may transmit data to a verifying Federal agency's mDL reader by hovering their mDL above the reader, potentially eliminating any physical contact with the individual's mobile device thereby reducing germ transmission.

³³ <https://support.google.com/wallet/answer/12436402?hl=en>; <https://getgroupna.com/get-mobile-id-is-now-accepted-at-tsa-precheck/>.

³⁴ See, e.g., comments submitted by: Applied Recognition, Bredemarket, Hiday, Mothershed, Muller, State of Connecticut, DHS of Motor Vehicles, Secure Technology Alliance, U.S. Travel Association.

D. Current and Emerging Industry Standards and Government Guidelines for mDLs

The nascence of mDLs and absence of standardized mDL-specific requirements provide an opportunity for industry and government to develop standards and guidelines to close this void. TSA is aware of multiple such documents, both published and under development, from both Federal and non-government sources. This section discusses standards and guidelines that form the basis of many of the requirements proposed in this rulemaking, as well as additional documents that may inform the upcoming Phase 2 rulemaking. As discussed in Part III.B.8, below, this rulemaking proposes to amend § 37.4 by incorporating by reference into part 37 nineteen standards and guidelines. All proposed incorporation by reference material is available for inspection at DHS Headquarters in Washington DC, please email requesttoreviewstandards@hq.dhs.gov. The material may also be obtained from its publisher, as discussed below.

1. American Association of Motor Vehicle Administrators

In September 2022, the American Association of Motor Vehicle Administrators published mDL Implementation Guidelines (AAMVA Guidelines). *Mobile Driver's License (mDL) Implementation Guidelines Version 1.2* (Jan. 2023), American Association of Motor Vehicle Administrators, 4401 Wilson Boulevard, Suite 700, Arlington, VA 22203, available at https://aamva.org/getmedia/b801da7b-5584-466c-8aeb-f230cef6dda5/mDL-Implementation-Guidelines-Version-1-2_final.pdf. The Guidelines are available to the public for free at the link provided above. The AAMVA Guidelines adapt industry standard ISO/IEC 18013-5:2021 (discussed in Part II.D.4., below), for State driver's licensing agencies through the addition of more stringent and more specific recommendations, as the ISO/IEC standard has been developed for international purposes and may not meet all purposes and needs of States and the Federal Government. For example, Part 3.2 of the AAMVA Guidelines modify and expand the data elements specified in ISO/IEC 18013-5:2021, in order to enable the mDL to indicate the REAL ID compliance status of the companion physical card, as well as to ensure interoperability necessary for Federal acceptance. AAMVA has added data fields for DHS Compliance and DHS Temporary Lawful Status. These additional fields provide the

digital analog to the requirements for data fields for physical cards defined in 6 CFR 37.17(n)³⁵ and 37.21(e)³⁶ respectively. As discussed generally in Part III.B, below, § 37.10(a)(1) and (4) of this proposed rule would require a State to explain, as part of its application for a waiver, how the State issues mDLs that are compliant with specified requirements of the AAMVA Guidelines.

2. Certification Authority Browser Forum

The Certification Authority Browser Forum (CA/Browser Forum) is an organization of vendors of hardware and software used in the production and use of publicly trusted certificates. These certificates are used by forum members, non-member vendors, and governments to establish the security and trust mechanisms for public key infrastructure-enabled systems. The CA/Browser Forum has published two sets of requirements applicable for any implementers of PKI, including States that are seeking to deploy Certificate Systems that must be publicly trusted and used by third parties:

- Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates v. 1.8.6 (December 14, 2022), available at <https://cabforum.org/wp-content/uploads/CA-Browser-Forum-BR-1.8.6.pdf>, and
- Network and Certificate System Security Requirements v. 1.7 (April 5, 2021), available at <https://cabforum.org/wp-content/uploads/CA-Browser-Forum-Network-Security-Guidelines-v1.7.pdf>. CA/Browser Forum, 815 Eddy St, San Francisco, CA 94109, (415) 436-9333.

These documents are available to the public for free at the links provided above.

To issue mDLs that can be trusted by Federal agencies, each issuing State must establish a certificate system, including a root certification authority that is under control of the issuing State. TSA believes the CA/Browser Forum requirements for publicly trusted certificates have been proven to be an effective model for securing online transactions. As discussed generally in Part III.B.4, below, appendix A to

³⁵ Section 37.17(n) provides, "The card shall bear a DHS-approved security marking on each driver's license or identification card that is issued reflecting the card's level of compliance as set forth in § 37.51 of this Rule."

³⁶ Section 37.21(e) provides, "Temporary or limited-term driver's licenses and identification cards must clearly indicate on the face of the license and in the machine readable zone that the license or card is a temporary or limited-term driver's license or identification card."

subpart A of the part, sections 1, 2, and 4–8, require compliance with specified requirements of the CA/Browser Forum Baseline Requirements and/or Network and Certificate System Requirements. Section 37.4 of this proposed rule would IBR these CA/Browser Forum references.

3. Cybersecurity Guidelines

DHS and the Cybersecurity and Infrastructure Security Agency (CISA) have published two guidelines which are relevant to the operations of States' mDL issuance systems:

- National Cyber Incident Response Plan (Dec. 2016), available at https://www.cisa.gov/uscert/sites/default/files/ncirp/National_Cyber_Incident_Response_Plan.pdf, and
- CISA Cybersecurity Incident & Vulnerability Response Playbooks (Nov. 2021), available at https://www.cisa.gov/sites/default/files/publications/Federal_Government_Cybersecurity_Incident_and_Vulnerability_Response_Playbooks_508C.pdf.

Cybersecurity and Infrastructure Security Agency, Mail Stop 0380, 245 Murray Lane, Washington, DC 20528–0380, (888) 282–0870. These guidelines, available for free at the links provided above, provide details on best practices for management of systems during a cybersecurity incident, providing recommendations on incident and vulnerability response. Management of cybersecurity incidents and vulnerabilities are critical to maintenance of a State's mDL issuance information technology (IT) infrastructure. As discussed generally in Part III.B.4, below, appendix A to subpart A of the part, section 8, requires compliance with specified requirements of the DHS National Cyber Incident Response Plan and the CISA Cybersecurity Incident & Vulnerability Response Playbooks. Section 37.4 of this proposed rule would IBR these DHS and CISA standards.

4. ISO/IEC Standards and Technical Specifications

Two international standards-setting organizations, the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC),³⁷ are jointly drafting

two series of multi-part International Standards and Technical Specifications.³⁸ Series ISO/IEC 18013, *Personal identification—ISO-compliant driving licence* Parts 5–7, are specific to mDLs, and series ISO/IEC 23220 *Cards and security devices for personal identification—Building blocks for identity management via mobile devices*, Parts 1–6, concern digital identity (of which mDLs are a subset). DHS TSA has participated in the development of both Series as a non-voting member of the United States national body member of the Joint Technical Committee.³⁹ Together, both Series would establish standardized interfaces that would enable the mDL communications triad (see Part II.C.1., above) as follows: (1) State driver's licensing agency and the mDL holder (Series 23220), (2) mDL Holder and a verifying entity (Series 18013), and (3) verifying entity and State licensing agency (Series 18013).

In September 2021, ISO and IEC published international standard ISO/IEC 18013, Part 5, entitled, “Personal identification—ISO-compliant driving licence.” ISO/IEC 18013–5:2021, *Personal identification—ISO-compliant driving licence—Part 5: Mobile driving licence (mDL) application* (Sept. 2021), International Organization for Standardization, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland, +41 22 749 01 11, www.iso.org/contact-iso.html.⁴⁰ Section 37.4 of this rulemaking proposes to IBR this standard, which is available from

as “electrotechnology.” ISO and IEC standards are voluntary and do not include contractual, legal or statutory obligations. ISO and IEC standards contain both mandatory requirements and optional recommendations, and those who choose to implement the standards must adopt the mandatory requirements.

³⁸ ISO defines an International Standard as “provid[ing] rules, guidelines or characteristics for activities or for their results, aimed at achieving the optimum degree of order in a given context. It can take many forms. Apart from product standards, other examples include: test methods, codes of practice, guideline standards and management systems standards.” www.iso.org/deliverables-all.html. In contrast, ISO defines a “Technical Specification” as “address[ing] work still under technical development, or where it is believed that there will be a future, but not immediate, possibility of agreement on an International Standard. A Technical Specification is published for immediate use, but it also provides a means to obtain feedback. The aim is that it will eventually be transformed and republished as an International Standard.” www.iso.org/deliverables-all.html.

³⁹ A member of the TSA serves as DHS's representative to the Working Group.

⁴⁰ Forthcoming Part 6 of Series ISO/IEC 18013, “mDL test methods,” is a technical specification that will enable testing of mDLs and readers to certify conformance with ISO/IEC 18013–5:2021. TSA anticipates a draft of this standard may be completed by the end of 2023, and the final document may publish at the end of 2024.

DHS as discussed above. In addition, the American National Standards Institute (ANSI), a private organization not affiliated with DHS, will provide public access⁴¹ to ISO/IEC 18013–5:2021 until October 16, 2023. Standard ISO/IEC 18013–5:2021 standardizes the interface between an mDL and an entity seeking to read an individual's mDL for identify verification purposes, and sets full operational and communication requirements for both mDLs and mDL readers. This standard applies to “attended” mode verification, in which both the mDL holder and an officer or agent of a verifying entity are physically present together during the time of identity verification.⁴² DHS received numerous comments in response to the RFI concerning the appropriateness of this standard as a starting point for future regulatory requirements.⁴³ Many comments received in response to the RFI noted that standard ISO/IEC 18013–5:2021, which published in Sept. 2021, provides a sufficient baseline for secure Federal acceptance.⁴⁴ After carefully

⁴¹ ANSI advises interested persons to visit the following website to obtain access: <https://www.surveymonkey.com/r/DQVJYMK>. This link will direct interested persons to a nongovernment website that is not within the Federal government's control and may not follow the same privacy, security, or accessibility policies as Federal government websites. ANSI requires individuals to complete an online license agreement form, which will ask for name, professional affiliation, and email address, before it grants access to any standards. ANSI will provide access on a view-only basis, meaning copies of the document cannot be downloaded or modified. Individuals who access non-governmental sites to view available standards are subject to the policies of the owner of the website. For access to non-final draft standards, please contact ISO/IEC using the information provided earlier.

⁴² Part 7 of Series ISO/IEC 18013, entitled “mDL add-on function,” is an upcoming technical specification that will standardize interfaces for “unattended” mode verification, in which the mDL holder and officer/agent of the verifying agency are not physically present together, and the identity verification is conducted remotely. Unattended identity verification is not currently considered a REAL ID use case.

⁴³ See, e.g., comments submitted by: American Association of Motor Vehicle Administrators; American Civil Liberties Union, Electronic Frontier Foundation, and Electronic Privacy Information Center; Apple; Association for Convenience & Fuel Retailing; CBN Secure Technologies; FaceTec; Florida DHS of Highway Safety and Motor Vehicles; IDEMIA; Maryland DHS of Transportation, Motor Vehicle Administration; National Immigration Law Center and Undersigned Organizations; Secure Technology Alliance; State of Connecticut, DHS of Motor Vehicles; Underwriters Laboratories; Verifiable Credentials Policy Committee, Blockchain Advocacy Coalition. All comments are available at <https://www.regulations.gov/docket/DHS-2020-0028>.

⁴⁴ See comments submitted by American Association of Motor Vehicle Administrators; Florida DHS of Highway Safety and Motor Vehicles; Maryland DHS of Transportation, Motor Vehicle Administration; State of Connecticut, DHS of Motor Vehicles.

³⁷ ISO is an independent, non-governmental international organization with a membership of 164 national standards bodies. ISO creates documents that provide requirements, specifications, guidelines or characteristics that can be used consistently to ensure that materials, products, processes and services are fit for their purpose. The IEC publishes consensus-based international standards and manages conformity assessment systems for electric and electronic products, systems and services, collectively known

considering all comments received, TSA believes ISO/IEC 18013–5:2021 is critical to enabling the interoperability, security, and privacy necessary for wide acceptance of mDLs by Federal agencies for official purposes. As discussed in Part III.B, below, this NPRM proposes to IBR this standard into part 37. Specifically, § 37.8 of the proposed rule would require Federal agencies to validate an mDL as required by standard ISO/IEC 18013–5:2021, and § 37.10(a)(4) would require a State to explain, as part of its application for a waiver, how the State issues mDLs that are interoperable with this standard to provide the security necessary for Federal acceptance.

The ISO/IEC 23220 Series of Technical Specifications, “Cards and security devices for personal identification—Building blocks for identity management via mobile devices,” cover international digital IDs broadly and are applicable to mDLs. ISO/IEC 23220: *Cards and security devices for personal identification—Building blocks for identity management via mobile devices*, International Organization for Standardization, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland, +41 22 749 01 11, www.iso.org/contact-iso.html. This Series consists of six Parts, with Parts 3, 5, and 6 being relevant to mDLs and the forthcoming Phase 2 rulemaking. More specifically, Series 23220 would establish the following critical requirements for “provisioning”⁴⁵ an mDL, which refers to the various steps required for a State driver’s licensing agency to securely place an mDL onto a mobile device:

- Part 3, “Protocols and services for installation and issuing phase,” covers data function calls and formatting that States will use to communicate (e.g., provision, refresh, revoke) with a mobile device.
- Part 5, “Trust models and confidence level assessment,” covers trust framework and provisioning, including confidence levels, identity proofing, binding, identity resolution, evidence validation, evidence verification, and holder authentication.
- Part 6, “Mechanism for use of certification on trustworthiness of secure area,” primarily covers device

security requirements and trust of the secure areas in mobile devices.

TSA anticipates that Series ISO/IEC 23220 will define critical requirements for the interface between a State driver’s licensing agency and mobile device. However, none of Parts 3, 5, and 6 of Series 23220 have published. TSA understands that drafts of Parts 3 and 5 may publish in late 2023, and final publication is possible by the end of 2024; publication dates for Part 6 are unknown, but a draft is anticipated in 2024. DHS received many comments in response to the RFI cautioning, however, that standard ISO/IEC 23220, Parts 3, 5, and 6, are not sufficiently mature to inform regulatory requirements.⁴⁶ Given the evolving stage of Series ISO/IEC 23220 and comments to the RFI, TSA believes it is premature to rely on this Series to inform this proposed rulemaking and thus is not proposing to IBR them in this NPRM. TSA may consider adopting requirements of pertinent Parts of this standard in the upcoming Phase 2 rulemaking, pending review of the final published documents.

5. National Institute for Standards and Technology

i. Digital Identity Guidelines

The National Institute for Standards and Technology (NIST) has published Digital Identity Guidelines, NIST SP 800–63–3, that cover technical requirements for Federal agencies implementing digital identity. NIST Special Publication 800–63–3, *Digital Identity Guidelines* (June 2017), National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, Gaithersburg, MD 20899, available at <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63-3.pdf>. The Digital Identity Guidelines, available for free at the link provided above, define technical requirements in each of the areas of identity proofing, registration, user authentication, and related issues. Because TSA is not aware of a common industry standard for mDL provisioning that is appropriate for official REAL ID purposes today, TSA views the current NIST Digital Identity Guidelines as critical to informing waiver application requirements for States regarding provisioning (discussed in detail in Part III.B.4., below). As discussed generally in Part III.B.4., below, under proposed rule text

§ 37.10(a)(2), which requires compliance with appendix A to subpart A of the part, a State must explain, as part of its application for a waiver, how the State issues mDLs that are compliant with NIST SP 800–63–3 to provide the security for mDL IT infrastructure necessary for Federal acceptance. Section 37.4 of this proposed rule would IBR NIST SP 800–63–3.

NIST has also published Digital Identity Guidelines Authentication and Lifecycle Management, NIST SP 800–63B, as a part of NIST SP 800–63–3. NIST Special Publication 800–63B, *Digital Identity Guidelines: Authentication and Lifecycle Management* (June 2017), National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, Gaithersburg, MD 20899, available at

<https://nvlpubs.nist.gov/nistpubs/specialpublications/nist.sp.800-63b.pdf>. This document provides technical requirements for Federal agencies implementing digital identity services. The standard focuses on the authentication of subjects interacting with government systems over open networks, establishing that a given claimant is a subscriber who has been previously authenticated and establishes three authenticator assurance levels. As discussed generally in Part III.B.4., below, proposed rule text § 37.10(a)(2) requires compliance with appendix A to subpart A of the part, which would require a State to explain, as part of its application for a waiver, how the State manages its mDL issuance infrastructure using authenticators at assurance levels provided in NIST SP 800–63B. Section 37.4 of this proposed rule would incorporate by reference NIST SP 800–63B.

NIST is developing a revision to the Digital Identity Guidelines, SP 800–63–4, which is expected to impact key issues related to mDL processes. This publication and its companion volumes NIST SP 800–63A Rev. 4, SP 800–63B Rev. 4, and SP 800–63C Rev. 4, provide technical guidelines for the implementation of digital identity services. Initial public drafts of this suite published in December 2022, and final drafts may publish in early 2024. The full suite of draft NIST Digital Identity Guidelines, NIST SP 800–63–4, are available for free as follows:

- NIST SP 800–63–4, *Digital Identity Guidelines, Initial Public Draft* (December 2022), available at <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63-4.ipd.pdf>.
- NIST SP 800–63A Rev. 4 *Digital Identity Guidelines: Enrollment and*

⁴⁵ The initial step of provisioning requires proving that an mDL applicant owns the mobile device onto which the mDL will be stored. Next, a trusted connection would be established between the licensing agency and the target device. Finally, the licensing agency would use this connection to securely transmit and update mDL data on the device.

⁴⁶ See comments submitted by American Civil Liberties Union, Electronic Frontier Foundation, and Electronic Privacy Information Center; IDEMIA; Maryland DHS of Transportation, Motor Vehicle Administration; Underwriters Laboratories.

Identity Proofing, Initial Public Draft (December 2022), available at <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63A-4.ipd.pdf>;

- NIST SP 800–63B Rev. 4 *Digital Identity Guidelines: Authentication and Lifecycle Management, Initial Public Draft* (December 2022), available at <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63B-4.ipd.pdf>;

- NIST SP 800–63C Rev. 4 *Digital Identity Guidelines: Federation and Assertions, Initial Public Draft* (December 2022), available at <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63C-4.ipd.pdf>.

National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, Gaithersburg, MD 20899. The final versions of these publications may be candidates for incorporation by reference (pending review of the final published documents) in the forthcoming Phase 2 rulemaking.

ii. Federal Information Processing Standards

NIST also maintains the Federal Information Processing Standards (FIPS) which relate to the specific protocols and algorithms necessary to securely process data. This suite of standards includes:

- NIST FIPS PUB 140–3, *Security Requirements for Cryptographic Modules* (March 22, 2019), available at <https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.140-3.pdf>;
- NIST FIPS PUB 180–4, *Secure Hash Standard (SHS)* (August 4, 2015), available at <https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.180-4.pdf>;
- NIST FIPS PUB 186–5, *Digital Signature Standard (DSS)* (February 3, 2023), available at <https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.186-5.pdf>;
- NIST FIPS PUB 197, *Advanced Encryption Standard (AES)* (November 26, 2001) available at <https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.197.pdf>;
- NIST FIPS PUB 198–1, *The Keyed-Hash Message Authentication Code (HMAC)* (July 16, 2008) available at <https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.198-1.pdf>; and
- NIST FIPS PUB 202, *SHA–3 Standard: Permutation-Based Hash and Extendable-Output Functions* (August 4, 2015) available at <https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.202.pdf>.

National Institute of Standards and Technology, U.S. Department of

Commerce, 100 Bureau Drive, Gaithersburg, MD 20899. This suite of FIPS standards, available for free at the links provided above, are critical to the transactions required for mDLs, and any Federal systems which interact with or are used to verify a mDL for REAL ID official purposes will be required to use the algorithms and protocols defined. As discussed generally in Part III.B, below, § 37.10(a)(4) requires compliance with specified requirements of NIST FIPS PUB 180–4, 186–5, 197, 198–1, and 202, and appendix A to subpart A of the part, section 5, requires compliance with FIPS PUB 140–3. Section 37.4 of this proposed rule would incorporate by reference the suite of FIPS standards discussed above.

iii. Security and Privacy Controls for Information Systems and Organizations; Key Management

NIST has published several guidelines to protect the security and privacy of information systems:

- NIST SP 800–53 Rev. 5, *Security and Privacy Controls for Information Systems and Organizations* (September 2020), available at <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r5.pdf>;
- NIST SP 800–57 Part 1, Rev. 5, *Recommendation for Key Management: Part 1—General* (May 2020), available at <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-57pt1r5.pdf>;
- NIST SP 800–57 Part 2, Rev. 1, *Recommendation for Key Management: Part 2—Best Practices for Key Management Organizations* (May 2019), available at <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-57pt2r1.pdf>;
- NIST SP 800–57 Part 3, Rev. 1, *Recommendation for Key Management, Part 3: Application-Specific Key Management Guidance* (January 2015) available at <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-57Pt3r1.pdf>.

National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, Gaithersburg, MD 20899. All of these documents are available for free at the links provided above.

Collectively, NIST SP 800–53 Rev. 5 and NIST SP 800–57 provide relevant controls for States regarding mDL security and privacy covering a broad range of topics related to the administration of a certificate system including: access management; certificate life-cycle policies; operational controls for facilities and personnel; technical security controls;

and vulnerability management such as threat detection, incident response, and recovery planning. Due to the sensitive nature of State Certificate System processes and the potential for significant harms to security if confidentiality, integrity, or availability of the certificate systems is compromised, the minimum risk controls specified in appendix A to subpart A of the part require compliance with the NIST SP 800–53 Rev. 5 “high baseline” as set forth in that document, as well as compliance with the specific risk controls described in the appendix. In addition, and as discussed generally in Part III.B, below: appendix A to subpart A of the part, secs. 1–8, require compliance with NIST SP 800–53 Rev. 5; secs. 1 and 5 require compliance with NIST SP 800–57 Part 1, Rev. 5; sec. 1 requires compliance with NIST SP 800–57 Part 2 Rev. 1; and sec. 1 requires compliance with NIST SP 800–57 Part 3, Rev. 1. Section 37.4 of this proposed rule would incorporate by reference NIST SP 800–53 Rev. 5 and the full suite of NIST SP 800–57 references discussed above.

iv. Cybersecurity Framework

NIST has published the Framework for Improving Critical Infrastructure Cybersecurity v. 1.1 (April 16, 2018), National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, Gaithersburg, MD 20899, available at <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf>. This document, available for free at the link provided above, provides relevant information for cybersecurity for States issuing mDLs. As discussed generally in Part III.B, below, certain requirements from the NIST Cybersecurity Framework have been adopted in appendix A to subpart A of the part, secs. 1, 2, 5–8. Section 37.4 of this proposed rule would incorporate by reference the NIST Cybersecurity Framework.

6. W3C Standards

In its RFI, DHS specifically sought comments on industry standards that could inform future regulatory requirements.⁴⁷ DHS received multiple comments⁴⁸ concerning standards being developed by the World Wide Web Consortium (W3C), which is a

⁴⁷ 86 FR 20320 at 20325–26.

⁴⁸ See comments submitted by American Civil Liberties Union, Electronic Frontier Foundation, and Electronic Privacy Information Center; Association for Convenience & Fuel Retailing; CBN Secure Technologies; Indico.tech and Lorica Identity; Mastercard; Muller; OpenID Foundation; UL; Verifiable Credentials Policy Committee, Blockchain Advocacy Coalition.

standards-development organization that develops open standards for the World Wide Web. Similar to its involvement with ISO, DHS has participated in the development of these standards as a non-voting member in the W3C Credential Community Group.

While TSA is not proposing to IBR these W3C standards in this NPRM, TSA understands that W3C is developing two standards concerning digital identification that, like the ISO/IEC Series of standards discussed above, may be relevant to the Phase 2 rulemaking. The W3C standards are “Verifiable Credentials Data Model v1.1” (VCDM v1.1) and “Decentralized Identifiers v1.0” (DID v1.0). *Verifiable Credentials Data Model v1.1* (March 3, 2022), W3C/MIT, 105 Broadway, Room 7–134, Cambridge, MA 02142, available at www.w3.org/TR/vc-data-model/; *Decentralized Identifiers (DIDs) v1.0* (July 19, 2022), W3C/MIT, 105 Broadway, Room 7–134, Cambridge, MA 02142, available at www.w3.org/TR/did-core/. These documents are available to the public for free at the links provided above. DHS has participated in the development of these standards as a non-voting member in the W3C Credential Community Group.

In March 2022, the W3C published VCDM v1.1. A “Verifiable Credential” (VC) is a form of digital identification, developed under this standard, with features that enable a verifying entity to confirm its authenticity.⁴⁹ This standard defines elements of a data model that enables using a digital identity in online transactions. The standard appears to provide broad requirements that enable issuance of diverse types of secure digital identification using varying data fields (e.g., name, date of birth), data types (e.g., text, numeric values, length of data string), and methods of digital security. Although the standard sets forth specifications for the data model generally, TSA understands the standard does not provide specific requirements to implement security and privacy protections for the data model. Instead, references to these topics appear to be largely non-binding, informative guidance. For example, the standard requires that the VC contain at least one encryption mechanism to detect tampering (such as a digital signature), but does not set forth any specific mechanisms that are acceptable.⁵⁰ Similarly, although the standard encourages the use of mechanisms to enable a VC holder to selectively release only certain data to a verifying entity, it does not specify

acceptable implementation mechanisms.⁵¹

In July 2022, W3C published complementary standard DID v1.0, which specifies the essential requirements to enable the use of diverse types of digital identification in online transactions. A “DID,” is a unique identifier used in online transactions that, for example, enables VC holders to authenticate themselves. A DID can be used in a blockchain system. Like the VCDM standard, DHS understands that the DIDs standard includes non-binding guidance, but no prescriptive specifications, concerning security and privacy.

In their current forms, TSA understands that the W3C VCDM standard and DID standard focus on the use of digital identification in unattended mode internet transactions, which is different from the attended, in-person REAL ID transactions contemplated for mDLs under this rulemaking. In addition, the current versions of the W3C standards do not set forth specific requirements concerning security and privacy or an mDL-specific data model, which may impede States from developing standardized, interoperable mDLs. Several commenters also expressed similar concerns.⁵² TSA is not aware of any State pursuing an mDL with the VCDM model as the sole data model. However, TSA understands that W3C’s work is ongoing, and future revisions may set forth security, privacy requirements, interoperability requirements, and a standardized data model needed for in-person REAL ID identity verification. In addition, given the breadth of the VCDM and DID, it may be possible in the future to develop a VCDM-based mDL that conforms to both W3C recommendations and the ISO/IEC standards simultaneously, providing full ecosystem interoperability. As stated above, TSA is not proposing to IBR these W3C Standards in this NPRM.

TSA understands that the standards and guidelines discussed above in this Part II.D. are the most comprehensive and relevant references governing mDLs today. TSA also acknowledges that many additional standards and guidelines are in development covering diverse types of digital identification that can be issued and verified by different entities, both government and commercial. These emerging documents are expected to concisely synthesize the large body of existing work from NIST and standards-development

organizations, and will provide standardized mechanisms for mDLs. After carefully evaluating comments concerning emerging industry standards and closely observing ongoing development, TSA does not endorse any emerging standards at this time. TSA will continue to monitor development, and the future Phase 2 rulemaking may incorporate by reference pertinent parts of emerging standards (pending review of final published documents) that TSA believes are appropriate for Federal acceptance of mDLs for REAL ID official purposes.

E. DHS and TSA Involvement in mDLs

DHS and TSA have been actively participating in the mDL and digital identity space for many years to keep pace with industry developments. DHS has been participating in industry standards-development activities by serving as a non-voting member on working groups of the ISO/IEC and the W3C that are developing mDL/digital identity standards and technical specifications. Concurrently, DHS and TSA have been collaborating with industry to test the use of mDLs at various TSA security checkpoints. In 2022, TSA, under its collaboration with Apple (see Part II.C.3., above), launched a limited initiative that enables Arizona, Maryland, and Colorado residents to test the use of mDLs provisioned into the Apple Wallet app at select airport security checkpoints.⁵³ On May 18, 2023, TSA announced acceptance of Georgia mDLs provisioned into the Apple Wallet app at select airport security checkpoints.⁵⁴ Similarly, on March 1, 2023 and June 1, 2023, TSA announced acceptance of Utah-issued mDLs provisioned into the GET Mobile ID app, and Maryland-issued mDLs provisioned into the Google Wallet app, respectively, at select airports.⁵⁵ Utah

⁵³ See TSA Biometrics Technology website, <https://www.tsa.gov/biometrics-technology>; Press Release, TSA, *TSA enables Arizona residents to use mobile driver’s license or state ID for verification at Phoenix Sky Harbor International Airport* (Mar. 23, 2022), available at <https://www.tsa.gov/news/press/releases/2022/03/23/tsa-enables-arizona-residents-use-mobile-drivers-license-or-state-id>; Press Release, TSA, *TSA enables Maryland residents to use mobile driver’s license or state ID for verification at Baltimore/Washington International and Reagan National Airports* (May 25, 2022), available at <https://www.tsa.gov/news/press/releases/2022/05/25/tsa-enables-maryland-residents-use-mobile-drivers-license-or-state>.

⁵⁴ Press release, TSA, *TSA enables Georgia residents to use mobile driver’s license or state ID for verification at ATL* (May 18, 2023), available at <https://www.tsa.gov/news/press/releases/2023/05/18/tsa-enables-georgia-residents-use-mobile-drivers-license-or-state-id>.

⁵⁵ Press Release, TSA, *TSA using state-of-the-art identity verification technology, accepting mobile driver licenses at SLC security checkpoint* (Mar. 9,

⁴⁹ See VCDM sections 1 and 2.

⁵⁰ See VCDM sections 4.7 and 8.1.

⁵¹ See VCDM sections 5.8 and 7.8.

⁵² See comments submitted by Muller and UL.

utilizes a third-party mDL app produced by GET Group North America. DHS and TSA anticipate additional collaborations with other States and vendors in the future. These programs enable States, industry, and the Federal government to evaluate mDLs and ensure that they provide the security, privacy, and interoperability necessary for future, full-scale acceptance at Federal agencies for official purposes as defined in the REAL ID Act.

III. Summary of the Proposed Rule

A. Overview

In addition to revising definitions applicable to the REAL ID Act to incorporate mDLs, this rule proposes changes to 6 CFR part 37 that would enable TSA to grant a temporary waiver to States that TSA determines issue mDLs consistent with specified TSA requirements concerning security, privacy, and interoperability. This rule would enable Federal agencies, at their discretion, to accept for REAL ID official purposes, mDLs issued by a State that has been granted a waiver. The proposed rule would apply only to Federal agency acceptance of State-issued mDLs as defined in this proposed rule for REAL ID official purposes, but not other forms of digital identification, physical driver's licenses or physical identification cards, or non-REAL ID purposes. Any temporary waiver issued by TSA would be valid for a period of 3 years from the date of issuance. The waiver enabled by this rulemaking would be repealed when TSA publishes a Phase 2 rule that would set forth comprehensive requirements for mDLs.

To obtain a waiver, a State would be required to submit an application, supporting data, and other documentation to establish that their mDLs meet TSA-specified criteria (discussed in Part III.B.4., below) concerning security, privacy, and interoperability. If the Secretary determines, upon evaluation of a State's application and supporting documents, that a State's mDL could be securely accepted under the terms of a waiver, the Secretary may issue such State a certificate of waiver. TSA intends to work with each State applying for a waiver on a case-by-case basis to ensure that its mDLs meet the minimum requirements necessary to obtain a

waiver. This rulemaking would establish the full process for a State to apply for a waiver, including instructions for submitting the application and responding to subsequent communications from TSA as necessary, specific information and documents that a State must provide with its application, and requirements concerning timing, issuance of decisions, requests for reconsideration, and terms, conditions, and limitations related to waivers. To assist States that are considering applying for a waiver, TSA has developed guidelines, entitled, "Mobile Driver's License Waiver Application Guidance," which provide non-binding recommendations of some ways that States can meet the application requirements set forth in this rulemaking.⁵⁶

TSA cautions, however, that the waiver enabled by this rulemaking is not a commitment by Federal agencies to accept mDLs issued by a State to whom TSA has granted a waiver. Federal agencies exercise full discretion over their identity verification policies, which may be subject to change. A Federal agency that accepts mDLs may suddenly halt acceptance for reasons beyond the agency's control, such as suspension or termination of a waiver, technical issues with IT systems, or a loss of resources to support mDLs. In such instances, an mDL holder seeking to use an mDL for REAL ID official purposes (including boarding commercially regulated aircraft or access to Federal facilities) may be denied such uses. To avoid this issue, TSA strongly urges all mDL holders to carry their physical REAL ID cards in addition to their mDLs. This will ensure that mDL holders are not disenfranchised from REAL ID uses if a Federal agency does not accept mDLs. Indeed, TSA has long advised that passengers who choose to present mDLs in TSA checkpoint testing must continue to have their physical cards readily available in the event that a TSA

officer requires such identification.⁵⁷ TSA also recommends to Federal agencies that they regularly inform the public, in a form and manner of their choosing, of their mDL acceptance policies. TSA urges the public to view mDLs not as a replacement of physical REAL ID cards, but as a complement to them.

B. Specific Provisions

1. Definitions

TSA proposes adding new definitions to subpart A, § 37.3. In particular, new definitions for "mobile driver's license" and "mobile identification card" are necessary because the current regulations predated the emergence of mDL technology and, therefore, does not define these terms. Additionally, the definitions reflect changes made by the REAL ID Modernization Act, which amended the definitions of "driver's license" and "identification card" to specifically include "mobile or digital driver's licenses" and "mobile or digital identification cards." The proposed definitions in this rule would provide a more precise definition of "mobile driver's license" and "mobile identification card" by clarifying that those forms of identification require a mobile electronic device to store the identification information, as well as an electronic device to read that information. TSA also proposes adding a new definition of "mDL" that collectively refers to mobile versions of both State-issued driver's licenses and State-issued identification cards as defined in the REAL ID Act. TSA also proposes adding additional definitions to explain terms used in § 37.10(a) and appendix A to subpart A to the part. For example, the proposed rule would add new definitions for "digital certificates" and "certificate systems," which are necessary elements of risk controls for the IT systems that States use to issue mDLs. In addition, the rulemaking proposes adding a definition for "certificate policy," which forms the governance framework for the State's certificate systems. A State must develop, maintain, and execute a certificate policy to comply with the requirements set forth in appendix A to subpart A of the part.

2. TSA Issuance of Temporary Waiver From § 37.5(b) and State Eligibility Criteria

TSA proposes adding to subpart A new § 37.7, entitled "Temporary waiver for mDLs; State eligibility," to establish the availability of a temporary waiver

⁵⁶ The specific measures and practices discussed in the DHS Waiver Application Guidance are neither mandatory nor necessarily the "preferred solution" for complying with the requirements proposed in the rule. Rather, they are examples of measures and practices that a State issuer of mDLs may choose to consider as part of its overall strategy to issue mDLs. States have the ability to choose and implement other measures to meet these requirements based on factors appropriate to that State, so long as DHS determines that the measures implemented provide the levels of security and data integrity necessary for Federal acceptance of mDLs for official purposes as defined in the REAL ID Act and 6 CFR part 37. As provided in proposed § 37.10(c) of 6 CFR part 37, DHS may periodically update the Guidance as necessary to recommend mitigations of evolving threats to security, privacy, or data integrity.

⁵⁷ See, e.g., <https://www.tsa.gov/real-id> (see FAQ for "Does TSA accept mobile driver's licenses?").

2023), available at <https://www.tsa.gov/news/press/releases/2023/03/09/tsa-using-state-art-identity-verification-technology-accepting>; Press Release, TSA, TSA now accepts mobile IDs in Google Wallet on Android mobile devices, starting with the State of Maryland (June 1, 2023), available at <https://www.tsa.gov/news/press/releases/2023/06/01/tsa-now-accepts-mobile-ids-google-wallet-android-mobile-devices>.

for a State to exempt its mDLs from meeting the card-based compliance requirement of § 37.5(b). Section 37.7(a) authorizes TSA to issue a temporary certificate of waiver to States that submit an application for a waiver that demonstrates compliance with application criteria set forth in § 37.10(a) and (b). This waiver would only apply to mDLs, not physical cards, and would not waive the requirement in § 37.5(b) regarding State-based compliance or any other requirements in the regulations. Issuance of a certificate of waiver to a State would permit Federal agencies to continue accepting for official purposes mDLs issued by those States when REAL ID enforcement begins on May 7, 2025. The mere issuance of a waiver to a State, however, does not obligate any Federal agency to accept an mDL issued by such State; each Federal agency retains discretion to determine its own policies regarding identification, including whether to accept mDLs.

To be eligible for consideration for a waiver, a State must meet the criteria set forth in proposed § 37.7(b). These criteria require that the issuing State: is in full compliance with REAL ID requirements; has submitted an application demonstrating that the State issues mDLs that provide security, privacy, and interoperability necessary for Federal acceptance; and issues mDLs only to individuals who have been issued a valid and unexpired REAL ID-compliant physical driver's license or identification card. TSA's determination of whether a State satisfies the eligibility criteria would be based on TSA's evaluation of the information provided by the State in its application (see Part III.B.4., below), as well as other information available to TSA.

3. Requirements for Federal Agencies That Accept mDLs

TSA proposes adding to subpart A new § 37.8, entitled "Requirements for Federal agencies accepting mDLs issued by States with temporary waiver." This section proposes that any Federal agency that elects to accept mDLs for REAL ID official purposes must meet three requirements in proposed new § 37.8. First, a Federal agency must confirm that the State holds a valid certificate of waiver. Agencies would make this confirmation by verifying that the State's name appears in a list of States to whom TSA has granted a waiver. TSA would publish this list on the REAL ID website at www.dhs.gov/real-id/mDL (as provided in § 37.9(b)(1)). Second, Federal agencies must use an mDL reader to retrieve mDL data from an individual's mobile device,

and validate that the data is authentic and unchanged. To retrieve and validate mDL data, Federal agencies must follow the processes required by industry standard ISO/IEC 18013–5:2021. Finally, if a State discovers that acceptance of a State's mDL is likely to cause imminent or serious threats to the security, privacy, or data integrity, the State must notify TSA at www.dhs.gov/real-id/mDL within 72 hours of such discovery. Examples of such triggering events include cyber-attacks and other events that cause serious harm to a State's mDL issuance system. TSA would consider whether such information warrants suspension of that State's waiver under § 37.9(e)(4)(i)(B) (see discussion in Part III.B.6., below). If TSA elects not to issue a suspension, Federal agencies would continue to exercise their own discretion regarding continuing acceptance of mDLs.

4. Requirements for States Seeking to Apply for a Waiver

TSA proposes adding to subpart A new § 37.9, which would set forth a process for a State to request a temporary certificate of waiver established in new § 37.7. As provided in § 37.9(a), a State seeking a waiver must file a complete application as set forth in § 37.10(a) and (b), following instructions that would be available at www.dhs.gov/real-id/mDL. Section 37.10(a) and (b) would set forth all information, documents, and data that a State must include in its application for a waiver. TSA is proposing that if TSA determines that the means that a State implements to comply with the requirements in § 37.10(a) and (b) provide the requisite levels of security, privacy, and data integrity for Federal acceptance of mDLs for official purposes, TSA would grant such State a waiver. TSA does not, however, propose prescribing specific means (other than the requirements specified in appendix A to subpart A of the part, which is discussed further in Part III.B.4.iv, below) that a State must implement. Instead, States would retain broad discretion to choose and implement measures to meet these requirements based on factors appropriate to that State.

(i) Application Requirements

As set forth in § 37.10(a)(1) through (4), a State would be required to establish in its application how it issues mDL under the specified criteria for security, privacy, and interoperability suitable for acceptance by Federal agencies, as follows:

- Paragraph (a)(1) would set forth requirements for mDL provisioning.

- Paragraph (a)(2) would specify requirements for managing State Certificate Systems, which are set forth in appendix A to subpart A of the part.

- Paragraph (a)(3) would require a State to demonstrate how it protects personally identifiable information of individuals during the mDL provisioning process.

- Paragraph (a)(4) would require a State to establish: how it issues mDLs that are interoperable with requirements set forth in standard ISO/IEC 18013–5:2021; that the State uses only those algorithms for encryption,⁵⁸ secure hash function,⁵⁹ and digital signatures that are specified in ISO/IEC 18013–5:2021, and in NIST FIPS PUB 180–4, 186–5, 197, 198–1, and 202; and how the State complies with the "AAMVA mDL data element set" as defined in the AAMVA mDL Guidelines v. 1.2, Section 3.2 (see Part II.D., above, for a detailed discussion of those references).

(ii) Audit Requirements

Section 37.10(b) would require a State to submit an audit report prepared by an independent auditor verifying the accuracy of the information provided by the State in response to § 37.10(a), as follows:

- Paragraph (1) would set forth specific experience, qualifications, and accreditations that an auditor must meet.

- Paragraph (2) would require a State to provide information demonstrating the absence of a potential conflict of interest of the auditing entity.

(iii) Waiver Application Guidance

As set forth in § 37.10(c), TSA proposes to publish "Mobile Driver's License Waiver Application Guidance," in the **Federal Register** and on the REAL ID website at www.dhs.gov/real-id/mDL to assist States in completing their applications. The proposed guidance document is available for review at www.regulations.gov/docket/TSA-2023-0002. TSA is accepting comments on the guidance along with this proposed rule. This guidance would provide TSA's recommendations for some ways that States can meet the requirements in § 37.10(a)(1). The guidance would *not* establish legally enforceable

⁵⁸ Encryption refers to the process of cryptographically transforming data into a form in a manner that conceals the data's original meaning to prevent it from being read. Decryption is the process of restoring encrypted data to its original state. [IETF RFC 4949, *Internet Security Glossary, Version 2*, August 2007]

⁵⁹ A function that processes an input value creating a fixed-length output value using a method that is not reversible (*i.e.*, given the output value of a function it is computationally impractical to find the function's corresponding input value).

requirements for a State applying for a waiver. Instead, the guidance would provide non-binding examples of measures and practices that a State may choose to consider as part of its overall strategy to issue mDLs. States continue to exercise discretion to select processes not included in the Guidance. Given the rapidly-evolving cyber threat landscape, however, TSA may periodically update its guidance to provide additional information regarding newly-published standards or other sources, or recommend mitigations of newly discovered risks to the mDL ecosystem. TSA would publish updated guidance in the **Federal Register** and on the REAL ID website at www.dhs.gov/real-id/mDL, and would provide a copy to all States that have applied for or been issued a certificate of waiver. Updates to guidance will not impact issued waivers or pending applications.

(iv) Appendix A to Subpart A: Requirements for State mDL Issuance Systems

Appendix A to subpart A of the part sets forth fundamental requirements to ensure the security and integrity of State mDL issuance processes. More specifically, these requirements concern the creation, issuance, use, revocation, and destruction of the State's certificate systems and cryptographic keys. The appendix consists of requirements in eight categories: (1) Certificate Authority Certificate Life Cycle Policy, (2) Certificate Authority Access Management, (3) Facility, Management, and Operational Controls, (4) Personnel Security Controls, (5) Technical Security Controls, (6) Threat Detection, (7) Logging, and (8) Incident Response and Recovery Plan. Adherence to these requirements ensures that States issue mDLs in a standardized manner with security and integrity to establish the trust necessary for Federal acceptance for official purposes.

- Certificate Authority Certificate Life Cycle Policy requirements (appendix A, sec. 1) ensure that a State issuing an mDL creates and manages a formal process which follows standardized management and protections of digital certificates. These requirements must be implemented in full compliance with the references cited in the appendix: the CA Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates, CA Browser Forum Network and Certificate System Security Requirement, NIST Cybersecurity Framework, NIST SP 800–53 Rev. 5, NIST SP 800–57, and NIST SP 800–53B.

- Certificate Authority Access Management requirements (appendix A,

sec. 2) set forth policies and processes for States concerning, for example, restricting access to mDL issuance systems, policies for multi-factor authentication, defining the scope and role of personnel, and Certificate System architecture which separates and isolates Certificate System functions to defined security zones. These requirements must be implemented in full compliance with the references cited in the appendix: CA Browser Forum Network and Certificate System Security Requirements, NIST Cybersecurity Framework, NIST SP 800–53 Rev. 5, NIST SP 800–63–3, and NIST SP 800–63B.

- Under the requirements concerning Facility, Management, and Operational Controls (appendix A, sec. 3), States must provide specified controls protecting facilities where Certificate Systems reside from unauthorized access, environmental damage, physical breaches, and risks from foreign ownership, control, or influence. These requirements must be implemented in full compliance with the references cited in the appendix: NIST SP 800–53 Rev. 5.

- Personnel security controls (appendix A, sec. 4) require States to establish policies to control insider threat risks to Certificate Systems and facilities. Such policies must include establish screening criteria for personnel who access Certificate Systems, post-employment access termination, updates to personnel security policy, training, records retention schedules, among other policies. These requirements must be implemented in full compliance with the references cited in the appendix: NIST SP 800–53 Rev. 5 and CA Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates.

- Technical security controls (appendix A, sec. 5) specify requirements to protect Certificate System networks. In addition, States are required to protect private cryptographic keys of Issuing Authority Root Certificates using hardware security modules of Level 3 or higher and Document Signer private cryptographic keys in hardware security modules of Level 2 and higher. Other controls are specified regarding Certificate System architecture and cryptographic key generation processes. These requirements must be implemented in full compliance with the references cited in the appendix: CA Browser Forum Network and Certificate System Security Requirements, CA Browser Forum Baseline Requirements for the Issuance and Management of

Publicly-Trusted Certificates, NIST Cybersecurity Framework, NIST SP 800–53 Rev. 5, NIST SP 800–57, and NIST FIPS 140–3.

- Under requirements for threat detection (appendix A, sec. 6), States must implement controls to monitor and log evolving threats to various mDL issuance infrastructure, including digital certificate, issuance, and support systems. These requirements must be implemented in full compliance with the references cited in the appendix: CA Browser Forum Network and Certificate System Security Requirements, CISA Cybersecurity Incident & Vulnerability Response Playbooks, NIST Cybersecurity Framework, NIST SP 800–53 Rev. 5.

- Logging controls (appendix A, sec. 7) require States to record various events concerning Certificate Systems, including the management of cryptographic keys, digital certificate lifecycle events. The controls set forth detailed requirements concerning specific types of events that must be logged, as well as timeframes for maintaining such logs. These requirements must be implemented in full compliance with the references cited in the appendix: CA Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates, NIST Cybersecurity Framework, and NIST SP 800–53 Rev. 5.

- Finally, section 8 of appendix A requires States to implement policies to respond to and recover from security incidents. States must act on logged events, issue alerts to relevant personnel, respond to alerts within a specified time period, perform vulnerability scans, among other things. In particular, States must provide written notice to TSA at www.dhs.gov/real-id/mDL within 72 hours of discovery of a significant cyber incident or breach that could compromise the integrity of a Certificate System. These requirements must be implemented in full compliance with the references cited in the appendix: CA Browser Forum Network and Certificate System Security Requirements, CISA Cybersecurity Incident & Vulnerability Response Playbooks, CISA National Cyber Incident Response Plan; NIST SP 800–53 Rev. 5, NIST Cybersecurity Framework. TSA invites comment on all aspects of the waiver application requirements and costs of compliance, including the Waiver Application Guidance, appendix A to subpart A to the part, the appropriateness of requiring compliance with the specified standards and guidelines and any alternate standards that should be considered, and other recommendations

that commenters believe TSA should consider.

5. Decisions on Applications for Waiver

Section 37.9(b) would establish a timeline and process for TSA to issue decisions on a waiver application. Under this paragraph, TSA would endeavor to provide States a decision on initial applications within 60 days, but not longer than 90 days. TSA would provide three types of written notice via email: approved, insufficient, or denied.

If TSA approves a State's application for a waiver, TSA would memorialize that decision by issuing a certificate of waiver to that State, and including the State in a list of State-mDLs approved for Federal use, published by TSA on the REAL ID website at www.dhs.gov/real-id/mDL. A certificate of waiver would specify the date that the waiver becomes effective, the expiration date, and any other terms and conditions with which a State must comply, as provided under proposed § 37.9(d). A State seeking to renew its certificate beyond the expiration date must reapply for a waiver, as provided in § 37.9(e)(6).

If TSA determines that an application is insufficient, did not respond to certain information required in § 37.10(a) or (b), or contains other deficiencies, TSA would provide an explanation of such deficiencies and allow the State an opportunity address the deficiencies within the timeframe specified in § 37.9(b)(2). TSA would permit States to submit multiple amended applications if necessary, with the intent of working with States individually to enable their mDLs to comply with the requirements of § 37.10(a) and (b).

If TSA denies an application, TSA would provide the specific grounds for the basis of the denial and afford the State an opportunity to submit a new application. As stated in § 37.9(c), TSA would also provide a State an opportunity to seek reconsideration of a denied application. Instructions for seeking reconsideration would be provided by TSA on the REAL ID website at www.dhs.gov/real-id/mDL. An adverse decision upon reconsideration would be considered a final agency action. As provided in § 37.9(c), however, a State whose request for reconsideration has been denied may submit a new application for a waiver.

6. Limitations, Suspension, and Termination of Certificate of Waiver

Section 37.9(e) would set forth various restrictions on a certificate of waiver. Specifically, in paragraph (e)(1) of this section, TSA proposes that a

certificate of waiver would be valid for a period of three years from the date of issuance. Paragraph (e)(2) proposes that a State must report to TSA if, after it receives a waiver, it makes significant modifications to its mDL issuance processes that differ in a material way from information that the State provided in its application. If the State makes such modifications, it would be required to report such changes 60 days before implementing the changes. This requirement is intended to apply to changes that may undermine the bases on which TSA granted a waiver. The reporting requirement is not intended to apply to routine, low-level changes, such as systems maintenance and software updates and patches. Paragraph (e)(3) would require a State that is issued a waiver to comply with all requirements specified in §§ 37.51(a) and 37.9(d)(3).

Section 37.9(e)(4) sets forth processes for suspension of certificates of waiver. As provided in proposed § 37.9(e)(4)(i)(A), TSA may suspend the validity of a certificate of waiver if TSA determines that a State:

- fails to comply with any terms and conditions (see § 37.9(d)(3)) specified in the certificate of waiver;
- fails to comply with reporting requirements (see § 37.9(e)(2)); or
- issues mDLs in a manner that is not consistent with the information the State provided in its application for a waiver under § 37.10(a) and (b).

Before suspending a waiver for these reasons, TSA will provide such State written notice via email that it intends to suspend its waiver, along with an explanation of the reasons, information on how the State may address the deficiencies, and a timeline for the State to respond and for TSA to reply to the State, as set forth in § 37.9(e)(4)(ii). DHS may withdraw the notice of suspension, request additional information, or issue a final suspension. If TSA issues a final suspension of a State's certificate of waiver, DHS will remove the name of that State from the list of mDLs approved for Federal acceptance for official purposes.

TSA additionally may suspend a State's waiver at any time upon discovery that Federal acceptance of a State's mDL is likely to cause imminent or serious threats to the security, privacy, or data integrity of any Federal agency, as proposed by § 37.9(e)(4)(i)(B). Suspension would apply to all Federal agencies and would not be agency-specific. Examples of such triggering events include cyber-attacks and other events that cause serious harm to a State's mDL issuance systems. If a State discovers a significant cyber incident

that it believes could compromise the integrity of its mDL issuance systems, sec. 8.6 of appendix A to subpart A of the part would require States to provide written notice to TSA, at www.dhs.gov/real-id/mDL, of such incident within 72 hours of discovery. If TSA determines such suspension is necessary, TSA will provide written notice via email to each State whose certificate of waiver is affected, as soon as practicable after discovery of the triggering event, providing an explanation for the suspension, as well as an estimated timeframe for resumption of the validity of the certificate of waiver.

It is TSA's intent to work with States to resolve the conditions that could lead to suspension and avoid issuing a final suspension. If TSA issues a final suspension of any State's certificate of waiver, TSA will temporarily remove the name of that State from the list of mDLs approved for Federal acceptance for official purposes. A State receiving a final suspension may apply for a new certificate of waiver by submitting a new application. Under § 37.9(e)(5), TSA may terminate a certificate of waiver for serious or egregious violations. More specifically, TSA may terminate a waiver if TSA determines that a State:

- does not comply with REAL ID requirements in § 37.51(a);
- is committing an egregious violation of any terms and conditions (see § 37.9(d)(3)) specified in the certificate of waiver and is unwilling to cure such violation;
- is committing an egregious violation of reporting requirements (see § 37.9(e)(2)) and is unwilling to cure such violation; or
- provided false information in its waiver application.

Before terminating a certificate of waiver, TSA would provide written notice via email of intent to terminate, including findings supporting the termination and an opportunity to present information. As specified, a State would have 7 days to respond to the notice, and TSA would respond via email within 30 days. TSA may withdraw the notice of termination, request additional information, or issue a final termination. If TSA issues a final termination of a State's certificate of waiver, TSA will remove the name of that State from the list of mDLs approved for Federal acceptance for official purposes. A State whose certificate of waiver has been terminated may apply for a new certificate of waiver by submitting a new application.

7. Effect of a Status of Waiver on REAL ID Compliance

Section 37.9(f) clarifies that the status of a State's certificate of waiver, including the status of an application for a waiver, has no bearing on TSA's determination of that State's compliance or non-compliance with any other section of this part. A certificate of waiver that TSA has issued to a State is not a determination that the State is in compliance with any other section in this part. Similarly, an application for a waiver that TSA has deemed insufficient or denied, or a certificate of waiver TSA has suspended, terminated, or expired, is not a determination that the State is not in compliance with any other section in this part.

8. Incorporation by Reference

TSA proposes adding to subpart A, § 37.4, the following industry standards and government guidelines that this rulemaking proposes to incorporate by reference (discussed in detail in Part II.D., above):

- AAMVA
 - Mobile Driver's License (mDL) Implementation Guidelines, Version 1.2 (Jan. 2023);
- CA/Browser Forum
 - Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates, Version 1.8.6 (Dec. 14, 2022),
 - Network and Certificate System Security Requirements, Version 1.7 (Apr. 5, 2021);
- CISA
 - Cybersecurity Incident & Vulnerability Response Playbooks (Nov. 2021),
 - National Cyber Incident Response Plan (Dec. 2016);
- ISO/IEC
 - ISO/IEC 18013-5:2021, Personal identification—ISO-compliant driving licence—Part 5: Mobile driving licence (mDL) application, Edition 1 (Sept. 2021);
- NIST
 - FIPS PUB 140-3, Security Requirements for Cryptographic Modules (Mar. 22, 2019),
 - FIPS PUB 180-4, Secure Hash Standard (SHS) (Aug. 2015),
 - FIPS PUB 186-5, Digital Signature Standard (DSS) (Feb. 2023),
 - FIPS PUB 197, Advanced Encryption Standard (AES) (Nov. 26, 2001),
 - FIPS PUB 198-1, The Keyed-Hash Message Authentication Code (HMAC) (July 2008),
 - FIPS PUB 202, SHA-3 Standard: Permutation-Based Hash and Extendable-Output Functions (Aug.

- 2015),
- SP 800-53, Security and Privacy Controls for Information Systems and Organizations, Rev. 5 (Sept. 2020),
- SP 800-57 Part 1, Recommendation for Key Management: Part 1—General, Rev. 5 (May 2020),
- SP 800-57 Part 2, Recommendation for Key Management: Part 2—Best Practices for Key Management Organization, Rev. 1 (May 2019),
- SP 800-57 Part 3, Recommendation for Key Management: Part 3: Application-Specific Key Management Guidance, Rev. 1 (Jan. 2015),
- SP 800-63-3, Digital Identity Guidelines, (June 2017),
- SP 800-63B, Digital Identity Guidelines Authentication and Lifecycle Management (June 2017), and
- Framework for Improving Critical Infrastructure Cybersecurity Version 1.1 (Apr. 16, 2018).

C. Impacted Stakeholders

The proposed changes would apply to State driver's licensing agencies issuing mDLs that seek a temporary waiver from TSA for its mDLs. The waiver would enable Federal agencies to accept such mDLs for official purposes, defined in the REAL ID Act as accessing Federal facilities, entering nuclear power plants, boarding federally regulated commercial aircraft, and any other purposes that the Secretary shall determine. Any Federal agency that chooses to accept mDLs for official purposes must procure a reader in order to receive an individual's identity data.

This proposed rule does not impose any requirements on:

- States that do not seek a waiver for mDLs;
- Non-State issuers of other forms of digital identification; or
- Federal agencies to accept mDLs.

A State seeking a waiver for Federal acceptance of its mDLs for official purposes would be required to file with TSA a complete application and supporting documents. An application form and instructions would be published by TSA in a form and manner prescribed by TSA, such as a TSA-specified website. Through the application, the State would be required to demonstrate how its mDLs meet the requirements for a waiver set forth in § 37.10(a) and (b).

D. Use Cases Affected by This Proposed Rule

The scope of this proposed rule is confined strictly to Federal acceptance of mDLs for official purposes, defined

by the REAL ID regulations as accessing Federal facilities, entering nuclear power plants, and boarding federally regulated commercial aircraft. Any other purpose is beyond the scope of this rulemaking. For example, a waiver issued under this proposed rule would not apply to any of the following:

- mDL acceptance by Federal agencies for non-REAL ID official uses (e.g., applying for Federal benefits);
- mDL acceptance by non-Federal agencies (e.g., State agencies, businesses, private persons);
- Commercial transactions; or
- Physical driver's licenses or identification cards.

Nothing in this proposed rule would *require* Federal agencies to accept mDLs; each Federal agency retains the discretion to determine its identification policies. Additionally, nothing in this proposed rule would require a State to seek a waiver or issue mDLs.

IV. Discussion of Public Comments in the RFI

As discussed in Part II.B., above, DHS issued an RFI⁶⁰ on April 19, 2021, and requested comments from the public to be submitted by June 18, 2021. In addition, DHS and TSA held a virtual public meeting on June 30, 2021, to provide an additional forum for public comments, and extended the RFI comment period until July 30, 2021, to permit additional comments following the public meeting.⁶¹ Approximately 100 persons attended the public meeting. In response to discussion at the public meeting and comments to the RFI concerning the importance of access to the primary industry standard referenced in the RFI, ISO/IEC 18013-5:2021, DHS facilitated public access to the standard by publishing a notification⁶² in the **Federal Register** on September 16, 2021, providing instructions to the public to gain access to the standard without cost. Approximately 30 persons requested and received access. Additionally, DHS reopened the comment period until October 18, 2021. With the comment period extension and reopening, DHS provided a total RFI comment period of 180 days.

DHS received roughly 60 comments to the RFI from a diverse group of stakeholders, including advocacy groups representing varied interests, individuals, State government agencies, trade associations, and industry. An analysis of comments received showed that topics of interest to stakeholders

⁶⁰ 86 FR 20320.

⁶¹ 86 FR 31987.

⁶² 86 FR 51625.

concerned: the need for standardization and/or Federal guidance,⁶³ potential benefits to the public from mDLs generally,⁶⁴ and the appropriateness of ISO/IEC standards as a starting point for regulatory requirements.⁶⁵ Input received from these stakeholders, as it relates to the focus of this NPRM, is included and referenced throughout this proposed rule.

In addition to the issues already discussed, many commenters raised concerns about potential privacy risks depending on the mode of data transfer. For background, an mDL reader can retrieve an individual's data under two different modes of operation: a "device retrieval" mode (also known as "offline") in which data is retrieved directly from an mDL holder's mobile device, and a "server retrieval" mode (also known as "online") in which the data is retrieved from a State driver's licensing agency.⁶⁶ In its RFI, DHS noted that it was considering both modes of operation for Federal acceptance for official purposes, and specifically sought comments on the security and privacy risks, and mitigating solutions for both modes.⁶⁷ DHS received numerous comments from advocacy groups, industry, and States concerning potential privacy risks posed specifically by server retrieval mode.⁶⁸ Chief among these concerns was the potential for mDL usage to be tracked. TSA has observed that security and

privacy protections to mitigate such concerns are evolving and unsettled, and after careful consideration of commenters' concerns, TSA does not believe server retrieval mode is appropriate for Federal acceptance for official purposes at this time. TSA will continue monitoring industry developments and may update its conclusions in the Phase 2 rulemaking, if warranted.

DHS also received comments on other topics, including non-REAL ID use cases such as commercial transactions and technical information on various topics. As noted above, a waiver issued under the proposed rule would not address use of an mDL for commercial transactions or any other non-Federal purposes not covered by the REAL ID Act or regulations. In general, mDL acceptance by Federal agencies for non-REAL ID official purposes, mDL acceptance by non-Federal agencies, and mDL use in commercial transactions go beyond the scope of the REAL ID Act's official purposes. Although not the focus of this proposal, TSA may examine some of these issues through its on-going mDL efforts, such as mDL collaborations with industry, which could inform future regulatory proposals. To support this interest, TSA appreciates stakeholders' perspectives on these topics.

V. Consultation With States, Non-Governmental Organizations, and the Department of Transportation

Under section 205 of the REAL ID Act, issuance of REAL ID regulations must be conducted in consultation with the Secretary of Transportation and the States. During the development of this NPRM, DHS and TSA consulted with the Department of Transportation and other Federal agencies with an interest in this rulemaking. DHS and TSA also consulted with State officials via AAMVA. In addition, DHS and TSA met with various non-governmental organizations, including civil rights and privacy advocacy groups. Stakeholder input, informed by extensive outreach, was critical to informing this NPRM.

VI. Regulatory Analyses

A. Economic Impact Analyses

1. Regulatory Impact Analysis Summary

Changes to Federal regulations must undergo several economic analyses. First, E.O. 12866 of September 30, 1993 (Regulatory Planning and Review),⁶⁹ as supplemented by E.O. 13563 of January 18, 2011 (Improving Regulation and

Regulatory Review),⁷⁰ and amended by E.O. 14094 of April 6, 2023 (Modernizing Regulatory Review)⁷¹ directs Federal agencies to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (RFA)⁷² requires agencies to consider the economic impact of regulatory changes on small entities. Third, the Trade Agreement Act of 1979⁷³ prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995⁷⁴ (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted for inflation) in any one year.

2. Assessments Required by E.O. 12866 and E.O. 13563

E.O. 12866 and E.O. 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Under E.O. 12866, as amended by E.O. 14094, agencies must also determine whether a regulatory action is significant.⁷⁵ These requirements were supplemented by E.O. 13563, which emphasizes the importance of quantifying both costs

⁶³ See, e.g., comments submitted by: American Association of Motor Vehicle Administrators; CBN Secure Technologies; DocuSign; FaceTec; IDmachines; Maryland DHS of Transportation, Motor Vehicle Administration; National Conference of State Legislatures; State of Connecticut, DHS of Motor Vehicles; U.S. Travel Association.

⁶⁴ See, e.g., comments submitted by: Applied Recognition; Bredemarket; Hiday; IDmachines; Mothershed; Muller; State of Connecticut, DHS of Motor Vehicles; U.S. Travel Association.

⁶⁵ See, e.g., comments submitted by: American Association of Motor Vehicle Administrators; American Civil Liberties Union, Electronic Frontier Foundation, and Electronic Privacy Information Center; Apple; Association for Convenience & Fuel Retailing; CBN Secure Technologies; FaceTec; Florida DHS of Highway Safety and Motor Vehicles; IDEMIA; Maryland DHS of Transportation, Motor Vehicle Administration; National Immigration Law Center and Undersigned Organizations; Secure Technology Alliance; State of Connecticut, DHS of Motor Vehicles; Underwriters Laboratories; Verifiable Credentials Policy Committee, Blockchain Advocacy Coalition.

⁶⁶ 86 FR 20323–24.

⁶⁷ 86 FR 20326.

⁶⁸ See, e.g., comments submitted by American Association of Motor Vehicle Administrators; American Civil Liberties Union, Electronic Frontier Foundation, and Electronic Privacy Information Center; Association for Convenience and Fuel Retailing; Better Identity Coalition; Electronic Privacy Information Center; IDEMIA; National Immigration Law Center, and Undersigned Organizations; and Verifiable Credentials Policy Committee—Blockchain Advocacy Coalition.

⁷⁰ Published at 76 FR 3821 (Jan. 21, 2011).

⁷¹ Published at 88 FR 21879 (April 6, 2023).

⁷² Public Law 96–354, 94 Stat. 1164 (Sept. 19, 1980) (codified at 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)).

⁷³ Public Law 96–39, 93 Stat. 144 (July 26, 1979) (codified at 19 U.S.C. 2531–2533).

⁷⁴ Public Law 104–4, 109 Stat. 66 (Mar. 22, 1995) (codified at 2 U.S.C. 1181–1538).

⁷⁵ See section 1(b) of E.O. 14094, revising section 3(f) of E.O. 12866. Section 3(f) of E.O. 12866 defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that: (1) has an annual effect on the economy of \$200 million or more or adversely affects 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 (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

⁶⁹ Published at 58 FR 51735 (Oct. 4, 1993).

and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

In conducting these analyses, TSA has made the following determinations:

(a) While TSA attempts to quantify costs where available, TSA primarily discusses the costs and benefits of this rulemaking in qualitative terms. At present, mDLs are part of an emerging and evolving industry with an elevated level of uncertainty surrounding costs and benefits. Nonetheless, TSA anticipates the rulemaking would not result in an effect on the economy of \$200 million or more in any year of the analysis. The rulemaking would not adversely affect the economy, interfere with actions taken or planned by other agencies, or generally alter the budgetary impact of any entitlements.

(b) TSA has not prepared an Initial Regulatory Flexibility Analysis (IRFA) and, pursuant to 5 U.S.C. 605(b), the Secretary certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would only directly regulate the fifty States, the District of Columbia, and the five U.S. territories who voluntarily participate in the mDL waiver process, who under the RFA are not considered small entities.

(c) TSA has determined that the NPRM imposes no significant barriers to international trade as defined by the Trade Agreement Act of 1979; and

(d) TSA has determined that the NPRM does not impose an unfunded

mandate on State, local, or tribal governments, such that a written statement would be required under the UMRA, as its annual effect on the economy does not exceed the \$100 million threshold (adjusted for inflation) in any year of the analysis.

TSA has prepared an analysis of its estimated costs and benefits, summarized in the following paragraphs, and in the OMB Circular A-4 Accounting Statement. When estimating the cost of a rulemaking, agencies typically estimate future expected costs imposed by a regulation over a period of analysis. For this proposed rule's period of analysis, TSA uses a 10-year period of analysis to estimate costs.

This proposed rule would establish a temporary waiver process that would permit Federal agencies to accept mDLs for official purposes, as defined in the REAL ID Act, when full enforcement of the REAL ID Act and regulations begins on May 7, 2025. Federal agencies would be able to accept mDLs for official purposes on an interim basis, provided that: (1) the mDL holder has been issued a valid and unexpired REAL ID-compliant physical driver's license or identification card from the same State that issued the mDL; (2) TSA has determined the issuing State to be REAL ID-compliant; and (3) TSA has issued a waiver to the State. Federal agencies that opt to accept mDLs for official purposes must also procure a mDL

reader in order to validate the identity of the mDL holder. As part of the application process for the mDL waiver, States would be required to submit to TSA an application, including supporting data, and other documentation necessary to establish that their mDLs meet specified criteria concerning security, privacy, and interoperability. The criteria concerning security, privacy, and interoperability would not change absent a subsequent rulemaking. When REAL ID Act and regulations enforcement begins on May 7, 2025, Federal agencies will be prohibited from accepting non-compliant driver's licenses and identification cards, including both physical cards and mDLs, for official purposes.

In the following paragraph TSA summarizes the estimated costs of the proposed rule on the affected parties: States, TSA, mDL users, and relying parties (Federal agencies that voluntarily choose to accept mDLs for official purposes). TSA has also identified other non-quantified impacts to affected parties. As Table 1 displays, TSA estimates the 10-year total cost of the proposed rule to be \$826.8 million undiscounted, \$695.6 million discounted at 3 percent, and \$562.0 million discounted at 7 percent. The total cost to States comprises approximately 98 percent of the total quantified costs of the proposed rule.

Table 1: Total Cost of the Proposed Rule by Entity (\$ Thousands)

Year	States Cost	TSA Cost	Relying Party Cost	Total Proposed Rule Cost		
				d = a + b + c		
	a	b	c	Undiscounted	Discounted at 3%	Discounted at 7%
1	\$42,957	\$1,589	\$40	\$44,586	\$43,287	\$41,669
2	\$62,842	\$1,662	\$459	\$64,963	\$61,234	\$56,741
3	\$71,374	\$1,174	\$269	\$72,818	\$66,638	\$59,441
4	\$83,278	\$1,069	\$191	\$84,538	\$75,111	\$64,494
5	\$94,531	\$833	\$188	\$95,551	\$82,423	\$68,127
6	\$91,485	\$669	\$580	\$92,734	\$77,663	\$61,793
7	\$91,974	\$702	\$371	\$93,047	\$75,655	\$57,945
8	\$91,811	\$703	\$279	\$92,793	\$73,252	\$54,007
9	\$91,485	\$691	\$266	\$92,442	\$70,849	\$50,283
10	\$91,974	\$746	\$645	\$93,364	\$69,472	\$47,462
Total	\$813,712	\$9,839	\$3,286	\$826,837	\$695,586	\$561,960
Annualized					\$81,544	\$80,010

Note: Totals may not add due to rounding.

States incur costs to familiarize themselves with the requirements of the proposed rule, purchase access to an industry standard, submit their mDL

waiver application, submit an mDL waiver reapplication, and comply with mDL application criteria requirements. As displayed in Table 2, the 10-year cost

to States is \$813.7 million undiscounted, \$684.2 million discounted at 3 percent, and \$552.4 million discounted at 7 percent.

Table 2: Total Cost of the Proposed Rule to States (\$ Thousands)

Year	Familiar- ization Cost	Stand- ards Cost	Waiver Applic- ation Cost	Reapplic- ation Cost	Esca- lated Review Cost	Infras- tructure Security Cost	Total Cost to States		
							g = a + b + c + d + e + f		
	a	b	c	d	e	f	Undis- counted	Disc- ounted at 3%	Disc- ounted at 7%
1	\$63.3	\$1.9	\$675.0	\$0	\$4.6	\$42,212	\$42,957	\$41,705	\$40,146
2	\$0	\$1.3	\$450.0	\$0	\$7.7	\$62,383	\$62,842	\$59,234	\$54,888
3	\$0	\$0.6	\$225.0	\$0	\$9.2	\$71,140	\$71,374	\$65,318	\$58,263
4	\$0	\$0.6	\$225.0	\$488.5	\$10.8	\$82,553	\$83,278	\$73,992	\$63,533
5	\$0	\$0.6	\$225.0	\$325.6	\$12.3	\$93,967	\$94,531	\$81,543	\$67,399
6	\$0	\$0	\$0	\$162.8	\$12.3	\$91,310	\$91,485	\$76,618	\$60,961
7	\$0	\$0	\$0	\$651.3	\$12.3	\$91,310	\$91,974	\$74,783	\$57,277
8	\$0	\$0	\$0	\$488.5	\$12.3	\$91,310	\$91,811	\$72,477	\$53,435
9	\$0	\$0	\$0	\$162.8	\$12.3	\$91,310	\$91,485	\$70,116	\$49,762
10	\$0	\$0	\$0	\$651.3	\$12.3	\$91,310	\$91,974	\$68,437	\$46,755
Total	\$63.3	\$5.0	\$1,800.0	\$2,930.8	\$106.0	\$808,807	\$813,712	\$684,223	\$552,419
Annual- ized								\$80,212	\$78,652

Note: Totals may not add due to rounding.

TSA incurs costs associated with reviewing mDL waiver applications and mDL waiver renewals, purchasing access to industry standards, procuring

mDL readers, and mDL training. As displayed in Table 3, the 10-year cost to TSA is \$9.84 million undiscounted, \$8.62 million discounted at 3 percent,

and \$7.35 million discounted at 7 percent.

Table 3: Total Cost of the Proposed Rule to DHS (\$ Thousands)

Year	Standards Cost	Application Review Cost	Reapplication Review Cost	mDL Reader Cost	mDL Training Cost	Total Cost to DHS		
						f = a + b + c + d + e		
	a	b	c	d	e	Undiscounted	Discounted at 3%	Discounted at 7%
1	\$0.4	\$74.3	\$0	\$1,418.8	\$96.0	\$1,589.4	\$1,543.1	\$1,485.5
2	\$0	\$49.5	\$0	\$699.8	\$912.9	\$1,662.3	\$1,566.8	\$1,451.9
3	\$0	\$24.8	\$0	\$547.9	\$601.7	\$1,174.4	\$1,074.7	\$958.6
4	\$0	\$24.8	\$39.9	\$440.6	\$564.0	\$1,069.3	\$950.1	\$815.8
5	\$0	\$24.8	\$26.6	\$240.6	\$540.6	\$832.6	\$718.2	\$593.7
6	\$0	\$0.0	\$13.3	\$199.4	\$455.8	\$668.5	\$559.9	\$445.5
7	\$0	\$0.0	\$53.2	\$200.9	\$447.6	\$701.7	\$570.6	\$437.0
8	\$0	\$0.0	\$39.9	\$202.3	\$460.9	\$703.2	\$555.1	\$409.3
9	\$0	\$0.0	\$13.3	\$203.8	\$474.2	\$691.3	\$529.8	\$376.0
10	\$0	\$0.0	\$53.2	\$205.2	\$487.5	\$745.9	\$555.0	\$379.2
Total	\$0.4	\$198.2	\$239.6	\$4,359.4	\$5,041.2	\$9,838.7	\$8,623.4	\$7,352.4
Annualized							\$1,010.9	\$1,046.8

Note: Totals may not add due to rounding.

Relying parties represent Federal agencies that elect to accept a mDLs for official purposes. Per the proposed rule, relying parties would be required to use a mDL reader to retrieve and validate mDL data. As a result, relying parties would incur costs to procure mDL

readers should they voluntarily choose to accept mDLs for official purposes. TSA is also considered a relying party, but due to the particular impact to TSA related to the requirement for REAL ID related to boarding federally regulated commercial aircraft, those impacts are

discussed separately. As displayed in Table 4, the 10-year cost to relying parties is \$3.29 million undiscounted, \$2.74 million discounted at 3 percent, and \$2.19 million discounted at 7 percent.

Table 4: Total Cost of the Proposed Rule to Relying Parties (\$ Thousands)

Year	mDL Reader Cost	Total Cost to Relying Parties		
		b = a		
	a	Undiscounted	Discounted at 3%	Discounted at 7%
1	\$39.6	\$39.6	\$38.5	\$37.0
2	\$459.4	\$459.4	\$433.0	\$401.2
3	\$268.7	\$268.7	\$245.9	\$219.4
4	\$190.7	\$190.7	\$169.4	\$145.5
5	\$187.5	\$187.5	\$161.8	\$133.7
6	\$580.2	\$580.2	\$485.9	\$386.6
7	\$370.9	\$370.9	\$301.6	\$231.0
8	\$279.2	\$279.2	\$220.4	\$162.5
9	\$265.6	\$265.6	\$203.5	\$144.5
10	\$644.5	\$644.5	\$479.6	\$327.6
Total	\$3,286.3	\$3,286.3	\$2,739.6	\$2,189.0
Annualized			\$321.2	\$311.7

Note: Totals may not add due to rounding.

TSA has also identified other non-quantified impacts to the affected entities. States may incur costs to: monitor and study mDL technology as it evolves; resolve the underlying issues that could lead to a suspension or termination of a mDL waiver; report serious threats to security, privacy, or data integrity; report material changes to mDL issuance processes; remove conflicts of interest with a third-party auditor; and request reconsideration of a denied mDL waiver application. TSA may incur costs to: investigate circumstances that could lead to suspension or termination of a State's mDL waiver; provide notice to States, relying parties, and the public related to mDL waiver suspensions or terminations; develop an IT solution that maintains an up-to-date list of States with valid mDL waivers; and resolve a request for reconsideration of a denied mDL waiver application. mDL users may incur costs with additional application requirements to obtain a mDL. Relying parties may incur costs to resolve any security or privacy issue with the mDL reader; report serious threats to security, privacy, or data integrity; verifying the list of States with

valid mDL waivers; train personnel to verify mDLs; and update the public on identification policies.

TSA believes that States implementing a mDL, absent the rulemaking, would still comply with the AAMVA mDL Implementation Guidelines (hereafter referred to as the "AAMVA Guidelines"). Many of the requirements of the mDL application criteria are already contained within the AAMVA Guidelines. This includes mDL application criteria concerning: data encryption; authentication; device identification keys; user identity verification; applicant presentation; REAL ID compliant physical card; data record; records retention; privacy; and interoperability. Only the mDL application criteria related to escalated review and infrastructure security/issuance are not contained with the AAMVA Guidelines. Operating under the assumption that States interested in mDLs would comply with the AAMVA Guidelines, TSA assumes the application criteria that overlap with the AAMVA Guidelines would otherwise be incurred and thus not included as a cost of the proposed rule. However, TSA requests comment on this assumption

and any cost information associated with the mDL application criteria.

This proposed rule would establish mDL application criteria that would serve as an interim mDL standard for those States choosing to issue mDLs that can be accepted for official purposes. TSA's application criteria may help guide States in their development of mDL technologies which would provide a shared standard that could potentially improve efficiency while also promoting higher security, privacy, and interoperability safeguards.

The application criteria set requirements establishing security and privacy protections to safeguard an mDL holder's identity data. They also set interoperability requirements to ensure secure transactions with Federal agencies. States, via their mDL waiver application, must establish that their mDLs meet the application criteria thus helping to ensure adequate security and privacy protections are in place. Absent the proposed rule, individual States may choose insufficient security and privacy safeguards for mDL technologies that fail to meet the intended security purposes of REAL ID and the privacy needs of users.

mDLs themselves may provide additional security benefits by offering a more secure verification of an individual's identity and authentication of an individual's credential compared to physical cards. In general, mDLs use a cryptographic protocol that ensures the mDL was obtained through a trusted authority, such as a State's Department of Motor Vehicles.⁷⁶ This same protocol may prevent the alteration of mDLs and reduce the threat of counterfeit credentials.⁷⁷ mDLs also offer increased protection of personal identifiers by preventing over-collection of information. mDLs may possess the ability to share only those attributes necessary to validate the user identity with the relying party.⁷⁸ When using a physical card, the user has no ability to limit the information that is shared,

⁷⁶ Secure Technology Alliance's Mobile Driver's License Workshop Showcases mDLs Role in the Future of Identification. December 14, 2021. <https://www.securetechalliance.org/secure-technology-alliances-mobile-drivers-license-workshop-showcases-mdls-role-in-the-future-of-identification/>.

⁷⁷ Ibid.

⁷⁸ Mobile ID can bring both convenience and citizen privacy. July 15, 2021. <https://www.biometricupdate.com/202107/mobile-id-can-bring-both-convenience-and-citizen-privacy>.

regardless of the amount of information required for verification.

TSA's mDL application criteria can help guide State development and investment in mDLs. The mDL application criteria would foster a level of standardization that would potentially reduce complexity by limiting individual State nuances while also ensuring interoperability across States and with the Federal Government. This increased interoperability reduces implementation costs by limiting the need for different protocols or mechanisms to accept mDLs from individual States.

Identification of mDL application criteria that can be used across States would result in efficiency gains through multiple States pursuing similar objectives, goals, and solutions. Establishing application criteria early in the technology development process has the potential to align development activities across disparate efforts. Early guidance might also reduce re-work or modifications required in future regulations thus saving time and resources redesigning systems and functionality to adhere to subsequent Federal guidelines.

Furthermore, the mDL application criteria may potentially encourage

investment in mDLs and the pooling of resources to develop mDL technology capabilities across States and address common concerns or issues. Such collaboration, or unity of effort, can help spread research and development risk and reduce inefficiencies that may arise from States working independently. Greater clarity over mDL regulations, with the proposed rule part of an incremental, multi-phased rulemaking approach, may spur new entrants (States and technology companies) into the mDL ecosystem.

The proposed rule, would allow Federal agencies to continue to accept mDLs for official purposes when REAL ID enforcement begins. This would avoid the sudden halting of mDL acceptance when REAL ID enforcement begins which would reverse trends in providing for a more customer-friendly screening experience. The experience and insight learned through the mDL waiver process could also be used to inform future standards and rulemaking.

3. OMB A-4 Statement

The OMB A-4 Accounting Statement presents annualized costs and qualitative benefits of the proposed rule.

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Table 5: OMB A-4 Accounting Statement (\$ Millions, 2022 Dollars)

Category	Estimates			Units			Notes
	Primary Estimate	Low Estimate	High Estimate	Year Dollar	Discount Rate	Period Covered	
Benefits							
Annualized Monetized (\$ millions/year)	N/A	N/A	N/A	N/A	7%	N/A	Not quantified
	N/A	N/A	N/A	N/A	3%	N/A	
Annualized Quantified	N/A	N/A	N/A	N/A	7%	N/A	Not quantified
	N/A	N/A	N/A	N/A	3%	N/A	
Qualitative	The proposed rule, if finalized, would produce benefits by reducing uncertainty in the mDL technology environment by helping to foster a minimum level of security, privacy and interoperability, and reduce potential costs through the alignment of development activities across disparate efforts.						
Costs							
Annualized Monetized (\$ millions/year)	\$80.01	N/A	N/A	2022	7%	10 years	NPRM Regulatory Impact Analysis (RIA)
	\$81.54	N/A	N/A	2022	3%	10 years	
Annualized Quantified	N/A	N/A	N/A	N/A	7%	N/A	Not quantified
	N/A	N/A	N/A	N/A	3%	N/A	
Qualitative	States may incur incremental costs to: monitor and study mDL technology as it evolves; resolve the underlying issues that could lead to a suspension or termination of a mDL waiver; report serious threats to security, privacy, or data integrity; report material changes to mDL issuance processes; remove conflicts of interest with a third-party auditor; and request reconsideration of a denied mDL waiver application. TSA may incur costs to: investigate circumstances that could lead to suspension or termination of a State's mDL waiver; provide notice to States, relying parties, and the public related to mDL waiver suspensions or terminations; develop an IT solution that maintains an up-to-date list of States with valid mDL waivers; and resolve a request for reconsideration of a denied mDL waiver application. mDL users may incur costs with additional application requirements to obtain a mDL. Relying parties may incur costs to resolve any security or privacy issue with the mDL reader; report serious threats to security, privacy, or data integrity; verifying the list of States with valid mDL waivers; train personnel to verify mDLs; and update the public on identification policies.						
Transfers							
From/To	From:	N/A		To:	N/A		
Effects On							
State, Local, and/or Tribal Government	The proposed rule would result in States incurring \$813.7 million undiscounted and \$552.4 million discounted at 7 percent, in costs over 10 years. The rule would not result in the expenditure by State governments, in the aggregate, of \$100 million or more in any one year, as such costs range from \$43.0 million to \$92.0 million across all States in any given year.						
Small Business	None						NPRM Regulatory Flexibility Analysis (RFA)
Wages	None						
Growth	Not measured						

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4. Alternatives Considered

In addition to the proposed rule, or the “preferred alternative”, TSA also

considered four alternative regulatory options.

The first alternative (Alternative 1) represents the status quo, or no change relative to the proposed creation of a

mDL waiver. This represents a scenario without a rulemaking or a waiver process to enable mDL acceptance for official Federal purposes. Under this alternative, States would continue to

develop mDLs in a less structured manner while waiting for relevant guiding standards to be published which would likely result in dissimilar mDL implementation and technology characteristics. This alternative was not selected because it does not address the market failures associated with a lack of common standards, such as increased complexity of mDL use across States, and may result in larger costs in the long run when formal mDL standards are finalized.

The second alternative (Alternative 2) features the same requirements of the proposed rule, including an mDL waiver process, but allows for an auto acceptance of certain State waivers that are “low-risk.” TSA would identify mDLs from States who have fulfilled the proposed rule’s minimum requirements prior to applying for the waiver and have sufficiently demonstrated (*e.g.*, via TSA initiative or recent evaluation by a trusted party) to TSA that their mDL systems present adequate interoperability and low security and privacy risk. The auto acceptance provision would allow Federal agencies to immediately (or conditionally) accept those “low-risk” mDLs for official purposes pending final approval of the respective State mDL waiver applications. However, TSA rejects this alternative because TSA believes the emerging technology underlying mDLs is insufficiently established to accept the security, privacy, and interoperability of States’ mDL systems without an evaluation by TSA or another trusted party. In addition, a similar presumptive eligibility process is not available for other aspects of REAL ID and such an action would not reduce the burden on States or TSA to comply with any framework DHS develops.

Under the third alternative (Alternative 3), TSA would establish more comprehensive requirements than those in the proposed rule to ensure mDLs comply with the REAL ID Act. States would be required to adopt the more comprehensive requirement to issue valid mDLs that can be accepted for official purposes. These technical requirements could include specific standards related to mDL issuance, provisioning, verification, readers, privacy, and other security measures. TSA rejects this alternative because promulgating more comprehensive requirements for mDLs is premature, as both industry standards and technology used by States are still evolving. Restrictive requirements could stifle innovation by forcing all stakeholders to pivot toward compliance. This could impede TSA from identifying and

implementing a more efficient regulatory approach in the future.

Finally, under the fourth alternative (Alternative 4), instead of a waiver process, TSA would first establish minimum requirements for issuing REAL ID compliant mDLs before TSA later sets more comprehensive requirements as additional guidance and standards become available in the mid- and long-term. The interim minimum requirements would consist of the same requirements for security, privacy, and interoperability, based on nineteen industry and government standards and guidelines, described in the proposed rule to guide waiver applications. Alternative 4 effectively would codify standards that may become obsolete in the near future, as existing standards are revised, emerging standards publish, and new cyber threats proliferate. TSA rejects this alternative because establishing minimum requirements that may become obsolete in the near future may limit the ability for TSA to revise standards quickly and would increase the security and privacy risks of accepting mDLs. In addition, costs under Alternative 4 would roughly be similar to costs under the proposed rule, as both options would require audits and other compliance costs. TSA requests comments as to whether finalizing these minimum requirements for REAL ID compliance would be preferable to the temporary waiver process described in this proposal. Specifically, TSA seeks comment on whether Alternative 4 would realize higher benefits, either quantitative or qualitative, for States and the public, than the waiver process described in this proposal. TSA also seeks comment on costs to the affected entities to comply with the minimum requirements.

5. Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act (RFA) of 1980, as amended,⁷⁹ was enacted by Congress to ensure that small entities (small businesses, small not-for-profit organizations, and small governmental jurisdictions) would not be unnecessarily or disproportionately burdened by Federal regulations. Section 605 of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulations are not expected to have a significant economic impact on a substantial number of small entities.

⁷⁹ Public Law 96–354, 94 Stat. 1164 (Sept. 19, 1980) (codified at 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)).

In accordance with the RFA, TSA has not prepared a Regulatory Flexibility Analysis and pursuant to 5 U.S.C. 605(b), the Secretary certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would directly impact States that voluntarily choose to apply for a waiver that would permit mDLs issued by those States to be accepted for official Federal purposes.

6. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. The Trade Agreement Act does not consider legitimate domestic objectives, such as essential security, as unnecessary obstacles. The statute also requires that international standards be considered and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this proposed rule and has determined this rule would not have an adverse impact on international trade.

7. Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (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 the private sector. Under sec. 202 of the UMRA, TSA generally must prepare a written Statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local, and tribal governments in the aggregate or by the private sector of \$100 million or more (adjusted for inflation) in any one year.

Before TSA promulgates a rule for which a written statement is required, sec. 205 of the UMRA generally requires TSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rulemaking. The provisions of sec. 205 do not apply when they are inconsistent with applicable law. Moreover, sec. 205 allows TSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the final rule provides an explanation why that alternative was not adopted. Before TSA establishes any regulatory requirements that may

significantly or uniquely affect small governments, including tribal governments, it must develop under sec. 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of TSA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

When adjusted for inflation, the threshold for expenditures becomes \$177.1 million in 2022 dollars. TSA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures that exceed that amount either for State, local, and tribal governments in the aggregate in any one year. TSA will publish a final analysis, including its response to public comments, when it publishes a final rule.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public. Under the provisions of PRA section 3507(d), DHS must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. This proposed rule would call for a collection of information under the PRA. Accordingly, TSA has submitted to OMB the proposed rule and this analysis, including the sections relating to collections of information. See 5 CFR 1320.11(a). As defined in 5 CFR 1320.3(c), “collection of information” includes reporting, recordkeeping, monitoring, posting, labeling, and other

similar actions. This section provides the description of the information collection and of those who must collect the information as well as an estimate of the total annual time burden.

The proposed rule establishes a process for States to apply to TSA for a temporary waiver. Such a request is voluntary but would require the submission of an mDL waiver application, resubmission of an mDL waiver application deemed insufficient or denied, and reapplication for a mDL waiver when the term of the mDL waiver expires. All of these items would be considered new information collections.

TSA uses the current State of mDL implementation to inform its estimate on how many State entities would request a mDL waiver during the period of analysis.⁸⁰ All 50 States, the District of Columbia, and five territories (collectively referred to as States hereafter) are eligible to apply for a mDL waiver as discussed in the proposed rule. However, DHS assumes that not all States would apply for the mDL waiver. TSA assumes 15 States would apply for a mDL waiver in Year 1 of the analysis, 10 States in Year 2, and five States in Year 3.⁸¹

Following the State submission of its mDL waiver application, TSA determines if the application is approved, insufficient, or denied. States are allowed to amend an insufficient or denied mDL waiver application and resubmit to TSA review.

TSA assumes that all submissions would initially be deemed insufficient due to the mDL waiver criteria being new and with mDLs an emerging technology. Nonetheless, TSA intends

⁸⁰ Eight States currently provide mDLs. Roughly 20 States have taken steps towards mDL implementation, including seven States participating in the TSA mobile ID evaluation program without a current mDL solution.

⁸¹ Each State would submit one mDL waiver application.

to work individually with interested States to meet the mDL criteria to maximize the likelihood of receiving a waiver. Based on these assumptions, TSA estimates all initial mDL waiver applications would be deemed insufficient and that 90 percent of States would resubmit their mDL waiver applications.⁸²

A State's mDL waivers would be valid for three years. Therefore, States granted a mDL waiver in Year 1 would need to reapply in Year 4 which is beyond the scope of this particular information collection.

TSA technology subject matter experts estimate that the mDL waiver application would take, on average, 20 hours to complete. TSA also estimates that mDL waiver resubmissions would take 25 percent of the initial mDL waiver application time which equates to 5 hours.⁸³ Finally, TSA estimates that mDL waiver reapplications would take 75 percent of the initial mDL waiver application time which equates to 15 hours.⁸⁴

These hour burden estimates are combined with the number of collection activities to calculate the total and average time burden associated with the proposed rule. TSA estimates the proposed rule's total three-year burden for mDL waiver applications, mDL waiver resubmissions, and mDL waiver reapplications is 57 responses and 735 hours. TSA estimates an average yearly burden of 19 responses and 245 hours. Details of the calculation can be found in Table 6.

⁸² DHS assumes that 10 percent of applications deemed insufficient would no longer pursue a mDL waiver due to the level of effort involved to become sufficient and wait until the mDL environment is more fully developed.

⁸³ mDL Waiver Resubmission burden = 20 hours [initial mDL waiver application burden] × 0.25 = 5 hours.

⁸⁴ mDL Waiver Renewal burden = 20 hours [initial mDL waiver application burden] × (1 – 0.25) = 15 hours.

Table 6: PRA Information Collection Responses and Burden Hours

Collection Activity	Number of Responses						Total Hours	Average Annual Hours
	Year 1	Year 2	Year 3	Total Responses	Average Annual Responses	Time Per Response (hours)		
	a	b	c	d = a + b + c	e = d / 3	f	g = d * f	h = g / 3
mDL Waiver Application	15.0	10.0	5.0	30.0	10.0	20	600	200
mDL Waiver Resubmission	13.5	9.0	4.5	27.0	9.0	5	135	45
mDL Waiver Reapplication	0	0	0	0	0	15	0	0
Total	28.5	19.0	9.5	57.0	19.0		735	245

In addition, States TSA incur costs associated with independent entity audits of their mDL infrastructure. DHS estimates this cost at \$32,500 per submission.⁸⁵ States would incur this cost for the initial mDL waiver application and mDL waiver reapplication. As there are no reapplications anticipated for this information collection request, TSA multiplies the annual average number of mDL waiver applications from Table 6 above (10) and the independent entity audit cost of \$32,500 for a total mDL waiver application cost of \$325,000.

C. Federalism (E.O. 13132)

A rule has implications for federalism under E.O. 13132 of August 6, 1999 (Federalism) if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. TSA analyzed this proposed rule under this order and determined it does not have these implications for federalism.

D. Customer Service (E.O. 14058)

E.O. 14058 of December 13, 2021 (Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government), is focused on enhancing the of technology “to modernize Government and implement services that are simple to use, accessible, equitable, protective, transparent, and responsive for all people of the United States.” The Secretary of Homeland Security has specifically committed to testing the use of innovative technologies at airport security checkpoints to reduce passenger wait times. This proposed rule supports this commitment. Using

mDLs to establish identity at airport security checkpoints is intended to provide the public with increased convenience, security, privacy, and health benefits from “contact-free” identity verification. In 2022, DHS began a limited initiative to evaluate some mDLs to determine the viability of using an mDLs as a form of identification at an airport security checkpoint.

E. Energy Impact Analysis (E.O. 13211)

TSA analyzed this proposed rule under E.O. 13211 of May 18, 2001 (Actions Concerning Regulations That Significantly Affected Energy Supply, Distribution or Use), and determined that it is not a “significant energy action” under that E.O. and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, this rulemaking does not require a Statement of Energy Effects.

F. Environmental Analysis

TSA reviews proposed actions to determine whether the National Environmental Policy Act (NEPA) applies to them and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 (Directive) and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) establish the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508. The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (“categorical exclusions”) which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment

(EA) or Environmental Impact Statement (EIS). See 40 CFR 1507.3(b)(2)(ii), 1508.4. DHS has determined that this action will not have a significant effect on the human environment. This action is covered by categorical exclusion number A3(d) in DHS Management Directive 023–01 Rev. 01.

VII. Specific Questions

While commenters are asked to comment on this proposal in its entirety, TSA specifically requests comments in response to the following questions. Commenters are encouraged to address issues that may not be discussed below based upon their knowledge of the issues and implications. In providing your comments, please follow the instructions in the Commenter Instructions section above.

1. Applications for waivers. Provide comments on:

a. The estimated cost and time required for States to complete and submit applications for waivers, including the initial mDL waiver application, resubmission, and reapplication;

b. The estimated number of States and territories that would submit a waiver application, and when those States and territories would submit a waiver application;

c. The percentage of States that would receive a decision of approved, insufficient, or denied;

d. The percentage of States receiving a decision of insufficient that would resubmit an amended application; and

e. The assumption that TSA would approve all resubmitted applications.

2. Application Criteria. Provide comments on:

a. The costs States may incur to demonstrate compliance with the criteria to apply for a waiver as required by proposed § 37.10(a) and appendix A

⁸⁵ TSA technology subject matter experts assume estimate a range of audit costs between \$5,000 and \$60,000. DHS uses the midpoint of this range as the point estimate.

to subpart A of the part, including the costs and availability of any professional services required;

b. The appropriateness of the application requirements set forth in proposed § 37.10(a) and appendix A to subpart A of the part;

c. The impact that the Initial Public Versions of Revision 4 of NIST SP 800–63, NIST SP 800–63A, NIST SP 800–63B, and NIST SP 800–63C may have on the requirements set forth in proposed § 37.10(a) and appendix A to subpart A of the part, including States' ability to demonstrate compliance with the criteria to apply for a waiver as required by proposed § 37.10(a) and appendix A to subpart A of the part.

3. Audit report. Provide comments on requiring States to submit a report of an audit as required in proposed § 37.10(b), which report would require verifying the materials that a State would provide in its application for a waiver as required by proposed § 37.10(a), including:

a. The appropriateness of requiring an audit to be conducted by a recognized independent entity;

b. The appropriateness of requiring an auditor to hold an active Certified Public Accountant license in the State that is seeking a waiver;

c. The appropriateness of requiring an auditor to be experienced with information systems security audits, including whether such auditors should have different or additional experience;

d. The appropriateness of requiring the auditor to be accredited by the State seeking a waiver;

e. The appropriateness of requiring an auditor to hold a current and active American Institute of Certified Public Accountants (AICPA) Certified Information Technology Professional (CITP) credential or ISACA (F/K/A Information Systems Audit and Control Association) Certified Information System Auditor certification;

f. The availability of auditors who meet the criteria specified in proposed § 37.10(b)(1);

g. The estimated cost and time incurred by States to obtain a report by the auditor; and

h. Any other considerations relating to auditing.

4. DHS Mobile Driver's License Waiver Application Guidance. Provide comments on the "Mobile Driver's License Waiver Application Guidance," available at www.dhs.gov/real-id/mDL.

5. Waiver validity period. DHS is considering a three-year validity period for waivers. Provide comments on the appropriateness of a three-year validity period for waivers and on alternate validity periods.

6. Mobile driver's license readers. Provide comment on the costs to procure mDL reader equipment, estimated reader usage by Federal agencies, States, and businesses, and the functional form of such reader equipment.

7. mDL acceptance. Provide comment on the number of Federal agencies other than TSA DHS and DHS component agencies that voluntarily choose to accept mDLs for official purposes for identity verification, including:

a. The number and types of locations where mDLs will be accepted; and

b. The number of individuals that are expected to obtain mDLs.

8. Costs to individuals. Provide comment on costs incurred by mDL users, including costs associated with obtaining an mDL.

9. TSA invites public comments on Alternative 4, including, but not limited to, costs to the affected entities to comply with the minimum standards, benefits of the alternative compared to the preferred alternative, and risks to security and privacy of accepting mDLs based on the minimum requirements.

List of Subjects in 6 CFR Part 37

Document security, Driver's licenses, Identification cards, Incorporation by reference, Licensing and registration, Motor vehicle administrations, Motor vehicle safety, Motor vehicles, Personally identifiable information, Physical security, Privacy, Reporting and recordkeeping requirements, Security measures.

The Proposed Amendments

For the reasons set forth in the preamble, the Transportation Security Administration is proposing to amend part 37 of title 6, Code of Federal Regulations, to read as follows:

PART 37—REAL ID DRIVER'S LICENSES AND IDENTIFICATION CARDS

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

Authority: 49 U.S.C. 30301 note; 6 U.S.C. 111, 112.

Subpart A—General

■ 2. Amend § 37.3 by adding the definitions for "A Root Certificate Authority," "Administration," "Certificate Authority," "Certificate Management System," "Certificate Policy," "Certificate System," "Critical Security Event," "Delegated Third Party," "Delegated Third Party System," "Denial of Service," "Digital Certificates," "Digital Signatures," "Distributed Denial of Service,"

"Execution Environment," "Front End System," "Hardware security module," "High Security Zone," "Identity Proofing," "Identity verification," "Internal Support System," "Issuing Authority," "Issuing Authority Certificate Authority," "Issuing System," "mDL," "Mobile driver's license," "Mobile identification card," "Multi-Factor Authentication," "Online Certificate Status Protocol," "Penetration Test," "Public Key Infrastructure," "Rich Execution Environment," "Root Certificate Authority System," "Secure Element," "Secure hardware," "Secure Key Storage Device," "Secure Zone," "Security Support System," "Sole Control," "State Root Certificate," "System," "Trusted Execution Environment," "Trusted Role," "Virtual Local Area Network," "Vulnerability," "Vulnerability scanning," and "Zone" in alphabetical order to read as follows:

§ 37.3 Definitions.

* * * * *

A Root Certificate Authority is the State *Certificate Authority* whose public encryption key establishes the basis of trust for all other *Digital Certificates* issued by a State.

Administration means management actions performed on *Certificate Systems* by a person in a *Trusted Role*.

* * * * *

Certificate Authority means an issuer of *Digital Certificates* that are used to certify the identity of parties in a digital transaction.

Certificate Management System means a system used by a State or *Delegated Third Party* to process, approve issuance of, or store *Digital Certificates* or Digital Certificate status information, including the database, database server, and storage.

Certificate Policy means the set of rules and documents that forms a State's governance framework in which *Digital Certificates*, *Certificate Systems*, and cryptographic keys are created, issued, managed, and used.

Certificate System means the system used by a State or *Delegated Third Party* to provide services related to *Public Key Infrastructure* for digital identities.

* * * * *

Critical Security Event means detection of an event, a set of circumstances, or anomalous activity that could lead to a circumvention of a *Zone's* security controls or a compromise of a *Certificate System's* integrity, including excessive login attempts, attempts to access prohibited resources, *Denial of Service* or *Distributed Denial of Service* attacks,

attacker reconnaissance, excessive traffic at unusual hours, signs of unauthorized access, system intrusion, or an actual compromise of component integrity.

* * * * *

Delegated Third Party means a natural person or legal entity that is not the State and that operates any part of a *Certificate System* under the State's legal authority.

Delegated Third Party System means any part of a *Certificate System* used by a *Delegated Third Party* while performing the functions delegated to it by the State.

Denial of Service means the prevention of authorized access to resources or the delaying of time-critical operations.

* * * * *

Digital Certificates identify the parties involved in an electronic transaction, and contain information necessary to validate *Digital Signatures*.

Digital Signatures are mathematical algorithms used to validate the authenticity and integrity of a message.

Distributed Denial of Service means a *Denial of Service* attack where numerous hosts perform the attack.

* * * * *

Execution Environment means a place within a device processor where active application's code is processed.

* * * * *

Front End System means a system with a public IP address, including a web server, mail server, DNS server, jump host, or authentication server.

* * * * *

Hardware security module means a physical computing device that safeguards and manages cryptographic keys and provides cryptographic processing.

High Security Zone means a physical location where a State's or *Delegated Third Party's* private key or cryptographic hardware is located.

* * * * *

Identity Proofing refers to a series of steps that the State executes to prove the identity of a person.

Identity verification is the confirmation that identity data belongs to its purported holder.

* * * * *

Internal Support System means a system which operates on a State's internal network and communicates with the *Certificate System* to provide business services related to mDL management.

Issuing Authority means the State that issues a *mobile driver's license* or *mobile identification card*.

Issuing Authority Certificate Authority means a *Certificate Authority* operated by or on behalf of an *Issuing Authority* or a State's *Root Certificate Authority*.

Issuing System means a system used to sign mDLs, digital certificates, mobile security objects, or validity status information.

* * * * *

mDL means *mobile driver's licenses* and *mobile identification cards*, collectively.

Mobile driver's license means a *driver's license* that is stored on a mobile electronic device and read electronically.

Mobile identification card means an *identification card*, issued by a State, that is stored on a mobile electronic device and read electronically.

Multi-Factor Authentication means an authentication mechanism consisting of two or more of the following independent categories of credentials (*i.e.*, factors) to verify the user's identity for a login or other transaction means something you know (knowledge factor), something you have (possession factor), and something you are (inherence factor).

* * * * *

Online Certificate Status Protocol means an online protocol used to determine the status of a *Digital Certificate*.

* * * * *

Penetration Test means a process that identifies and attempts to exploit vulnerabilities in systems through the active use of known attack techniques, including the combination of different types of exploits, with a goal of breaking through layers of defenses and reporting on unpatched vulnerabilities and system weaknesses.

* * * * *

Public Key Infrastructure means a structure where a *Certificate Authority* uses *Digital Certificates* for issuing, renewing, and revoking digital credentials.

* * * * *

Rich Execution Environment, also known as a "normal execution environment," means the area inside a device processor that runs an operating system.

Root Certificate Authority System means a system used to create a State's *Root Certificate* or to generate, store, or sign with the private key associated with a *State Root Certificate*.

* * * * *

Secure Element means a tamper-resistant secure hardware component which is used in a device to provide the security, confidentiality, and multiple

application environment required to support various business models.

Secure hardware means hardware provided on a mobile device for key management and trusted computation such as a *Secure Element (SE)* or *Trusted Execution Environment*.

Secure Key Storage Device means a device certified as meeting the specified FIPS 140-3 Level 2 overall, Level 3 physical, or Common Criteria (EAL 4+).

Secure Zone means an area (physical or logical) protected by physical and logical controls that appropriately protect the confidentiality, integrity, and availability of *Certificate Systems*.

Security Support System means a system used to provide security support functions, which may include authentication, network boundary control, audit logging, audit log reduction and analysis, vulnerability scanning, and intrusion detection (host-based intrusion detection, network-based intrusion detection).

* * * * *

Sole Control means a condition in which logical and physical controls are in place to ensure the *Administration* of a *Certificate System* can only be performed by a State or *Delegated Third Party*.

* * * * *

State Root Certificate means a public *Digital Certificate* of a *Root Certificate Authority* operated by or on behalf of a State.

System means one or more pieces of equipment or software that stores, transforms, or communicates data.

* * * * *

Trusted Execution Environment means an *Execution Environment* that runs alongside but isolated from a *Rich Execution Environment* and has the security capabilities necessary to protect designated applications.

Trusted Role means an employee or contractor of a State or *Delegated Third Party* who has authorized access to or control over a *Secure Zone* or *High Security Zone*.

* * * * *

Virtual Local Area Network means a broadcast domain that is partitioned and isolated within a network.

Vulnerability means a weakness in an information system, system security procedures, internal controls, or implementation that could be exploited or triggered by a threat source.

Vulnerability scanning means a technique used to identify host attributes and associated *Vulnerabilities*.

Zone means a subset of *Certificate Systems* created by the logical or physical partitioning of systems from other *Certificate Systems*.

■ 3. Amend § 37.4 by adding paragraphs (a)(2), (b)(2), and (d) through (f) to read as follows:

§ 37.4 Incorporation by reference.

* * * * *

(a) * * *
(2) ISO/IEC 18013–5:2021, Personal identification—ISO-compliant driving license—Part 5: Mobile driving license (mDL) application, Edition 1 (September 2021); IBR approved for §§ 37.8; 37.10(a); appendix A to this subpart.

(b) * * *
(2) Mobile Driver's License (mDL) Implementation Guidelines, Version 1.2 (January 2023); IBR approved for § 37.10(a); appendix A to this subpart.

* * * * *

(d) Certification Authority Browser Forum (CA/Browser Forum), 815 Eddy St, San Francisco, CA 94109, (415) 436–9333, questions@cabforum.org, www.cabforum.org.

(1) Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates, Version 1.8.6 (December 14, 2022), <https://cabforum.org/wp-content/uploads/CA-Browser-Forum-BR-1.8.6.pdf>; IBR approved for appendix A to this subpart.

(2) Network and Certificate System Security Requirements, Version 1.7 (April 5, 2021), <https://cabforum.org/wp-content/uploads/CA-Browser-Forum-Network-Security-Guidelines-v1.7.pdf>; IBR approved for appendix A to this subpart A.

(e) Cybersecurity and Infrastructure Security Agency, Mail Stop 0380, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0380, central@cisa.gov, (888) 282–0870, www.cisa.gov.

(1) Cybersecurity Incident & Vulnerability Response Playbooks (November 2021), https://www.cisa.gov/sites/default/files/publications/Federal_Government_Cybersecurity_Incident_and_Vulnerability_Response_Playbooks_508C.pdf; IBR approved for appendix A to this subpart.

(2) National Cyber Incident Response Plan (December 2016), Department of Homeland Security, https://www.cisa.gov/uscrt/sites/default/files/ncirp/National_Cyber_Incident_Response_Plan.pdf; IBR approved for appendix A to this subpart.

(f) National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899, (301) 975–2000, www.nist.gov.

(1) Federal Information Processing Standard (FIPS) Publication (PUB) 140–3, Security Requirements for Cryptographic Modules (March 22, 2019), <https://nvlpubs.nist.gov/>

[nvlpubs/FIPS/NIST.FIPS.140-3.pdf](https://nvlpubs.nist.gov/nistpubs/FIPS.140-3.pdf); IBR approved for appendix A to this subpart.

(2) FIPS PUB 180–4, Secure Hash Standard (SHS) (August 2015), <https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.180-4.pdf>; IBR approved for § 37.10(a).

(3) FIPS PUB 186–5, Digital Signature Standard (DSS) (Feb. 2023), <https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.186-5.pdf>; IBR approved for § 37.10(a).

(4) FIPS PUB 197, Advanced Encryption Standard (AES) (Nov. 26, 2001), <https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.197.pdf>; IBR approved for § 37.10(a).

(5) FIPS PUB 198–1, The Keyed-Hash Message Authentication Code (HMAC) (July 2008), <https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.198-1.pdf>; IBR approved for § 37.10(a).

(6) FIPS PUB 202, SHA–3 Standard: Permutation-Based Hash and Extendable-Output Functions (August 2015), <https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.202.pdf>; IBR approved for § 37.10(a).

(7) Special Publication (SP) 800–53, Security and Privacy Controls for Information Systems and Organizations, Rev. 5 (September 2020), <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53Rev.5.pdf>; IBR approved for appendix A to this subpart.

(8) SP 800–57 Part 1, Recommendation for Key Management: Part 1—General, Rev. 5, Elaine Barker (May 2020), <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-57pt1r5.pdf>; IBR approved for appendix A to this subpart.

(9) SP 800–57 Part 2, Recommendation for Key Management: Part 2—Best Practices for Key Management Organization, Rev. 1, Elaine and William C. Barker (May 2019), <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-57pt2r1.pdf>; IBR approved for appendix A to this subpart A.

(10) SP 800–57 Part 3, Recommendation for Key Management: Part 3: Application-Specific Key Management Guidance, Rev. 1, Elaine Barker and Quynh Dang (January 2015), <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-57Pt3r1.pdf>; IBR approved for appendix A to this subpart.

(11) SP 800–63–3, Digital Identity Guidelines, Paul A. Grassi et al. (June 2017), <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63-3.pdf>; IBR approved for appendix A to this subpart.

(12) SP 800–63B, Digital Identity Guidelines Authentication and Lifecycle Management, Paul A. Grassi et al. (June 2017), <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63b.pdf>; IBR approved for appendix A to this subpart.

(13) Framework for Improving Critical Infrastructure Cybersecurity Version 1.1 (April 16, 2018), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf>; IBR approved for appendix A to this subpart.

■ 4. Add § 37.7 to read as follows:

§ 37.7 Temporary waiver for mDLs; State eligibility.

(a) *Generally*. TSA may issue a temporary certificate of waiver that exempts mDLs issued by a State from meeting the requirements in § 37.5(b), when the State meets the requirements of § 37.10(a) and (b).

(b) *State eligibility*. A State may be eligible for a waiver only if, after considering all information provided by a State under § 37.10(a) and (b), TSA determines that—

(1) The State is in full compliance with all applicable REAL ID requirements as defined in subpart E of this part;

(2) Information provided by the State under § 37.10(a) and (b) sufficiently demonstrates that the State's mDL provides the security, privacy, and interoperability necessary for acceptance by Federal agencies; and

(3) The State issues mDLs only to individuals who have been issued a valid and unexpired REAL ID-compliant physical driver's license or identification card issued by that State.

■ 5. Add § 37.8 to read as follows:

§ 37.8 Requirements for Federal agencies accepting mDLs issued by States with temporary waiver.

Notwithstanding § 37.5(b), Federal agencies may accept an mDL for REAL ID official purposes issued by a State that has a valid certificate of waiver issued by TSA under § 37.7(a). A Federal agency that elects to accept mDLs under this section must—

(a) Confirm the State holds a valid certificate of waiver consistent with § 37.7(a) by verifying that the State appears in a list of mDLs approved for Federal use, available as provided in § 37.9(b)(1);

(b) Use an mDL reader to retrieve and validate mDL data as required by standard ISO/IEC 18013–5:2021 (incorporated by reference; see § 37.4); and

(c) Upon discovery that acceptance of a State's mDL is likely to cause

imminent or serious threats to the security, privacy, or data integrity, the agency's senior official responsible for REAL ID compliance, or equivalent function, must report such discovery to DHS at www.dhs.gov/real-id/mDL within 72 hours of such discovery.

■ 6. Add § 37.9 to read as follows:

§ 37.9 Applications for temporary waiver for mDLs.

(a) *Application process.* Each State requesting a temporary waiver must file with TSA a complete application as set forth in § 37.10(a) and (b). Application filing instructions, may be obtained from DHS at www.dhs.gov/real-id/mDL.

(b) *Decisions.* TSA will provide written notice via email to States within 60 days, to the extent practicable, but in no event longer than 90 days, indicating that TSA has made one of the following decisions:

(1) *Approved.* Upon approval of an application for a temporary waiver, TSA will issue a certificate of waiver to the State, and publish the State's name in a list of mDLs approved for Federal use at www.dhs.gov/real-id/mDL.

(2) *Insufficient.* Upon determination that an application for a temporary waiver is incomplete or otherwise deficient, TSA will provide the State an explanation of deficiencies, and an opportunity to address any deficiencies and submit an amended application. States will have 60 days to respond to the notice, and TSA will respond via email within 30 days.

(3) *Denied.* Upon determination that an application for a waiver fails to meet criteria specified in § 37.10(a) and (b), TSA will provide the State specific grounds on which the denial is based, and provide the State an opportunity to seek reconsideration as provided in paragraph (c) of this section.

(c) *Reconsideration.* (1) States will have 90 days to file a request for reconsideration of a denied application. The State must explain what corrective action it intends to implement to correct any defects cited in the denial or, alternatively, explain why the denial is incorrect. Instructions on how to file a request for reconsideration for denied applications may be obtained from TSA at www.dhs.gov/real-id/mDL. TSA will notify States of its final determination within 60 days of receipt of a State's request for reconsideration.

(2) An adverse decision upon reconsideration is a final agency action. A State whose request for reconsideration has been denied may submit a new application at any time following the process set forth in paragraph (a) of this section.

(d) *Terms and conditions.* A certificate of waiver will specify—

- (1) The effective date of the waiver;
- (2) The expiration date of the waiver; and
- (3) Any additional terms or conditions as necessary.

(e) *Limitations; suspension; termination—*(1) *Validity period.* A certificate of waiver is valid for a period of 3 years from the date of issuance.

(2) *Reporting requirements.* If a State, after it has been granted a certificate of waiver, makes any significant additions, deletions, or modifications to its mDL issuance processes, other than routine systems maintenance and software updates, that differ materially from the information the State provided in response to § 37.10(a) and (b) under which the waiver was granted, the State must provide written notice of such changes to TSA at www.dhs.gov/real-id/mDL 60 days before implementing such additions, deletions, or modifications.

(3) *Compliance.* A State that is issued a certificate of waiver under this section must comply with all applicable REAL ID requirements in § 37.51(a), and with all terms and conditions specified in paragraph (d)(3) of this section.

(4) *Suspension.* (i) TSA may suspend the validity of a certificate of waiver for any of the following reasons:

(A) *Failure to comply.* TSA determines that a State has failed to comply with paragraph (d)(3) or (e)(2) of this section, or has issued mDLs in a manner not consistent with the information provided under § 37.10(a) or (b); or

(B) *Threats to security, privacy, and data integrity.* TSA reserves the right to suspend a certificate of waiver at any time upon discovery that Federal acceptance of a State's mDL is likely to cause imminent or serious threats to the security, privacy, or data integrity of any Federal agency. In such instances, TSA will provide written notice via email to each affected State as soon as practicable after discovery of the triggering event, including reasons for suspension, an explanation of any corrective actions a State must take to resume validity of its certificate of waiver.

(ii) Before suspending a certificate of waiver under paragraph (e)(4)(i)(A) of this section, TSA will provide to such State written notice via email of intent to suspend, including an explanation of deficiencies and instructions on how the State may cure such deficiencies. States will have 30 days to respond to the notice, and TSA will respond via email within 30 days. TSA's response would include one of the following: withdrawal of the notice, a request for

additional information, or a final suspension.

(iii) If TSA issues a final suspension, TSA will temporarily remove the State from the list of mDLs approved for Federal acceptance for official purposes. TSA will continue to work with a State to whom TSA has issued a final suspension to resume validity of its existing certificate of waiver. A State that has been issued a final suspension may seek a new certificate of waiver by submitting a new application following the process set forth in paragraph (a) of this section.

(5) *Termination.* (i) DHS may terminate a certificate of waiver at an earlier date than specified in paragraph (d)(2) of this section if TSA determines that a State—

(A) Does not comply with applicable REAL ID requirements in § 37.51(a);

(B) Is committing an egregious violation of requirements specified under paragraph (d)(3) or (e)(2) of this section that the State is unwilling to cure; or

(C) Provided false information in support of its waiver application.

(ii) Before terminating a certificate of waiver, TSA will provide the State written notice via email of intent to terminate, including findings on which the intended termination is based, together with a notice of opportunity to present additional information. States must respond to the notice within 7 days, and TSA will reply via email within 30 days. TSA's response would include one of the following: withdrawal of the notice, a request for additional information, or a final termination.

(iii) If TSA issues a final termination, TSA will remove the State from the list of mDLs approved for Federal acceptance for official purposes. A State whose certificate of waiver has been terminated may seek a new waiver by submitting a new application following the process set forth in paragraph (a) of this section.

(6) *Reapplication.* A State seeking extension of a certificate of waiver after expiration of its validity period must file a new application under paragraph (a) of this section.

(f) *Effect of status of certificate of waiver.* (1) Issuance of a certificate of waiver is not a determination of compliance with any other section in this part.

(2) An application for certificate of waiver that TSA has deemed insufficient or denied, or a certificate of waiver that TSA has deemed suspended, terminated, or expired, is not a determination of non-compliance with any other section in this part.

■ 7. Add § 37.10 to read as follows:

§ 37.10 Application criteria for issuance of temporary waiver for mDLs; audit report; waiver application guidance.

(a) *Application criteria.* A State requesting a certificate of waiver must establish in its application that the mDLs for which the State seeks a waiver are issued with controls sufficient to resist compromise and fraud attempts, provide privacy protections sufficient to safeguard an mDL holder's identity data, and provide interoperability for secure acceptance by Federal agencies under the terms of a certificate of waiver. To demonstrate compliance with such requirements, a State must provide information, documents, and/or data sufficient to explain the means, which includes processes, methodologies, or policies, that the State has implemented to comply with requirements in this paragraph (a).

(1) *Provisioning.* For both remote and in-person provisioning, a State must explain the means it uses to address or perform the following—

(i) *Data encryption.* Securely encrypt mDL data and an mDL holder's Personally Identifiable Information when such data is transferred during provisioning, and when stored on the State's system(s) and on mDL holders' mobile devices.

(ii) *Escalated review.* Review repeated failed attempts at provisioning, resolve such failures, and establish criteria to determine when the State will deny provisioning an mDL to a particular mDL applicant.

(iii) *Authentication.* Confirm that an mDL applicant has control over the mobile device to which an mDL is being provisioned at the time of provisioning.

(iv) *Device identification keys.* Confirm that the mDL applicant possesses the mDL device private key bound to the mDL during provisioning.

(v) *User identity verification.* Prevent an individual from falsely matching with the licensing agency's records, including portrait images, of other individuals.

(vi) *Applicant presentation.* Prevent physical and digital presentation attacks by detecting the liveness of an individual and any alterations to the individual's appearance during remote and in-person provisioning.

(vii) *REAL ID compliant physical card.* Issue mDLs only to residents who have been issued by that State a valid and unexpired REAL ID compliant physical driver's license or physical identification card.

(viii) *Data record.* Issue mDLs using data, including portrait image, of an individual that matches corresponding

data in the database of the issuing State's driver's licensing agency for that individual.

(ix) *Records retention.* Manage mDL records and related records, consistent with requirements set forth in the American Association of Motor Vehicle Administrator (AAMVA) Mobile Driver's License (mDL) Implementation Guidelines (incorporated by reference; see § 37.4).

(2) *Issuance.* A State must explain the means it uses to manage the creation, issuance, use, revocation, and destruction of the State's certificate systems and keys in full compliance with the requirements set forth in appendix A to this subpart.

(3) *Privacy.* A State must explain the means it uses to protect Personally Identifiable Information during processing, storage, and destruction of mDL records and provisioning records.

(4) *Interoperability.* A State must explain the means it uses to issue mDLs that are interoperable with standard ISO/IEC 18013-5:2021 and the "AAMVA mDL data element set" defined in the American Association of Motor Vehicle Administrator (AAMVA) Mobile Driver's License (mDL) Implementation Guidelines v. 1.1 (incorporated by reference; see § 37.4) as follows:

(i) A State must issue mDLs using the data model defined in ISO/IEC 18013-5:2021 section 7 (incorporated by reference; see § 37.4), using the document type "org.iso.18013.5.1.mDL," and using the name space "org.iso.18013.5.1". States must include the following mDL data elements defined as mandatory in Table 5: "family_name", "given_name", "birth_date", "issue_date", "expiry_date", "issuing_authority", "document_number", "portrait", and must include the following mDL data elements defined as optional in Table 5: "sex", "resident_address", "portrait_capture_date", "signature_usual_mark".

(ii) States must use the AAMVA mDL data element set defined in American Association of Motor Vehicle Administrator (AAMVA) Mobile Driver's License (mDL) Implementation Guidelines v. 1.2, Section 3.2 (incorporated by reference; see § 37.4), using the namespace "org.iso.18013.5.1.aamva" and must include the following data elements in accordance with the AAMVA mDL Implementation Guidelines v1.2 (incorporated by reference; see § 37.4): "DHS_compliance", and "DHS_temporary_lawful_status".

(iii) States must use only encryption algorithms, secure hashing algorithms, and digital signing algorithms as

defined by ISO/IEC 18013-5:2021, Section 9 and Annex B (incorporated by reference; see § 37.4), and which are included in the following NIST Federal Information Processing Standards (FIPS): NIST FIPS PUB 180-4, NIST FIPS PUB 186-5, NIST FIPS PUB 197, NIST FIPS PUB 198-1, and NIST FIPS PUB 202 (incorporated by reference; see § 37.4).

(b) *Audit report.* States must include with their applications a report of an audit that verifies the information provided under paragraph (a) of this section.

(1) The audit must be conducted by a recognized independent entity—

(i) Holding an active Certified Public Accountant license in the issuing State;

(ii) Experienced with information systems security audits;

(iii) Accredited by the issuing State; and

(iv) Holding a current and active American Institute of Certified Public Accountants (AICPA) Certified Information Technology Professional (CITP) credential or ISACA (F/K/A Information Systems Audit and Control Association) Certified Information System Auditor (CISA) certification.

(2) States must include information about the entity conducting the audit that identifies—

(i) Any potential conflicts of interest; and

(ii) Mitigation measures or other divestiture actions taken to avoid conflicts of interest.

(c) *Waiver application guidance*—(1) *Generally.* TSA will publish "Mobile Driver's License Waiver Application Guidance" to facilitate States' understanding of the requirements set forth in paragraph (a) of this section. The non-binding Guidance will include recommendations and examples of possible implementations for illustrative purposes only. TSA will publish the Guidance on the REAL website at www.dhs.gov/real-id/mDL.

(2) *Updates.* TSA may periodically update its Waiver Application Guidance as necessary to provide additional information or recommendations to mitigate evolving threats to security, privacy, or data integrity. TSA will publish updated Guidance in the **Federal Register** and at www.dhs.gov/real-id/mDL, and provide a copy to all States that have applied for or been issued a certificate or waiver.

■ 8. Add appendix A to subpart A to read as follows:

**Appendix A to Subpart A of Part 37—
Mobile Driver's License Issuance
Infrastructure Requirements**

A State that issues mDLs for acceptance by Federal agencies for official purposes as

specified in the REAL ID Act must implement the requirements set forth in this appendix in full compliance with the cited references as set forth in the following table. All the standards identified in the following table are incorporated by reference, see

§ 37.4. If a State utilizes the services of a Delegated Third Party, the State must ensure the Delegated Third Party complies with all applicable requirements of this appendix for the services provided.
BILLING CODE 9110-05-P

Section	Requirement
1: Certificate Authority Certificate Life-cycle Policy	
1.1	Maintain a Certificate Policy, which forms the State's Certificate System governance framework. If Certificate Systems are managed at a facility not controlled by the State, the State must require any Delegated Third Party to comply with the State's Certificate Policy. These Requirements must be implemented in full compliance with the following references: • CA Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates; • CA Browser Forum Network and Certificate System Security Requirements; • NIST SP 800-57 Part 1, Rev. 5; • NIST SP 800-57 Part 2, Rev. 1; • NIST SP 800-57 Part 3, Rev. 1; • NIST 800-53 Rev. 5, AC-1, AT-1, AU-1, CA-1, CM-1, CP-1, IA-1, IR-1, MA-1, MP-1, PE-1, PL-1, PL-2, PL-8, PL-10, PM-1, PS-1, PT-1, RA-1, SA-1, SC-1, SI-1, SR-1; and • NIST SP 800-53B.
1.2	Perform management and maintenance processes which includes baseline configurations, documentation, approval, and review of changes to Certificate Systems, Issuing Systems, Certificate Management Systems, Security Support Systems, and Front End and Internal Support Systems. These Requirements must be implemented in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework PR.IP-3; and • NIST SP 800-53 Rev. 5, CM-1, CM-2, CM-3, CM-4, CM-5, CM-6, CM-8, CM-9, CM-10, CM-11, CM-12, MA-2, MA-3, MA-4, MA-5, MA-6, PE-16, PE-17, PE-18, PL-10, PL-11, RA-7, SA-2, SA-3, SA-4, SA-5, SA-8, SA-9, SA-10, SA-11, SA-15, SA-17, SA-22, SC-18, SI-6, SI-7, SR-2, SR-5.
1.3	Apply recommended security patches, to Certificate Systems within six months of the security patch's availability, unless the State documents that the security patch would introduce additional vulnerabilities or instabilities that outweigh the benefits of applying the security patch. These Requirements must be implemented in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework ID.RA-1, PR.IP-12; and • NIST SP 800-53 Rev. 5, SI-2, SI-3.
2: Certificate Authority Access Management	

Section	Requirement
2.1	Grant Administration access to Certificate Systems only to persons acting in Trusted Roles, and require their accountability for the Certificate System's security, in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework PR.AC-4; and • NIST SP 800-53 Rev. 5, AC-1, AC-2, AC-3, AC-5, AC-6, AC-8, AC-21, AC-22, AC-24, CA-6, PS-6.
2.2	Change authentication keys and passwords for any privileged account or service account on a Certificate System whenever a person's authorization to administratively access that account on the Certificate System is changed or revoked, in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework PR.AC-1; and • NIST SP 800-53 Rev. 5, AC-1, AC-2, AC-3, AC-6, IA-1, IA-2, PS-4, PS-5.
2.3	Follow a documented procedure for appointing individuals to Trusted Roles and assigning responsibilities to them, in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework PR.AC-1; and • NIST SP 800-53 Rev. 5, AC-1, AC-2, AC-3, AC-5, AC-6, IA-1, IA-2.
2.4	Document the responsibilities and tasks assigned to Trusted Roles and implement "separation of duties" for such Trusted Roles based on the security-related concerns of the functions to be performed, in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework - PR.AC-4; and • NIST SP 800-53 Rev. 5, AC-1, AC-2, AC-5, AC-6, MP-2, PS-9.
2.5	Restrict access to Secure Zones and High Security Zones to only individuals assigned to Trusted Roles, in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework PR.AC; and • NIST SP 800-53 Rev. 5, AC-1, AC-2, AC-3, AC-5, AC-6, MP-2, PS-1, PS-6.
2.6	Restrict individuals assigned to Trusted Roles from acting beyond the scope of such role when performing administrative tasks assigned to that role, in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements;

Section	Requirement
	• NIST Cybersecurity Framework PR.AC-1, PR.AC-4, PR.AC-6, PR.AT-2; and • NIST SP 800-53 Rev. 5, AT-2, AT-3, PM-13, PM-14.
2.7	Require employees and contractors to observe the principle of "least privilege" when accessing or configuring access privileges on Certificate Systems, in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework PR.AC-4, PR.AC-2; and • NIST SP 800-53 Rev. 5, AC-1, AC-2, AC-3, AC-5, AC-6, PE-1, PE-3, PL-4
2.8	Require that individuals assigned to Trusted Roles use a unique credential created by or assigned to them in order to authenticate to Certificate Systems, in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework PR.AC-1, PR.AC-6, PR.AC-4, PR.AC-7; and • NIST SP 800-53 Rev. 5, AC-1, IA-1, IA-2, IA-3, IA-5, IA-8, IA-12.
2.9	Lockout account access to Certificate Systems after a maximum of five failed access attempts, provided that this security measure: 1. Is supported by the Certificate System; 2. Cannot be leveraged for a denial-of-service attack; and 3. Does not weaken the security of this authentication control. These Requirements must be implemented in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework PR.AC-7; and • NIST SP 800-53 Rev. 5, AC-7.
2.10	Implement controls that disable all privileged access of an individual to Certificate Systems within 4 hours of termination of the individual's employment or contracting relationship with the State or Delegated Third Party, in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework PR.AC-7; and • NIST SP 800-53 Rev. 5, AC-1, AC-2, PS-1, PS-4, PS-7.
2.11	Implement Multi-Factor Authentication or multi-party authentication for administrator access to Issuing Systems and Certificate Management Systems, in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework-PR.AC-6, PR.AC-7; and

Section	Requirement
	• NIST SP 800-53 Rev. 5, AC-14, IA-1, IA-2, IA-3, IA-5, IA-8, IA-11.
2.12	Implement Multi-Factor Authentication for all Trusted Role accounts on Certificate Systems, including those approving the issuance of a Certificate and Delegated Third Parties, that are accessible from outside a Secure Zone or High Security Zone, in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework PR.AC-7; and • NIST SP 800-53 Rev. 5, AC-17, AC-18, AC-19, AC-20, IA-1, IA-2, IA-3, IA-4, IA-5, IA-6, IA-8.
2.13	If Multi-Factor Authentication is used, implement only Multi-Factor Authentication that achieves an Authenticator Assurance Level equivalent to AAL2 or higher, in full compliance with the following references: • NIST SP 800-63-3 Section 4.3, 6.2; • NIST SP 800-63B; • NIST Cybersecurity Framework PR.AC-7; and • NIST SP 800-53 Rev. 5, IA-5, IA-7.
2.14	If multi-factor authentication is not possible, implement a password policy for Trusted Role accounts in full compliance with NIST SP 800-63B Section 5.1.1.2 Memorized Secret Verifiers and implement supplementary risk controls based on a system risk assessment.
2.15	Require Trusted Roles to log out of or lock workstations when no longer in use, in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; and • NIST SP 800-53 Rev. 5, AC-11, AC-12.
2.16	Configure workstations with inactivity time-outs that log the user off or lock the workstation after a set time of inactivity without input from the user. A workstation may remain active and unattended if the workstation is otherwise secured and running administrative tasks that would be interrupted by an inactivity time-out or system lock. These Requirements must be implemented in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; and • NIST SP 800-53 Rev. 5, AC-11, AC-12.
2.17	Review all system accounts at least every three months and deactivate any accounts that are no longer necessary for operations, in full compliance with the following references:

Section	Requirement
	• CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework PR.AC-1; and • NIST SP 800-53 Rev. 5, AC-2.
2.18	Restrict remote Administration or access to a State Issuing System, Certificate Management System, or Security Support System, including access to cloud environments, except when: 1. The remote connection originates from a device owned or controlled by the State or Delegated Third Party; 2. The remote connection is through a temporary, non-persistent encrypted channel that is supported by Multi-Factor Authentication; and 3. The remote connection is made to a designated intermediary device— a. located within the State's network or secured Virtual Local Area Network (VLAN), b. secured in accordance with the requirements of this appendix, and c. that mediates the remote connection to the Issuing System. These Requirements must be implemented in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework PR.AC-3, PR.AC-7; and • NIST SP 800-53 Rev. 5, AC-17, AC-19, AC-20, IA-3, IA-4, IA-6.
3: Facility, Management, and Operational Controls	
3.1	Restrict physical access authorizations at facilities where Certificate Systems reside, including facilities controlled by a Delegated Third Party, by: 1. Verifying individual access authorizations before granting access to the facility; 2. Controlling ingress and egress to the facility using appropriate security controls; 3. Controlling access to areas within the facility designated as publicly accessible; 4. Escorting visitors, logging visitor entrance and exit from facilities, and limiting visitor activities within facilities to minimize risks to Certificate Systems; 5. Securing physical keys, combinations, and other physical access devices; 6. Maintaining an inventory of physical keys, combinations, and physical access devices; conduct review of this inventory at least annually; and 7. Changing combinations and keys every three years or when physical keys are lost, combinations are compromised, or when individuals possessing the physical keys or combinations are transferred or terminated. These Requirements must be implemented in full compliance with the following reference:

Section	Requirement
	NIST SP 800-53 Rev. 5, PE-2, PE-3, PE-4, PE-5, PE-8.
3.2	Implement controls to protect Certificate System operations and facilities where Certificate Systems reside from environmental damage and/or physical breaches, including facilities controlled by a Delegated Third Party, in full compliance with the following reference: NIST SP 800-53 Rev. 5, CP-2, CP-4, CP-6, CP-7, CP-8, CP-9, CP-10, PE-2, PE-9, PE-10, PE-11, PE-12, PE-13, PE-14, PE-15, PE-21.
3.3	If Certificate Systems are managed at a facility not controlled by the State, implement controls to prevent risks to such facilities presented by foreign ownership, control, or influence, in full compliance with the following reference: NIST SP 800-53 Rev. 5, SR-2, SR-3, SR-4, SR-6.
3.4	Implement controls to prevent supply chain risks for Certificate Systems including: - Employing acquisition strategies, tools, and methods to mitigate risks; - Establishing agreements and procedures with entities involved in the supply chain of Certificate Systems; - Implementing an inspection and tamper protection program for Certificate Systems components; - Developing and implementing component authenticity policies and procedures; and - Developing and implementing policies and procedures for the secure disposal of Certificate Systems components. These requirements must be implemented in full compliance with the following reference: - NIST SP 800-53 Rev. 5, SR-5, SR-8, SR-9, SR-10, SR-11, SR-12.
4: Personnel Security Controls	
4.1	Implement and disseminate to personnel with access to Certificate Systems and facilities, including facilities controlled by a Delegated Third Party, a policy to control insider threat security risks that: - Addresses the purpose, scope, roles, responsibilities, management commitment, coordination among State entities, and compliance; - Complies with all applicable laws, executive orders, directives, regulations, policies, standards, and guidelines; and - Designates an official in a Trusted Role to manage the development, documentation, and dissemination of the policy and procedures. These requirements must be implemented in full compliance with the following reference: - NIST SP 800-53 Rev. 5, MA-5, PS-1, PS-8.

Section	Requirement
4.2	Assign a risk designation to all organizational positions with access to Certificate Systems and facilities, in full compliance with the following reference: • NIST SP 800-53 Rev. 5, PS-2, PS-9.
4.3	Establish screening criteria for personnel filling organization positions with access to Certificate System and facilities, in full compliance with the following reference: • NIST SP 800-53 Rev. 5, PS-2, PS-3, SA-21.
4.4	Screen individual personnel in organizational positions with access to Certificate Systems and facilities, in full compliance with the following reference: • NIST SP 800-53 Rev. 5, PS-3.
4.5	Upon termination of individual employment, State or Delegated Third Party must: 1. Disable system access within 4 hours; 2. Terminate or revoke any authenticators and credentials associated with the individual; 3. Conduct exit interviews that include— a. Notify terminated individuals of applicable, legally binding post-employment requirements for the protection of organizational information, and b. Requiring terminated individuals to sign an acknowledgment of post-employment requirements as part of the organizational termination process; 4. Retrieve all security-related organizational system-related property; and 5. Retain access to organizational information and systems formerly controlled by terminated individual. These requirements must be implemented in full compliance with the following reference: • NIST SP 800-53 Rev. 5, PS-4.
4.6	Review and update personnel security policy, procedures, and position risk designations at least once every 12 months, in full compliance with the following reference: • NIST SP 800-53 Rev. 5, PS-1, PS-2.
4.7	Provide training to all personnel performing Certificate System duties, on the following topics: 1. Fundamental principles of Public Key Infrastructure; 2. Authentication and vetting policies and procedures, including the State's Certificate Policy; 3. Common threats to Certificate System processes, including phishing and other social engineering tactics; 4. Role specific technical functions related to the administration of Certificate Systems; and 5. The requirements of this appendix. These Requirements must be implemented in full compliance with the following references:

Section	Requirement
	- CA Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates Section 5.3.3; and - NIST SP 800-53 Rev. 5, CP-3, IR-2, SA-16.
4.8	Maintain records of training as required by section 4.7 of this appendix, in full compliance with the following references: - CA Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates Sections 5.3.3, 5.4.1; and - NIST SP 800-53 Rev. 5, AT-4.
4.9	Implement policies and processes to prevent any Delegated Third Party personnel managing Certificate Systems at a facility not controlled by a State from being subject to risks presented by foreign control or influence, in full compliance with the following reference: NIST SP 800-53 Rev. 5, SR-3, SR-4, SR-6.
5: Technical Security Controls	
5.1	Segment Certificate Systems into networks based on their functional or logical relationship, such as separate physical networks or VLANs, in full compliance with the following references: - CA Browser Forum Network and Certificate System Security Requirements; - NIST Cybersecurity Framework PR.AC-5; and - NIST SP 800-53 Rev. 5, AC-4, AC-10, CA-3, CA-9, MP-3, MP-4, RA-2, RA-9, SC-2, SC-3, SC-4, SC-8.
5.2	Apply equivalent security controls to all systems co-located in the same network (including VLANs) with a Certificate System, in full compliance with the following references: - CA Browser Forum Network and Certificate System Security Requirements; - NIST Cybersecurity Framework PR.AC-5; and - NIST SP 800-53 Rev. 5, MP-5, MP-6, MP-7, RA-2, SC-7, SC-10, SC-39.
5.3	Maintain State Root Certificate Authority Systems in a High Security Zone and in an offline state or air-gapped from all other network operations. If operated in a cloud environment, State Root Certificate Authority Systems must use a dedicated VLAN with the sole purpose of Issuing Authority Certificate Authority (IACA) Root Certificate functions and be in an offline state when not in use for IACA Root Certificate functions. These Requirements must be implemented in full compliance with the following references: - CA Browser Forum Network and Certificate System Security Requirements; and - NIST SP 800-53 Rev. 5, SC-32.

Section	Requirement
5.4	Protect IACA Root Certificate Private Keys using dedicated hardware security modules (HSMs), either managed on-premises or provided through cloud platforms, that are under Sole Control of the State or Delegated Third Party. These requirements must be implemented in full compliance with the following references: • NIST SP 800-57 Part 1, Rev. 5; • NIST FIPS 140-3; and • NIST SP 800-53 Rev. 5, SC-12, SC-13.
5.5	Protect Certificate Systems private keys using NIST FIPS 140-3 Level 3 or Level 4 certified HSMs, in full compliance with the following references: • NIST FIPS 140-3; and • NIST SP 800-53 Rev. 5, SC-12, SC-13.
5.6	Protect Document Signer Private Keys using HSMs, either managed on-premises or provided through cloud platforms, that are under Sole Control of the State or Delegated Third Party. These requirements must be implemented in full compliance with the following references: • NIST SP 800-57 Part 1, Rev. 5; • NIST FIPS 140-3; and • NIST SP 800-53 Rev. 5, SC-12, SC-13.
5.7	Protect Certificate Systems Document Signer keys using NIST FIPS 140-3 Level 2, Level 3, or Level 4 certified HSMs, in full compliance with the following references: • NIST FIPS 140-3; and • NIST SP 800-53 Rev. 5, SC-12, SC-13.
5.8	Maintain and protect Issuing Systems, Certificate Management Systems, and Security Support Systems in at least a Secure Zone, in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; and • NIST SP 800-53 Rev. 5, SC-15, SC-20, SC-21, SC-22, SC-24, SC-28, SI-16.
5.9	Implement and configure, in full compliance with the following references: Security Support Systems that protect systems and communications between systems inside Secure Zones and High Security Zones, and communications with non-Certificate Systems outside those Zones (including those with organizational business units that do not provide PKI-related services) and those on public networks. These Requirements must be implemented in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; and • NIST SP 800-53 Rev. 5, SC-15, SC-20, SC-21, SC-22, SC-24, SC-28, SI-16.

Section	Requirement
5.10	Configure each network boundary control (firewall, switch, router, gateway, or other network control device or system) with rules that support only the services, protocols, ports, and communications that the State has identified as necessary to its operations. These Requirements must be implemented in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; and • NIST SP 800-53 Rev. 5, AC-4, SI-3, SI-8, SC-7, SC-10, SC-23, CM-7.
5.11	Configure Issuing Systems, Certificate Management Systems, Security Support Systems, and Front End and Internal Support Systems by removing or disabling all accounts, applications, services, protocols, and ports that are not used in the State's or Delegated Third Party's operations and restricting use of such systems to only those that are approved by the State or Delegated Third Party. These Requirements must be implemented in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework PR.PT-3; and • NIST SP 800-53 Rev. 5, CM-7.
5.12	Implement Multi-Factor Authentication on each component of the Certificate System that supports Multi-Factor Authentication, in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework PR.AC-7; and • NIST SP 800-53 Rev. 5, IA-2.
5.13	Generate IACA Root Certificate Key Pairs with a documented and auditable multi-party Key Ceremony, performing at least the following steps: 1. Prepare and follow a Key Generation Script; 2. Require a qualified person who is in a Trusted Role and not a participant in the key generation to serve as a live witness of the full process of generating the IACA Root Certificate Key Pair, or record a video in lieu of a live witness; 3. Require the qualified witness to issue a report confirming that the State followed its Key ceremony during its Key and Certificate generation process, and confirming that controls were used to protect the integrity and confidentiality of the Key Pair; 4. Generate the IACA Root Certificate Key Pair in a physically secured environment as described in the State's Certificate Policy and/or Certification Practice Statement; 5. Generate the IACA Root Certificate Key Pair using personnel in Trusted Roles under the principles of multiple person control and split knowledge. IACA Root Certificate Key Pair generation requires a

Section	Requirement
	minimum of three persons, consisting of two key generation ceremony administrators and one qualified witness); 6. Log the IACA Root Certificate Key Pair generation activities, sign the witness report (and video file, if applicable), with a document signing key which has been signed by the IACA Root Certificate Private Key, and include signed files and document signing public certificate with the IACA Root Certificate Key Pair generation log files; and 7. Implement controls to confirm that the IACA Root Certificate Private Key was generated and protected in conformance with the procedures described in the State's Certificate Policy and/or Certification Practice Statement and the State's Key Generation Script. These Requirements must be implemented in full compliance with the following reference: CA Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates, Section 6.1.1.1.
5.14	Generate Document Signer Key Pairs with a documented and auditable multi-party Key Ceremony, performing at least the following steps: 1. Prepare and follow a Key Generation Script; 2. Generate the Document Signer Key Pairs in a physically secured environment as described in the State's Certificate Policy and/or Certification Practice Statement; 3. Generate the Document Signer Key Pairs using only personnel in Trusted Roles under the principles of multiple person control and split knowledge, using at least two key generation ceremony administrators; 4. Log the Document Signer Key Pairs generation activities; and 5. Implement controls to confirm that the Document Signer Private Key was generated and protected in conformance with the procedures described in the State's Certificate Policy and/or Certification Practice Statement and the State's Key Generation Script. These Requirements must be implemented in full compliance with the following reference: - CA Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates, Section 6.1.1.1.
6: Threat Detection	
6.1	Implement a System under the control of State or Delegated Third Party Trusted Roles that continuously monitors, detects, and alerts personnel to any modification to Certificate Systems, Issuing Systems, Certificate Management Systems, Security Support Systems, and Front-End/Internal-Support Systems, unless the modification has been authorized through a change management process. The State or

Section	Requirement
	Delegated Third Party must respond to the alert and initiate a plan of action within at most 24 hours. These Requirements must be implemented in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • NIST Cybersecurity Framework DE.CM-7; and • NIST SP 800-53 Rev. 5, CA-7, CM-3, SI-5.
6.2	Identify any Certificate Systems under the control of State or Delegated Third Party Trusted Roles that are capable of monitoring and logging system activity, and enable those systems to log and continuously monitor the events specified in section 7 of this appendix. These Requirements must be implemented in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; and • NIST SP 800-53 Rev. 5, AU-12.
6.3	Monitor the integrity of the logging processes for application and system logs using either continuous automated monitoring and alerting, or human review, to confirm that logging and log-integrity functions meet the requirements set forth in section 7 of this appendix. Alternatively, if a human review is utilized and the system is online, the process must be performed at least once every 31 days. These Requirements must be implemented in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; and • NIST SP 800-53 Rev. 5, AU-1, AU-6, AU-5, AU-9, AU-12.
7: Logging	
7.1	Log records must include the following elements: 1. Date and time of record; 2. Identity of the person or non-person entity making the journal record; and 3. Description of the record. These Requirements must be implemented in full compliance with the following references: • CA Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates Section 5.4.1; • NIST Cybersecurity Framework PR.PT-1; and • NIST SP 800-53 Rev. 5, AU-2, AU-3, AU-8.

Section	Requirement
7.2	Log at least Certificate System and key lifecycle events for IACA Root Certificates, Document Signer Certificates, and other intermediate certificates, including: 1. Key generation, backup, storage, recovery, archival, and destruction; 2. Certificate requests, renewal, and re-key requests, and revocation; 3. Approval and rejection of certificate requests; 4. Cryptographic device lifecycle management events; 5. Generation of Certificate Revocation Lists and OCSP entries; 6. Introduction of new Certificate Profiles and retirement of existing Certificate Profiles; 7. Issuance of Certificates; and 8. All verification activities required in section 2 of this appendix and the State's Certification System Policy. These Requirements must be implemented in full compliance with the following references: • CA Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates Section 5.4.1; • NIST Cybersecurity Framework PR.PT-1; and • NIST SP 800-53 Rev. 5, AU-1, AU-2, AU-3, AU-4, AU-7, AU-10, SC-17.
7.3	Log Certificate System Security events, including: 1. Successful and unsuccessful PKI system access attempts; 2. PKI and security system actions performed; 3. Security profile changes; 4. Installation, update and removal of software on a Certificate System; 5. System crashes, hardware failures, and other anomalies; 6. Firewall and router activities; and 7. Entries to and exits from the IACA facility if managed on-premises. These Requirements must be implemented in full compliance with the following references: • CA Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates Section 5.4.1; and • NIST SP 800-53 Rev. 5, AU-2, AU-3, AU-4, AU-7, AU-10, CM-3, PE-6, SI-11, SI-12.
7.4	Maintain Certificate System logs for a period not less than 36 months, in full compliance with the following references: • CA Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates Section 5.4.3; and

Section	Requirement
	NIST SP 800-53 Rev. 5, AU-4, AU-10, AU-11.
7.5	Maintain IACA Root Certificate and key lifecycle management event logs for a period of not less than 24 months after the destruction of the IACA Root Certificate Private Key, in full compliance with the following references: - CA Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates Section 5.4.3; - NIST Cybersecurity Framework PR.PT-1; and - NIST SP 800-53 Rev. 5, AU-2, AU-4, AU-10, AU-11.
8: Incident Response & Recovery Plan	
8.1	Implement automated mechanisms under the control of State or Delegated Third Party Trusted Roles to process logged system activity and alert personnel, using notices provided to multiple destinations, of possible Critical Security Events. These Requirements must be implemented in full compliance with the following references: - CA Browser Forum Network and Certificate System Security Requirements; - National Cyber Incident Response Plan; - NIST Cybersecurity Framework RS.CO-5, RS.AN-5; and - NIST SP 800-53 Rev. 5, AU-1, AU-2, AU-6, IR-5, SI-4, SI-5.
8.2	Require Trusted Role personnel to follow up on alerts of possible Critical Security Events, in full compliance with the following references: - CA Browser Forum Network and Certificate System Security Requirements; - National Cyber Incident Response Plan; and - NIST SP 800-53 Rev. 5, AC-5, AC-6, IR-1, IR-4, IR-7, SI-4, SI-5.
8.3	If continuous automated monitoring and alerting is utilized, respond to the alert and initiate a plan of action within 24 hours, in full compliance with the following references: - CA Browser Forum Network and Certificate System Security Requirements; - National Cyber Incident Response Plan; and - NIST SP 800-53 Rev. 5, IR-1, PM-14, SI-4.
8.4	Implement intrusion detection and prevention controls under the management of State or Delegated Third Party individuals in Trusted Roles to protect Certificate Systems against common network and system threats, in full compliance with the following references: CA Browser Forum Network and Certificate System Security Requirements;

Section	Requirement
	• CISA Cybersecurity Incident & Vulnerability Response Playbooks; • National Cyber Incident Response Plan; • NIST Cybersecurity Framework DE.AE-2, DE.AE-3; DE.DP-1; and • NIST SP 800-53 Rev. 5, IR-1, IR-4, IR-7, IR-8, SI-4, SI-5.
8.5	Document and follow a vulnerability correction process that addresses the identification, review, response, and remediation of vulnerabilities, in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • CISA Cybersecurity Incident & Vulnerability Response Playbooks; • National Cyber Incident Response Plan; • NIST Cybersecurity Framework PR.IP-9; and • NIST SP 800-53 Rev. 5, CA-5, CP-2, CP-4, CP-6, CP-7, CP-8, CP-9, CP-10, SI-1, SI-2, SI-10.
8.6	Within 72 hours of the discovery of a significant cyber incident or breach which may compromise the integrity of the Certificate Systems, provide written notice to TSA of the incident or breach at www.dhs.gov/real-id/mDL. These Requirements must be implemented in full compliance with the following references: • National Cyber Incident Response Plan; and • NIST SP 800-53 Rev. 5, IR-6.
8.7	Undergo a Vulnerability Scan on public and private IP addresses identified by the State or Delegated Third Party as the State's or Delegated Third Party's Certificate Systems at least every three months, and after performing any significant system or network changes. These Requirements must be implemented in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • National Cyber Incident Response Plan; and • NIST SP 800-53 Rev. 5, CM-1, CM-4, IR-3, RA-1, RA-5.
8.8	Undergo a Penetration Test on the State's and each Delegated Third Party's Certificate Systems at least every 12 months, and after performing any significant infrastructure or application upgrades or modifications. These Requirements must be implemented in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • National Cyber Incident Response Plan; • NIST Cybersecurity Framework PR.IP-7; and • NIST SP 800-53 Rev. 5, CA-2, CA-8, CM-4, RA-3.

Section	Requirement
8.9	Record evidence that each Vulnerability Scan and Penetration Test was performed by a person or entity with the requisite skills, tools, proficiency, code of ethics, and independence.
8.10	Review State and/or Delegated Third Party Incident Response & Recovery Plan at least once during every 12 months to address cybersecurity threats and vulnerabilities, in full compliance with the following references: • CA Browser Forum Network and Certificate System Security Requirements; • National Cyber Incident Response Plan; and • NIST SP 800-53 Rev. 5, CP-2, IR-1, IR-2, SC-5.

Dated: August 17, 2023.

David P. Pekoske,
Administrator.

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General Information, indexes and other finding aids	202-741-6000
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Presidential Documents	
Executive orders and proclamations	741-6000
The United States Government Manual	741-6000
Other Services	
Electronic and on-line services (voice)	741-6020
Privacy Act Compilation	741-6050

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FEDERAL REGISTER PAGES AND DATE, AUGUST

49993-50532	1
50533-51208	2
51209-51694	3
51695-52020	4
52021-53348	7
53349-53758	8
53759-54222	9
54223-54486	10
54487-54872	11
54873-55330	14
55331-55548	15
55549-55904	16
55905-56458	17
56459-56744	18
56745-56998	21
56999-57328	22
57329-57860	23
57861-58064	24
58065-58494	25
58495-59438	28
59439-59784	29
59785-60104	30

CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR	254.....54908
184.....57750	354.....54796
200.....57750	3550.....55601
	3555.....55601
3 CFR	8 CFR
Proclamations:	103.....53358
10605.....53759	214.....53761
10606.....55331	217.....50759
10607.....57329	235.....59439
10608.....59785	
10609.....59787	9 CFR
Executive Orders:	93.....49994
14103.....50535	130.....49994
14104.....51203	381.....55909
14105.....54867	Proposed Rules:
14106.....55905	11.....56924
Administrative Orders:	57.....58524
Memorandums:	161.....58524
Memorandum of July	10 CFR
25, 2023.....50533	1.....57873
Memorandum of July	2.....57873
28, 2023.....53349	26.....57873
Notices:	32.....57873
Notice of August 14,	40.....57873
2023.....55549	50.....56750, 56752, 57873
Presidential	51.....57873
Determinations:	52.....56750, 56752, 57873
No. 2023-09 of August	72.....51209, 57873
11, 2023.....56997	73.....57873
5 CFR	100.....56750, 56752
7001.....53351	429.....53371
Proposed Rules:	430.....53371, 59790
300.....55586	431.....53371
362.....55586	Proposed Rules:
410.....55586	50.....53384, 56780, 59471
532.....55421, 55423	72.....51253
1321.....56708	429.....56392
	430.....50810, 55128
6 CFR	431.....56392
Proposed Rules:	850.....57365
37.....60056	900.....55826, 57011
7 CFR	11 CFR
27.....49993	Proposed Rules:
210.....57792	112.....55606
215.....57792	12 CFR
220.....57792	201.....50760
225.....57792	204.....50761
226.....57792	1002.....58065
235.....57792	1022.....58065
457.....59789	1026.....58065
984.....56745	13 CFR
1146.....57861	107.....50003, 55913
1147.....57861	120.....50003
1205.....55345	121.....55913
Proposed Rules:	142.....50003
58.....55426	146.....50003
247.....54908	14 CFR
250.....54908	25.....51695, 55359
251.....54908	
253.....54908	

39 50005, 50008, 50011, 50014, 50762, 51218, 51220, 51223, 51225, 51227, 51230, 51695, 52021, 52024, 53761, 54223, 55362, 55551, 56459, 56753, 56756, 56999, 57331, 59440, 59442	240 51896 249 51896 270 51404 274 51404 279 51404	602 52057	55913, 55915, 56768, 56770, 57004, 57006, 57352, 57354, 57356, 57882, 58104, 58106, 58108, 58110, 58112, 58500, 59453, 59800, 59802, 59804
71 50018, 50764, 54225, 54227, 54228, 54229, 54230, 54231, 54232, 54233, 55553, 58071	Proposed Rules: 23 53409, 58145 37 58145 240 53960 275 50076, 53960, 59818 279 50076, 59818	Proposed Rules: 9 59482, 59820 555 57370	207 51234 326 51234
93 54873	20 CFR	28 CFR	Proposed Rules:
97 56760, 56761, 58945, 58946	404 55366, 57004 416 55366, 57004	Proposed Rules: 35 51948 105 58167	100 51763, 57374 117 58174, 58176 165 57378
382 50020	Proposed Rules:	29 CFR	34 CFR
1204 50765	404 51747 416 51747, 57910 422 51747	1 57526 3 57526 5 57526 102 58075, 58076 1614 57879 1952 59793	Ch. II 54882 165 58112
Proposed Rules:	21 CFR	Proposed Rules:	36 CFR
21 53815	Ch.I 58498	1636 54714 1903 59825 2510 54511 2520 54511 2550 54511 2590 51552 4022 56583 4044 56583 4050 56583 4262 56583 4281 56583	1190 53604 1280 58502
25 55941	161 53764 164 53764 184 53764 186 53764 500 55559 510 55559 516 55559 520 55559 522 55559 524 55559 526 55559 529 55559 556 55559 558 55559	30 CFR	Proposed Rules:
27 55941	1300 50036 1302 50036 1306 53377 1308 50036, 56466	250 57334 285 54880 1206 53790, 57881 1208 53790 1217 53790, 55571 1220 53790	1195 50096
29 55941	Proposed Rules:	Proposed Rules:	37 CFR
39 50067, 51739, 51742, 51745, 52055, 53402, 53406, 53823, 54500, 54933, 54935, 54939, 54941, 54944, 54946, 54949, 55953, 55956, 57012, 57902, 57904, 57907, 58114, 58116, 58120, 59471, 59473, 59476, 59813, 59815	146 55607 161 53827, 58157 164 53827 184 53827 186 53827 1120 59481	56 54961 57 54961 60 54961 70 54961 71 54961 72 54961 75 54961 90 54961 550 58173 556 58173 590 58173 926 52082, 52084, 52086	6 50767 201 54491 205 54491 385 54406
61 55959	22 CFR	31 CFR	38 CFR
71 54248, 54249, 54251, 54252, 54254, 54503, 54952, 54955, 54956, 54959	171 58072	515 58102 555 52026 587 52038 591 52038, 52039 802 57348	38 51236
91 55941, 55959	24 CFR	Proposed Rules:	Proposed Rules:
110 59480	880 56764 888 56764 903 56764 905 56764 964 56764 970 56764 983 56764	Ch. VIII 54961	17 54972
121 55941	25 CFR	32 CFR	39 CFR
125 55941	2 53774 502 55366 556 55366 558 55366	1660 59449 1700 51234	111 54239
135 55941	26 CFR	33 CFR	40 CFR
401 56546	1 50041, 55506, 59449	100 54487, 55572, 56469, 56766, 58102, 59796, 59797 117 54487, 54488, 56470, 58102, 59799	52 50770, 50773, 51702, 51711, 51713, 53793, 53795, 53798, 53800, 53802, 54240, 54899, 55377, 55379, 55383, 55576, 57358, 57361, 57882
413 56546	Proposed Rules:	165 50042, 50765, 51699, 51701, 54237, 54489, 54880, 55371, 55373, 55375, 55572,	60 58442 70 53802 80 51239 180 52040, 53806, 54244, 55578, 56772, 56773, 57887, 57891, 57894, 57898, 58503, 58506
415 56546	1 51756, 52057, 57916, 59482, 59575, 60018		260 54086 261 54086 262 54086 264 54086 265 54086 266 54086 270 54086 271 54086, 55387, 55394 272 55394 300 55582 441 54086 761 59662
431 56546	5 52057 31 59575 54 51552 301 52057, 59575		Proposed Rules:
435 56546			2 54118 51 54118
437 56546			52 53431, 54257, 54259, 54534, 54975, 54983, 54996, 54998, 55428, 56787, 57014, 57018, 57020, 58178, 58202, 58538, 59834
440 56546			62 56787 63 55858, 57381 98 50282 123 55276 124 55276 147 55610
450 56546			
460 56546			
15 CFR			
30 54234			
738 54875, 56763, 59449			
742 54875			
744 57002			
766 59791			
774 56462			
902 53704			
950 56465			
Proposed Rules:			
705 58525			
922 58123			
16 CFR			
310 57333			
1309 54878			
1310 55554			
Proposed Rules:			
432 56780			
801 54256			
803 54256			
17 CFR			
39 53664			
140 53664			
229 51896			
232 51896			
239 51896			

180.....	57026	411.....	52262	64.....	52088, 53850	195.....	50056
232.....	55276	414.....	52262	73.....	57031, 57032, 57033, 58210, 59836	1002.....	59806
233.....	55276	415.....	52262			Proposed Rules:	
257.....	55220	416.....	57029	74.....	55961	171.....	55430
260.....	53836, 54537	418.....	52262	78.....	55961	174.....	55430
261.....	53836, 54537	419.....	57029	101.....	55961	180.....	55430
262.....	53836, 54537	422.....	52262	48 CFR		245.....	57043
263.....	54537	423.....	52262	Ch. 1.....	53748, 53756	246.....	57044
264.....	53836, 54537	424.....	52262, 57029	1.....	53748	350.....	59489
265.....	53836, 54537	425.....	52262	2.....	53751	365.....	59489
266.....	53836, 54537	455.....	52262	9.....	53754	385.....	59489
267.....	54537	485.....	57029	11.....	53754	386.....	59489
268.....	54537	488.....	57029	12.....	53748	387.....	59489
270.....	53836, 54537	489.....	52262, 57029	19.....	53751	395.....	59489
271.....	53836, 55429	491.....	52262	23.....	53754	531.....	56128, 58229, 58232
272.....	55429	495.....	52262	26.....	53748	533.....	56128, 58229, 58232
300.....	55611	498.....	52262	52.....	53748, 53751, 53754, 53756	535.....	56128, 58229, 58232
441.....	53836	600.....	52262	53.....	53754	537.....	56128, 58229, 58232
745.....	50444	44 CFR		203.....	55937	1500.....	57044
41 CFR		296.....	59730	204.....	55937	1530.....	57044
60-1.....	51717	45 CFR		206.....	55937	1570.....	57044
60-2.....	51717	620.....	50044	212.....	55937	1572.....	57044
60-4.....	51717	1110.....	53810	215.....	55937, 55940	1580.....	57044
60-20.....	51717	Proposed Rules:		225.....	55940	1582.....	57044
60-30.....	51717	101.....	55613	234.....	55940	1584.....	57044
60-40.....	51717	146.....	51552	235.....	55937	50 CFR	
60-50.....	51717	147.....	51552	252.....	55940	17.....	56471, 57046, 59698
60-300.....	51717, 57009	180.....	57029	501.....	53811	20.....	54830, 56489
60-741.....	51717, 57009	46 CFR		Proposed Rules:		223.....	54026, 58511
42 CFR		169.....	51737	1.....	51672, 52102	226.....	54026
73.....	54247	Proposed Rules:		2.....	51672	300.....	53383
405.....	57901	401.....	55629	4.....	51672	622.....	50063, 50806, 55585, 56527, 59810
410.....	57901	47 CFR		5.....	51672	635.....	50807, 53812, 56777
411.....	53200, 57901, 58640	7.....	55584	7.....	51672	648.....	50065, 50808, 51737, 54495, 54899, 55411, 56527, 56544, 58113, 58521, 59469
412.....	50986, 51054, 57901, 58640	8.....	52043	9.....	51672	660.....	51250, 52046, 53813, 58522
413.....	53200, 57901	14.....	50053	10.....	51672	679.....	52053, 53704, 55419, 56778, 57009, 59811
416.....	57901	54.....	55401, 55918, 57363, 58509	11.....	51672	Proposed Rules:	
417.....	50043	64.....	51240	12.....	51672, 52102	17.....	54263, 54548, 55962, 55991, 57060, 57180, 57224, 57292, 57388, 59837
418.....	51164	73.....	51249	13.....	51672	223.....	55431, 59494
419.....	57901, 58640	74.....	59455	15.....	51672	224.....	59494
422.....	50043	Proposed Rules:		16.....	53855	300.....	59838
423.....	50043	Ch. I.....	58211	18.....	51672	622.....	51255, 57916
424.....	51164, 57901	1.....	50486, 55961, 57030	22.....	52102	635.....	50822, 50829
455.....	50043	2.....	55961	23.....	51672	660.....	50830, 57400, 59838
460.....	50043	14.....	52088	26.....	51672	679.....	50097
485.....	57901	15.....	55961	36.....	51672		
488.....	53200, 58640	25.....	55961, 58540	37.....	51672		
489.....	53200, 57901, 58640	27.....	55961	39.....	51672		
495.....	58640	54.....	53837, 56579, 57383	42.....	51672		
Proposed Rules:		63.....	50486	47.....	52102		
405.....	52262, 57029	48 CFR		52.....	51672, 52102		
410.....	52262, 57029			49 CFR			
				192.....	50056		

LIST OF PUBLIC LAWS Note: No public bills which have become law were received by the Office of the Federal Register for inclusion	in today's List of Public Laws. Last List August 9, 2023	Public Laws Electronic Notification Service (PENS) PENS is a free email notification service of newly	enacted public laws. To subscribe, go to https://portalguard.gsa.gov/—layouts/PG/register.aspx. Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. PENS cannot respond to specific inquiries sent to this address.